

(2023) 02 BOM CK 0120
In the Bombay High Court
Case No : Writ Petition No.1725 Of 2023

Santosh

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 — Section 11, 13, 14, 27(8)

Citation : (2023) 02 BOM CK 0120

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : N. P. Patil Jamalpurkar, K. N. Lokhande, S. K. Kadam, Abhishek D. Chapule, V. D. Salunke

Final Decision : Disposed Of

Judgement

Arun R. Pedneker, J.

1. Heard Mr. N. P. Patil Jamalpurkar, learned Counsel for the Petitioner, Mr. K. N. Lokhande, learned AGP for the Respondent / State, Mr. S. K. Kadam, learned Counsel for Respondent Nos.2 and 3, Mr. Abhishek D. Chapule, learned Counsel for Respondent No.4 and Mr. V. D. Salunke, learned Counsel for Respondent No.5.

2. By the present petition, the petitioner is challenging the order dated 06.02.2023, passed by the Assistant Registrar, Co-operative Societies / Election Officer, Kallam / Respondent No.3, thereby, 58 names of the members of the Vividh Karyakari Seva Sahakari Sanstha Maryadit Satra, Taluka Kalamb, District - Osmanabad (for short 'the said Society') were deleted from the provisional voters list. The petitioner is holding a General Power of Attorney dated 08.02.2023, of the 57 members in favour of the petitioner to file the present writ petition. The petitioner himself is one of the aggrieved person in the list of deleted 58 members.

3. The facts in brief can be summarized as under:-

A] The term of the managing committee of the said Society had come to an end and, therefore, the Respondent Nos.2 and 3 published a programme for finalising of voters list and to hold the elections to the managing committee of the said society.

B] As per the programme the Respondent No.4 – Society, through the Secretary, forwarded the provisional voters list to Respondent No.3, on 24.01.2023, for preparation of final voters list of 588 members. In the said provisional list, the cut-off date of eligible members is fixed as of 01.01.2023. The name of the petitioner and other 57 members were included in the provisional voters list.

C] Respondent No.5 submitted objection to the provisional voters list and, thereby, prayed for deletion of names of 58 members from the provisional voters list for the reason that Respondent No. 4 / Society has passed a Resolution on 30.09.2018 to accept 97th amendment to the Constitution and to delete the members who do not hold 10 Are of land from the membership.

D] After receipt of the objection, Respondent No.3 / Election Officer called for say and record from Respondent No.4. In pursuance of the notice issued by Respondent No.3, Respondent No.4 submitted his explanation stating therein that the names of the 58 members cannot be deleted since their membership has not been cancelled as per the Resolution adopted by the Society on 30.09.2018. There was no separate notice issued to the 58 affected members. The Respondent No.3, on consideration of the objections, published final voters list, which included the 58 members. However, within a couple of hours a revised final voters list was published, wherein names of the 58 members were deleted.

4. Mr. N. P. Patil Jamalpurkar, learned counsel for the petitioner contend that the petitioners (58 deleted voters) are the members of the said Society for last more than 20 years and they have been voting for the said society and deletion of their names from the membership ought not to have been done by Respondent No.3 without notice to the petitioners.

5. The learned counsel for the petitioner submits that the deletion of the membership is done by an elaborate process as followed under the Maharashtra Co-operative Societies Act, 1960 under Section 11 of the said Act and in absence of a formal order of the deletion of members by the authorities constituted under the Act, the petitioners name ought not to have been deleted from the final voters list.

6. It is further the contention of the petitioner that the Society resolution seeks deletion of 146 members, however the deletion has happened of only 58 voters. The learned counsel for the petitioner submits that the election programme is yet to be declared and, as such, the order passed by the Respondent No.3 be quashed and set aside and that the petitioners be directed to be included in the final voters list.

7. Mr. N. P. Patil Jamalpurkar, learned counsel for the petitioner has relied upon

the Judgment of this Court passed in Writ Petition No.13018 of 2022, dated 16.01.2023.

8. Per contra, Mr. V. D. Salunke, learned counsel for Respondent No.5 – Objector, submits that the petitioner cannot agitate the grievance of the remaining 57 members. The petitioner may agitate his grievance individually as the individual facts of each deleted member is required to be pleaded in the Writ Petition. The relevant facts are required to be stated on affidavit by the concerned member whose name is deleted. There has to be positive assertion of the fact and that the member owns at least 10 Are of agricultural land. In absence of such positive assertion by the individual member, the petitioner on the basis of General Power of Attorney cannot make an assertion on behalf of all the other members and, as such, the case has to be restricted, if at all to the individual petitioner.

9. Mr. V. D. Salunke, learned counsel for Respondent No.5 further submits that after the 97th amendment of the Constitution, there are large scale changes that are brought about in the cooperative societies bye-laws and the model bye-laws were adopted by the societies. The condition for the membership in the model bye-laws is that the individual member should hold 10 Are of land in the area of operation of the said Society. There is also membership given to the non agriculture members, however, present case relates to person holding the agricultural land or agriculturist. The petitioners are not holding land of 10 Are and that was so mentioned in the resolution passed by the General body of the said society for deletion of their names from the membership of the society.

10. Mr. V. D. Salunke, learned Counsel for Respondent No.5 further submits that in view of 97 Constitutional amendment there are drastic changes brought about in the Maharashtra Cooperative Societies Act by amendment No.16 / 2013 dated 13.08.2013. Accordingly, the Government has compelled societies to adopt model bye-laws to every Cooperative Society exercising powers u/s. 13 and 14 of the Maharashtra Co-operative Societies Act, 1960 and compulsorily imposed the bylaws. The model bye-laws was adopted by Respondent No.4 – Society. As per by-law No.4, the object of the society is to provide all facilities for upliftment of the agriculturist. Bylaw No.6 provides conditions for membership. Material provision is bye-law No.6(3) employing condition that a person claiming to be the member of society should possess at least 10 Are of agricultural land. Bye-law No.4(14) provides that the artisans mentioned in the same clause need not require any landed property for becoming a member. Bye-law No.6(10) describes kinds of membership. Bye-law No.6(10)(a) describes active members. Bye-law No.6(10)(b) describes non-active members. Bylaw No.6(10)(c) provides nominal members. Active members are only entitled for voting rights. Whereas the non-active members and nominal members are not entitled for voting rights as provided in bylaws No.8(24)(5) (c) read with Section 27(8). The provision i.e. bylaws No.6(17)(u) provides that the person having no land ceases to be the member of the society and has no voting right.

11. Mr. V. D. Salunke, learned Counsel for Respondent No.5 further submits that,

even if a person is enrolled as member but does not hold the land or was having land and he was enrolled but subsequently sold the land or transferred the land automatically ceases to be the member of society and, thereby, not required to follow expulsion proceedings as his membership is deemed to be cancelled (ceased to be member). Here as per objection raised by Respondent No.5, 58 persons are not having land. Even they are not before this Hon'ble High Court, no proof of land of all 58 persons is on record. Hence, they are not eligible to be included in the final voters list though wrongly included in provisional voters list.

12. Mr. Kadam, learned Advocate appearing for the Election Authority submits that the Election Officer has only 2 staff members and they are also handicapped persons and that there was an error in publishing the final voters list and after it was noticed it was immediately rectified within couple of hours. He has also submitted that the Response of the society did not dispute the fact that the petitioners are not holding 10 Are of land and, as such, the Respondent No.3 / Election Officer proceeded to pass an order of deletion of 58 members.

Consideration & Conclusion:-

13. Having heard the rival submissions, the law on the aspect of this Court's jurisdiction to interfere in election process of Co-operative Societies is well settled that this court would not ordinarily interfere with the election process of the society unless the illegality committed is patent and that the interference by this Court is only in aid of the election process. In the instant case, it has to be noted that 58 members are deleted out of 588 members. The ground for deletion is that the deleted members are not holding 10 Are of land.

14. The response of the society to the objection raised by Respondent No.5 before the Election Officer was as under:-

"as per the provisions made in the by-laws of the Society, a non-account holder cannot become a member of the Society as per the Agenda No.6 passed in the Annual General Body Meeting dated 30-09-2018 of the Saatra Vividh Karyakari Seva Sahkari Society Limited [Saatra Multipurpose Co-operative Service Society Ltd.]. A copy of the proceedings has been annexed herewith.

Pursuant to that, the Society has not served any notice to such members. Their share have not been returned. Therefore, their names cannot be deleted from the voter' list in the present situation."

15. The Response of the society indicates that although the society has passed a resolution the process of removal of membership is yet to be completed. However, from his record the Secretary of Respondent No.4 - Society has not disputed that the petitioners / deleted members do not own 10 Are of land.

16. The petitioner in this writ petition with reference to ownership of 10 Are of land at grounds nos.4 and 5, has stated as under:-

"IV. These 58 members, whose names came to be deleted from the final voters

list, are holding agricultural lands and they have taken loans from the Society. Even majority of the members were voters list in the last elections. In support of this contention, the petitioner is annexing herewith the copies of 7/12 Extracts of agricultural lands held by 19 members and the same are marked as ANNEXURE "F" Collectively. The respondent no.3 without conducting a thorough inquiry and without hearing the petitioner & others has abruptly passed the impugned order directing to delete the names of the petitioner & 57 others from the voters list. Therefore, the impugned order dated 06.02.2023 is liable to be quashed & set aside.

V. It should have been seen that the Resolution passed by the respondent no.4 – Society on 30.09.2018 was in respect of cancellation of membership of 146 members. It was not accepted & approved by the respondent no.3. Based on the said Resolution, the names of 58 members are not sought to be deleted wrongly & illegally. However, the names of remaining 88 members/persons are kept as it is and included in the final voters list."

17. Bye-law No.6 of the Society deals with membership reads as under:-

" 6 MEMBERSHIP

A person fulfilling the conditions as laid in the Maharashtra Co-operative Societies Act, 1960, the Rules made thereunder and the By-laws of the Society can become a member of the Society:

1. Must have completed the 18 years of age and is competent to enter into a contract under the Indian Contracts Act;
2. Possess good credit;
3. Should have made an application for the membership in the format as prescribed under the Maharashtra Co-operative Societies Act, 1960 and the Rules made thereunder. Must be an account holder or a permanent resident within the territory of the Society as mentioned in the By-law No.1[3] and should have attached the 7/12 extract showing him as the holder of a minimum 10 R of land. However, if the application for the membership is for the objectives as laid in the By-law No.4[14], the condition of area shall not be applicable.
4. Should have submitted an factual financial statement of assets and liabilities."

18. In the instant case, as per the petitioner, 19 deleted members have agricultural land of 10 Are. However, it is not supported by an affidavit of those 19 members. There is resolution by the society to delete these particular members amongst others who do not have 10 Are of land. On the objections raised by Respondent No.5, the Respondent No.3 / Election Officer had called for a reply from the society and in response the society had not disputed the facts that the petitioners are not holding 10 Are of land. The society submitted before the Election Officer that they have not been deleted from the membership so far and, therefore, they cannot be deleted from the final voters list.

19. There are disputed questions of facts, answer to which may not be immediately visible without foundational facts being contested and answered. Thus, upon a writ petition challenging intermediate stage of an election process this court would not venture in the findings of facts, when there is an alternate remedy provided in the Statute. For any positive direction to be issued by this court there should be undisputed facts or that the facts on the basis of which a direction could be issued should be prima facie visible and discernible from the record.

20. The Judgment passed in Writ Petition No.13018 of 2022, relied upon by the petitioner is not applicable to the facts of this case, as in that Judgment the facts revealed that all the voters were similarly placed yet some of the voters were deleted and there was no finding of fact required to be rendered as regards the qualification to vote and in that case all the members were equally placed however some members were deleted and, as such, this Court has exercised writ jurisdiction to restore membership of the unlawfully deleted members.

21. In Writ Petition No.13018 of 2022, by order dated 16.01.2023, this Court at Paragraph Nos.11, 12 and 14 has held as under:-

"11) In the instant case, as all the voters on the provisional voters list are included in the list on the basis of secondary evidence, it was not permissible for the respondent No. 3 Election Officer to single out the present petitioners and remove their names from the final voters list on the basis that their names are not in the I and J register.

12) The deletion of 76 voters from total of 317 would materially affect the election process and the managing committee members elected from the truncated voters list may not represent the will of the majority.

13) ...

14) Since I have already held that there is patent illegality in the order passed by respondent No. 3 Election Officer and that non inclusion of the large number of voters will materially affect the election outcome and the elected representatives may not represent the will of the majority and thus, the order dated 6.12.2022 passed by the respondent No. 3 Election Officer is set aside..."

22. The Respondent No.3 / Election Officer has considered the matter on merits and passed the impugned order. The petitioner may possibly have a case on merits. However, this court while exercising the writ jurisdiction would not go into the facts as to who are the members who hold 10 Are of land or decide the question, whether a member can vote until his membership is cancelled without further qualification of holding 10 Are of land.

23. As there is also a resolution of the society to delete the voters not holding 10 Are of land and since the bye-law No.6(17)(u) of the society specifically provides for cessation of membership if the entire land is sold or transferred, this matter be more properly dealt by a properly instituted Election Petition.

24. In view of the disputed questions of fact and also that alternate remedy is provided, the Writ Petition is disposed of with liberty to the petitioner to approach the alternate forum to seek such a relief as may be available in law.

25. The Writ Petition is disposed of with above liberty. In the event of appropriate proceedings being filed all issues are left open.