

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 2164 OF 2023

Shashirao s/o. Kerba Rokde,
Age : 75 years, Occu. Agriculture,
Ram Tirth, Tq. Biloli, Dist Nanded and Ors. Petitioner

Versus

The District Cooperative Election Officer
and District Deputy Registrar,
Cooperative Societies, Nanded and Ors. Respondents

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Mr. V.D. Sapkal, Senior Advocate i/b. Mr. Nitin Jagdale a/w. Mr. V.D. Salunke, Advocate for petitioners.
Mr. V.H. Dighe, Advocate for respondent Nos. 1 and 2.
Mr. K.J. Suryawanshi, Advocate for respondent No. 3.
Mr. A.B. Kharosekar & Mr. O.B. Boinwad, Advocates for respondent Nos. 4 to 6.
Mr. V.D. Hon i/b. Mr. A.V. Hon, Advocate for respondent No. 7.

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CORAM	: ARUN R. PEDNEKER, J.
CLOSED ON	: 08/03/2023
DELIVERED ON	: 14/03/2023

ORDER :

1. By the present writ petition, the petitioners are challenging the order dated 13.2.2023 passed by respondent No. 2 – Returning Officer for the election of respondent No. 3 - Tuljabhavani Ginning and Pressing Cooperative Society, Narsi, Taluka Naigaon (Kh), District Nanded, by which names of 335 voters were included in the final voter list for the election of respondent No. 3.

2. Brief facts, giving rise to the present writ petition, can be summarised as under :-

The election of respondent No. 3 Society - Tuljabhavani Ginning and

Pressing Cooperative Society, Narsi, Taluka Naigaon (Kh), District Nanded, which is 'D' Class society, was due and an administrator was also appointed on the said society. The appointment of administrator was challenged before the Division Bench of this Court in Writ Petition No. 13119/2022 (Bhaskar Bhagwanrao Bhilwande Vs. The State of Maharashtra and Ors.). By order dated 9.1.2023, the Division Bench relying upon the affidavit of respondent No. 4 therein affirming that the elections of present respondent No. 3 society would be conducted by the end of April 2023, the said writ petition was disposed of. Pursuance to the same, the election programme of respondent No. 3 society was set in motion under the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 read with the provisions of the Maharashtra Cooperative Societies Act, 1960 and Rules 1961.

3. As per the election programme, the entire election process from nomination to election takes place on a single day and the date for election is fixed on 21.3.2023. The election programme was published on 30.1.2023. On 31.1.2023 provisional voters list of respondent No. 3 society was published. The last date for submission of objections on the provisional voters list was 6.2.2023. 13.2.2023 was the date fixed for taking decision on the objections of provisional voters list. 14.2.2023 was the date fixed for publication of final voters list.

4. After publication of the provisional voters list, objections were received by the respondent No. 2. In the cause title of the writ petition, the designation of the respondent No. 2 is wrongly mentioned as Returning

Officer. The respondent No. 2 is the Taluka Cooperative Election Officer. [The impugned order dated 13.2.2023 which is challenged in the present writ petition is passed by the Taluka Cooperative Election Officer.]

5. The respondent No. 2 having considered the objections, in respect of inclusion of 355 names of voters, after taking into consideration the names of members in 'J' register, Share account book and those who have deposited admission fee and share amount as on 30.6.2019 with respondent No. 3 society, included the names of additional 355 members in the final voters list. The Taluka Cooperative Election Officer by order dated 13.2.2023 has held as under :-

"अॅड. पवार यांनी एकुण ३०३ सदस्यांची नोंद असलेल्या नमुनाआय मधील नोंदवहीच्या छायाप्रती, संस्थेची किर्द दिनांक ०३/०६/१९९३ ते ३१/०३/२०१८ या कालावधीची किर्दबुकच्या छायांकीत प्रति सादर केले आहेत. आक्षेपकर्ते यांनी संस्थेची एकुण ६५६ सभासद यांची नोंद असलेली नमुना जे नोंदवही, शेअर्स खाते नोंदवही आणि सभासदांनी संस्थेकडे दिनांक ३०/०६/२०१९ रोजी प्रवेश फी व भागाची रक्कम भरणा केले बाबत आक्षेपात नमुद एकुण ३५५ सभासदांचे पावत्यांची छायाप्रती सादर केले आहेत.

वरील प्रमाणे संस्थेची सादर करण्यात आलेली नोंदवह्या यावरून संस्थेकडे मतदार यादीतील सभासदाव्यतिरिक्त आक्षेपअर्जात नमुद ३५५ व्यक्तींनी संस्थेकडे प्रवेशफी व भागाची रक्कम भरणा केल्याचे दिसून येते. संस्थेच्या सभासदाच्या इतर पात्रता / अपात्रता बाबत महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम ११ अंतर्गत निर्णय घेण्याचे अधिकार सदर संस्थेचे कार्यक्षेत्र जिल्हास्तरीय असल्याने उक्त प्रकरणी तालुका सहकारी निवडणुक अधिकारी या नात्याने मला प्राप्त नाही. प्रारूप यादीवरील आक्षेपाबाबत संक्षिप्त सुनावणी घेउन निर्णय घेणे आवश्यक आहे. सदर चौकशी संक्षिप्त स्वरूपाची (Summery Enquiry) आहे. त्यामुळे सदर आक्षेप मंजुर करून सोबतच्या परिशिष्टात नमुद उर्वरीत सभासदांची नावे अंतीम मतदार यादीत समाविष्ट करण्यात येत आहेत."

Translation of aforesaid paragraph in English is as under :-

"The photocopies of the entry book in Form-I

containing the registration of 303 members, photocopies of ledger book's entry from dated 03/06/1993 to 31/03/2018 have been submitted by Advocate Shri. Pawar. The objector have submitted the photocopies of entry form of total 656 members which have been taken in entry book, similarly the entry book of share account and the receipts of total 355 members mentioned in the objection regarding the payment of admission fee and payment of shares on 30/06/2019 to the society.

Upon the aforementioned entry book submitted by society, it is transpired that, apart from the registered member of the society from the voter list, total 355 persons mentioned in the objection application have paid the admission fee and payment of shares to the society. As the rights of decisions regarding other qualifications/disqualifications of the members of the society u/s 11 of the Maharashtra Co-operative Society Act 1960 are reserved with the district level purview of the society, being Taluka Co-operative Election Officer I do not have rights regarding above mentioned matter. It is necessary to take decision regarding the objections against draft list by conducting brief hearing in the matter. As the said enquiry is summery enquiry, the said objections are accepted and the names of remaining members as mentioned in the annexure are being included in the final voter list."

Being aggrieved by the aforesaid impugned order, the petitioners have filed the present writ petition.

6. Mr. V.D. Hon, learned Senior counsel for respondent No. 7/ Chairman Administrative Committee of respondent No.3 raised preliminary objection to the writ petition and submitted that the petitioners have only made

objectors as party respondents in this writ petition and the petitioners have not added 355 persons as party respondents, whose names are included by the impugned order in the final voters list.

7. Mr. V.D. Sapkal, learned Senior Advocate for the petitioners submitted that the objectors are representing the cause of 355 members and as such, there is no further need to add the 355 members in the present writ petition.

8. Mr. V.D. Sapkal, learned Senior Advocate submitted that the order passed by respondent No. 2 is patently illegal as the jurisdiction of respondent No. 2 in terms of Rule 10 and 11 of the Maharashtra Cooperative Societies (Election to Committee) Rules 2014, is very limited to the extent of verifying the 'I' register and compare the names and only if he finds any discrepancies in the names, he can correct the same.

9. Mr. Sapkal, learned Senior Advocate further submitted that the respondent No. 2 has no authority to include the names in the register beyond what is available on 'I' register in the final voters list. In the alternative, the learned Senior advocate for the petitioners submitted that individual voters whose names were not in the final voters list have to themselves object and raise claim and give necessary supporting documents.

10. Mr. Sapkal, Senior Advocate further submitted that the record produced by the respondent No. 3 society contained only 303 persons

names and thus, the additional 355 names are bogus names which are added after the record was submitted to the Election Officer and that there is collusion between the Election Officer and the Administrator of the Society and the record of the Society was manipulated, after it was submitted to the respondent No. 2.

11. Mr. Sapkal, Senior advocate further submitted that although the added voters are not the members of the respondent No. 3 Society, by virtue of addition in the voters list, they have become members of the society without there being any application or fees being paid.

12. Mr. K.J. Suryawanshi, learned counsel appearing for the Secretary of respondent No. 3 society has filed affidavit of Mr. Chandrakant Govindrao Shriramwar, Secretary of respondent No. 3 society in which it is stated as under :-

"07. I say that, the respondent No. 2 had issued notice dated 06.02.2023 to the respondent nos. 3 to 6 for hearing on objections. As per the said notice the respondent no. 3 submitted written reply through Advocate on 09.02.2023 contending that, the objections raised by the respondent nos. 4 to 6 is not legal, proper and the alleged 355 persons are not members of Society, they did not made applications for membership, the admission fees and shares amount is not deposited, no any documentary proof has been submitted with objections, they are not having legal right to raise objections, etc. Along with reply the respondent no. 3 had submitted 'I' & 'J' Register of membership of 303 members. **The copy of reply dated 09.02.2023 submitted by respondent no. 2 Society is at Exh. 'D' page 52 to 54 of the**

petition itself.

08. I say that, the audit of respondent no. 3 Society for the period of 01.04.2017 to 31.03.2022 has been conducted by the concerned auditor and report has been submitted on 01.12.2022 in which also the total members are shown 303. In the said audit report it is also specifically mentioned that, from 2017 to 2022, no any new member has been enrolled. The list of 303 members including 22 Societies and 281 individuals is annexed to the said Audit Report. **The copy of Audit Report is at Exh. 'E', Page 55 to 84 of the Petition itself.**

09.

10. I say that, the respondent no. 2 had asked the respondent no. 3 to keep the original 'J' Register and Share Register with him for deciding the objections raised by the respondent nos. 4 to 6. Therefore, the respondent no. 3 had kept the said original 'J' Register and Shares Register with respondent no. 2.

11. I say that, the respondent no. 2 in collusion with respondent nos. 4 to 6 manipulated the 'J' Register and after Sr. No. 304 to 656 i.e. 355 names are illegally inserted in the said register, which is clearly reflected from said record. True copy of original J Register and Xerox copy of J register manipulated by the respondent no. 2 and 4 to 7 is annexed herewith and marked as EXH. R-1.

12.

13. I say that, on the basis of forged record submitted by respondent nos. 4 to 6, the respondent no. 2 allowed the objections of respondent nos. 4 to 6 for inclusion of names of alleged 355 persons in the final voters list of Society, though those 355 persons were/are not members of the Society.

14. I say that, the copy of alleged 'J' Register and Shares Register was not produced on record by respondent nos. 4 to 6 during course of hearing on objection on 09.02.2023

before respondent no. 2. The said registers were taken by respondent no. 2 on 09.02.2023 from the respondent no. 3 and respondent no. 2 handed it to the respondent no. 7, who has manipulated it in collusion with respondent no. 2."

13. Thus, Mr. K.J. Suryawanshi, learned advocate for respondent No. 3 submitted that 'J' register was manipulated and names were included in the 'J' register after the record of the Society was submitted to the respondent No. 2 and the respondent No. 2 in collusion with the respondent No. 7 has manipulated the record.

14. Per contra, Mr. V.H. Dighe, learned advocate appearing for respondent No. 2 – Election authority has filed affidavit of Mr. Sunilkumar Gunderao Ganlewar, Assistant Registrar, Co-operative Societies, Naigaon, Taluka and Taluka Election Officer (TCEO), Naigaon, District Nanded. In para 5 and 6 of the affidavit it is stated that :-

"05. I say and submit that, the petitioners have made certain allegations against the deponent. I say that, I deny the said allegations made by the petitioners in the petition regarding the misuse of power and handing over the record to other respondents. I say and submit that, I have not taken the custody of any record of the Society and the same is not handed over to other respondents. I say that, the said allegations are made only with malafide intentions.

06. I say and submit that, Chandrakant G. Shriramwar who is claiming to be the Secretary of respondent No. 3 Society has filed affidavit making certain allegations against the deponent. I say and submit that, I deny the said allegations made by the Secretary. I say and submit that, it is necessary to point out that, as per the information of the deponent received from the Nanded Zilha Dekhreh Sahakari

Sanstha Limited, Nanded has already taken action against the Secretary of respondent No. 3 Society informing that, the respondent No. 3 Society has already removed him from the post of Secretary. I crave liberty to produce and rely upon the said communication."

15. Mr. V.H. Dighe, learned counsel for respondent No. 2 has thus submitted that the respondent No. 2, who is a Government Officer working as Assistant Registrar, Co-operative Societies, Naigaon, Taluka and Taluka Election Officer (TCEO), Naigaon, District Nanded, has not taken custody of the record of the society and same is not handed over by him to any respondents.

16. Mr. V.D. Hon, learned Senior Advocate appearing for respondent No. 7 – Administrator of the respondent No. 3 Society submits that the Secretary of the Society Mr. Chandrakant Govindrao Shriramwar, who has filed affidavit in this writ petition is a suspended officer and has no authority to represent the society in the writ petition and it is only the respondent No. 7 – Administrator who has the authority to represent the respondent No. 3 Society in the matter.

17. Thus, the contention is raised by the petitioners that the record in respect of 'J' register is manipulated. The factual assertion made by the petitioners and also in the affidavit filed by Secretary of respondent No. 3 is controverted by respondent No. 2 – TCEO, an independent election authority, who has no cause between the parties to the petition. The respondent No. 2 on affidavit has stated that no record

was taken by him in his possession and handed over to the Administrator of the society. Thus, the legal submissions canvassed by the learned counsel for the petitioners cannot be considered in this matter as there are disputed questions of facts.

18. The law is well settled as regards the High Court's power to interfere in the election process. The order passed by the election authority would be interfered with only in case of patent illegality. However, the statement made by the Secretary Mr. Chandrakant Govindrao Shriramwar cannot be taken at face value as it is doubtful whether the Secretary can represent the society, in view of the affidavit of respondent No. 2, that Nanded Zilla Dekhreh Sahakari Sanstha Ltd. has suspended the said Secretary. Also the factual assertion made of manipulation by the Secretary cannot be prima-facie accepted as the same is controverted by the respondent No. 2.

19. There is alternate remedy provided to the petitioners to challenge the impugned order in this petition. This Court in the writ jurisdiction cannot summarily arrive at factual findings in a seriously contested factual issues, before proceeding to decide the legal issue. The same can be done by leading evidence in a properly constituted election petition under section 91 of the MCS Act r/w. Rule 72 of MCS Rules in the matter.

20. Thus, the present writ petition is disposed of with liberty to the petitioners to approach the alternate forum at appropriate stage. The

observations made in the present writ petition would not bind any authority in the event the petitioner files proceedings before a appropriate authority. In the event, the petitioner approaches alternate forum for any relief, all contentions are left open.

[ARUN R. PEDNEKER J.]

SSC/