

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

Writ Petition No. 04801 of 2017

District : Aurangabad

1. Baliram s/o. Pralhad Pole,
Aged : 38 years,
Occupation : Agriculture.
2. Sk. Sardar s/o. Sk. Birham,
Aged : 55 years,
Occupation : Agriculture.
3. Narayan s/o. Bhanudas Thete,
Aged : 48 years,
Occupation : Agriculture.
4. Baburao s/o. Shripati Sawant,
Aged : 58 years,
Occupation : Agriculture.
5. Asaram s/o. Deorao Talekar,
Aged : 63 years,
Occupation : Agriculture.

All R/o. Gandheli,
Taluka & Dist. Aurangabad.
[No.5 at present N-4, H-53,
CIDCO, Aurangabad].

.. Petitioners.

versus

1. The State of Maharashtra,
[The Department of Co-operation,
Government of Maharashtra,
Mantralaya, Mumbai - 32].
2. The State Co-operative Election
Authority, Maharashtra State,
Pune.
3. The District Deputy Registrar,
Co-operative Societies,
Aurangabad, Dist. Aurangabad.

4. The Assistant Registrar,
Co-operative Societies,
Taluka Aurangabad,
Dist. Aurangabad-cum-Taluka
Co-operative Election Officer.
5. The Election Officer-cum-
Returning Officer for Gandheli
Vividh Karyuakari Seva Sahakari
Society Ltd., Gandheli,
Taluka & Dist. Aurangabad.
6. The Vividh Karyakari Seva
Sahakari Society Ltd.,
Gandheli,
Taluka & Dist. Aurangabad,
Through its Secretary,
Sanjay s/o. Eknath Sasane,
Aged : 47 years,
Occupation : Service,
R/o. Chikalathana (Airport),
Taluka & Dist. Aurangabad.
7. Dattu s/o. Shrirang Waghmode,
Aged : 45 years,
Occupation : Agriculture,
R/o. Gandheli,
Taluka & Dist. Aurangabad,
the Chairman of the
respondent no.6. .. Respondents.

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Mr. A.G. Godhamgaonkar, Advocate, for petitioners.

*Mr. P.S. Patil, Asst. Government Pleader, for
respondent nos.01 and 03.*

*Mr. S.K. Kadam, Advocate, for respondent
nos.02, 04 and 05.*

*Mr. S.S. Thombre, Advocate, for respondent
nos.06 and 07.*

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**CORAM : R.M. BORDE &
K.L. WADANE, JJ.**

DATE : 28TH APRIL 2017

ORAL ORDER (Per R.M. Borde, J.):

Heard Adv. Mr. A.G. Godhamgaonkar appearing for petitioners, learned AGP Mr. Patil appearing for respondent nos.01 & 03, Adv. Mr. S.K. Kadam appearing for respondent nos.02, 04 & 05 and Adv. Mr. S.S. Thombre appearing for respondent nos.06 and 07.

02. Petitioners are objecting to the programme of election on various grounds. It is contended that the outgoing body, whose term has already expired, shall not be permitted to commence the election process and the electoral rolls prepared by such body cannot be the basis for the election. It is also contended that the fraud has been played in preparing the list of voters. It is also contended on behalf of the petitioners, that provisions of Rules 6 and 7 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, have not been complied with and as such, the voters' list is defective. It is contended that the election programme on the basis of defective voters' list cannot be proceeded and if such a course is permitted, it would amount to an unfair conduct of election. Petitioners also contend that they had approached this Court well within time and as such the grievance raised by petitioners in the instant petition need to be considered.

03. The programme of election has been published on 27.03.2017. Today, the matter is listed before us i.e. on 28th April 2017 and as on today, all the stages of election, including allotment of symbols are over. As per programme of election being conducted by the State Co-operative Election Authority, the date prescribed for recording of votes is 30th April 2017. At this late stage of process of election, interference in outgoing process would not be prudent. In this context, reliance can be placed on the judgment of the Supreme Court in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & another Vs. State of Maharashtra & others** [2002(1) Mh.L.J. 659]. In the said judgment, the Supreme Court has observed that '*the preparation of provisional voters' list, calling for objections thereto and finalising it are all part of process for the election and an intermediate stage can be challenged by way of election petition and not in writ petition*'. It is also observed by the Supreme Court in the said judgment, that '*any breach of a Rule or provision of the Act including one in preparation of the electoral rolls is challengeable under Rule 81(d)(iv) of Maharashtra Co-operative Society Rules by way of election petition before the Tribunal*'. Relevant observations of the Supreme Court can be found in paras 07, 08 and 09 of the judgment, which read as under :-

"7. In the light of the aforestated provisions of Chapter

XI-A of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XI-A was enacted and the Rules were framed specially to deal with the election of the specified societies under Section 73-G of the Act. Section 144-X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete Code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters list must be held to be part of the election process for constituting managing committee of a specified society. In (*Someshwar Sahakari Sakhar Karkhana Ltd., Someshwarnagar v. Shriniwas Patil, Collector, Pune & others*), 1992(1) Bom.C.R. 590 : 1992 Mh.L.J. 883, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in (*Shivnarayan Amarchand Paliwal v. Vasantrao Vithalrao Gurjar and others*), 1992(2) Vol. 30 Mh.L.J. 1052. However, in (*Karbhari Maruti Agawan and others v. State of Maharashtra and others*), 1995(1) Bom.C.R. 596 : 1994(2) Mh.L.J. 1527, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view on the interpretation of Chapter XI-A of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of

amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XI-A and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

8. It was then urged that the Tribunal constituted under the Act has no power to go behind the preparation of the electoral roll and, therefore, the writ petition is maintainable. Learned Counsel also strongly relied upon the decisions in the case of (*Bar Council of India and others v. Surjeet Singh and others*), 1980(4) S.C.C. 211, and (*Ramchandra Ganpat Shinde and another v. State of Maharashtra and others*), 1994(1) Bom.C.R. 460 : 1993(4) S.C.C. 216. Learned Counsel also referred to Section 100 of Representation of People's Act and a decision in the case of (*Shri Shreewant Kumar Choudhary v. Shri Baidyanath Panjiar*), 1973(1) S.C.C. 95. In sum and substance, the argument is that since the breach of rule in preparation of the electoral roll cannot be questioned in an election petition before the election Tribunal, therefore, the writ petition challenging the preparation of the electoral roll could not have been dismissed on the ground that the appellant had an alternative remedy of filing an election petition. In this regard, it is relevant to notice Rule 81 of the Rules which provides for grounds for declaring election to be void. The relevant portion of the Rule runs as under : "81. Grounds for declaring election to be void. --- (d)(iv) - by any non-compliance with the provisions of the Act or any Rules made thereunder, the Commissioner shall declare the election of the returned candidate to be void."

9. If the contention of the appellant is that there was a breach of Rule or certain mandatory provisions of the rules were not complied with while preparing of the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that, the preparation of electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal."

04. In view of the mandate of the Supreme Court, in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & another** (*supra*), interference in the process of

election at this late stage would not be prudent.

05. Keeping option of the petitioners, to avail of remedies as may available in law, open, at appropriate stage, the Writ Petition is disposed of.

(K.L. Wadane)
JUDGE

(R.M. Borde)
JUDGE

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