IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 897 OF 2016

Shamrao B. Kadam & ors. .. Petitioners
vs.
District Cooperative Election Officer
@ District Deputy Registrar, Cooperative
Societies, Kolhapur & ors. .. Respondents

Mr. Prashant Bhavake for the Petitioners.
Mr. A.R. Metkari, AGP for Respondent No.1.
Mr. S.R. Ganbavle for Respondent Nos.2 and 3.

CORAM : M. S. SONAK, J.
Date of Reserving the Judgment : 05 February 2016.
Date of Pronouncing the Judgment : 11 February 2016.

JUDGMENT :-

1] Rule. In view of the order dated 28 January 2016, as also with the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The Petitioners, sixteen in all, challenge the continuance of the remark as '*defaulter*' in the final voters list for election to the Respondent No.2-Society, the polling of which is scheduled on 27 February 2016, expressing the apprehension that such remark, will dis-entitle them to exercise their right to vote at the said election.

3] By interim order dated 28 January 2016, the continuance of remark as aforesaid, was stayed until further orders. However, an early returnable date was granted, so that the petition itself could be disposed of finally.

4] Mr. Bhavake, learned counsel for the Petitioners, has submitted that elections to the Respondent No.2 Society are required to be held in terms of the Maharashtra State Cooperative Societies (Election to Committee) Rules, 2014 (said Rules). In terms of Rule 7 of the said Rules, there is no provision to insert any remark in the provisional voters list, styling the voter as a defaulter. The very insertion of such remark is *ultra vires* Rule 7 of the said Rules. In any case, Mr. Bhavake submits that in the present case, the provisional voters list, which was published on 22 December 2015 was finalized only on 13 January 2016. By this date, the sixteen Petitioners, as also twelve other Members had, without prejudice, cleared their dues and therefore, could not have been styled as defaulters. Respondent No.1, by abdicating discretion to the say of the Secretary of Respondent No.2-Society, had deleted the remark against the names of twelve Members, but refused to apply the same yardstick insofar as sixteen Petitioners are concerned. Mr. Bhavake contends

that such approach on the part of Respondent No.1 is *ex-facie* discriminatory and on such basis, the Petitioners, cannot be deprived of their right to vote. Mr. Bhavake relied upon several decisions and reference will be made to some of relevant decisions, in the course of this judgment and order.

5] Mr. Ganbavle, learned counsel for Respondent Nos.2 and 3 and Mr. Metkari, learned AGP for Respondent No.1, at the outset submitted that since the election process is commenced, this Court ought not to entertain the present petition under Articles 226 and 227 of the Constitution of India. The learned counsel made some contradictory submissions in the context of deletion of remark of '*defaulter*' against the names of twelve members, vis-a-vis sixteen Petitioners claimed discrimination. The learned counsel submitted that twelve members, having cleared their dues within a period of ten days from the date of publication of provisional voters list, were entitled to have the remark of '*defaulter*' deleted, even though the twelve members had failed to lodge their objections to the provisional voters list within the prescribed period of ten days in terms of Rule 8 of the said Rules. Later on, in the context of their own submissions that the provisions contained in Rule 8 of the said

Rules are mandatory and have to be strictly construed, learned counsel contended that the action of Respondent No.1 in deleting the remark against the names of twelve members, even though, the twelve members had not lodged their objections within the prescribed period of ten days, was illegal and the Petitioners, cannot claim any equality of illegalities. Finally, the learned counsel however, submitted that they stand by the decision of Respondent No.1 in deleting the remark against the names of twelve members but refusing to delete similar remark against the names of sixteen Petitioners, even though, the twelve members and the sixteen Petitioners, may have not filed objections to the provisional voters list within the prescribed period of ten days. The learned counsel, in unison, submitted that the action of Respondent No.1 whether legal or not, may not be examined in these proceedings, now that the election process has already commenced. They relied upon several decisions and the relevant amongst those, will be referred to in the course of this judgment and order.

6] The rival contentions now fall for determination.

7] In this case, Respondent No.2 is a Primary Agricultural Cooperative Credit Society (type 'B' Society) having share capital in excess of Rs.10 lacs. In the provisional voters list was published on 22 December 2015, names of in all two hundred fifty eight Members figure. Ultimately, it turned out that almost forty eight Members had already expired and their names were therefore, deleted. As against, the names of approximately 31 voters, the provisional voters list carried the remark '*defaulter*'. In the final list, published on 13 January 2016, however, remark against the names of twelve Members was ordered to be deleted, but the remark, continues as against the names of sixteen Petitioners. The final voters list, prior to the interim order made by this Court, had names of one hundred ninety six members eligible to vote. Sixteen voters, in the facts and circumstances, constitutes, a sizeable percentage.

8] The learned counsel for Respondent Nos.1,2 and 3 have justified the deletion of remark as '*defaulter*' against the names of twelve members, even though, these twelve members, had not raised any objections to the provisional voters list published on 22 December 2015, by contending that these twelve members, had cleared the dues to the Respondent No.2- Society within a period of

ten days from the date of publication of the provisional voters list and this fact was communicated by the Secretary (Respondent No.3) to Respondent No.1, before the finalization of the provisional voters list. The letter addressed by Respondent No.3 to Respondent No.1 on 31 December 2015 indeed sets out that the twelve members have cleared their arrears and therefore the remark as defaulter against their names may be deleted. The record however, bears out that even the sixteen Petitioners, without prejudice to their contentions, had cleared the dues to the Respondent No.2-Society and such material, was placed before the Respondent No.1 on or about 8 January 2016, i.e., much before the Respondent No.3 finalised the voters list on 13 January 2016. There is no dispute on this aspect. The record, therefore bears out that as between the dates of publication of provisional voters list on 22 December 2015 and the finalization of the voters list on 13 January 2016, the sixteen Petitioners as well as other twelve Members, against whose names, the remark of '*defaulter*' has been deleted, had cleared their dues towards the Respondent No.2- Society and therefore, were not, defaulters on the date of finalization of the provisional voters list. If this is the position, then the onus lay upon the Respondent No.1 to

justify his action of treating the twelve Members and the sixteen Petitioners, with an unequal yardstick.

9] In the present case, admittedly, neither the sixteen Petitioners nor twelve Members against whose names the remark of defaulter stands deleted, lodged any objections to the provisional voters list within a period of ten days, as stipulated by Rule 8(1) of the said Rules. The learned counsel for Respondent No.1, at one stage, had vehemently contended that the period of ten days as prescribed under Rule 8(1) of the said Rules is mandatory and is required to be strictly construed. They had contended that any objection raised, beyond the period of ten days, cannot even considered by District Cooperative Election Officer or Taluka or Ward Co-operative Election Officer, as the case may be. However, when faced with the situation that twelve Members, who had also not raised any objection within the period of ten days from the date of publication of provisional voters list, learned counsel for the Respondents submitted that there was material on record before the Respondent No.1, in the form of communication dated 31 December 2015 addressed by the Secretary (Respondent No.3) to the effect that twelve Members were not defaulter as on the said date. In my judgment, this is hardly a

satisfactory manner to distinguish between the twelve Members and the sixteen Petitioners, who constitute one class. The twelve Members and the sixteen Petitioners, may have been defaulters on the date of publication of the provisional voters list, i.e., on 22 December 2015. However, on the date of finalization of the provisional voters list, i.e., on 13 January 2016, neither the twelve Members nor the sixteen Petitioners were defaulters, they having, cleared their dues to the Respondent No.2-Society, without prejudice. In such circumstances, relying upon the period prescribed under Rule 8(1) of the said Rules, the Respondent No.1, was not right in treating the Petitioners with an unequal yardstick. As long as Respondent No.1 had before him unimpeachable material that the Petitioners had also cleared dues to the Respondent No.2-Society, at least, five days prior to finalization of the voters list, the Respondent No.1, was duty bound to take into consideration this vital and relevant material and on the said basis, delete the remark of '*defaulter*' against their names as well. Respondent No.1, after having adopted the similar approach and ordered deletion against the names of the twelve Members on the provisional list, was not justified in discriminating against the Petitioners. Such

discrimination, violates the guarantee of equality enshrined in the Article 14 of the Constitution of India.

10] In case of ***Rajbala & ors vs. State of Haryana & ors.***[1] , the Hon'ble Apex Court, no doubt, in the context of election to Panchayats, has held that right to vote is a constitutional right. Although, the provision, which barred an aspirant to contest election to the Panchayat, if, in arrears to the Panchayat, was held as *intra vires,* the Hon'ble Apex Court, in paragraph 92, made it clear that nothing in law prevents an aspirant to context an election to the Panchayat to make payments under protest of the amounts claimed to be due from him and seek adjudication of legality of the dues by an appropriate forum.

11] In case of ***Ramesh R. Patil Vs. The Additional Commissioner and ors.***[2]***,*** the learned Single Judge of this Court, in the context of elections to specified cooperative societies, has held that if dues are paid before the Returning Officer scrutinizes the nomination papers, the Returning Officer is not justified in rejecting the nomination papers. This Court, rejected the contention that a Returning Officer

1 Writ Petition (Civil) No. 671 of 2015 decided on 10 December 2015
2 1995 (2) Bom.C.R. 264

was not empowered to allow a person who has filed his nomination, to cure his default in making payment before the date of decision on the objection taken to his nomination paper, on the ground of default. The relevant observations in paragraphs 25, 26 and 27 read thus:

> *25. The principle of co-operation itself rests on the sound principles of Democracy. The success of co-operative movement lies in not debarring the members eligible to contest, from contesting the elections. In view of the considerations discussed above, the disqualification regarding the default is a temporary and curbale disqualification. That provision is not a penal provision. So long as the person, who is alleged to be a defaulter wants to mend his mistake and pay the amount due to the Karkhana or the society, as the case may be, and who, in fact, makes the payment before the decision to be recorded by the Returning Officer on the objection taken against him in the context of the alleged default, need not be ousted from the entire process of contesting the election. At the cost of repetition, it may be pointed out that Section 73-FF(1) or Rule 23(2) of the Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971, do not speak of the date on which the person shall be considered as disqualified for the purposes of contesting the election so as to exclude him from the process of election and a distinction has got to be made in this context, between the exclusion from the membership of the managing committee and exclusion from the process of election of members to the managing committee.*
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> *26. It was, then, submitted that the Rules do not empower the Returning Officer to allow a person who has filed nomination to cure his default by making the payment before the date of decision on the objection taken to his nomination paper on the ground of default and therefore, such a power cannot be conferred implicitly on the Returning Officer. With respect, we see a fallacy in this argument. No Section nor any rule empowers the Returning Officer to reject nomination papers filed by a member, who was in arrears of the amounts*

due to the society except on the date on which the decision on the objection regarding his alleged default was to be recorded. If the relevant date for the purpose is considered to be the date on which the Returning Officer records his decision, there would be no question of the Statute or Rules empowering the Returning Officer to condone the disqualification on the ground of default (where the payment is already made before the decision) or to reject the nomination paper on the ground that on the date of filing the nomination papers, the person was a defaulter on account of being in arrears of dues to the society as on the date of filing of the nomination papers. The contention raised, in this behalf is therefore, rejected.

27. There is one more aspect to the whole issue, namely, whether it would be open to the Court to condone the delay made in payment of arrears and allow the candidate to contest the election, when the aforesaid fact was brought to his notice at the time of scrutiny and when he had mended the wrong. Neither any explicit provision in the Maharashtra Cooperative Societies Act restricts such a power of the Court in the interest of the cooperative movement nor is any other principle indicated on account of which, the Court shall refrain from exercising such a power. It is true that the Rules regarding election are to be construed very strictly. But, when the Rules leave a margin, on account of the wording in which they are drafted, for consideration of such an eventuality, the Courts would ordinarily, exercise such discretion to ensure that the co-operative principle succeeds ultimately. The Court shall not encourage elimination of candidates on hyper-technical grounds of the type that are entertained and sustained by the Returning Officer in the present case.

12] Mr. Ganbavle attempted to distinguish the decision in case of *Ramesh Patil (supra)*, on the ground that same related to a specified cooperative society, whereas , in the present case, Respondent No.2 was only a Primary Agricultural Cooperative Credit Society. The distinction is hardly relevant, if, the said Rules are compared with

the Rules for elections to specified cooperative societies. On the material aspects of publication of provisional voters list and finalization thereof, there is hardly any difference. Therefore, the distinction made, has no real basis.

13] Again, in case of ***Bhaulal s/o. R. Sonavane vs. The Returning Officer and ors.***[3]***,*** this Court, has taken the view that if the defaulted amounts are cleared on or before the last date for filing of nomination, the nomination papers cannot be rejected. The contention that once a defaulter, always a defaulter has been expressly rejected. The relevant observations in paragraph '3' read thus:

> *3. It is true that section 73-FF deals with the default made by a primary member as welt as a member of the committee of the Society. It is also true that section 73-FFF provides that the defaulter member shall not be re-appointed, re-nominated or re-elected as a member of committee for two years. However, I do not find any basis to assume that primary members of the Society wants to get themselves elected, nominated or appointed and the members who have been already elected as a member of the committee and are in office have been treated alike by the legislature while making default under the Maharashtra Co-operative Societies Act, 1960. Members who are in office is a separate class and they can separately be dealt. If somebody is already entrusted with the management of the Society, he is expected to obey the rules of the Society and if he commits a default in it, punishment of removal is provided and he is debarred from being again appointed or elected to the said post for a period*

3 1995(1)Bom.C.R.354

of two years. This Court in the case of (Keshaorao Narayanrao Patil vs. District Deputy Registrar, Co-operative Societies, Akola and others : 1987 Mh.L.J, 709, has taken a view that the consequences of sub-section (2) of section 73-FF is not automatic and a person who is defaulter ceases to be member and procedure as prescribed under section 78 of the Maharashtra Co-operative Societies Act, 1960, will have to be followed and a hearing will have to be given. No such procedure is prescribed so far default of a primary member is concerned. So far as primary members of the Society are concerned, the default has been defined by section 73-FF and default in respect of the repayment of the term loan or repayment of the anamat payment for the price of the goods, commodities or services obtained from the Society will have to be paid on the due date. If it is not made by the due date, then he is termed as a defaulter. Any member when he is continuing the default shall not be entitled to be nominated, elected, co-opted or appointed as a member of the committee. Legislature has not provided that if default is once committed stigma shall continue for a specified period. It has not been provided that a stigma would last for a particular period irrespective of the fact that the concerned member wants to make payment of amounts and has actually paid defaulted money. The principle underlying the disqualification so far as the election law is concerned is that he should not be a defaulter on the last day of the nomination. There is nothing in section 73-FF or any of the provisions of the Maharashtra Co-operative Societies Act, 1960 to interpret that a default once committed will disentitle the primary member to be elected or nominated, co-opted or appointed, as the case may be, as member of the managing committee of any Co-operative Society at any time in future. There is no provision to disqualify him even for the next election due if he has paid amount defaulted. Any penal provision, however reasonable it may appear, cannot be added to the statute when actually there is none. Penal provisions are to be interpreted strictly and should be confined to the class and circumstances which have been laid down in the provision. This point was also raised before the Division Bench of this Court in the case of (Murlidhar Bhaulal Malu and others vs. Sudhakar Honaji Patil and another) : AIR 1988 Bom. 256, and the Division

Bench had observed :

> *Some debate was raised before us as to what will be the date relevant for deciding the question of disqualification so far as elections are concerned. The expression used is "no person shall be eligible for being elected as a member of a society, if he is disqualified". The words "for being elected" will include whole series of steps in the process of election, starting with the nomination and ending with the announcement of election. Therefore, the date of nomination will also be a relevant date. Such a disqualification should exist on the last date fixed for filing of nomination, as till that date nomination papers could be filed. This position was not disputed by the learned Counsel appearing before us. Further from section 73-FFF(3) it is clear that a person is eligible to be re-nominated, re-co-opted, re-appointed or re-elected as a member on the committee as soon as his disqualification ceases to exist.*

Division Bench thus held that if the disqualification ceases to be operative on the date of the nomination, the candidate's nomination will have to be held valid.

14] In case of ***Navnath M. Shirale Vs. The Returning Officer & ors.***[4]***,*** this Court, upon reference to conspectus of decisions on the subject has explained the decision in case of *Ramesh Patil (supra),* to mean that curing of default prior to the last date of filing nomination papers is very much permissible. In this case, this Court, has distinguished the judgment of the Hon'ble Apex Court in case of ***Sant Sadguru Janardhan Swami (Monigiri Maharaj) Sahakari Doodh Utpadak Sanstha and anr. Vs. State of Maharashtra***[5]***,*** upon which, reliance was placed by Mr. Ganbavle. The Division

4 2004 BCI 518
5 2001 (I) Mh.L.J. 659

Bench of this Court, in case of ***Murlidhar Malu Vs. Sudhakar H. Patil and anr.*** [6], has also held that the relevant date to disqualify a Member would be the last date of filing nomination. If therefore, before this date, a Member, is no longer in default, his nomination, cannot be rejected.

15] All the aforesaid decisions, indicate that a Member of Cooperative Society, who may be a defaulter is even entitled to contest the election, provided, before the last date of filing his nomination, he has cleared the defaulted amount and is therefore, no longer a defaulter on the last of date for filing nomination. Applying this principle, to the facts and circumstances of the present case, there is no reason to deny, a similar benefit to a Member-voter, who has cleared the defaulted amount prior to the date of finalization of the voters list. Such benefit, is due to the sixteen Petitioners more particularly since, the Respondent No.1 in the present case, has extended such benefit to twelve Members, who were also defaulters on the date of publication of provisional voters list, but have cleared the defaulted amounts before the date of finalization of the voters list.

6 1987 (3) Bom.C.R 550

16] Rule 7 of the said Rules provides for particulars to be contained in provisional voters list. Rule 8, provides that claims and objections in relation to the provisional voters list may be filed within ten days from the publication of the provisional voters list. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer is required to make such enquiries as deemed necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter, he has to publish voters list within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalized by the Election Officer after deciding all claims and objection shall be final list of voters.

17] If the aforesaid scheme is examined, then, one thing is clear that Rule 8(1) does not prescribe the time limit for clearance of the arrears to the society. The time limit prescribed is in the matter of inviting claims and objections in regard to any omission or error. The finalization of the provisional voters list is also not automatic. The Election Officer is required to make such enquiries as deemed necessary in this behalf. In the present case, the Election Officer has

deleted the names of the expired Members. Even if there were to be no objection in this regard, but if the Election Officer has material before him that names of voters who have already expired, continue, the Election Officer is duty bound to make correction. The Election Officer has also similarly taken cognizance of the circumstance that twelve Members had cleared their dues to the Society. In the same vein, the Election Officer, was duty bound to take cognizance of the unimpeachable material before him that even the sixteen Petitioners had cleared their dues, though without prejudice, at least five days before the date of finalization of the provisional voters list. The refusal to delete remark against the names of sixteen Petitioners was therefore, not proper or justified, in the facts and circumstances of the present case.

18] From the record, it is quite clear that the provisional voters list, which was published on 22 December 2015 was finalised by Respondent No.1 only on 13 January 2016. Further, on 13 January 2016, Respondent No.1 had before him documentary evidence that the Petitioners had cleared their arrears due to the Society. The Respondent No.1, however, chose to place reliance upon the letter of the Society dated 31 December 2015 and on the said basis, deleted

the remark as '*defaulter*' only against the names of twelve members, but retained the same against the names of the Petitioners. The reasoning of the society or rather, Secretary of the Society is that the twelve members had cleared the arrears within ten days, whereas the Petitioners have cleared their arrears beyond the period of ten days. If the provisions contained in Rule 8 of the said Rules are perused, they refer to the period during which objections are to be lodged in the matter of any omission or error in respect of name or address or any other particulars in the provisional voters list. Rule 8 also contemplate claims and objections to the provisional voters list in the matter of inclusion and exclusion of the names. The time limit specified in Rule 8 has no nexus with the date of clearance of dues. Admittedly, even twelve members, who are beneficiaries of deletion of remark of defaulters, had not raised any objections against such remark within prescribed period of ten days. Therefore, the position as between the said twelve members and the Petitioners is not significantly different. Therefore, it was for the Election Officer to independently apply his mind and determine whether on the date of finalisation of the provisional voters list, the Petitioners were indeed defaulters. Instead, the Election Officer has based his decision almost entirely upon the letter of the Secretary of the Society. This is not

proper. As a result of such abdication, the Election Officer has treated the Petitioners and the twelve members with different yardstick.

19] In case of ***Sou. Lata Namdeo Bhandari and ors. Vs. The Returning Officer @ Cooperative Officer Class-1 and ors.***[7]***,*** where, on the basis of Secretary's letter, names of several voters were summarily deleted from the final voters list, this court, granted interim reliefs and observed that the Election Officer cannot abdicate his powers to the some '*say of the Secretary of the Society*' and on the said basis, delete names of the voters from the final voters list. In the said case also, reference was made to the statutory rules and the importance of Election Officer himself making an enquiry and taking an independent decision in the matter of finalization of voters list. In paragraphs 15,16 and 17 of the order dated 21 January 2015, this Court, observed thus:

> *15] There is no necessity, at this stage, to go into the issue as to whether the Returning Officer was required to issue individual notices to each of the petitioners, whose names have now been deleted from the list, prior to effecting of such deletion. There may be substance in the submission of learned counsel for respondent Nos.4 and 5 that such course of action would lead to a logistical log jam. Nevertheless, Returning Officer in terms of the prescribed procedure is required to undertake enquiries. Such enquiries would contemplate fair*

7 Writ Petition No. 637 of 2015 decided on 21/1/2015

and impartial enquiries. Such enquiries cannot be equated with merely seeking say from the Secretary and thereafter blindly accepting such say, without effective enquiries. This is what appears to have happened in the present case. Besides, this Court in case of Wamanrao Satpute (supra) has made a distinction between the process, which results in addition of certain names to the voters list and deletion of names from the voters list. This Court has held that in case of addition of a person in the list of voters normally it is the satisfaction of the competent authority as regards that persons entitlement for being registered as a voter. But in so far as the deletion of the name of the voter already included either in the provisional list of voters or more particularly in a final list of voters is concerned, it is necessarily provided that before ordering the deleting of the name of a particular voter from the voters list that the competent authority shall give a person concerned a reasonable opportunity of being heard in respect of action proposed to be taken in this matter. The importance and necessity of giving of a reasonable opportunity of being heard to the person whose name is being sought to be deleted relates to a facet of natural justice. In the said case, this Court set aside the order, by which the names of the petitioners were deleted, by overruling the objections based upon availability of alternate remedy.

16] Then again, reference is also required to be made to the decision of the Division Bench of this Court in case of Dattatray K. Chine (supra). In the said case as well, a preliminary objection to the maintainability of the petition was raised, relying upon the decision of the Supreme Court in case of Shri Sant Sanduguru Janardan Swami (supra), which in terms has considered the decision of this Court in case of Someshwar Sahakari Sakhar Karkhana Limited (supra). This Court, in the said case was again dealing with a situation where names of numbers of voters were deleted, without compliance with the principles of natural justice and in breach of the provisions relating to preparation of electoral rolls. The preliminary objection as to the maintainability was overruled and the order made by the Returning Officer deleting the names of the petitioners from voters list was quashed. This Court, in the context of the decision of Supreme Court in case

of Sant Sadguru Janardan Swami (supra) observed thus:

> *"23. The above decision of the Supreme Court, therefore, at once discloses that the point which was sought to be canvassed before the Apex Court was in relation to "the breach of Rule or certain mandatory provisions of the Rules in the process of preparation of electoral roll". There was no issue relating to the right of a person who had been already a member of the society, to continue as a member of the society. It was not a case of non-inclusion of hundreds of names in the electoral roll on the ground that they ceased to be the members of the society on the basis of an order passed under Section 79B of the said Act. A dispute relating to mere non-inclusion of a name of a person who is already a member of the society is different from the dispute pertaining to the right of a person to continue to be a member or relating to illegality on the part of the authority in deciding the issue pertaining to the right of membership in contravention of the mandatory provisions under the statute in that regard. In the case in hand, the dispute does not merely relate to non-inclusion of the names of the members in the voters list. The dispute basically pertains to the action on the part of the statutory authority which is taken contrary to the statutory provisions divesting the petitioners and others from their right to continue to be the members of the respondent No. 4 society. Non-inclusion of the names of the petitioners in the voters list is merely a consequence of the said order. The dispute essentially relates to the said order. The moment the said order ceases to have existence or becomes unenforceable, undoubtedly the consequences thereof would be the inclusion of names of those persons in the voters list. This being so, the issue which was before the Apex Court in Shri Sant Sadgurus case, while deciding the question about restraint which the Court had to observe once the election process commences, was totally different than the issue being dealt with in the matter in hand. The said decision would not, therefore, justify the contention of the learned Advocate for respondent No. 4 that the present petition is not maintainable or will have to be dismissed in limine.*

> *Besides, in the said matter before the Apex Court, the election process had already been concluded and the only result was withheld on account of specific directions in that regard issued by the Apex Court. That is not the case in the matter in hand. Being so, the respondents would not be entitled to non-suit the petitioners on the basis of the decision of the Apex Court in Shri Sant Sadgurus case particularly in the facts and circumstances of the case in hand. The objection in that regard is, therefore, rejected."*
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> *17] In the present case, the impugned order is almost entirely non-speaking. The impugned order is almost entirely based upon say submitted by the Secretary. There is prima-facie material, which indicates that the Secretary has suppressed relevant materials from the Returning Officer. The Returning Officer also made no efforts whatsoever to at least notice some of the petitioners, whose names he has now deleted from the final voters list. There is strong prima-facie material on record which indicates that the petitioners have been members of the society from the year 2008. The material cannot be overlooked at this stage.*

20] The Petition for Special Leave to Appeal (C) No (s). 4246/2015 challenging the order dated 21 January 2015 in case of *Sou. Lata Namdeo Bhandari (supra)* was dismissed by the Hon'ble Supreme Court on 10 February 2015. It is significant to note that in the case of *Sou. Lata Namdeo Bhandari (supra)* inclusion names of certain Members of the Society was directed, despite objection that election process had already commenced, without thereby, disturbing the election process itself. The decision of the Hon'ble Apex Court in case of *Shri. Sant Sadguru Janardan Swami (supra),*

was, again distinguished and the same reasoning will apply to the facts and circumstances of the present case as well.

21] Mr. Ganbavle has relied upon the decisions of the Hon'ble Supreme Court in cases of *Shri. Sant Sadguru Janardan Swami (supra),* ***Ahmednagar Zilla S.D.V. & P.Sangh Ltd. & anr. Vs. State of Maharashtra & ors.***[8]***, N.P. Ponnuswami Vs. Returning Officer***[9]*i* and the decisions of this Court in cases of ***Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. Vs. Collector of Kolhapur & anr.***[10] and ***Sanjay Bhoir Vs. Divisional Commissioner & ors.***[11]***,*** to submit that the very entertainment of such petition, once election process has commenced, is barred.

22] As noted earlier, the decision in case of *Shri Sant Sadguru Janardan Swami (supra),* has already been considered and distinguished in the earlier decisions referred to in the course of this judgment and order. Besides, in none of the decisions upon which, reliance was placed by Mr. Ganbavle, any absolute proposition is laid down that the jurisdiction of this Court under Articles 226 and 227

8 (2004) 1 SCC 133
9 1952 SCR 218
10 2005(6) Bom.C.R. 160
11 2013(3) Bom.C.R. 703

of the Constitution of India is totally ousted in a matter of this nature. No doubt, normally, in a matter concerning elections, this Court will not exercise such jurisdiction, particularly where the exercise will result in derailing the election process. In this case, in terms of the interim order granted in this petition, the remark as against the names of the Petitioners has already been stayed. Some of the Petitioners have filed their nominations, which have been duly accepted by the Returning Officer. There is, accordingly, no possibility that the election process will be derailed, if, the relief is granted to the Petitioners.

23] Mr. Ganbavle, learned counsel for the Respondent No.2-Society, had applied for stay upon the interim order made in the present petition. However, the same was denied by observing that the Respondent No.2- Society, which is a legal entity, should normally not be concerned with which set of persons is manage its affairs. Ultimately, there is no record of Respondent No.2-Society challenging the interim order, in pursuance of which, even the nomination of some of the Petitioners have already been accepted by the Returning Officer. At this stage, therefore, it will not be

appropriate to non-suit the Petitioners, on the grounds of availability of any alternate remedy.

24] Therefore, upon consideration of aforesaid facts, circumstance and the position in law, the remark as '*defaulter*', against the names of sixteen Petitioners in the final voters list for election to the Respondent No.2-Society is hereby quashed and set aside. Accordingly, Rule is made absolute. There shall, however, be no order as to costs.

25] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

26] Mr. Ganbavle, learned counsel for the Respondent Nos.2 and 3, applies for a stay for a period four weeks. As against the interim order granted earlier, Mr. Ganbavle had applied for stay and the same was rejected. The Respondent Nos.2 and 3 had not challenged the interim order before the Hon'ble Apex Court. From that date, therefore, the remark as '*defaulter*' against the names of sixteen Petitioners, stands stayed. The nomination submitted by some of the Petitioners have already been accepted by the Returning Officer. Stay for a period of four weeks, if granted, will wipe out relief already in operation. Accordingly, it is not possible to accede to the request for stay.

(M. S. SONAK, J.)