
(2022) 11 BOM CK 0091

In the Bombay High Court

Case No : Writ Petition No. 11516, 11520 Of 2022

Gopalrao Kashinath Kele And Others

APPELLANT

Vs

State Co-Operative Election Authority And Others

RESPONDENT

Date of Decision : 28-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 32,. 226
Maharashtra Co-Operative Societies Rules, 1961 — Rule 58
Code Of Civil Procedure, 1908 — Order 21 Rule 50
Maharashtra Cooperative Societies Act, 1960 — Section 2(14), 22(1)(a), 22(1)(b), 24, 27, 27(1), 27(5), 27(10), 73CA, 73CA(1)(i)
Indian Partnership Act, 1932 — Section 4, 25
Indian Contract Act, 1872 — Section 11

Citation : (2022) 11 BOM CK 0091

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : V.D.Salunke, S.S.Patil, D.R.Kale, S.K.Kadam, V.D.Sapkal, S.R.Sapkal, Ujwal Patil

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1] By way of present Writ Petitions, the petitioners are challenging the legality and validity of the order passed by respondent no.4 – the District Co-operative Election Authority dated 14.11.2022 wherein the objections raised by respondent no.6 to the provisional voter list dated 27.10.2022 of the respondent no.7, Yogeshwar Co-operative Credit Society Ltd. are accepted and 28 number of voters are directed to be deleted from the final voters list to be published on 21.11.2022.

2] The petitioners are the above deleted voters and have restricted their challenge to the extent of deletion of present writ petitioners, three in number. The petitioner no.1 is the Chairman and petitioner nos.2 and 3 are the Directors of the Co-operative Credit Society – respondent no.7.

3] Brief facts leading to filing the present Writ Petitions can be summarized as under:

i] Respondent no.4 – The District Co-operative Election Officer published a programme for election to respondent no.7 – Yogeshwar Co-operative Credit Society Ltd. Dhule. As per the said programme, the provisional voters list was to be published on dated nil. Thereafter from 31.10.2022 to 04.11.2022, 5 days period was given calling for objections. On 09.11.2022 at 11.00 a.m. was fixed for scrutiny of the objection and on or before 14.11.2022, the decision was to be taken on the objections. Thereafter, final voters list was to be published on 21.11.2022.

ii] The provisional voters list of 3561 voters was published by respondent no.7 society on 27.10.2022.

iii] Respondent no. 6 raised objection to the provisional voters list, stating that the petitioners are partners of the firms registered under the Partnership Act, 1932, namely, M/s. Prithvi Builders and Developers and other partnership firms wherein the firms have taken huge loans from the respondent no.7, society and has defaulted on repayment of loans, and thus, sought disqualification of the petitioners and deletion of their names from the final voters list. Respondent no.6 objector along with the objection submitted audit report of the year 2022 and NPA list and also the order dated 05.05.2022 passed by the Additional Registrar, Co-operative Societies [Credit Societies], Pune under Section 73CA of the Maharashtra Co-operative Societies Act, 1960 [for short 'Act of 1960'] read with Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 [for short 'Rules of 1961'], disqualifying the petitioners.

iv] On objection being received, the respondent no.4 – The District Co-operative Election Officer called for reply from the respondent no. 7 society to satisfy itself about the claim of the objectors. The manager of the respondent no. 7 - society appeared before the District Co-operative Election Officer along with record of the respondent no. 7 - society. The District Co-operative Election Officer, on going through the record, found various members of the society ineligible for voting and directed deletion of the ineligible voters, which included the petitioners from the provisional voters list. The respondent no.4, by its order dated 14.11.2022, held that members who have either defaulted themselves or are the partners of the partnership firm which has defaulted would be disqualified from voting and has directed to remove their names from the final voters list.

4] The names of the petitioners were apparently deleted on the ground that the Firms of which they were partners were defaulters. There was no finding that the petitioners have personally defaulted on their personal loan. By the present Writ Petitions, the petitioners have challenged the order of respondent no.4 - The District Cooperative Election Officer dated 14.11.2022, on the following grounds :-

a] The learned counsel for the petitioners

Mr.V.D.Salunke submits that the petitioners themselves have not defaulted and although one of their partnership firms, namely, M/s. Prithvi Builders and Developers has defaulted, as per the Maharashtra Co-operative Societies Act, 1960 and the bye laws of the respondent no. 7 - society, the partnership firm registered under the Indian Partnership Act, 1932 has an independent membership and on default only the partnership firm became ineligible to vote and accordingly the name of the partnership firm has not been included in the provisional voters list. The petitioners further submits that disqualification of the partnership firm ipso facto does not incur disqualification of the individual member as they have not individually defaulted. The petitioners rely upon Section 27 [5] and 27

[10] of the Maharashtra Co-operative Societies Act and Rules and Bye laws of respondent no.7 – society.

b] Mr.Salunke, learned counsel for the petitioners also contends that no notice of the enquiry or objection was given to them personally and as such the order passed by respondent no.4 is in violation of the principles of natural justice and the order dated 14.11.2022 of respondent no. 4 - The District Co-operative Election Authority should be quashed and set aside and they be heard by the District Co-operative Election Authority before passing order on the objections of the respondent no.6.

c] It is further the case of the petitioners that only final voters list is published and the election programme is not published as on the date of filing of the petition and the election programme can be declared only after minimum of 10 days period after finalization of the voters list and thus this Court can interfere with the illegality committed by respondent no. 4 - The District Co-operative Election Authority and direct respondent no.4 to decide the objection raised by the objectors against the petitioners after hearing the petitioners.

d] The learned counsel for the petitioners Mr.Salunke relies upon the judgments in the cases of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & others reported in 1998 [8] SCC 1, Tirupati Motiram Mohite & others Vs. The State of Maharashtra & others in Writ Petition No.3323 of 2022 decided on 10.03.2022, Pandurang Hindurao Patil Vs. The State of Maharashtra reported in 1984 C.T.J. 125, Dalsing Shamsing Rajput Vs. State of Maharashtra & others reported in 2006

[3] Mh.L.J. 592, Election Commission of India vs. Ashok Kumar & others, reported in AIR 2000 SC 2977, Ahmednagar Zilla S.D.V. & P. Sangh Ltd. & another Vs. State of Maharashtra & others reported in [2004] 1 SCC 133, Pundlik Vs. State of Maharashtra & others reported in [2005] 7 SCC 181, Karbhari Maruti Agawan & others Vs. State of Maharashtra & others reported in 1994 [2] Mh.L.J. 1527 and Ankushbhau Juglal Baghele & others Vs. State of Maharashtra & others reported in 2022 [4] Mh.L.J. 539, to contend that this Court can interfere with the order passed by respondent no. 4 – the District Cooperative Election

Authority for the reasons mentioned in above judgments and that remedy of writ jurisdiction is not barred.

5. [a] Per contra, the learned Senior Counsel Mr.Sapkal appearing for respondent no. 6 – objector submits that the petitioners were the Chairman and the Directors of the Co-operative Societies. The petitioners personally may have not defaulted on loans taken from respondent no. 7 – society but their partnership firms have taken huge loan from the co-operative society and that there is a clear admission on the part of the petitioners that the partnership firm registered under the 1932 Act in which the petitioners are partners has defaulted. The learned counsel further submits that respondent no. 4 - The District Co-operative Election Authority conducts summary enquiry while deciding objections to voters list and he had called for the reply of the society along with record to ascertain itself as to the default committed by the members on the list of the provisional voters. The entire audit report was considered by respondent no. 4 - The District Co-operative Election Authority wherein huge defaults have been noticed of various partnership firms of the petitioners.

b] The learned Senior Advocate Mr.Sapkal relies upon Section 4 and 25 of the Indian Partnership Act, 1932 [for short 'Act of 1932'] to contend that the partnership firm is not a body incorporated and is an Association of individuals and that the liabilities of the partnership firm is a liability of each of the partners and thus when the partnership firm incurs liability, it is incurred by all the partners of the defaulting firm and in the instant case, the partners being individual vote, they have also incurred disqualification of voting rights.

c] The learned Senior Advocate Mr.Sapkal further submits that it is an admitted position in the writ petition that the partnership firm has defaulted and therefore no meaningful purpose would be served in sending the matter back to respondent no.4 as the said authority has already passed the order based on the default of the partnership firm of which the petitioners are the partners.

d] The learned Senior Advocate Mr. Sapkal has taken me through provisions of Partnership Act, 1932, the Maharashtra Co-operative Societies Act, 1960 and Rules framed thereunder and the bye-laws of the society to contend that the petitioners being partners of the defaulting partnership firm, the petitioners have personally defaulted and should be disqualified from voting.

The learned Senior Advocate relies upon the judgments in the cases of Bansilal Narayandas Kankaria & another Vs. Special Land Acquisition Officer and others reported in 2001 [1] Bom.C.R. 136 and in the case of Glorious Plastics Limited Vs. Laghate Enterprises and others reported in 1993 [1] Bom.C.R. 179 to contend that when the partnership firm incurs liability it is the liability of all the partners and also the judgment in the case of Nilkanth Balappa Managave Shop through Partners Vs. Mis Raj & Company through Partners reported in 1982 BCI 37 wherein it has been held that the decree against the partnership firm can be executed against the personal property of the partnership firm.

6. [a] Mr.R.N.Dhorde, learned Senior Advocate, appearing for respondent no.6 in Writ Petition No.11520 of 2022 accepts argument of the learned Senior Advocate Mr.Sapkal and further submits that name of respondent no. 6 is not reflected in the provisional voters list as the partnership firm of which he is the partner has defaulted although he has himself not defaulted. However, this factual aspect is disputed by the petitioners. Mr.Dhorde, learned Senior Advocate relies upon the judgment passed in the case of Shri Sant Sadguru Janardan Swami [Moingiri Maharaj] Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra & others reported in [2001] 8 SCC 509 and submits that this Court should not interfere with the election process and that the preparation of the voters list is a part of the election process.

b] The learned Senior Advocate Mr.Dhorde submits that the provisional voters list is published on 27.10.2022 and final voters list is published on 21.11.2022 and the interference at this stage would hamper the process of election and this Court should refrain from interfering in the election process and relegate the parties to the alternate remedy of election petition.

7] From the contention raised, the following facts emerge :

i] The petitioners are the Chairman and Directors of respondent no. 7 – Cooperative Credit Society.

ii] The petitioners have not defaulted on any of the loans personally.

iii] There was no personal notice of objections given to the petitioners.

iv] The objection raised by respondent no. 6 relied upon the audit report of the society. The audit report showed defaults on the part of the partnership firms of which the petitioners are the partners and at least to the extent of one of the partnership firm the petitioners admit that the partnership firm has defaulted.

v] The respondent no. 4 called for record from respondent no. 7 society to ascertain defaults and the manager of respondent no.7 remain present for hearing before respondent no.4 with all its records.

8] From the above all undisputed facts, the following three question arise for consideration of this case, namely;

(i) Whether the petitioners could be disqualified as being the voters of respondent no.7 society on the ground of default in repayment of loan amount being committed by the partnership firms registered under the Act of 1932 of which the petitioners are the partners when the petitioners have not personally committed any default in repayments of their personal loans?

(ii) Whether the order passed by respondent no. 4 – the District Co-operative Election Authority without notice to the petitioners denies the right of natural justice and that the impugned order needs to be set aside and the matter be remanded back to respondent no.4 – the District Co-operative Election Authority for reconsideration of objections raised by respondent no.6?

(iii) Whether this Court should interfere in the election process at this stage or relegate the parties to the alternate remedy at an appropriate stage?

9] The order to examine the questions raised above at para 8 (i), the following provisions of the Maharashtra Co-operative Societies Act and bye laws of the respondent no.7 society needs to be noted.

10] Section 2 (14) of the Act of 1960 defines a firm.

Section 22 (1) (a) and (b) of the Act of 1960 provides for membership of an individual and a firm. Section 27 of the Act of 1960 relates to the voting powers of the members.

Section 27 (1) provides for one vote per member and the same has to be exercised personally. Section 27 (5) relates to the voting by a firm and Section 27 (10) provides for disqualification of members from voting in case of default.

All the above sections of the Act of 1960 read as under :

2. In this Act, unless the context otherwise requires, -

[14] "firm" means a firm registered under the Indian Partnership Act, 1932;

22. Person who may become member

(1) Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say -

(a) an individual, who is competent to contract under the Indian Contract Act, 1872;

(b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, 1860;

27. Voting powers of members.

[(1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy :

Provided that, in the case of an equality of votes the Chairman shall have a casting vote.]

(5) Where a firm has invested any part of its funds in the shares of a society, any one of its partners [appointed by the firm] shall be entitled to vote in the affairs of the society on behalf of the firm.

(10) [If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the Explanation to clause (i) of sub-section (1) of Section 73CA, have no right to vote in the affairs of the society:]

Provided that, a member shall not be deemed to be a defaulter, if he has

discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.

Explanation to clause (1) of Section 73CA, reads as under:

73-CA]. Disqualification of committee and its members.

Explanation – For the purposes of this clause, the term “defaulter” includes -

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any instalment of the loan granted;

11] From the above quoted provisions of the Maharashtra Co-operative Societies Act, 1960, it would be clear that a partnership firm registered under the provisions of the Indian Partnership Act, 1932 as well as an individual competent to contract, can become the members of the cooperative societies. Section 27 deals with voting powers of the members. Section 27 (1) provides for one vote to each individual member. Sub-Section (5) of Section 27 provides for one vote to a firm by any one of its partner. Sub-section (10) of Section 27 deals with a member who has defaulted on its loan, to lose its voting right. Thus, from the above, it is clear that if a partnership firm registered under the Act of 1932 defaults on its loan, it would lose its voting right as well as if an individual member defaults on repayment of his loan, then he would also lose its voting right.

12] Now coming to the bye laws of respondent no.7 – society, in terms of bye-law 2 (14) a firm means a firm registered under the Indian Partnership Act, 1932.

Similarly, under bye-laws 10 (1) and 10 (2) (C) an individual as well as a partnership firm registered under the Act of 1932 can also be a member of the respondent no.7 – society. Right of voting is determined under bye law 21.

Bye law 21 (3) which is the relevant for our case says that the members who are defaulters and not fulfilling the criteria as laid down in Section 27 of the Maharashtra Co-operative Societies Act, shall be disqualified from voting.

The word ‘defaulter’ has been defined under bye law No. 4

(17) to mean any borrower whose loan is in default for more than 90 days and would also include a person who is a guarantor to such a loan.

13] The relevant provisions of the bye-laws of respondent no. 7 society, relating to membership and voting right of members are as under:-

4. Definition :

(8) ‘Person’ means any major person capable of entering into a contract as per section 11 of the Indian Contract Act, 1872. A person having own proprietary firm, a partnership firm registered under the Indian Partnership Act, 1932, Hindu

Undivided Family, State Government, Public Trust or any other company or society having registered under any Act in force.

(17) 'Defaulter' means any borrower whose loan is in default for more than 90 days; also a person who is a guarantor to such a loan.

10. Ordinary Membership :

1. Any person who is residing within the working area of the society and who is in need of the services of the society and if the society is capable of serving such a person and if the business of the person is not parallel or competitive to the business of the society, such a person shall be accepted as a general member of the society.

2. No person other than given in the list below shall be accepted as a general member of the society :

A.

B.

C. A partnership firm having registered under the Indian Partnership Act, 1932.

21. Right of voting in the election of the Board of Directors :-

1. Only active members shall have the right to vote to the extent of one vote only irrespective of the holding of shares;

2. It is mandatory for the individual members to cast their vote by remaining in person. A society / company / trust / a society having formed under any other law in force, who is a member can appoint their partner / director / office bearers as representative of the society for such voting.

3. Those active members who are defaulters and are not fulfilling the criteria as laid in the Section 27 of the Maharashtra Co-operative Societies Act, shall be disqualified for voting.

4. It shall be required for the active members to possess the eligibility to become an active member of the society as per the by-laws of the society, before exercising their right to vote.

14] Thus, from the reading of the above bye laws, it is clear that partnership firm registered under the Indian Partnership Act, 1932 as well as any individual competent to contract can be a member of respondent no. 7 – society.

If there is any default by the partnership firm then the partnership firm is disqualified from voting and if there is a default by individual member then he is disqualified from voting. The bye law no. 4 (17) further provides that even the guarantor of such a loan of which there is a default is also debarred from voting if he is a member of the cooperative society. The bye laws of the respondent no.1 society with respect to membership and voting rights are similar to the

provisions of the Maharashtra Co-operative Societies Act. However, there is one additional aspect in the bye laws that if the guarantor of a defaulted loan, is also an individual member of the society then he would be also disqualified from voting.

15] Although the Act and bye laws clearly lay down that a defaulting member or a defaulting firm would be disqualified from voting, there is no direct provision relating to disqualification of an individual member from voting in the event of the individual member being partner of the partnership firm which has defaulted on the repayment of loan. Thus, the question arises whether the default by the partnership firm can also be construed as default by its partners. Therefore, I have to analyze the relevant provisions of the Indian Partnership Act, 1932.

16] The Section 4 and 25 of the Indian Partnership Act, 1932 reads as under:

"4. "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.

Persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name."

25. Every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner."

17] From the above quoted Section 4 of the Partnership Act, it is clear that the partnership is an association of individuals. As per Section 25 of the Partnership Act, every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.

18] The Hon'ble Supreme Court while dealing with the liability of the partners in a partnership firm registered under the Act of 1932 in the case of Ashutosh Vs. State of Rajasthan & others reported in (2005) 7 SCC 308 in paras 15, 19 and 20 has held as under:

15. In the case of ITO (III) v. Arunagiri Chettiar this Court considered the question as to whether an erstwhile partner is liable to pay the tax arrears due from the partnership firm pertaining to the period when he was a partner. The Madras High Court has held that he is not. Disputing the correctness of the said judgment, the Revenue came in appeal before this Court. This Court while allowing the appeal and setting aside the judgment of the High Court observed as follows : (SCC p. 33)

"Section 25 of the Partnership Act does not make a distinction between a continuing partner and an erstwhile partner. Its principle is clear and specific viz. that every partner is liable for all the acts of the firm done while he is a partner jointly along with other partners and also severally. Therefore, it cannot be held that the said liability ceases merely because a partner has ceased to be partner subsequent to the said period."

19. In the case of *Sahu Rajeshwar Nath v. ITO* this Court ruled that the liability of the partner of the firm is joint and several and it is open to a creditor of the firm to recover the debt of the firm from any one or more of the partners. In a decree against the partnership firm, each partner is personally liable except the minor whose liability is limited to his assets in the partnership.

20. In the case of *Mandalsa Devi v. M. Ramnarain (P) Ltd.* while considering the scope of Order 21 Rule 50 this Court observed as follows: (AIR p.1718)

"A suit by or in the name of a firm is really a suit by or in the name of all its partners. The decree passed in the suit, though in form against the firm, is in effect a decree against all the partners. Beyond doubt, in a normal case where all the partners of a firm are capable of being sued and of being adjudged judgment-debtors, a suit may be filed and a decree may be obtained against a firm under Order 30 of the Code of Civil Procedure, and such a decree may be executed against the property of the partnership and against all the partners by following the procedure of Order 21 Rule 50 of the Code of Civil Procedure."

19] Thus, as held in the judgment of *Ashutosh Vs. State of Rajasthan & others* [supra] under the Partnership Act, 1932, all the partners are severally and jointly, liable for the act of the firm and all the defaults made by the firms are recoverable from the partners individually. The firm is not individual juristic person separate from its partners and liability of the firm is the liability of the partners.

20] Thus, I hold that defaults at the hands of the partnership firm registered under the Act of 1932 is a default at the hands of the partners of the defaulting firm and the logical consequences of such a default is that if a partner of a defaulting firm is also an individual member of the cooperative society, then the defaulting member should also be held to be disqualified in terms of bye law 10 (3) from voting.

21] In terms of bye law no.4 (17), even a guarantor to a defaulting loan is a defaulter and thus if guarantor of a defaulting firm is a member of the cooperative society then even he is disqualified from voting. The partners of the defaulting firm is directly liable for the loan default of the firm and thus would incur disqualification from voting in his individual capacity also.

22] The idea of not making defaulters voters in the co-operative credit society is that they should not vote or get elected the people who would protect the defaulters from recovery of loans and therefore harm the interest of the cooperative credit society. The whole purpose of the legislation is to keep the defaulters out of the purview of vote and contesting in the cooperative credit society. The liability of the partnership firm is a liability of each of the partners and that all the loans, which are taken by the Partnership, has gone to the benefit of individual partners of a firm and are directly responsible for default and they have to be kept out from voting the management of the cooperative society. Although election law is very technical but interpretation has to be in line with

the purpose of the legislation and thus no fault can be found with the order passed by respondent no.4 disqualifying the petitioners and deleting their names from the final voters list.

23] Next question raised by the petitioners with regards to the question no.2 raised at para 8 above, admittedly no personal notice was issued to the petitioners before removal of their names from the voters list.

24] The learned Senior Advocate Mr.Sapkal relies upon the judgment in case of Bansilal Narayandas Kankaria and another Vs. Special Land Acquisition Officer and others reported in 2001 [1] Bom.C.R. 136. Para 13 of the said judgment which reads as under :

13. The learned Counsel for the petitioners urged before us that the matter should be remanded to the State Government as the order dated 6th April, 1987 was passed without affording an opportunity of hearing to the petitioners. We have rejected the said contention and proceeded to decide the matter on merits. On this issue we may usefully refer to the judgment of the Supreme Court in the case of M.C. Mehta v. Union of India & others 1999 (1) Bom.C.R. (S.C.) : A.I.R. 1999 S.C.W. 2754 wherein it has been held :-

"It is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law. It is, therefore, clear that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there is violation of principles of natural justice."

25] In view of above, in the instant case, admittedly at least one of the firm in which the petitioners are the partners have defaulted and respondent no.4 has passed the order deleting the names of the petitioners on account of the default of the partnership firm. Thus, no meaningful purpose would be served in remitting the matter back.

26] Even in the writ petition, the petitioners are not disputing that one of the partnership firm has defaulted. The issue canvassed before me by the petitioners is that even if the partnership firm has defaulted , it is only the partnership firm to lose its voting right and not an individual member. Thus, I proceed to decide the questions of law framed in para no.8 without remitting the matter back to respondent no.4.

27] With regard to the question no.3 at para 8 above, since I have answered the question no.1 at para 8 that the default by the partnership firm registered under the Act of 1932 is a default by all its partners and if any one of the partners is also a member of the cooperative society, then such partner would also stand

disqualified from voting, this Writ Petition fails on merits and since there is no interference in the election process this question of law does not survive for consideration.

28] In view of the above and fact that I am upholding the order passed by the respondent no. 4, there can be no liberty granted to the petitioners to exhaust the alternate remedy of election petition. Writ Petitions are dismissed.