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**(2015) 02 BOM CK 0044**

**In the Bombay High Court**

**Case No :** Writ Petition No. 1786 of 2015

Vishwas Chandar Nejdar-Mane — APPELLANT

Vs

Shri Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd. and Others — RESPONDENT

**Date of Decision :** 26-02-2015

**Acts Referred:**

**Citation :** (2015) 3 ALLMR 67 : (2015) 5 BomCR 214 : (2015) 3 MhLj 750

**Hon'ble Judges :** Anoop V. Mohta, J.

**Bench :** Single Bench

**Advocate :** R.V. Pai a/w P.D. Dalvi, for the Appellant; Amit B. Borkar, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Anoop V. Mohta, J.—Petitioner-Objector has challenged order dated 13.3.2015 passed by Respondent No. 2-District Co-operative Election Officer thereby, as stated, rejected the objections without assigning specific reasons, in spite of specific contentions so raised, in the objections.

2. Respondent No. 2 (Authority) resisted the Petition by affidavit dated 25.2.2015 and has contended to dismiss the Petition basically on the preliminary grounds itself. Those, contentions, in my view, in the present matter, are not acceptable to dismiss the Writ Petition for want of non-joining of said 287 members and further that other remedy available to the Petitioner to file Election Petition. The submission that there are disputed questions involved and, therefore, detailed trial is necessary, is also not acceptable.

3. The learned counsel appearing for the Petitioner relied upon the following Judgments:-

(a) Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, ,

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(b) Pundlik Vs. State of Maharashtra and Others, ,

(c) Shankar Ramlu Banpalliwar and Ayub Khan Ibrahim Khan Tighale Vs. State of Maharashtra and Others, ,

(d) Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Another Vs. State of Maharashtra and Others,

(e) Karbhari Maruti Agawan and Others Vs. State of Maharashtra and Others,

4. The learned counsel appearing for Respondent No. 1 - Society, apart from above preliminary objections, read and referred various judgments which are as under:-

(a) Balasaheb Kondiram Pawar and ors. Vs. State of Maharashtra and Ors. 1993(3) Mh.L.J. 982

(b) Dhondiba Parshuram Lakade and Ors. vs. Someshwar Sahakari Sakhar Karkhana Ltd. and Ors. 1997 Mh. L.J. 311

(c) Pandit Krishnat Pativ Vs. State of Maharashtra and Ors. WP No. 7381 of 2009, dated 6 January 2009.

(d) Shriram S/o. Mukundrao Korde Vs. The State of Maharashtra and ors. WP 545 of 2015 (Aurangabad Bench) dated 5 February 2015.

and contended that there is no question of entertaining present Writ Petition, as the judgments so referred by the learned Authority specifically in Dhondiba Parshuram Lakade (Supra), whereby, this Court after considering earlier Rule 6 (1) held that Collector is not authorized to hold enquiry, whether a person is qualified to be a registered member or not and to delete his name from the provisional voters list, as no Authority to upset the membership register of the Society, as the power so contemplated is nothing but a summary enquiry. The reliance is also placed on some other judgments, which the counsel appearing for the parties could not trace it out. The learned counsel appearing for the Society also read and refer other judgments in which this Court and the Supreme Court refused to interfere with the list once published by the competent authority after following the due procedure laid down under the Maharashtra Co-operative Societies Act, 1960 (for short, "the MCS Act") and earlier Rules made therein. In all those matters referred in the Judgments, the decision was taken by the concerned authority after hearing both the parties and finalized the same itself. The scope and power, not to entertain the objections based upon the then existing Rules, is not sufficient to accept the unreasoned order passed in the present matter, specifically when there is no issue that the election in question is governed by the Maharashtra Co-operative Society (Election Committee) Rules 2014 (for short, "the Election Rules") which came into force from 11.9.2014. The role of concerned administrative machinery, including the officers, in my view, is relevant to determine the final list of voters.

5. The judgment so cited by the learned counsel appearing for the Petitioner,

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accept the mandate for objection to the provisional list after publication of said process/notice need to be decided in timely manner, but by giving an opportunity to all the concerned.

6. The element of giving opportunity to all the parties is inherent at every stage of any procedure of determination of rights of the parties. Here, there is specific provisions available for the concerned officers to consider each claim or objection and giving his decision thereon in writing, after receipt of the claims and objections. The final voter list need to be published thereafter. The said final list will be the list for the election of the Society, subject to completion of other formalities within the prescribed period. The Election Programme need to be published thereafter.

7. In the present case, after publication of the provisional list of voters for the ensuing election for the year 2015-16, the Petitioner has raised specific objections on 09.02.2015, basically on the foundation of earlier decision of Collector dated 15.06.2009 whereby, about 287 members ordered to be deleted. Thus, Society resisted the said objections on 03.02.2015 by reply dated 09.02.2015. There is no denial, however to the fact of order dated 15.06.2009 passed by the Collector, Kolhapur, who is a Competent Authority to pass such order deleting the name of those members. The said Authority and the order remained final till this date. No specific challenge is raised, neither averments even made in the reply by the Society. The Respondent-Authority, in the present matter, without dealing with the specific objection and the issue referring to the Collector''s earlier order, relied upon the above judgments and proceeded on the foundation that the Authority in question has no jurisdiction and/or power to adjudicate the issue of membership and, therefore, the list so given and published by the Society, without deciding the objections so raised, maintain/ accepted and published final list accordingly.

8. The judgments so referred and cited by the learned counsel appearing for the Respondents, nowhere dealt with the power and authority of such officer, including the concept of "decision" so referred in the Rules. The aspect of principle of natural justice, which just cannot be overlooked by the Authority, which includes to give and provide reasons for the "decision". The earlier order of Collector dated 15.06.2009, if is a final decision, there is no question of overlooking the same by publishing provisional list, even by the Society. The provisional list is published by the Society and has confirmed by the Authority and treated the same as final voter list in the ensuing election, in my view, that is no reason to not to decide the objections so raise and/or even to accept said contention in the present writ jurisdiction. Those judgments, in any way as referred, are distinguishable on facts itself, apart from the latest Rules in question. The factual aspect, in the present matter and specifically order of Collector so referred above, has attended finality. The provisional list published by the Society ought not to have been given confirmation, as done in the present case. Such impermissible procedure and the position so given without assigning

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the reasons for the specific issues so raised and relied upon the judgments based upon old Rules, is unsustainable. I am inclined to observe therefore, that the order so passed without assigning specific reasons, as it goes to the root of the matter, impugned order dated 13.02.2015 deserves to be interfered with. It is unjust and contrary to the provisions of law, apart from the principle of natural justice of not giving reasoned order.

9. The submission of learned counsel appearing for Respondents, based upon the judgments so cited, so far as law is concerned, need no further discussion. Merely, because this is an election matter and the basic steps are closed, including publication of voter list, that itself, cannot be the reason to permit such impermissible order to be maintained. This is also in the background that the fact of amendment to the MCS Act based upon the amendment to the Constitution of India and it has also foundation for statutory amendment to the MCS Act and the various Rules made therein. Two stages of an election to a particular Society has been recognized and elaborated. The objection of voter list and the procedure to be followed, just cannot be overlooked by the Authorities. They must deal with the same by following the due procedure of law, including giving reasons at every necessary steps where the rights of voters and of the Society and of Objectors, are required to be dealt with by giving "decision", mandate the Authority to pass reasoned order, while dealing with the objections so raised. This aspect/fact, in the present case, is missing.

10. Having noted this, I am declined to accept the Respondent''s submission that the alternate remedy available and Election Petition is another remedy for the factual aspect if any, and can be gone into by the concerned other Authority. Having once observed that the impugned order is not within the frame work of law and apart from principle of natural justice of not providing the reasons, and therefore, it is unsustainable, the ratio in the judgments so cited itself sufficient to entertain the present Writ Petition, as the case is made out. Therefore, I am inclined to interfere with impugned order dated 13.02.2015 passed by Respondent No. 2.

11. The learned counsel appearing for the Respondent have also submitted that having once declared the Election Programme and as final list is already published on 20.02.2015 and now by revised Programme dated 25.02.2015 and as the last date 07.03.2015 is for acceptance of nomination and further procedure need to be followed, accordingly, present Petition need not be entertained. However, for the reasons so recorded, to avoid further delay I am inclined to direct Respondent No. 2 to rehear the objections and pass reasoned order, considering the submissions/objections raised by the Petitioner, by giving an equal opportunity to all the concerned. It is made clear that the concerned Authority to deal with the same in accordance with law as earliest within the time so fixed as per the Election Programme so published and/or take appropriate steps to see that a final list is published in accordance with law, before proceeding further with the Election Programme and/or rescheduling it, if

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necessary. Such unreasoned impugned order and such final list, cannot be the basis for any election.

12. Therefore, the following order :-

ORDER

a) Impugned order dated 13.02.2015 is quashed and set aside.

b) Respondent No. 2 to rehear the objections by giving equal opportunity to all the parties and pass reasoned order, as early as possible, within the time so fixed and/or by taking appropriate steps accordingly.

c) The Petition is accordingly allowed.

d) Rule made absolute accordingly. No costs.

e) The parties to act on an authenticated copy of this order.

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