

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1494 OF 2016

Raju V. Gawade and anr.	.. Petitioners
vs.	
The District Co-op. Election Officer and the Regional Joint Director (Sugar) Pune Region, Pune and ors.	.. Respondents

AND
WRIT PETITION NO. 1680 OF 2016

Satish D. Bhosale and ors.	.. Petitioners
vs.	
The District Co-op. Election Officer and the Regional Joint Director (Sugar) Pune Region, Pune and ors.	.. Respondents

Mr. A.V. Anturkar, Sr. Counsel i/b Tanaji Mhatugade for the Petitioners in Writ Petition No. 1494 of 2016.

Mr. A.P. Kulkarni a/w. Mr. Manoj Badgujar for the Petitioner in Writ Petition No. 1680 of 2016.

Mr. C.P. Yadav, AGP for State-Respondent Nos.1 and 2 in both petitions.

Mr. Amit Borkar for Respondent No.3 in both petitions.

CORAM : M. S. SONAK, J.
DATE : 23 FEBRUARY 2016.

P.C. :-

1] The challenge in these petitions is to the orders dated 27 January 2016 made by the District Cooperative Election Officer (Respondent No.1), rejecting the Petitioners' objections, in both the petitions, to the inclusion of 1047 and 600 voters in the voters list

for elections to the Respondent No.3-society, the polling of which is scheduled for 13 March 2016.

2] Mr. Anturkar, learned senior advocate for the Petitioners in Writ Petition No. 1494 of 2016 and Mr. Abhijit Kulkarni, learned counsel for the Petitioners in Writ Petition No. 1680 of 2016 submitted that there are no serious objections to the view taken by the Respondent No.1 with regard to the limited nature of the jurisdiction exercised by him under Rule 11 of Maharashtra Cooperative Societies (Election to the Committee) Rules 2014 (Rules 2014). However, they submitted that Respondent No.1, upon being apprised of the serious illegalities in the matter of inclusion of the names of ineligible voters in the voter's list, cannot remain a mute spectator but is required to refer the matter to the Registrar for exercise of powers under Section 11 of the Maharashtra Cooperative Societies Act, 1960 (said Act), so that the Registrar can strike off the names of such voters/members, before the actual date of polling. The learned counsel submitted that in the present case, the very high number of ineligible voters have been included in the voters list. All such voters do not fulfill the qualification of residence within the area of operation of the society. Unimpeachable material, in the form

of documents and the voters list have been produced to indicate that such persons are the residents of Kolhapur, when in fact, the area of operation of said Respondent-Society is at Solapur. The reliance was placed upon the decision of Division Bench of this Court in case of *Dr. Prakash M. Shere Vs. The State of Maharashtra & ors.*¹, to submit that in similar circumstances, the Division Bench of this Court has held that it is the duty of the Election Officer to refer the matter to the Registrar for examination.

3] Learned counsel for the Petitioners submitted that there is no bar to entertainment of a petition of this nature, even though, the election process had already commenced, particularly considering that the magnitude of illegality involved. The learned counsel submitted that alternate remedies are really not available to redress a grievance of this nature, in any case, the alternate remedy would hardly be efficacious, in the facts and circumstances of the present case. In particular, Mr. Anturkar submitted that if 1047 ineligible voters cast their votes at the elections scheduled for 13 March 2016, it will be virtually impossible to determine the manner in which these voters have been cast and the consequent effect upon the result of elections. In these circumstances, Mr. Anturkar, submitted

1 1996 BCI 145

that directions be issued for keeping the votes of ineligible voters in a separate ballot box, which may not be opened until further orders in these petitions or until the completion of enquiry under Section 11 of the said Act, by the Registrar into the credentials of ineligible voters. Mr. Anturkar submitted that similar reliefs were granted by the Division Bench of this Court in case of *Shri. Dinkarrao B. Jadhav and ors. Vs. The State of Maharashtra & ors.*².

4] Mr. Borkar, learned counsel for the Respondent No.3-Society and Mr. C.P. Yadav, learned AGP for the Respondent Nos.1 and 2 resisted the entertainment of these petitions, by pointing out that the election process has progressed considerably and only the date of poll is scheduled for 13 March 2016. They pointed out that the voters list have already been finalized, as also several other process in relation to the election have concluded. They submitted that the decision in case of *Dr. Prakash M. Shere (supra)* was delivered under the 1971 Rules, which are not *pari materia* with the Rules 2014 with which the present cases are concerned. They pointed out that *Dr. Prakash Shere's (supra)* case relies upon the decision in case of *Karbhari M. Agawan and ors. Vs. State of Maharashtra & ors.*³,

² Writ Petition No. 872 of 2015 alongwith Writ Petition No. 3774 of 2015 decided on 17/4/2015

³ 1994 Mh.L.J. 1527

which has been held by another Division Bench of this Court in case of *Shantaram P. Aher Vs. The Vasantrao Dada Patil Sah Sakhar Karkhana Ltd. and ors.*⁴, as no longer good law in view of the decision of the Supreme Court in case of *Shri. Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and anr. Vs. State of Maharashtra and ors.*⁵ They also placed reliance upon the decision of the Division Bench of this Court in case of *Prataprao R. Patil Vs. State of Maharashtra & ors.*⁶, in which, the contentions similar to those raised in the present petitions came to be rejected. For all these reasons, the learned counsel submitted that these petitions may not be entertained.

5] Upon due consideration of the contentions raised by the learned counsel for the parties and upon perusing the material on record, in my judgment, this is not a fit case to exercise extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

6] The Petitioners, in the present case, undoubtedly have an alternate and efficacious remedies available to them, upon

4 Writ Petition No. 5539 of 2002 decided on 24/10/2002

5 (2001) 8 SCC 509

6 Writ Petition no. 3933 of 2003 decided on 30/6/2003

conclusion of election process. The total number of voters is stated to be in the range of 20,000. The two petitions concern the inclusion of around 1647 voters or thereabouts. The objection to the inclusion of these voters is mainly on the ground that these voters were ineligible to even be enrolled as members of Respondent No.3-Society, since they reside beyond the area of operation of the Society. The claim that the Petitioners were unaware of the enrollment of these voters as members, is difficult to accept. In any case, sufficient diligence was expected from the Petitioners in the matter of knowledge as to enrollment of so many members. Mr. Borkar pointed out that there are statutory audit reports, which the society filed with the authorities and therein, invariably, there are disclosures with regard to enrollment of new members. That apart, the Petitioners, approached the Respondent No.1 with their objections, when in fact, the jurisdiction of Respondent No.1 to entertain objections or rule upon them, is quite limited to the circumstances set out in Rule 11 of 1914 Rules. There is no proper explanation as to why the Petitioners did not move Registrar to exercise powers under Section 11 of the said Act, within reasonable period.

7] The decision in case of *Dr. Prakash Shere (surpa)* has drawn sustenance from the earlier decision in case of *Karbhari Agawan (supra)*. The Division Bench of this Court, in case of *Shantaram Punjali Aher (supra)*, upon reference to the decision of the Supreme Court in case of *Shri. Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)*, has in terms held that the decision in case of *Karbhari Agawan (supra)* is no longer good law.

8] The Division Bench of this Court in case of *Prataprao Patil (supra)*, again, relying upon *Shri. Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra)* has held that even the preparation of the voters list, must be held to be a part of 'election process' and if this be so, no interference is called for in exercise of extra ordinary jurisdiction under Article 227 of the Constitution of India, at a stage prior to conclusion of election process. In the said decision, the request that the voters tendered by the disputes voters be kept in a sealed cover was also not accepted. The Division Bench in case of *Prataprao Patil (supra)* at paragraphs '5' and '6' observed thus:

“5. The learned counsel for the petitioner, in the alternative, submitted that those persons whose names have

been wrongly included in the final voters list or wrongly deleted, may be allowed to exercise their right to vote and an appropriate order may be passed that their votes may be kept in a sealed envelope so that no prejudice would be caused to any party. At an appropriate stage, an appropriate direction can be issued.

6. In our opinion, however, the prayer cannot be granted. Once preparation of voters list is held to be part and parcel of election process which has been held by the Supreme Court in the aforesaid case, no such direction can be issued. Hence, the prayer is rejected.”

9] The operation of the decision in case of *Shri. Dinkarrao B. Jadhav (supra)* was stayed by the Hon'ble Apex Court in Petition for Special Leave to Appeal No. 8096 of 2015 on 8 May 2015.

10] Taking into consideration the aforesaid facts and circumstances, it will not be appropriate to entertain the present petitions and to interfere with the election process. These petitions are, accordingly, dismissed.

11] It is however, clarified that this Court has not examined the the merits and de-merits of the respective contentions of the parties in the matter of inclusion of voters. Therefore, all such contentions are kept open to be determined and decided by the appropriate authorities at the appropriate stage.

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

(M. S. SONAK, J.)