

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

**46 WRIT PETITION NO.3602 OF 2018
WITH
CIVIL APPLICATION NO.4914 OF 2018**

Bandu Karbhari Mendhare ... Petitioner.

Versus

The State Co-operative Election
Authority, Maharashtra State, Pune
and others ... Respondents.

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Mr. Kamlakar J. Suryawanshi, Advocate for the Petitioner.
Mr. S.K. Kadam, Advocate for Respondent Nos. 1 to 3.
Mr. M.V. Nagargoje, Advocate for Respondent No.4.
Mr. Dabasaheb S. Dhengle, Advocate for intervenor.

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CORAM : V.L. ACHLIYA, J.

DATED : 09th APRIL, 2018

ORAL ORDER:-

1. Petitioner has preferred this petition seeking the following reliefs:

“B] By issuing writ of certiorari or any other appropriate writ, orders or directions in the like nature, the order dated 3.3.2018 passed by the respondent no.3 for inclusion of names of persons at Sr. No.33.62 in the final voter list of respondent no.4 society may kindly be quashed and set aside and the respondent no.3 be directed not to allow those persons to participate in the election process.

C] Pending hearing and final disposal of this writ petition, the order dated 3.3.2018 passed by the respondent no.3 for inclusion of names of persons at Sr. No.33 to 62 in the final voter list of respondent no.4 society may kindly be stayed.

2. Heard Mr. Suryawanshi, the learned counsel for the petitioner, Mr. Kadam, learned advocate representing the respondent nos. 1 to 3 and Mr. Nagargoje, appearing for the caveator.

3. By this petition filed under Article 226 and 227 of the Constitution of India, the petitioner has challenged the decision of respondent no.3-Election Officer to include the name of 30 persons in the voter list, so as to allow them to participate in the election of respondent no.4-society scheduled to be held on 10.04.2018.

4. Petitioner has approached with the case that the election programme to hold the election for the management committee of the respondent no.4-society was notified on 22.02.2018. The list of the proposed voters was also published on 22.02.2018. The objections to the proposed voters list were to be submitted on or before 27.02.2018. Objections if any received to names in proposed list to be decided on 01.03.2018. On 01.03.2018, the respondent no.3 published the final voters list in which he has included names of 30 persons as voters in addition to names of 32 persons mentioned in the proposed voters list as persons

entitle to participate and vote in the election. It is the contention of the petitioner that those 30 persons whose names are added in the voters list published in fact resigned as a member of respondent no.4-society and also taken back their share capital in the year 2015. After resigning as a members of respondent no.4-society, those 30 persons submitted proposal for registration of another society in the name of “Maharana Pratap Mastvyasaik Sahakari Sanstha Ltd. Rajewadi, Tq. Badnapur, Dist. Jalna”. The proposal was received in the office of respondent no.2 on 19.09.2016. In support of these contentions, the petitioner has relied upon copies of documents such as resolution passed by respondent no.4-society to accept their resignations, letters of resignations of those 30 persons, receipts of refund of share capital to those 30 persons and copy of the letter forwarded to Assistant Registrar, Cooperative Societies, Jalna for permission to accept the resignations of those 30 persons as well as other documents in the form of audit reports of the year 2016 and onwards showing that the names of those 30 persons not figured in the list of the members of respondent no.4-society.

5. In the background of the facts pleaded in the petition and documents relied in support of the pleadings, the learned counsel submits that the very act of the respondent no.3 to include the names of those 30 persons in the voters list is *per se* illegal, arbitrary, beyond the authority vested with respondent no. as a Election Officer. He submits that the respondent no.3 in his capacity as a Election Officer holds no authority to decide on

disputed aspects like eligibility of the persons to continue to hold the membership of the society after resignation etc. Such objections can be entertained and decided only by Assistant Registrar, Cooperative Societies. It is contended that respondent no.3 has acted in collusion with those 30 persons and included their names in the final voters list. In this background, the learned counsel urged to stay the further process of election.

6. On the other hand, Mr. S.K. Kadam, the learned counsel appearing for the respondent no. 1 to 3 submits that all the stages of election process except voting are concluded and voting is scheduled on 10.04.2018. It is pointed out that the final voters list was published on 03.03.2018. The petitioner has approached this Court after a period of more than one month of final publication of the voters list and that too at the fag end of the process of election. By referring the contentions raised in the petition, the learned counsel submits that the petitioner has raised number of disputed questions of fact which can be considered only by way of election petition and the petitioner have an alternate remedy to challenge the entire process by filing election dispute before the appropriate forum. In this background the learned counsel urged to dismiss the petition.

7. Learned counsel appearing for the intervenor also supported the arguments advanced by Mr. Kadam, learned counsel representing respondent nos. 1 to 3 and submits that the process of election cannot be stalled at this juncture.

8. On due consideration of the submissions advanced by the learned counsel for the petitioner in the light of documents relied, *prima facie* there appears to be substance that the persons whose names have been included in the voters list have resigned as a members of respondent no.4-society and filed proposal to form new society in the year 2015. The report of auditor also reflects the names of those 30 persons were not recorded as a members of the respondent no.4 society in the audit carried out from the year 2016 onwards. While dealing with the objection to the voters list, the Election Officer is expected to confine its scope of enquiry in a limited sphere. The issue in respect of cessation or continuation as a member of society squarely falls within the domain of adjudication to be made by the Assistant Registrar of the cooperative society. The inclusion of names of 30 persons in the voters list certainly affect the result of the election. But the fact remains that the decision to include the names of those 30 persons was taken by the Election Officer on 03.03.2018 and the petitioner has filed this petition on 04.04.2018 i.e. after a period of about one month from publication of final voters list. The voting to elect the members of the managing committee is scheduled to take place on 10.04.2018. In this view it is not desirable to stall the process of election. So also, the contentions raised by the petitioner in the petition that the persons whose names have been included in the final voters list by respondent no.3 had resigned way back in the year 2015 and also taken back their share capital are the

disputed question of facts. In exercise of writ jurisdiction, it is not possible to deal with such disputed questions of fact. In that way, I am not inclined to entertain the petition. The petitioner have a remedy to challenge the entire process of election of respondent no.4-society which include the inclusion of names of 30 persons as a voters in the final voters list by filing the appropriate proceeding. Accordingly, the Petition is dismissed with liberty to petitioner to adopt the alternate remedy to challenge the entire process of election including the result of election. In case, such petition is filed, then the Court concerned is directed to decide the same as expeditiously as possible, preferably within six months from filing of such proceeding.

9. It is expressly made clear that this Court has not examined the case of the petitioner on merits. All contentions of the respective parties are kept open.

10. In view of disposal of writ petition, civil application, if any, filed same stands disposed in terms of order of disposal of petition.

(V.L. ACHLIYA)
JUDGE