

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10792 OF 2021

Dinkar s/o Rangnath Pandharkar,
Age : 65 years, Occu. Agri.,
R/o Pimplagaonpisa, Tq. Shrigonda,
District Ahmednagar

PETITIONER

VERSUS

The Principal Secretary,
Co-operation and Textile and
Marketing Department,
Mantralaya, Mumbai and
162 others

RESPONDENTS

AND

WRIT PETITION NO. 10787 OF 2021

Dinkar s/o Rangnath Pandharkar,
Age : 65 years, Occu. Agri.,
R/o Pimplagaonpisa, Tq. Shrigonda,
District Ahmednagar

PETITIONER

VERSUS

The Principal Secretary,
Co-operation and Textile and
Marketing Department,
Mantralaya, Mumbai and
76 others

RESPONDENTS

AND

WRIT PETITION NO. 13139 OF 2021

Dinkar s/o Rangnath Pandharkar,
Age : 65 years, Occu. Agri.,
R/o Pimplagaonpisa, Tq. Shrigonda,
District Ahmednagar

PETITIONER

VERSUS

The State of Maharashtra,
through its Principal Secretary,
Co-operation and Textile and
Marketing Department,
Mantralaya, Mumbai and
440 others

RESPONDENTS

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Mr. Rahul R. Karpe, Advocate for the petitioner in all petitions
Mr. K.B. Jadhavar, A.G.P. for the respondent/State
Mr. V.H. Dighe, Advocate for respondent No.4 in writ petition
Nos.10792/2021 and 10787/2021 and for respondent No.2 in
writ petition No.13139/2021
Mr. Salgar, Advocate holding for Mr. N.V. Gaware, Advocate
for respondent No.3 in all writ petitions
Mr. Z.H. Farooqui, Advocate for respondent Nos.22, 181 and
210 in writ petition No.13139/2021

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CORAM : MANGESH S. PATIL, J.

DATE : 03.12.2021

PER COURT :

Heard the learned Advocate for the petitioner in all the three petitions, learned A.G.P, learned Advocate Mr. V.H. Dighe for the respondent – the District Cooperative Election Officer and learned Advocate Mr. Z.H. Farooqui for some of the respondents.

2. Common questions arise in all these petitions filed by the same person in respect of the same cooperative society in respect of the provisional voters list published under the Maharashtra Cooperative Societies (Election to the Committee) Rules, 2014 (hereinafter referred to as 'the Rules') framed under the Maharashtra Cooperative Societies Act, 1960 ('the Act', for short). In view of the exigency expressed at the bar by

the learned Advocate for the petitioner, these matters are taken up for final hearing at the admission stage.

3. By way of writ petition Nos.10792/2021 and 10787/2021, the petitioner is seeking to challenge the order passed by the learned Minister in the appeals under Section 152 of the Act whereby he has allowed the appeals and quashed and set aside the order dated 28.12.2020 passed by the Returning Officer under the provisions of Rule 11 of the Rules in respect of earlier process of election, whereby the Returning Officer had directed some voters to be removed from the voters' list. In writ petition No.13139/2021, the petitioner is taking exception to the order passed by the Returning Officer, rejecting his objection to the provisional voters list published during the recent process, raised under Rule 11 of the Rules in respect of respondent No.3 cooperative society duly registered as such under the Act.

4. Though elaborate arguments were advanced by both the sides, considering the nature of the dispute and the stage at which these petitions have been filed, one need not delve deep into the controversy.

5. According to the petitioner, the contesting respondents were not eligible to be enrolled as voters. Their names were included in the election process of the year 2020. The objection of the petitioner in that process was upheld and the decision of the Returning Officer was challenged before the learned Minister in appeals under Section 152 of the

Act. Ignoring the fact that the appeal was preferred by some of the voters, the entire orders were quashed and set aside. The petitioner has challenged these orders of the learned Minister in writ petition Nos.10792/2021 and 10787/2021.

6. Due to pandemic, the elections were postponed and now a fresh provisional voters list has been published. Since the elections were postponed and a fresh provisional voters list has been published, the petitioner raised objection which has been turned down by the order under challenge in writ petition No.13139/2021.

7. Mr. R.R. Karpe, learned Advocate for the petitioner would vehemently submit that in the earlier round of preparation of provisional voters list of the year 2020, without there being any challenge by many of the respondents to the decision of the Returning Officer, the learned Minister allowed the appeals and quashed and set aside the order of the Returning Officer in entirety. It was in blatant disregard to the settled norms of exercising quasi-judicial power. The orders were without jurisdiction and should have been interpreted to mean, at the most, that the order passed by the Returning Officer was quashed and set aside only to the extent of the voters who had preferred those appeals under Section 152 of the Act.

8. Mr. Karpe, learned Advocate would then point out that a fresh election process has now been contemplated and a provisional list has

been published. Again, the petitioner raised the same objection and still, by the order under challenge, the Returning Officer has illegally rejected it. He ignored the fact that only some of the voters had preferred the appeals before the learned Minister and those voters who had not challenged the earlier orders could not have been included in the provisional voters' list published for the fresh elections to be held now.

9. Mr. Karpe thereafter refers to various decisions and particularly in the matter of *Election Commission of India V. Ashok Kumar; 2000 AIR(SC) 2979* and tries to distinguish the decision of the Full Bench of this court in the matter of *Karmaveer Tulshiram Autade and others V. State Election Commission office and others; 2021 AIR (Bom.) 90* as also the latest Division Bench judgment in the matter of *Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar, Cooperative Societies and others; Writ Petition No.5878 of 2021*, decided on *26.11.2021*.

10. Per contra, the learned A.G.P., Mr. V.H. Dighe, learned Advocate for the District Cooperative Election Officer, learned Advocate Mr. Salgar, holding for Mr. N.V. Gaware, Advocate for respondent No.3 and learned Advocate Mr. Z.H. Farooqui for some of the respondents would submit that preparation of provisional voters list has been consistently held to be an intermediate stage in the process of election and even it has been consistently held by this court as also the Supreme Court that such preparation and process of finalization of the voters list is a matter in

respect of which the High Court cannot exercise writ jurisdiction under Article 226 of the Constitution of India. They also point out that even there is an equally efficacious remedy in the form of a dispute to be raised under Section 91 of the Act. Lastly, they would submit that in view of the recent programme for finalization of voters list, objections were to be raised in the given timeline and the final voters list was to be published by 26.11.2021. The writ petition No.13139/2021 is filed after such cut-off date of 26.11.2021.

11. Though attractive, the submission of the learned Advocate for the petitioner ignores the fact that all such persons, who are likely to be now affected by a challenge in the present petitions, will have to be given an opportunity of being heard. Though some of them have been arrayed as respondents herein, it is only by way of an indulgence that in addition to the regular mode of service, they were permitted to be served by paper publication of their notices. The fact remains that they are not before this court so that any adverse order affecting their interest can be passed.

12. In my considered view, it would not be necessary to consider the rival submissions threadbare. It would suffice for the purpose to refer to the Full Bench decision of this court in the matter of *Karmaveer Tulshiram Autade and others* (supra) coupled with the Division Bench judgment in the matter of *Dattatray Genaba Lole and others* (supra). Again, in the similar challenge, a coordinate bench of this court in the case

of *Bhagwanrao Ramchandrarao Patil V. The State of Maharashtra and others; Writ Petition No.12006 of 2021* with connected matters, decided on 05.11.2021, referring to the decision of the Full Bench, has elaborately discussed and given reasons as to why and how this court cannot exercise the writ jurisdiction to cause any interference in the preparation of the voters' list.

13. Apart from such state-of-affairs, as is mentioned earlier the voters list was to be finalized on 26.11.2021 and the latest writ petition challenging the provisional list has been filed on 29.11.2021. Therefore even for this reason, these writ petitions fail.

14. Following the observations of the Division Bench in the matter of *Dattatray Genaba Lole and others* (supra), these writ petitions are liable to be dismissed.

15. The Writ Petitions are dismissed.

[MANGESH S. PATIL]
JUDGE