

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 5431 OF 2016

Sugriv s/o Manikrao Karad
& another

.. PETITIONERS

VERSUS

The State Co-operative Election
Authority (SCEA)
Maharashtra State & others

.. RESPONDENTS

Mr. V.D Salunke, advocate for petitioners.
Mr. S.K. Kadam, advocate for respondents 1 and 2.
Mr. S.V. Deshmukh, advocate holding for Mr. S.B Solanke, advocate for
respondent no. 3.
Mr. S.S. Thombre, advocate for intervener.

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**CORAM : R.M. BORDE &
SANGITRAO S. PATIL, JJ.
DATE : 1st DECEMBER, 2016.**

PER COURT :

1. Petitioners are raising objection in respect of non-inclusion of names of 197 members in the final list of voters and are seeking direction to allow them to participate and exercise right to vote at the election which was scheduled to be held on 29.05.2016. The list of voters has attained finality. After publication of final voters list, the program of election was published and as per the said program, the date prescribed for recording of votes was 29.05.2016. It has been pointed out that the votes have already been

recorded on 29.05.2016 in observance of the directives issued by the learned Single Judge (Vacation) on 20.05.2016. The learned Single Judge, while permitting the Returning Officer to proceed to record votes, has directed to keep the ballot papers of 90 voters in sealed box whereas it is further directed to keep the ballot papers of 107 voters in a separate box.

2. After hearing arguments of the respective parties, it is noticed that there does not appear to be any controversy in respect of rights exercisable by 90 voters and, the controversy relates only in respect of 107 members. The Division Bench of this Court while dealing with the petition on 06.06.2016 has observed that in view of provisions of section 26(1) proviso, 90 members whose votes are collected and preserved in a separate box do have entitlement to cast vote. In this view of the matter, there should be no difficulty in permitting computation of votes of 90 members which are kept in a separate box as per the directions issued by the learned Single Judge. At present, ballot papers of 107 members which are separately kept shall not be considered for computation of votes recorded on 29.05.2016. The Division Bench of this Court by order dated 06.06.2016 directed the District Deputy Registrar, Co-operative Societies, to scrutinise the record and, after extending an opportunity of hearing to petitioners as well as objectors, tender report in respect of entitlement of 107 members to claim membership rights on the basis of their enrollment as members in the year 2009. The District Deputy Registrar in pursuance to the directions issued by the Division Bench has tendered report, however, the report is not conclusive. In order to reach the conclusion in respect of entitlement of 107 members

who claim membership, certain fact finding exercise would be necessary which need not be undertaken by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India.

3. In view of the facts and circumstances enumerated above, while disposing of instant writ petition, we direct respondent no. 2 to declare result of the election and, while making declaration, he shall take into account 90 votes preserved in a separate sealed box however, shall not consider 107 votes preserved in another sealed box. It would be open for the aggrieved parties, if they desire, to raise challenge in respect of elections in observance of section 91 of the Maharashtra Co-operative Societies Act, 1960, within the time stipulated, after declaration of the result of election. In the event of failure of any of the parties to raise challenge to the election within the time stipulated under section 92 of the Act, it would be open for the State Election Authority or the Returning Officer to dispose of the ballots. It is informed that by virtue of order granted by the learned Single Judge of this Court dealing with Writ Petition No. 5565/2016 presented by one Mahadev Datta Kolhe, restrain has been clamped in respect of declaration of result of VJNT constituency. The Returning Officer shall abide by the directives issued by the learned Single Judge and it shall not be obligatory on his part to declare election result of the said constituency and, the directions issued in the instant petition shall not relate to declaration of election result of the aforesaid constituency. Writ petition accordingly stands disposed of.

4. In view of disposal of writ petition, civil application does not survive and stands disposed of.

5. Parties to act upon authentic copy of this order.

(SANGITRAO S. PATIL)
JUDGE

(R. M. BORDE)
JUDGE

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