

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6337 OF 2016

Sharad Kalbhor & Anr.

... Petitioners

V/s.

**District Co-operative Election Officer
and District Deputy Registrar & Ors.**

... Respondents

Mr. S.S. Patwardhan i/b Chaitanya Nikte for the Petitioner.

Mr. S.H.Kankal, AGP for the Respondent No.1.

Mr. P.S. Dani, Senior Advocate a/w Chetan Nagare i/b Kuldeep Nikam for the Respondent Nos. 2 and 3.

CORAM : R.D. DHANUKA, J.

DATE : 18th JUNE, 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the Petitioner has impugned the orders both dated 26.05.2016 passed below proceedings bearing Nos. 881 and 882 of 2016. Petitioners are the members of the Respondent No.2 Society. The election of the Managing Committee Members was due. A Provisional list of voters of Respondent No.2 Society was filed by the then Managing Committee Members for inviting objections from the members under Rule 8 of Maharashtra Co-operative Societies Election to the Committee Rules, 2013. Provisional voters list was also forwarded to the Authority under the said Rules. 5 members of the society raised objections in writing. The initial objection raised in writing was that certain members were wrongly included in

the provisional list and they were included after cut off date of 31.03.2013. The other objection was that some of the members were wrongly excluded in the provisional list.

2 During the course of hearing of objections before the District Co-operative Election Officer, the reliance was placed on an Audit Report of the Respondent No.2 Society for the Financial Years 2012-2013 and 2013-2014. It was submitted before the District Co-operative Election Officer that there was difference in the number of members shown in the Audit Report and the provisional list submitted by the society. It was one of the argument that the final list shall be prepared on the basis of the members reflected in the Audit Report and not as reflected in the provisional list submitted by the society. Respondent No.2 society on the other hand produced the proceeding books, cash register and various resolutions passed by the society from time-to-time before the Authority. The Authority considered all these issues at great length and passed two separate orders thereby rejecting the application filed by those 5 members and approved the provisional list. Out of those, 5 members who have raised objections only two of them have filed this writ petition under Article 227 of the Constitution of India.

3 Learned Counsel for the Petitioner invited my attention to some of the provisions of the Election Rules. He submits that the learned Election Officer ought to have considered the Audit Report for two financial years which would clearly indicate that the Society had included the some of the members after the

cut off date and excluded some of the members. The Authority could not have considered the provisional list prepared by the Society which did not tally with the number of members audited by the auditors of the Society.

4 Mr. P.S. Dani, learned Senior Counsel for the Society on the other hand invited my attention to the objections raised by 5 members initially and also to the objections subsequently raised in the written argument filed before the Authority. He submits that in the written statement filed before the Authority, the objectors did not raise any objection that any members were enrolled by the Society after cut off date of 31.03.2013. He submits that the society had produced the records including copies of resolutions, proceeding book and the cash register which would clearly indicate the actual numbers of members admitted supported by the resolutions and the payment received from those members. He submits that disputed question of fact cannot be gone into by this Court in this petition filed under Article 227 of the Constitution of India. He submits that the remedy of Petitioner would be under Section 91 of the Maharashtra Co-operative Societies Act, by filing dispute under Section 91 of the said Act.

5 It is not in dispute that 5 members of the society had raised objections under Rule 8 of the Election Rules pursuant to the provisional list filed by the Respondent No.2 Society. The objections raised by those 5 members were two fold i.e. (i) that certain members were included in the society after cut off date

and (ii) that certain members were excluded in the provisional list.

6 Per contra, the Society had appeared before the Authority when objections raised by the Petitioners and other three members were considered. The Society produced the copies of the resolutions, proceedings books, cash register etc. All these documents were duly verified by the Authority and has rejected the objections raised by the Petitioners.

7 A perusal of the Election Rules, does not indicate that the Auditor's Report would be binding as a conclusive proof on the Election Officer while considering the objections while finalising the provisional list of the members. The society had on other hand produced proof of actual members supported by the resolutions, cash book and proceeding book. It is not the case of the Petitioners that any of the resolutions accepting any members had been challenged by any of the Petitioners under Section 91 of the Maharashtra Co-operative Societies Act. The Resolutions are thus, binding on all the members till the validity thereof is set aside by the Co-operative Court under Section 91 of the Act.

8 A perusal of the impugned order clearly indicates that various findings of fact are rendered by the Authority after considering the documents showing the proof of payment received from various members, whose names were included in the provisional list. In my view, these findings of facts rendered by the Election Officer cannot be faulted with. The objections raised by the Petitioners are duly considered by the Election Officer and the finding of the Election officer being

not perverse does not warrant any interference.

10 In view of the ad- interim relief granted by this Court, the entire election process is stalled since June 2016. The Election Officer is accordingly, directed to finalise the provisional list in terms of impugned order passed by him and upon preparation of such final list, the Election Officer shall declare the election programme within two weeks from that date.

11 The election of Managing Committee shall be conducted in accordance with the final list of the members as would declare by the Election Officer. The election shall be conducted within the period prescribed under the Election Rules. The Election Officer is permitted to amend the programme based on the final list that would be declared by the Election Officer.

12 Petition is dismissed with aforesaid clarification with no order as to costs.

13 Parties to act on an authenticated copy of this order.

(R.D. DHANUKA, J.)