

(2012) 02 BOM CK 0218

Bombay High Court

Case No: Writ Petition No. 1404 of 2012

Ranjit Prabhakar Banne and
Prakash Jagannath Nale

APPELLANT

Vs

Collector of Kolhapur and Others

RESPONDENT

Date of Decision: Feb. 22, 2012

Acts Referred:

- Maharashtra Co-operative Societies Act, 1960 - Section 27, 27(3), 27(3A), 37(3), 73G(1)
- Maharashtra Specified Co-operative Societies (Elections to Committees) Rules, 1971 - Rule 4, 4(1), 6

Citation: (2012) 3 ALLMR 95 : (2012) 4 BomCR 364 : (2012) 114 BOMLR 1149 : (2012) 3 MhLj 468

Hon'ble Judges: G.S. Godbole, J

Bench: Single Bench

Advocate: P.K. Dhakephalkar, with Mr. S.S. Patwardhan with Mr. Ajay Magdum, for the Appellant; P.S. Cardozo, AGP for Respondent Nos. 1 and 2, Mr. A.A. Kumbhakoni with Mr. Amit Borkar for Respondent No. 3, Mr. Vijay Patil with Mr. Prashant Darandale for Respondent Nos. 4 and 5, for the Respondent

Judgement

G.S. Godbole J.

1. In this petition, notice was issued to Respondent Nos. 1 to 3 only by order dated 15th February, 2012. No notice was issued to Respondent Nos. 4 and 5 and even while disposing off this petition finally, I have not considered it necessary to issue any notice to Respondent Nos. 4 and 5. Respondent Nos. 4 and 5 are the Honorable Minister for Cooperation and Honorable Chief Minister respectively. The Petitioners have made certain allegations against them and the Government Pleader wanted to place on record an affidavit denying the said allegations. However, as I have made it clear that the petition will be disposed off purely on the basis of the question of law involved and no factual controversy will be looked into, it is not necessary to go into the allegations made against Respondent Nos. 4 and 5.

2. Considering the nature of controversy and the fact that a preliminary list of voters is to be published on 23rd February, 2012, this petition is being disposed off at the stage of admission itself.

3. Rule made returnable forthwith.

The learned AGP waives service on behalf of Respondent Nos. 1 & 2. Mr. Borkar waives service on behalf of Respondent No. 3. As stated above, no notice of rule is issued to Respondent Nos. 4 & 5.

The Controversy involved in this petition :

3. It is an admitted position that Respondent No. 3 is a Cooperative Sugar Factory and as such, a specified Cooperative Society U/sec. 73-G of the MCS Act, 1960 (hereinafter referred as to "the Act"). Consequently the elections of such a society are conducted in accordance with the provisions of Chapter-XI-A of the Act. The State Government has framed the Maharashtra Specified Co-operative Societies (Elections to Committee) Rules, 1971 for regulating the procedure for elections of specified Cooperative Societies (hereinafter referred to as 1971 Rules). There is no dispute that the said rules are applicable.

4. The facts which are not in dispute are as under.

The tenure of the existing Managing Committee of Respondent No. 3 Society is to expire on 17th June, 2012. The Collector, Kolhapur who is the authorized officer to conduct the elections, has set in motion the process for preparation of a preliminary list of voters of Respondent No. 3 Society and for that purpose, the Collector passed an order dated 28th January, 2012 (Exhibit A) directing the Managing Director of Respondent No. 3 to prepare and submit a preliminary list of voters as contemplated by Rule 4 of the 1971 Rules. By the said order, the Collector ordered that in accordance with the provisions of Sec. 27 of the Act, the names of individual members, who have been enrolled as members up to two years prior to cut off date 17th June, 2012 and the names of Society members who have been enrolled before three years prior to cut off date 17th June, 2012 should be included in the preliminary list of voters. The Petitioners thereafter submitted a representation dated 1st February, 2012 to the Collector; and apart from various other submissions which were made in the said representation regarding political intervention etc., with which we are not concerned and in which this Court has not gone into, the representation requested that in terms of Rule 4 of the 1971 Rules, only those members who have completed minimum period of two years as members from the date of their enrollment before the 30th June immediately preceding the year in which such election is due i.e. members enrolled before 30th June, 2009, can alone can be included in the preliminary list of voters.

5. This representation/objection of the Petitioners has been decided by the Collector, Kolhapur by the impugned order dated 4th February, 2012. The Collector

has relied upon the Judgment of the Supreme Court in C.A. No. 2122 Of 2006 and other connected matters decided on 2nd May, 2006 in case of [Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others,](#) . By relying on the said Judgment, the Collector has held that though Rule 4 of 1971 Rules, provides for inclusion of names of only those members who have completed a tenure of two years prior to 30th June of the year immediately preceding the year in which the elections are due, on account of the provisions of Sec. 27(3-A) & 27(3) of the Act, the names of individual members of the Society who are enrolled two years prior to 17th June, 2012 and the names of all Society members of the Respondent No. 3 Society who are enrolled three years prior to 17th June, 2012 should be included in the list of voters. Aggrieved by this order, the Petitioners have approached this Court.

6. Before I proceed to record the respective submissions of the Advocates, since the entire controversy revolves around the proper interpretation of Sec. 27 of the Act and Rule 4 of the 1971 Rules, I deem it fit to quote relevant portion of Sec. 27 and Rule 4 which read thus :

27. Voting powers of members. -- (1) Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of the 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 casting vote.

(2) * * *

(3) A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society: Provided that, any new member society of federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

(3-A) An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrolment as a member of such society.

Rule 4 of the 1971, Rules reads thus :

4. Provisional list of voters : --(1) A provisional list of voters shall be prepared by every society for the year in which general election is due to be held. The persons who have completed minimum period of two years as members from the date of their enrolment before 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged

constituency wise as laid down in the bye-law:

Provided that, if in any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies of the categories mentioned in clauses (i), (v), (vi) and (vii) of sub-section (1) of Section 73-G, and in consultation with the District Deputy Registrar in respect of the societies the other categories mentioned in sub-section (1) of Section 73-G, by order, change the date of the 30th June and subsequent dates and fix revised dates for the purposes of these rules.

7. In the present case, there is no factual controversy involved and it is not in dispute that 17th June, 2012 is the date on which the tenure of the earlier existing Managing Committee of Respondent No. 3 Society has to end.

Submissions of respective Advocates :

8. Mr. P.K. Dhakephalkar, learned Senior Advocate appearing for the Petitioners submitted that Sec. 27 and Rule 4 will have to be harmoniously construed and will have to be read together. He submitted that Sub Section 3-A of Section 27 does not create a right to vote but it creates a fetter against right to vote unless and until a person is a member of a cooperative society for a period of two years from the date of his enrollment as a member of the society. He submitted that Sec. 27 applies to all societies whether they are specified, notified or ordinary societies; whereas Rule 4 is applicable only to specified societies. He submitted that Rule 4 provides for the method and manner of preparation of a preliminary list of voters, hearing of claims and objections and thereafter a final list of voters is to be published under Rule 6 of the 1971 Rules. He therefore submitted that Rule 4 makes a provision making only a class of members eligible as voters subject to the condition that they had completed a period of two years prior to 30th June of the preceding year of the year in which the elections are to be held. He therefore submitted that there is no inconsistency in Sec. 27(3-A) and Rule 4 and the conclusions which are drawn by the Collector, clearly overlook the legislative mandate of Rule 4.

9. Mr. Dhakephalkar relied on the Judgment of the Supreme Court in case of [Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others](#), by laying emphasis on the observations in paragraphs 5 and 7 of the said judgment. He submitted that the Collector has completely misread and misconstrued the Judgment of the Supreme Court in case of [Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others](#), .

10. On the other hand, Mr. Kumbhakoni, learned Advocate for Respondent No. 3 and Ms Cardozo learned Additional Government Pleader appearing for Respondent Nos. 1 and 2 supported the impugned Judgment. Heavy reliance was placed on the observations of the Supreme Court in paragraphs 7, 8 and 12 of the Judgment of the Supreme Court in case of Dudhganga (supra). Mr. Kumbhakoni also relied upon the

Judgment of Division Bench at Aurangabad in W.P. No. 6242 of 2006 in case of Dhule Gramin Vikas Bhajipapa Phal Phalawal Va Phule Kharedi Vikri Sahakari Sanstha Limited, Dhule And Ors. Vs. The State of Maharashtra & Ors., and it was submitted that the controversy involved in this petition is clearly covered by the said judgment.

11. Mr. Kumbhakoni and Ms Cardozo submitted that the provisions of Sec. 27(3-A) confer a right on every member to vote in the elections of the society after completion of two years and the said right cannot be curtailed by the rule making authority that is the State Government. It was therefore submitted that since Sub Section (3-A) of Sec. 27 prohibits a person from voting only for a period of two years from the date of enrollment as member, once the period of two years is over, such member cannot be denied right of his name being included in the preliminary list of voters.

Consideration of submissions :

12. Though the objection regarding existence of alternate remedy was not raised by any of the Respondents, I wish to briefly indicate that I am conscious of the fact that process of preparation of a preliminary list of voters has consistently been held to be a step in the election process. However, this is a case where even prior to the publication of preliminary list of voters, the Petitioners had approached the Collector and aggrieved by the order of Collector, have approached this Court well in time. The petition can, therefore, be conveniently decided without in any manner disturbing or halting the election process and hence I have decided to entertain the petition on merits and I have proceeded to dispose off the same on merits.

13. On a careful consideration of provisions of Sec. 27 of the Act and Rule 4 of the 1971 Rules, in my opinion, the Collector has committed a manifest error of law in holding that all the members who were enrolled since 17th June, 2010 are entitled to be included in the list of voters of Respondent No. 3 Society. In my opinion, the Collector has clearly misdirected himself in interpreting the ratio of the Judgment of the Supreme Court in case of [Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others](#), and has in the process, passed an order which will clearly defeat the legislative intent behind enacting Rule 4 of the 1971 Rules.

14. It is therefore necessary to have a brief look at the facts in the case of Dudhganga (supra) which are as under.

(a) In that case, the Appellant primary society had contributed to the capital of a federal society viz. Kolhapur District Central Cooperative Bank Ltd. On 30/12/2001. The period of 3 years as provided by proviso to Sec. 37(3) thus ended on 30/12/2005.

(b) The election of the office-bearers of the federal society were due to be held in April, 2006. (c) In terms of Rule 4, the list of voters as on 30th June, 2005 was to be prepared. Appellant Society had completed the tenure of two years as on 30th December, 2004. (d) Therefore, in terms of Rule 4, it was entitled to be included in the list of voters even as on 30th June, 2005, but its name was not included.

15. It is in this context that the Supreme Court had an occasion to decide the controversy and in this context that Judgment of the Supreme Court will have to be read.

16. In case of [Dudhganga Vikas Seva Sanstha Maryadit Vs. Distt. Collectors, Kolhapur and Others](#), , on the backdrop of above referred facts, what is observed by the Supreme Court in paragraphs 7, 8, 9, 10 and 12 is as under :

7. A mere reading of Section 27 makes its explicit that a society which has invested any part of its fund in the shares of a federal society, may appoint one of its members to vote on its behalf in the affairs of the federal society. Proviso to sub-Section (3) of Section 27 of the Act lays down the condition of eligibility which is to the effect that any new member of a federal society shall be eligible to vote in the affairs of the federal society only after the completion of the period of 3 years from the date of its investing any part of its fund in the shares of such federal society. We may also note sub-Section (3A) of Section 27 of the Act which relates to an individual member of a society. In his case it is provided that he shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. The Legislature has consciously employed in Sub-Sections (3) and (3A) words which are of significance. In the proviso to Sub-Section (3) the period of 3 years is reckoned from the date of the society investing any part of its fund in the shares of a federal society, whereas sub-Section (3A) provides that the period of 2 years shall be computed from the date of enrollment of an individual as a member of such federal society.

8. Having regard to the plain word used in Section 27(3) of the Act, the appellant society having invested its fund in the shares of Kolhapur District Central Cooperative Bank Ltd. respondent No. 2 herein on 30.12.2002, it became eligible to vote in the affairs of the federal society after 30.12.2005. We are informed that the date of investment by the appellant society and its enrollment as a member of the federal society is the same, namely, 30.12.2002. Ex facie, therefore, in terms of Section 27(3) of the Act, in April, 2006 when the election was due to be held, the appellant society was entitled to appoint one of its members to vote on its behalf in the affairs of the federal society respondent No. 2, having completed the period of 3 years from the date of its investment in shares of the respondent No. 2 society on 30.12.2005.

9. The Collector as well as the High Court have, however, taken the contrary view relying upon Rule 4 of the Rules. We may in the passing notice that Section 27(3) of the Act was amended in year 2000 whereas Rule 4 of the Rules was modified in the year 1971 and thereafter again on 18.2.2002. Thus, the Act as it stood amended in the year 2000 and the Rules as they stood w.e.f. 18.2.2002 are applicable to the case in hand.

10. Rule 4 of the Rules provides for the preparation of the provisional list of voters. We may observe that while Section 27 of the Act lays down the eligibility condition of a new member of a federal society to vote in the affairs of a federal society, Rule 4 of the Rules only relates to preparation of a provisional voters list. The provisional list is required to be prepared by every specified cooperative society for the year in which general election is due to be held. According to Rule 4 persons who have completed a minimum period of 2 years as member from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due, shall be included in the said provisional list. The question is whether for inclusion in the provisional list of voters the appellant society fulfilled the conditions laid down therein, namely, that it had completed minimum period of 2 years as a member of such society as on 30.6.2005, since the election was scheduled to be held in April, 2006. There is no dispute about the fact that the appellant society was enrolled as a member on 30.12.2002, the date on which it invested its fund in the capital of the respondent No. 2 federal society. We, therefore, find no difficulty in holding that in terms of Rule 4 of the Rules, which relates to preparation of the provisional voters list, the name of the appellant society had to be included in the provisional list. So viewed, u/s 27 of the Act the appellant society was eligible to vote in the elections to be held in April, 2006, and was also eligible to be included in the provisional list of voters to be prepared in accordance with Rule 4 of the Rules. That being the legal and factual position, we find no reason to reject the claim of the appellant society to cast its vote in the election scheduled to be held in April, 2006.

12. Learned counsel appearing on behalf of the State of Maharashtra as well as the interveners submitted that under Rule 4, though there were no express words to that effect, the eligibility of a society for its name to be included in the provisional voters list has to be considered in the light of the provisions of Section 27 of the Act. It was, therefore, submitted that unless a society is a member of the specified society for a period of at least 3 years on the 30th of June of the year immediately preceding the year in which such election is due, its name cannot be included in the provisional list of voters. The submission is wholly misconceived. Rule 4 of the Rules does not provide that a person whose name is to be included in the provisional list of voters should be one who has completed a minimum period of 3 years as a member as on 30th June of the year immediately preceding the year in which election is due. In fact, express words of Rule 4 provide that he should have completed minimum period of 2 years. To read Rule 4 in the matter suggested by the respondents would amount to rewriting the rule. It was submitted that Rule 4 must be read into Section 27 and so read there may be inconsistency between the Act and the Rules. In fact, the District Collector as well as the High Court took the view that the District Collector was bound by the Rules and, therefore, it has rejected the claim of the appellant society. On a careful consideration of the provisions of the Act and the Rules, there is no inconsistency between Section 27 of the Act and Rule 4

of the Rules. Even if there was any inconsistency as argued by the respondents, the Act must prevail over the Rules.

17. What was argued before the Supreme Court was that unless a member Society completes a period of 3 years from the date of investing part of its capital in the share capital of the federal Society, its name cannot be included in the preliminary list of voters prepared under Rule 4. Dealing with this submission, the Supreme Court has made the relevant observations in para 12 of the Judgment and has held that to read Rule 4 in the manner suggested by the Respondents, would amount to rewriting the rule. The Supreme Court has held that there is no inconsistency between Sec. 27 of the Act and Rule 4 of the 1971 Rules.

18. It is necessary to note that the Supreme court has nowhere held that Rule 4 will have to be ignored. In fact the observations in para 12 are to the contrary and Supreme court has held that Rule 4 will have to be harmoniously construed with Sec. 27.

19. At this juncture, it is necessary to consider the earlier Judgment of the Supreme Court in the case of [Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others](#), . I am conscious of the fact that when that case was decided, Sub Section 3-A of Sec. 27 was not on the statute book. I am also conscious of the fact that Sub Section 3 of Sec. 27 has also been substituted by Maharashtra Act No. 40 of 2000. I am also conscious of the fact that consequent upon the amendment of Sec. 27 in the year 2000, Rule 4 has been modified on 18th February, 2002. Despite this, in my opinion, the law laid down by the Supreme Court in case of Ramchandra Ganpat Shinde (supra) is squarely applicable to the controversy involved in this petition. I wish to quote portion of para 5 and portion of para 7 of the Judgment in case of Ramchandra Ganpat Shinde which read thus:

5. Its reading adumbrates that the provisional list of voters of every society shall be prepared by the Society for " the year in which general election is due to be held". Persons who are members as on 30th June of the year immediately preceding the year in which such election is due, shall alone be included in the provisional list. Thereby, it is clear that the Society shall prepare a provisions list of voters, comprising all the members of that society for the year in which general election is due to be held. But the persons who are members of the Society as on 30th June of the year immediately preceding the year in which such election is due should alone be included in the provisional list and eligible to vote at the election.

7. ... When Section 73-G, provisions in Chapter XI-A and the bye- laws read with Rule 4 envisage that the election to the Managing Committee should be conducted before the expiry of the term, the Society has been enjoined under Rule 4 (1) to prepare the provisional votes list of the members as on June 30th the year "immediately preceding the year" in which such general election is due to be held and submit the same to the District Collector. The Legislature, thereby intended that

despite the existence of the members on the admission register of the society, only those members who were admitted and valid as members on or before 30th June of the year immediately preceding the year in which such general election is due alone are eligible to exercise the franchise and to be included in the provisional list.

20. The Supreme Court has clearly held that the legislative mandate in Rule 4(1) mandates that the provisional list of voters of the members has to be prepared strictly in accordance with the said Rules. The Supreme Court has held that the legislature thereby intended that despite the existence of members on the admission register of the society, only those members who were admitted and valid as members on or before 30th June of the preceding year, are alone entitled and eligible to exercise the franchise and to be included in the provisional list.

21. By an amendment in the year 2002, Rule 4 has been amended and the present Rule mandates that only those persons who have completed minimum period of two years as members from the date of their enrollment before 30th June of the year immediately preceding the year in which such election is due, shall be included in the provisional list. This mandate of Rule 4 is very clear and unambiguous. In my opinion, Rule 4 is not capable of two interpretations and there is no inconsistency between Rule 4 and Sub Section 3-A of Sec. 27. In my opinion, all the arguments about inconsistency and the argument that Sub Section 3-A of Sec. 27 must prevail over Rule 4, are clearly answered by the observations of the Supreme Court in para 7 of the Judgment in case of [Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others](#), .

22. It is now necessary to consider the Judgment of Division Bench relied upon by Mr. Kumbhakoni. Even in that Judgment, the Division Bench was considering the proviso to Sub Section 3 of Sec. 27 and Sub Section 3-A dealing with individual members has not directly fallen for consideration of the Division Bench. In my opinion, therefore, the Division Bench Judgment has no application to the facts of this case.

23. Before I conclude, it is necessary to note that Mr. Kumbhakoni also sought to rely upon certain observations of the Judgment of Division Bench in the case of [Pune District Central Co-op. Bank Ltd. Vs. Datta Vikas Karyakari Seva Sahakari Sanstha Maryadit and Others](#), . In my opinion, the said Judgment has also no application to the facts of this case; as even in that case, a case of society members for which the law imposes a prohibition of three years, was being considered.

24. As an outcome of the aforesaid discussion, I have no hesitation to conclude that the Collector has committed a manifest error of law which is apparent on the face of record; and has passed an order which is clearly contrary to the provisions of Rule 4 of the 1971 Rules. I have, therefore, no option but to quash and set aside the said order.

25. It is necessary to direct that only those individual members of Respondent No. 3 Society who have completed minimum period of 2 years as members of the Society from the date of their enrollment before the 30th June, 2011 will alone be considered as eligible voters and only their names will be included in the preliminary list of voters to be published by the Collector on 23rd February, 2012.

26. I, therefore, pass the following order.

ORDER

(i) The impugned Judgment and order dated, 4th February, 2012 passed by the District Collector, Kolhapur being Exhibit-D to this petition is quashed and set aside.

(ii) The Collector is directed to publish preliminary list of voters of Respondent No. 3-Society in accordance with the directions contained in this judgment.

(iii) Only individual members of Respondent No. 3 Society who have completed minimum period of 2 years as members of the Society from the date of their enrollment before the 30th June, 2011 will alone be considered as eligible voters and only their names will be included in the preliminary list of voters to be published by the Collector on 23rd February, 2012.

(iv) At this stage, Mr. Borkar appearing for Respondent No. 3 prays for stay of operation of this order at least for 8 weeks.

This prayer is strongly opposed by Mr. Patwardhan. Mr. Borkar submits that if the impugned order is not stayed, the Collector will exclude the names of all individual members who are enrolled after 1st July, 2009 though the Society has included the names of all the members enrolled till 17th June, 2010 and such members will never get the benefit of their names being included in future even if this Judgment is stayed or set aside.

(v) I do not think Mr. Borkar is right. Under Rule 6 of the 1971 Rules, a person whose name is not included in the preliminary list of voters has been given a right of making an application for inclusion of his name. All those persons who feel aggrieved by their exclusion, can always make an application for inclusion and before their applications are decided, if this Judgment is stayed, the Collector will be bound to include their names in terms of order dated 4th February, 2012 which is set aside by this Court. In view of this, prayer for stay is rejected.

(vi) On oral request of Mr. Borkar, to give him at least some breathing time, operative order of this order will be made available during the course of day and the Collector, Kolhapur is directed to publish the preliminary list of voters pursuant to this order not before 5 pm on 23rd February, 2012.

Rule is made absolute in aforesaid terms.