

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

WRIT PETITION NO.810 OF 2021
WITH
CIVIL APPLICATION NO.1021 OF 2021 WITH CIVIL APPLICATION
NO.1159 OF 2021 WITH CIVIL APPLICATION NO. 1361 OF 2021
WITH CIVIL APPLICATION NO. 1482 OF 2021
IN
WRIT PETITION NO.810 OF 2021

Bhausahab S/o Kachru Natkar ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. S.S. Thombre, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos. 3 and 4.
Mr. D.J. Choudhari, Advocate for Respondent No.5.
Mr. V.D. Hon, Senior Advocate i/by Mr. P.D. Bachate, Advocate for
Applicant in CA/1021/2021 and CA/1361/2021.
Mr. R.N. Dhorde, Senior Advocate h/f Mr. V.R.Dhorde, Advocate for
Application in CA/1159/2021.
Mr. N.V. Gaware, Advocate for Applicant in CA/1482/2021.

AND

WRIT PETITION NO. 93 OF 2021

Mahadeo Sitaram Bhosale
and another ... Petitioners.

Versus

The State of Maharashtra
and others ... Respondents.

2

Mr. C.V. Thombre, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr.V.H. Dighe, Advocate for Respondent Nos. 2 and 3.

AND

WRIT PETITION NO. 553 OF 2021

Dhananjay S/o Badrinath Sabale ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. V.D. Hon, Senior Advocate i/by Mr. P.D. Pachate, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos. 3 to 5.
Mr. D.J. Choudhari, Advocate for Respondent No.6.

AND

WRIT PETITION NO. 1057 OF 2021

Janardhan Sadashiv Mane ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. S.T. Shelke, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos. 2 and 3.
Mr. N.V. Gaware, Advocate for Respondent No.4.

AND

WRIT PETITION NO. 1732 OF 2021

Swaraj S/o Shivpalsing Parihar ... Petitioner.

Versus

The State of Maharashtra
and others

... Respondents.

Mr. V.A. Bagal, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. V.H. Dighe, Advocate for Respondent Nos. 3 and 4.
Mr. S.K. Kadam, Advocate for Respondent - SCEA
Mr. M.S. Deshmukh, Advocate for Respondent No.6.

AND

WRIT PETITION NO. 1737 OF 2021
WITH
CIVIL APPLICATION NO. 1585 OF 2021

Samar S/o Suresh Warpudkar

... Petitioner.

Versus

The State of Maharashtra
and others

... Respondents.

Mr. N.B.Kandhare, Advocate h/f Mr. M.P. Tripathi, Advocate for the
Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent - SCEA
Mr. M.S. Deshmukh, Advocate for Respondent No.5.
Mr. N.R. Pawade, Advocate for the Applicant in CA/1585/2021.

AND

WRIT PETITION NO. 1745 OF 2021

Bhagwan Sakharam Chavan

... Petitioner.

Versus

The State of Maharashtra
and others

... Respondents.

Mr. C.V. Thombre, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos.2 and 3.

4

AND

WRIT PETITION NO. 1876 OF 2021

Ramesh Asaram Pimpale ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. S.T. Shelke, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos.2 and 3.

AND

WRIT PETITION NO. 2008 OF 2021

Burud Samaj Bamboo Vyavsay
Audhyogik Magaswargiya Sahakari
Sanstha Maryadity, Aurangabad ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. S.S. Thombre, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr.V.H. Dighe, Advocate for Respondent Nos.2 and 3.

AND

WRIT PETITION NO. 2049 OF 2021

Saneguruji Zilla Parishad
Karmachari Sahakari Patsanstha
Ltd. Vaijapur, Tq. Vaijapur,
Dist. Aurangabad. ... Petitioner.

Versus

The State of Maharashtra
and others ... Respondents.

Mr. K.J. Suryawanshi, Advocate for the Petitioner.
Mr. D.R. Kale, I/c. Government Pleader for Respondent / State.
Mr. S.K. Kadam, Advocate for Respondent Nos.2 and 3.

....

**CORAM : S.V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 09th FEBRUARY, 2021

FINAL ORDER:-

1. All the writ petitions are based on similar set of facts and involve common question of law, to avoid rigmarole, are decided by the common judgment.
2. The cut off date for preparing / finalizing the voters list for the election of the federal societies viz. Beed District Central Cooperative Bank. Parbhani District Central Cooperative Bank. Aurangabad District Central Cooperative Bank and the village level societies is the issue germane to decide the present lis.
3. The term of the members of the managing committee of these federal societies came to an end on 06.05.2020.
4. The provisional voters list for Beed District Central Cooperative Bank is published on 29.02.2020. For Parbhani District Central Cooperative Bank, the provisional voters list is published on 16.03.2020 and for Aurangabad District Central Cooperative Bank it

is published on 04.01.2021. The final voters list for Beed District Central Cooperative Bank is published on 22.03.2020. For Parbhani District Central Cooperative Bank it is published on 20.01.2021 and for Aurangabad Central Cooperative Bank it is published on 27.01.2021.

5. The elections of these federal societies could not be held within the stipulated period because of the prevalent extraordinary situation emerging on account of Covid-19 pandemic. The elections were postponed under the executive instructions of the State Government from time to time.

6. According to the petitioners, as the elections are postponed and are to be held beyond five years of the term of the members of the managing committee of the societies the cut off date to finalize the voters list including the date of eligibility of a valid voter also stands axiomatically extended.

7. Mr. Thombre, Mr.Khandare, Mr. Bagal, Mr. Suryawanshi, learned counsel for the petitioners in respective writ petitions canvassed their submissions. The contour of their submissions are hitherto are.

8. Proviso to sub-section 3 of Section 73AAA of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “Act 1960”) is introduced, wherein it is provided that if the election to the committee of the society could not be held for any reason not attributable to the members of the committee of said society, the existing members of the committee shall be deemed to have continued till new committee is duly constituted. By legal fiction the terms of the existing members of the committee is deemed to be continued till new committee is duly constituted. When the elections are postponed, the term of existing members of the duly constituted committee is also extended. The reliance is also placed on proviso to sub-section 15 of Section 73CB, wherein it provides that in respect of such society, the committee shall continue to hold the office till such period of six months or declaration of election of such society whichever is earlier.

9. Referring to Rule 9 sub rule (2) of Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as Rules 2014) it is submitted that the period of three years provided in sub-section (3) of section 27 of the Act is to be counted from the date of enrollment of member to the date when election of the managing committee of the society becomes due. It is submitted that

the period of three years would stand extended if the elections are also extended and in such a case proviso to sub-rule 2 of Rule 9 provides for the different date to be fixed by the SCEA. Similar provision finds place in Rule 6 of the Rules 2014.

10. It is further submitted that the very purpose of holding the elections democratically is to invite participation of large number of members. The said theme of democratic process would be frustrated if narrow view is taken in a sense that though the managing committee members remain in the office till the extended period, the term would not be extended. That would not be in tune and spirit with the amended provisions under section 73AAA and 73CB as referred to above.

11. Further reliance is placed by the learned Advocate for petitioners on sub rule 2 of rule 10 of Rules 2014. Under sub rule 2 of rule 10, the society shall send the name of representative duly authorized to vote at the election on behalf of the society or firm, so as to reach it to the office of District Cooperative Election Officer at least 120 days prior to the date of expiry of term of office of the committee. When the term of the office of the committee is extended, naturally the period of 120 days as referred to above in sub rule 2 of rule 10 also stands extended.

12. Under rule 18 of Rules 2014, the date of election programme has to be published between 10 to 20 days after the date of display of final list of voters. The said date also is over, if the final voters list is considered to have been finalized on 22.03.2020. It is further submitted that the provisions of section 27(1)(a) of the Act would not apply to the elections of societies to be conducted on or before 31.03.2021, and as such, the disqualification prescribed under subsection 1 of section 27 would be of no relevance and the said persons would also be eligible to find their place in the voters list. The same has not been considered by the SCEA.

13. Similar issue as raised in respect of federal societies is raised in writ petition Nos. 1057 and 1876, of voters list for the elections of villages level societies. Mr. Shelke, learned counsel for the petitioners in these matters adopted the arguments of the learned counsel for the petitioners assailing the voters list of federal societies and further submits that the State Election Commission a Constitutional functionary, taking stock of Covid-19 pandemic has rescheduled the elections of Grampanchayats, thereby cancelling the earlier election process and commenced the election process afresh. The same exercise ought to have been adopted in the present matters by the statutory SCEA so that the purpose of democratically electing

members would be fructified.

14. Mr. Dhorde, learned Senior Counsel, Mr. Hon, learned Senior Counsel, Mr. Dighe, Mr. Deshmukh, Mr. Choudhari, Mr. Gaware, learned Counsel for the intervenor and respective respondents so also Mr. S.K. Kadam, learned Advocate for SCEA and countering the argument advanced by the learned counsel for the petitioners emphasized that the Article 243ZJ of the Constitution of India prescribes the term of the office of elected members of the Board and its office bearers to be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the Board. Under Constitutional mandate, the term of the members of the Board is prescribed and under no circumstances the term of the members of the committee can be extended, even under statutory powers. The proviso to sub-section 3 of Section 73AAA cannot be read to mean that the term of the committee would stand extended. The proviso of sub-section 3 of section 73AAA postulates the situation where for some unforeseen reasons not attributable to the members of the committee, the elections could not be held before the end of the term, then the members of the committee are deemed to have continued till the new committee is constituted. Instead of giving the society in the hands of an Administrator, the democratically elected

members would continue as it was not their fault in not holding the elections within the stipulated period. These members after the term is over would be mere care takers and the same cannot be construed as extending the term of the managing committee. By placing reliance on explanation to sub rule 1 of Rule 9 of Rules 2014, it is submitted that the term of existing managing committee expires the moment, it completes the period of five years from the date of election. According to them, the term in no case would stand extended. Section 73AAA (3) also prescribes the term of the office of the elected members of the committee to be 5 years from the date of election.

15. Right to elect though it is fundamental to democracy is neither a fundamental right nor a common law rights. It is purely a statutory right. So is the right to be elected. They are statutory creations and therefore, subject to statutory limitation. Dehors the statute, there is no right to elect, no right to be elected and no right to dispute an election. The entire election process commencing from issuance of provisional voters list and right upto final resolution of dispute, if any, concerning the election is regulated by the Maharashtra Cooperative Societies Act, 1960 and Rules 2014.

16. The horizon of the present list would be the cut off date in preparation of the provisional voters list for election of the federal and village level societies.

17. Article 243ZJ of the Constitution provides for the term of the members of the committee of cooperative society. Sub article 2 of Article 243ZJ unambiguously prescribes the term of office of elected members of the board and its office bearers to be five years from the date of election. The provisions of the Constitution of India are sacrosanct. Statutes and Rules framed by the legislature have to be subservient to the constitutional mandate and its provisions. The Act 2014 passed by the State Legislature in conformity with the prescription provided in Article 243ZJ incorporated sub-section 3 to Section 73AAA prescribing the term of the office of the elected members of the committee and its office bearers to be five years. The term of the office bearers is coterminous with the term of the committee. The same provision further provides that on expiry of the term of the committee, the members shall be deemed to have vacated their office as member of the committee.

18. The extraordinary circumstances were created due to Covid-19 pandemic. In these extraordinary times varied functions could not be

performed to its optimum and were required to be deferred. The country witnessed complete lock down for some period, with passage of time the restrictions were eased but partial lock down continued, resultantly the election of the cooperative societies could not be held. The State Legislature in its wisdom amended and introduced proviso to sub-section 3 of Section 73AAA on 10.07.2020, thereby taking care of the contingency where the elections could not be held for unforeseen circumstances and for which the members of the committee are not at fault. In that case, the members of the managing committee shall continue to hold the office till the new committee comes into existence.

19. Article 243ZJ of the Constitution and sub-section of Section 73AAA providing the term of the office of elected members of the committee of the cooperative societies and the term of the office bearers of is five years from the date of election does not postulate postponement of the terms of the members of the committee. Under proviso to sub-section 3 of Section 73AAA of the Act 1960, the State Legislation to redress a situation when the election of the cooperative society could not be held due to some unforeseen circumstances or for any reason not attributable the members of the committee allowed the members to continue till new committee is constituted. The said

proviso is introduced to ameliorate a situation when the election of the committee could not be held within time and the same is not attributable to the members of the committee. In such cases instead of appointing Administrator and vesting management of the society in the hands of the stranger on completion of the term of the committee the members of the committee are allowed to continue.

20. Explanation to sub rule 1 of of rule 6 and sub rule 1 to rule 9 of Rules 2014 clarifies the term date of expiry of term of existing managing committee means the date on which the existing managing committee completes the term of five years from the date of election.

21. All these provisions lead credence to the proposition that the term of the managing committee is five years from the date of the election.

22. Section 27 of the Act 1960 details the voting powers of the members. Under sub-section 3A of Section 27 of Act 1960 an individual member of the society shall not be eligible to cast vote in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. As per proviso to sub-section 3 of Section 27 a new member of a society or federal society shall be

eligible to vote in the affairs of that federal society only after the completion of period of three years from the date of its investing any part of its funds in the share of such federal society. The period of two years for an individual active member and three years for an active society members is computed from their date of enrollment/investing any part of its fund to the date of expiry of period of existing managing committee and / or the date when the election of the managing committee of the society becomes due.

23. The provisional list of the voters of cooperative society having individuals as members (such as village levels societies) is to be prepared as provided under sub rule 1 of rule 6 and provisional list of voters of society or society and individuals as members (such as federal society) is to be prepared as contemplated in sub-rule 1 of rule 9 of Rules 2014. Both the rules provide that a member who has completed two years as member from the date of his enrollment upto the date of expiry of the term of the existing committee in case of federal society in case of society being a active member who has completed minimum three years from the date of enrollment to the date of expiry of the period of existing managing committee.

24. Sub rule 2 of rule 6 and sub rule 2 of rule 9 of Rules 2014 and Section 27(3) and 3A of Act 1960 provides the cut off date for a member to find place in the voters list. The proviso to sub-rule 2 of rules 6 and 9 of the Rules 2014 also takes care of the contingency where the election could not be held before the expiry of the term of the committee due to unforeseen condition or for any other reason.

25. We feel that the entire gamut of discussion surrounding the “term of the committee” or extension to the term of the committee would pale into insignificance in as much as the State Cooperative Election Authority (SCEA) is authorized to fix the cut off date.

26. The superintendence, direction and control of the preparation of the electoral roles for, and the conduct of, all elections to the society shall rest in the authority called as “State Cooperative Election Authority” as per Section 73CB of the Act 1960.

27. Proviso to sub rule 2 of Rules 6 and 9 of Rules 2014 bestows discretion upon the SCEA to fix any other date than the one prescribed under sub rule 2 of rules 6 and 9 of Rules 2014 in case the elections are postponed. The discretion that vest with the SCEA to fix any other date for the voter to be eligible for being a voter on account of postponement of election is not ordinary or unregulated

discretion but a judicious discretion to be exercised as per the judicial norm and legal principle.

28. The fundamental to the success of democratic election process is participation of large numbers of legitimate voters. It may happen that an individual member may not complete two years or a society member three years from the date of its enrollment or investing any part of its fund as the case may be till the expiry of the term of the committee but upon postponement of the election by six month or year may complete the qualifying period for being eligible to be voter. The SCEA in cases where the elections are postponed beyond the term of the committee shall exercise its discretion and direct preparation of the provisional voters list fixing the appropriate date enabling participation of the large numbers of legitimate and valid members.

29. In the present matter SCEA has fixed the cut off date considering the term of the committee as five years from the date of election. It is contended by the respondents/intervenors that there would be hardly any change in the list of voters by considering the postponed date of election. The petitioners have not placed on record the statistics and the data if the cut off date is postponed to demonstrate number of members becoming eligible and not finding

name in the provisional voters list. The provisional list of voters except for Aurangabad District Central Cooperative Bank are prepared in February / March 2020 and same is proceeded further. In absence of details it would not be appropriate to direct reparation of a voters list.

30. In the light of the aforesaid, there is no need to issue directions to the SCEA to change the voters list.

31. Writ petitions are disposed of. No costs.

32. In view of disposal of the writ petitions, pending civil applications stand disposed of.

33. At this stage Mr. Thombre, learned Advocate for the petitioner seeks continuation of interim order for a period of three (03) weeks.

34. Mr. Kadam, the learned counsel for SCEA and the other learned Advocates appearing for the respondents oppose the said request on the ground that the elections are already held and are on hold. The process has to be conclude.

35. We have also held that the petitioners have not placed on record any statistics or data about eligibility of the voters during the period the term of the committee was over and extended period of election.

36. In view of that, the request made for extension of the interim order is rejected.

(SHRIKANT D. KULKARNI)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

S.P. Rane