

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 2122 OF 2006

DUDHGANGA VIKAS SEVA SANSTHA MARYADIT

Appellant (s)

VERSUS

DISTT. COLLECTOR, KOLHAPUR & ORS.

Respondent(s)

(With appln(s) for directions and intervention with prayer for interim relief and office report ))

WITH

Civil Appeal NO. 2123 of 2006(With prayer for interim relief and office report)

Civil Appeal NO. 2124 of 2006(With prayer for interim relief and office report)

Civil Appeal NO. 2125 of 2006(With prayer for interim relief and office report)

Date: 02/05/2006 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE ALTAMAS KABIR

For Appellant(s)

Mr. Shekhar Naphade, Sr. adv.

Mr. Himanshu Gupta, Adv.

Mr. T.Raja,Adv.

For Respondent(s)

Mr. Sudhanshu Choudhari, adv.

Mr. Naresh Kumar,Adv.

Mr. Shivaji M. Jadhav, Adv.

Mr. Murli Patil, Adv.

Mr. S.S. Shinde, Adv.

Mr. V.N.Raghupathy, Adv.

UPON hearing counsel the Court made the following

O R D E R

The application for intervention is allowed.

The appeals are allowed in terms of the signed judgment placed on the file. No order as to costs.

(Ajay Kr. Jain)  
(Vijay Dhawan)  
Court Master  
Court Master

(Signed reportable judgment is placed on the file)

REPORTABLE  
IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 2122 OF 2006

Dudhganga Vikas Seva Sanstha Maryadit  
... Appellant

Versus

Distt. Collectors, Kolhapur & Ors.  
.... Respondents

WITH

C.A. No. 2123/2006, C.A. No. 2124/2006 and C.A. No. 2125/2006

JUDGMENT

B.P. SINGH, J.

In this batch of appeals since the issue involved is identical, they are

being disposed of by this

common judgment and order.

These appeals by special leave impugn the judgment and order of the High Court of Bombay

dated 12.1.2006 in Writ Petition No. 49/2006. The High Court by its impugned judgment and order dismissed

the writ petitions filed by the appellant-societies and upheld the order of the District Collector holding that

the appellant-societies were not eligible to vote in the election which were to be held in the month of April,

2006. The answer to the question which arises for consideration is dependent upon the interpretation of

Section 27(3) of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as the "Act") and

Rule 4 of the Maharashtra Specified Co-operative Societies Election to Committees Rules, 1971 (hereinafter

referred to as the "Rules").

For the sake of convenience we are taking the representative facts in C.A. No. 2122/2006.

The facts not in dispute are that the appellant-society is a primary society. It contributed to the

capital of a federal society known as "Kolhapur District Central Cooperative Bank Ltd."- respondent No. 2

herein on 30.12.2002. It is also not disputed before us that it became a member of the federal society with

effect from that very date. Election of the office bearers of the federal society was due to be held in April,

2006 and a question arose as to whether the appellant society was eligible to be a voter. The controversy

arose because the name of the appellant society was not included in the provisional list of voters. The matter

came for decision before the District Collector who rejected the contention of the appellant s

ociety and held

that it was not eligible to vote. Aggrieved by the order of the District Collector, the appellant society filed the

instant writ petition before the High Court which has been dismissed by the impugned judgment and order.

The relevant part of Section 27 of the Act is as follows :-

27. Voting powers of members - (1) Save as otherwise provided in sub-sections (2

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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

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provided that, in the case of an equality of votes the Chairm

an shall

have a casting vote.

(2) .....

(3) A society, which has invested any part of its funds in the sh

ares of

any federal society, may appoint one of its members to vote on its behalf in the

on its

affairs of that federal society; and accordingly such member shall have the righ

t to

vote on behalf of the society :

Provided that, any new member society of a federal society sh

all be

eligible to vote in the affairs of that federal society only after the completio

n of the

period of three years from the date of its investing any part of its fund in the

shares

of such federal society :

(3A) An individual member of a society shall not be eligible for v

oting in

the affairs of that society for a period of two years from the date of his enrol

lment

as a member of such society.

(4) to (11) ....."

The federal society being a specified cooperative society, election to the committees thereof are

governed by the Rules. The relevant part of Rule 4 reads as follows :-

"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 enrollment 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 constituencywise 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

73G, and in consultation with the District Deputy Registrar in respect of the

societies the other categories mentioned in sub-section (1) of section 73G, by order,

change the date of the 30th June and subsequent dates and fix revised dates for the

purposes of these rules."(sic)

A mere reading of Section 27 makes it 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.

Having regard to the plain words 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.

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 the 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.

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, under Section 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.

By an interim order of this Court the appellant society as well as other similarly situated

societies were permitted to cast their votes which were to be kept in a separate sealed cover and were not to be

counted until further orders.

Learned counsel appearing on behalf of the State of Maharashtra as well as the intervenors

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 atleast 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, the express words of

Rule 4 provide that he should have completed minimum period of 2 years. To read Rule 4 in the manner

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

t, 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.

The appellant had relied upon a Full Bench decision of the High Court reported in 2005 (2) All

Maharashtra Reports, 489. No doubt, the said decision related to a notified society and not a specified society,

and therefore, the District Collector held that it did not apply to the facts of this case. Technically speaking,

the District Collector may be right, but what was sought to be relied upon by the appellant was the principle

laid down in the aforesaid Full Bench decision having regard to the similarity of the language of the

provisions. It is, however, not necessary for us to consider the decision of the Full Bench, because on a mere

reading of Section 27 of the Act and Rule 4 of the Rules, we are satisfied that the appellant society is eligible to

vote under Section 27 (3) of the Act and its name must also be included in the provisional list of voters

prepared in accordance with Rule 4 of the Rules.

We, therefore, allow these appeals and set aside the impugned judgment and order of the High

Court. Pursuant to the interim order of this Court made on 6.2.2006, election was held and the appellant

society and other similarly situated societies were permitted to vote, but their votes were kept in a separate

sealed cover and were not to be counted until further orders. By subsequent order dated 31.3

.2006, we also

stayed the counting of votes and declaration of the result, until further orders.

In view of the fact that we have allowed the appeals today, we direct that the votes cast by the

appellant society and other similarly situated societies shall be counted and the result of the election declared.

No order as to the costs.

.....J.

(B.P. SINGH)

.....J.

(ALTAMAS KABIR)

New Delhi

May 02, 2006