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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3021 OF 2016

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| 1. | Dhondiram Balasaheb Pardikar
Age – 40 years, Occ – Medical Practitioner
R/o Saraswati Hospital,
Saraswati Nagar, Vasmat,
Taluka – Vasmat, District – Hingoli | PETITIONERS |
| 2. | Mahadev Vishwanath Kapuskari,
Age – 55 years, Occ – Business
R/o Zenda Chowk, Vasmatnagar,
Taluka – Vasmat, District – Hingoli | |

VERSUS

- | | | |
|----|--|-------------|
| 1. | The State of Maharashtra
Through its Principal Secretary,
Co-operation, Marketing and Textile
Department, Mantralaya,
Mumbai | RESPONDENTS |
| 2. | The State Co-operative Election Commission,
Maharashtra State, Pune
Through its Secretary | |
| 3. | The District Deputy Registrar /
District Co-operative Election Officer,
Hingoli | |
| 4. | Jaiprakash Narayan Nagari
Sahakari Bank Ltd., Vasmatnagar,
Chhatrapati Shivaji Chowk,
Parbhani Road, Vasmatnagar,
Taluka – Vasmat, District – Hingoli
Through its Manager | |

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Mr. R.N.Dhorde, Sr. Advocate i/b Mr. V. R. Dhorde, for petitioners
 Mr. S. K. Tambe, AGP for respondent-State
 Mr. S. K. Kadam, Advocate for respondents No.2 and 3
 Mr. V.D.Salunke, Advocate for respondent No.4

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WITH
WRIT PETITION NO.3367 OF 2016

Sow Vanisri Vasant Chepurwar
Age – 36 years, Occ – Household
R/o Main Road, Vasmath Nagar,
Taluka – Vasmath,
District – Hingoli

PETITIONER

VERSUS

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| <ol style="list-style-type: none"> 1. The State of Maharashtra
Through the Principal Secretary,
Co-operation, Marketing and Textile
Department, M.S.
Mantralaya, Mumbai-32 2. The State Co-operative Election Commission,
Maharashtra State, Pune
Through its Secretary 3. The District Deputy Registrar /
District Co-operative Election Officer,
Hingoli 4. Jaiprakash Narayan Nagari
Sahakari Bank Ltd., Vasmatnagar,
Chhatrapati Shivaji Chowk,
Parbhani Road, Vasmatnagar,
Taluka – Vasmat, District – Hingoli
Through its Manager | <p>RESPONDENTS</p> |
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Mr. N. B. Khandare, Advocate for petitioner
Mr. S. K. Tambe, AGP for respondent-State
Mr. S. K. Kadam, Advocate for respondents No.2 and 3
Mr. V. D. Salunke, Advocate for respondent No.4

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WITH
WRIT PETITION NO.3463 OF 2016

1. Vijay Shrirangsa Kadkan

PETITIONERS

Age – 49 years, Occ – Business,
R/o Ganesh Peth, Vasmatnagar,
District – Hingoli

2. Santosh Trimbak Gore,
Age – 35 years, Occ – Agriculture
R/o Bhosale Galli, Shahar Peth,
Vasmatnagar, District – Hingoli
3. Bhaskar Laxman Gawale,
Age – 36 years, Occ – Business,
R/o Boudhwada, Vasmatnagar,
District – Hingoli
4. Khajakha Rashidkha
Age – 45 years, Occ – Business
R/o Station Road, Vasmatnagar,
District – Hingoli
5. Aminkha Arifkha
Age – 54 years, Occ – Labour,
R/o Shukrwarapeth, Vasmatnagar,
District – Hingoli
6. Umar Baig Mahemud Baig,
Age – 45 years, Occ – Business
R/o Shukrawarapeth, Vasmatnagar,
District – Hingoli
7. Shaikh Kalim Shaikh Rahim,
Age – 45 years, Occ – Business,
R/o Vasmatnagar,
District – Hingoli
8. Dinesh Balajirao Palimkar,
Age – 35 years, Occ – Business,
R/o Ganesh Peth, Vasmatnagar,
District - Hingoli

VERSUS

1. The State of Maharashtra
Through the Principal Secretary,
Co-operation, Marketing and Textile

RESPONDENTS

Department,
Mantralaya, Mumbai

2. The State Co-operative Election Commission,
Maharashtra State, Pune
Through its Secretary
3. The District Deputy Registrar Co-operative Societies
and the District Election Officer,
Hingoli, District - Hingoli
4. Jaiprakash Narayan Nagari
Sahakari Bank Ltd., Vasmatnagar,
Chhatrapati Shivaji Chowk,
Parbhani Road, Vasmatnagar,
Taluka – Vasmat, District – Hingoli
Through its Manager

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Mr. V. D. Hon, Sr. Advocate i/b Mr. A. V. Hon, for petitioners
Mr. S. K. Tambe, AGP for respondent-State
Mr. S. K. Kadam, Advocate for respondents No.2 and 3
Mr. V.D.Salunke, Advocate for respondent No.4
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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 31st MARCH, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. I have heard Mr. R. N. Dhorde, Mr. V. D. Hon, learned senior advocates, Mr. N. B. Khandare, learned advocate for the petitioners in respective writ petitions, Mr. Tambe, Learned AGP for respondent State, Mr. S. K. Kadam, learned advocate

appearing for State Co-operative Election Authority, respondents No.2 and 3 and Mr. V. D. Salunke, learned advocate for respondent No.4 Bank.

3. Broadly stated, contention on behalf of the petitioners that is being canvassed is that, voters' list, as had been prepared pursuant to the programme for finalization of voters' list, is illegal and improper, the list being not containing names of all the existing members of the bank, as would be mandatory under the last proviso to section 26 (2) of the Maharashtra Co-operative Societies Act, 1960 (Hereinafter for the sake of brevity will be referred to as "the Act"), present election to managing committee being first elections after 2013, the proviso reads thus -

"Provided also that, in any election conducted immediately after the date of commencement of the Maharashtra Co-operative Societies (Amendment) Act, 2013, all the existing members of the society shall be eligible for voting, unless otherwise ineligible to vote".

4. Further contention on behalf of the petitioners is that not only the voters' list is deficient in aforesaid respect, however, there are certain other irregularities in publication of voters' list, which contains names of dead persons, names of such persons who are not residents within the area of operation of the bank, certain persons' names figure twice in the voters' list and gender

of quite a few persons has undergone mutation. Thus, according to the petitioners, the whole basis of election, the voters' list, being defective and illegal, it is amenable to be interfered with under the extraordinary powers of this court under Articles 226 and 227 of the Constitution of India. The learned advocates refer to the provisional voters' list as annexed to the writ petition and contend that when it refers existing membership of 5766 persons, the same also refers to figure of eligible voters as 2706. According to them, absence of rest of the members in the provisional voters' list is an illegality, which is writ large having regard to proviso, afore-stated. According to them, this being a statutory and mandatory provision, the technicalities should not matter and this court should intervene, arresting deterioration in the situation.

5. Mr. Dhorde, learned senior advocate contends that the law ordains that all the existing members of the society should be voters pursuant to proviso to section 26 of the Act and in the circumstances, inclusion of all the existing members ought to be there in the provisional list of voters. He submits that in the circumstances, it was incumbent on the election officer to question as to why 5766 members should not be included in the voters' list and here the election officer has faltered in his

statutory duty and it was imperative.

6. Mr. Dhorde, refers to a decision of the Supreme Court, rendered in the case of *“Bar Counsel of Delhi and Another V. Surjeet Singh”* reported in *AIR 1980 SC 1612*, which was a case wherein the electoral roll, pursuant to proviso, which was found to be *ultra vires* of the Delhi Bar Council Election Rules, had been invalidated by the Supreme Court and in the circumstances considered that an electoral roll prepared with such proviso is completely vitiated and shall be liable to be set aside, further finding that an alternate remedy in respect of said elections held on basis of an electoral roll under a provision which is void and *ultra vires*, relating to preparation of electoral rolls, in such cases, would not detain exercise of powers of the Court, particularly under Article 226 of the Constitution of India. In the peculiar facts and circumstances of the case, the court had considered that Rule 34 of the Bar Council of Delhi Elections Rules, 1968 was not a remedy at all. The Supreme Court appears to have considered that if alternate remedy fully covers challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge to election of all successful candidates. But, if the nature and the ground of challenge of the whole election are such that the

alternate remedy is not remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available. Thus, that case appears to be with reference to the proviso which was found to be *ultra vires* and that an election Tribunal in such cases would not be able to declare the provision to be *ultra vires*. So the supreme court appears to have ruled, as referred to above.

7. Mr. Dhorde, learned senior advocate further refers to a decision by division bench of this court in the case of “*Vasantrao Annasaheb Ubale and Others V. The State of Maharashtra and Others*” reported in 2001 (4) ALL MR 578 to emphasise that an amendment is prospective in its application and would not be retro active. In said case, under the amendment a necessity of passage of two years as a member before being considered as a voter is mandatory and in that case the division bench appears to have ruled that the persons who were on the date of amendment otherwise eligible as voter, their voting right would not be affected by amendment and the amendment would be applicable prospectively. This citation has been relied upon, perhaps to emphasise that all the existing members would have a right to vote to the first elections after 2013 and ineligibility if any

incurred under the amendment in 2013, would not hold them from being voter, having regard to the proviso.

8. Learned senior advocate further refers to a decision in the case of “*Dattatraya Kachru Chine and Others V. State of Maharashtra and Others*” reported in 2005 (4) ALL MR 597, which was a case involving discontinuation of membership on account of failure to supply sugarcane. The division bench distinguished said case from the case of “*Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha V. State of Maharashtra*” reported in 2001 AIR (SC) 3982 : 2001 (8) SCC 509, referring to that the point canvassed before the Apex Court was in reference to breach of certain mandatory provisions of the rules in the process of preparation of electoral roll. There was no issue relating to right of persons, who had already been a member of the society to continue to be a voter of the society. While going by the allegations and contentions of learned advocates for the petitioners, it does not appear to be a case relating to right of a person, who had been a member of the society, to continue to be a member of society. The contentions and allegations as are advanced are with reference to preparation of voters' list. As such, said case, may not assist the petitioners, the way they may desire.

9. In the course of their submissions, learned advocates refer to various provisions of the Act, particularly section 26, the proviso as referred to above and sub clause (10) of section 27 and provisions of section 73CA. According to learned advocates, no procedure having been followed for foisting disqualifications, on the other members, whose names do not figure in the voters' list, having regard to proviso to section 26 of the Act, non appearance of their names in the provisional voters' list or for that matter in the final voters' is illegal and unsustainable. As such, according to them, quite a few objections had been placed before the returning officer during the period referred to in the programme for finalization of voters' list and those have been cursorily dealt with and rejected. On the contrary, the objections taken by the Manager of the Bank have been sustained deleting names of 192 persons from the provisional voters' list terming them to be defaulters. According to them, the requisite record, which is in the custody of the bank, which would support their contentions and the objections before the returning officer, had not been provided to them.

10. Over and above this, it is sought to be canvased that publication of programme of finalization of voters' list is almost a clandestine affair. The same had been ostensibly published in

newspaper "*Loksatta*", which cannot be said to be a widely circulated newspaper in the area of operation of the bank. As such, many of the petitioners were unaware about ensuing elections and for that matter about objections having been called in respect of preparation of voters' list. It is upon coming to know about the same, writ petitions No.3367 of 2016 and 3463 of 2016 have been filed.

11. Mr. Salunke, learned advocate appearing for respondent No.4 Bank at the outset, questions tenability of the writ petitions on the grounds being taken up in the petitions and the authority of the petitioners to raise such objections and their *locus standi*. He refers to an order passed by Division Bench of this Court dated 11th March, 2016 contending that scope of writ petition No. 3021 of 2016 cannot be extended beyond the extent of petitioner No.2 and that had been made specific by the Division Bench while issuing notice. He further refers to that since the order passed by the election officer was under challenge, the matter has been referred to single judge.

12. In addition to above, he submits that the petitions cannot be maintainable for, either the petitioners in the three writ petitions had not taken any such objections as in writ petitions to

the preparation of the voters' list at the relevant time. In case of writ petition No.3021 of 2016, looking at the nature of objection, particularly, as appearing on pages from 17 to 20 thereof, tenor of their grievance is that provisional voters' list includes quite a few members, who are defaulters and as such, their names need to be omitted from the voters' list. Such a grievance stands satisfied with deletion of 192 members, while it came to the notice of respondent No.4 that those members had defaulted payment of loan to the bank. He further submits that rest of the objections as are appearing are too vague and nonspecific and do not satisfy conditions and requirements of the Rules, particularly Rules 8 (1) and (2), nor any material had been made available before the election officer to substantiate the objections which are purportedly taken. In such circumstances, the election officer cannot be faulted with for the orders, which are purportedly impugned in writ petition No. 3021 of 2016.

13. He points out that writ petition No.3021 of 2016 is confined to petitioner No.2, who purportedly objected to deletion of his name, however, the same has no substance, for, he has not brought anything on record to show that he has is not a defaulter and the no dues certificate which he has produced, is not with reference to him, but to his brother. As such, there is no

substance in the grievances in writ petition No.3021 of 2016 that deletion of name of petitioner No.2 from the voters' list is erroneous. His name does not figure in the voters' list for him being a defaulter.

14. As far as other two writ petitions i.e. writ petitions No.3367 of 2016 and 3463 of 2016 are concerned, according to him, those cannot be maintained on various counts, particularly for *laches*, having come to the court belatedly, when the election programme has advanced to an irreversible stage. He submits that over and above this, the petitioners have no *locus standi* at all. Their grievances in the writ petitions are too general in nature and are vague and are not supported by any material. According to him, the petitions having filed on perceived illegalities, when in fact there are none. He submits that the persons whose names do not figure in the voters' list are not before this court. Nor they have authorized present petitioners to take their cases to the court. While they could have taken objections to the preparation of voters' list, they have not taken any objection during relevant period and even otherwise, there is no substance in the allegations being now hurled, for, preparation of voters' list is in accordance with the Rules.

15. Mr. Salunke, learned advocate places reliance on the decision rendered by the Supreme Court in case of “*Sant Sadguru*” (*supra*) stating that preparation of voters' list having declared by the supreme court as part of election programme, it is not to be meddled with in exercise of extraordinary powers under Article 226 of the Constitution of India. He further submits that it is not such a gross case wherein it can be said that there is illegality, glaringly surfacing. He further refers to an order of division bench of this court dated 13th February, 2015 in writ petition No.1753 of 2015 refusing to interfere with election programme with reference to judgment of the supreme court in case of “*Sant Sadguru*” (*supra*) as also said order having been followed by learned single judge of this court in case of “*Abasaheb Hanumant Chitte and Others V. State of Maharashtra and Others*” in writ petition No. 973 of 2015 dated 18th February, 2015.

16. In addition to above, Mr. Salunke, learned advocate, placing reliance on by-laws of the society, in order to counter allegations made in the writ petition about inclusion of such persons who are not residents in the area of operation of the bank, refers to by-laws No.9 and 10 of the society, which refer to that it is not necessary that the member should be resident within the area of operation of the bank and that the person who

is engaged in any occupation, profession or business within the area of operation of the bank would qualify him to be a member of the bank. He submits that it is not the allegation that the persons whose names appear in the voters' list, who may, ostensibly appear residents of area outside the area of operation of the bank, are not carrying on any occupation, profession or business within the area of operation of the bank. In absence of such objection and that having regard to that said members stated to be carrying on occupation, profession and business in the area of operation of the bank, their inclusion in the voters' list cannot be faulted with. He goes on to submit that assuming that a person who is dead, his inclusion in voters' list is not going to prejudice elections, as he would not be able to vote. So is the case in respect of persons whose gender is allegedly erroneous as the person would not change.

17. According to him, even otherwise, the writ petition raises so many questions of facts which can hardly be dealt with in the writ jurisdiction and it would require evidence to support the allegations. In such a case, writ petition is not at all be a remedy and if at all, the petitioners are aggrieved by inclusion and / or deletion of certain persons, alleging illegalities in the same, the same may be taken care of by some other remedy. According to

him, these are the questions to be decided by the Registrar or for that matter at appropriate stage, if at all the petitioners are aggrieved, having regard to Section 78 of the Act and the Rules. He submits that having regard to nature of allegations hurled, the writ petition would not be an efficacious remedy, without prejudice to his basic contention that there is no substance in the writ petitions. He, therefore, submits that there is no substance in the writ petitions and those deserve to be dismissed.

18. Mr. S. K. Kadam, learned advocate representing respondents No.2 and 3, State Co-operative Election Authority, submits that the infirmities, sought to be alleged in the preparation of voters' list by contentions and allegations of the petitioners, cannot be said to be tenable at all. The voters' list, having regard to Rule 6 of the Rules, is to be given by the society in the form and accordingly, the election officer is required to publish the same in Form E-3 of Rule 7 of the Election Rules 2014, which requires him to refer to total number of membership of the society followed by total number of eligible voters as supplied by the society. As such, the publication of provisional voters' list on that count cannot be flawed and objection on that ground is untenable.

19. Mr. Kadam refers to objections as have been appended to writ petition No.3021 of 2016 stating that looking at the nature of objections appended to the writ petition from pages 17 to 21, would not give an indication that the petitioners would be entitled to the relief, now being sought in the writ petition, for, the nature of objections primarily is that the voters' list, rather the list of defaulters has not been supplied to them by the bank and therefore, it is likely that their names may be included in the voters' list. That grievance according to him, stands taken care of by deletion of the persons, who were defaulters, under the request from the bank. He further refers to that in none of the objection that was ground of non appearance of members before 2076 and in fact it is in the nature of request to include names of members of last five years. However, he submits that preparation of list of voters has to be in accordance with provisions of law and rules thereunder. It cannot be said that preparation of voters' list is not in accordance with relevant provisions of law. He further points out that on the date of hearing, the objectors had skipped appearance before the election officer and had not produced any material in support of the objections and having regard to the material as has been placed before the election officer, he has passed the orders. He

submits that the so called objections are too vague, uncertain and non speaking. Mr. Kadam further submits that the scope of the writ petition cannot be widened beyond the orders passed by the election officer and beyond the objections as have been taken.

20. Mr. Tambe, learned AGP appearing for respondent-State submits that having regard to the nature of allegations appearing in the writ petitions, it is discernible that it is only a fishing inquiry which is sought to be made through the court without placing any credible material on record. He, therefore, supports the impugned orders and the submissions advanced on behalf of the respondents.

21. Looking at aforesaid submissions on either side, the objections as are appearing on pages 17 to 21 in writ petition No.3021 of 2016, do not appear to form basis for or can be said to give rise to contentions and allegations in the writ petition. The contentions and allegations in the writ petition appear to be beyond scope of objections taken before election officer. The petitioners, allege that there are dead persons included in the voters' list, there are persons who reside outside the area of operation of the bank, there are persons whose genders have

been erroneously shown, are not the objections taken before the election officer during the period reserved therefor. As a matter of fact, the objections appear to be under apprehension that some defaulters may be included in the voters' list. In writ petition No. 3021 of 2016, however, there is sort of a *volte face*, in the sense that whereas the apprehension expressed in the objection is inclusion of defaulters in the voters' list, here in the writ petition prayers appear to seek direction to include names of 192 persons who have been deleted as defaulters under the orders of the election officer. Those 192 persons do not appear to have been aggrieved, having not come before this court. Nor do the petitioners show that said 192 persons have authorized the petitioners to approach this Court. Further, the petitioners have not placed anything on record to show that said 192 persons cannot be termed as defaulters by placing any material on record. Petitioners in writ petitions No. 3367 of 2016 and 3463 of 2016 had not taken objection to voters' list within appropriate time schedule and have already approached under writ petitions. The contentions advanced are on perceptions rather than being substantiated by material.

22. At the stage at which the elections now stand, wherein list of candidates whose nominations are found to be valid has

already been declared and having regard to that the dispute mainly relates to quite a few factual aspects, which are disputed, I do not think these are the matters, wherein this court should interfere and invoke its powers under Article 226 of the Constitution of India.

23. Writ petitions, as such, are not being entertained and are dismissed. Rule stands discharged.

[SUNIL P. DESHMUKH, J.]

drp/wp3021-16