

(2015) 08 BOM CK 0345
In the Bombay High Court
Case No : Writ Petition No.7195 of 2015

Kondiba S/o Babarao Manorkar, Nanded	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Maharashtra Co-operative Societies Act, 1960 — Section 2(19)(a), Section 26

Citation : (2016) MCR 446

Hon'ble Judges : R.M. Borde and P.R. Bora, JJ.

Bench : Division Bench

Advocate : Mr. U.M. Maske, Advocate holding for Mr. S.B. Ghatol Patil, Advocate, for the Petitioner; Mr. N.B. Patil, AGP, for the Respondents Nos. 1, 3 and 4; Mr. S.K. Kadam, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

R.M. Borde, J.—Heard. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties.

2. The petitioner is praying for quashing the order dated 08.07.2015, passed by Respondent No.3- District Cooperative Election Officer and District Deputy Registrar, Co-operative Societies, Nanded, rejecting the objection tendered by petitioner in respect of non inclusion of petitioner and other members in the final list of voters prepared for the purposes of holding elections to Umri Taluka Kharedi Vikri Sangh Limited. Petitioner is also seeking a direction to the Respondents to include names of 1666 members of Respondent No.4-Society in the final list of voters.

3. The petitioner contends that he is a legally enrolled member of Respondent No.4-Society and has participated in the election process of the society on earlier occasions. The elections for electing managing body of Respondent No.4 are due in the year 2015. Respondent No.3 ? District Cooperative Election Officer ordered a programme for finalisation of list of voters on 18.06.2015. The date prescribed

for publication of preliminary list of voters as per the programme was 19.06.2015, whereas, objection to the preliminary voters list was to be submitted between 19.06.2015 to 29.06.2015. Hearing on objections was proposed on 02.07.2015 and the decision, in respect of objections raised, was to be declared on 08.07.2015. The date prescribed for publication of final list of voters, as per the programme, was 15.07.2015.

4. The petitioner contends that on publication of final voters list on 19.06.2015, so far as Individual Member Constituency is concerned, it was noticed that names of only 107 members have been notified in the final list of voters. Although the list records that membership of the society, as on the date of publication of list, is 1663, the list of voters has been prepared on consideration of due date as 31.10.2014. The petitioner contends that since his name together with 1663 total number of voters did not find place in the preliminary list of voters, he raised an objection to the District Cooperative Election Officer requesting for inclusion of about 1666 members in the final list of voters. Hearing on the objection raised by the petitioner was prescribed on 02.07.2015.

5. It was submitted by the Assistant Registrar, Cooperative Societies, Umri, before the District Cooperative Election Officer that since price of the share amount is enhanced to Rs.500/- and as the petitioner and other members have failed to pay the difference amount in the price of shares, their names cannot be included in the list of valid members. It is also recorded in the order that an advertisement was published on 20.04.2015 in Daily Godateer Samachar calling upon members of the Society to deposit balance amount of share price, however, since petitioner and others did not deposit balance amount of share price with the society, their names have not been incorporated in the valid list of voters.

6. The petitioner contends that decision rendered by the District Cooperative Election Officer is erroneous and in violation of provisions of Maharashtra Co-operative Societies Act, 1960. The petitioner, along with the petition, has presented a list of individual members of the society consisting of 1624 names of the members. The final list of voters published by the Returning Officer consists of only 107 names of members. The reason for failure to include names of remaining members is referable to bye law No.12 of the Bye-Laws of the Society, which prescribes that share value of one share shall be Rs.500/-. It is contended that amendment to the bye-laws, directing enhancement in the share value, has been adopted by the General Body of the society on 26.04.2013 and the said amendment has been approved by the Assistant Registrar, Cooperative Societies, Umri.

7. The petitioner, placing reliance on the provisions of Section 26 of the Maharashtra Co-operative Societies Act, contends that a member shall be entitled to exercise such right as provided under the said Act, Rules and by-laws, provided that no member shall exercise the right until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society,

from time to time. Second proviso to Section 26(1) provides that in case of increase in minimum contribution of member in share capital to exercise right of membership, the society shall give a due notice of demand to the members and give reasonable period to comply with. It is stated that the society has neither given any notice of demand to the petitioner or others nor has specified reasonable period for complying with such demand.

8. The petitioner contends that since there was no demand in respect of enhanced amount of share, the right exercisable by him as a member of the society cannot be curtailed. It is also pointed out that amended provisions of the Maharashtra Co-operative Societies Act provide for classification of an "active member" to mean that a member who participates in the affairs of the society and utilises minimum level of services or products of that society, as may be specified in the by-laws. The definition of the word "Member", as provided under Section 2 (19) (a) provides that, a person joining in an application for the registration of a Cooperative Society, which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a nominal or associate member and any depositor or financial service user of primary agricultural co-operative credit society.

9. It is not a matter of doubt that the petitioner and other members, whose names have not been incorporated in the final list of voters, are conferred with the membership of the society. The by-laws of the society provides for an active member, which definition, is in conformity with the definition provided under the Maharashtra Co-operative Societies Act. In case name of the member is removed from the list of active members, necessary intimation shall have to be given to such member within thirty days from the date of close of the financial year. In the instant matter, it has not been disclosed as to whether petitioner and others have been classified as non active members. The fact, however, remains that the petitioner and other members have not been communicated regarding change in the classification and as such, it shall have to be presumed that they are valid members of the society entitled to exercise all the rights.

10. That, so far as issuance of notice is concerned, by-law No.89 of the society prescribes the mode of service of the notice. It is mandated that the notice must be served at the residence of the member and thereupon, it shall be construed that the same is validly served. In the instant matter, there is no notice issued to the petitioner or others, as required under the Act, calling upon them to pay the difference in share value within reasonable period.

11. It has been contended that there was a publication of notice in the news paper calling upon members of the society to deposit difference in share value with the society and in spite of such publication, the petitioner and other members have failed to deposit the amount. It must be noted that the publication appears to have been issued in the local news paper only on 20.04.2015 and that there is no individual notice to each of the members within contemplation of proviso to Section 26 of the Act. The bylaws of the society

prescribed a mode of service of notice and since the society failed to issue notice as contemplated under the bylaws, it shall have to be presumed that there is no compliance of the mandate contained in proviso to Section 26.

12. It is also contended by the petitioner that since majority of members i.e. about 90% are kept away from the process of election, interference in exercise of extraordinary jurisdiction, by this Court, is called for. Reliance is placed on the judgment in the matter of Rajan Dinkarrao Pharate and others v. State of Maharashtra & others, reported in 1997 (1) MhLJ 543. It is observed in paragraph 25 of the judgment, thus:

"25 No doubt the High Court is always slow and sparingly invokes its jurisdiction under Article 226 of Constitution of India when there is challenge to preparation of voters list but where the exceptional and extraordinary case is made out that the entire exercise of election would be farce if the process of election is completed on the basis of grossly invalid voters list depriving majority of members of the society from exercising right to vote, in my view, case is made out for invoking extraordinary jurisdiction under Article 226 of the Constitution of India and the interference by this Court. The edifice of valid election is built on valid list of voters and where there is wholesale exclusion of members from final list of voters, shockingly to the extent of 97% on unjustifiable grounds, the High Court cannot imprudently refuse to exercise extraordinary jurisdiction and observe that since the election process has started the dispute should be resolved through election petition. The very objective and purpose of rules of 1971 particularly after insertion of sub-rules (5), (6) and 7 in rule 6 that no member be excluded from right to vote unless of course he is dis-entitled to vote under law would be defeated if this Court refuses to interfere with the erroneous, unjustified and illegal order of Collector de-franchising more than 97% of the members of the society on the ground that legality and correctness of such order should be challenged after election is over by way of election petition under section 144T of the Act of 1960. Each case has to be examined in its own facts. A remedy under Article 226 by its nature is extraordinary and is invoked only in deserving cases but it would be too much to say that once the process of election has been set in motion, in no case the High Court can invoke its jurisdiction under Article 226 of Constitution of India. The judgments relied upon by the parties also lay down the aforesaid proposition and need not be dealt with at length. Ordinarily the High Court should not interfere in the matters relating to preparation of voters list and process of election once it has been set in motion, but there is no rule prohibiting the exercise of jurisdiction by the High Court under Article 226 of Constitution of India in an exceptional case. The present case being an exceptional case where more than 97% members have been excluded from right to vote and their applications for registering them as voters in the final list of voters has been rejected under sub rule (7) of rule 6 on untenable and unjustifiable grounds, in my view, a case is made out for interference under Article 226 of Constitution of India. Out of the 10,687 members, if only 271 members have been registered as voters in the final list of

voters, and rest have been excluded illegally and unlawfully despite their making applications under Rule 6(5), a clear case for interference in extraordinary jurisdiction is made out and there is no escape but to interfere with such order.

13. In the instant matter, as also in the reported case, about 90% of the members have been kept away from the process of election. There is no compliance of the mandate contained in proviso to Sub-section (1) of Section 26 of the Act. The petitioner and other members have not been given any notice in respect of increase in minimum contribution of the members in share capital nor they were called upon to deposit amount of difference in share amount within reasonable period by issuing individual notice. The by-laws of the society provide for mode of service of notice, which has not been adhered to in this matter. Mere publication of notice in the news paper is not a compliance and what is contemplated under the proviso to sub-section (1) of Section 26 is, due notice of demand to the members and to give reasonable period to comply with the demand.

14. In the instant matter, since there is violation of the mandate contained in proviso to sub-section (1) of Section 26, in our opinion, failure of the District Cooperative Election Officer to incorporate names of the petitioner and other members in the list of voters, vitiates whole process of election and as such, interference by this Court is warranted.

15. For the reasons recorded above, writ petition is allowed. The order dated 08.07.2015, rejecting the objection tendered by the petitioner, passed by the District Cooperative Election Officer and District Deputy Registrar, Cooperative Societies, Nanded, is quashed and set aside and Respondent No.3- District Cooperative Election Officer, Nanded, is directed to incorporate names of all those members who were eligible to be included in the list of voters and shall not exclude any of the eligible member only on the ground that such a member has failed to deposit difference amount in share value. Respondent No.3 shall publish corrected final voters list, as expeditiously as possible, preferably within a period of three weeks from today and shall proceed to continue further process of election.

16. Rule is accordingly made absolute. There shall be no order as to costs.