

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

931 WRIT PETITION NO.12006 OF 2021

BHAGWANRAO RAMCHANDRARAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. A. N. Irpatgire.
AGP for Respondent No.1/State: Mr. P. S. Patil.
Advocate for Respondent Nos.2 & 3: Mr. V. H. Dighe.
Advocate for Respondent No.4: Mr. N. B. Khandare.
Advocate for Respondent No.5: Mr. S. V. Advant.

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932 WRIT PETITION (STAMP) NO.29584 OF 2021

BHAIDAS DHANRAJ LANDAGE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. Rahul S. Pawar.
AGP for Respondent Nos.1, 2, 4 & 5: Mr. A. V. Deshmukh.
Advocate for Respondent No.3 : Mr. S. K. Kadam.

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937 WRIT PETITION (STAMP) NO.29905 OF 2021

DHARMPAL ANNARAO DEVSHETTE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. V. D. Sapkal (Senior Counsel)
i/b Dr.Tawshikar Swapnil D.
AGP for Respondent No.1-State : Mr. S. S. Dande.
Advocate for Respondent Nos. 2 & 7 : Mr. S. V. Advant.
Advocate for Respondent Nos.3 & 8: Mr. S. K. Kadam.
Advocate for Respondent No.6: Mr. V. S. Kakade.

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944 WRIT PETITION NO.12017 OF 2021

BHARAT TUKARAM CHAMLE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. A. N. Irpatgire.
AGP for Respondent No.1-State : Mr. P. S. Patil.
Advocate for Respondent Nos.2 & 3: Mr. S. K. Kadam.
Advocate for Respondent No.4: Mr. N. B. Khandare.

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945 WRIT PETITION NO.12018 OF 2021

BABURAO HANMANTRAO KHANDADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr.Mahesh Deshmukh h/f
Mr. U.L. Momale.
AGP for Respondent No.1-State : Mr. P. S. Patil.
Advocate for Respondent No.2: Mr. S. K. Kadam.
Advocate for Respondent No.3: Mr. D. J. Choudhary.

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946 WRIT PETITION NO.12159 OF 2021

PRADEEP RAMRAO DESHMUKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V. D. Sapkal (Senior Counsel)
i/b Mr. Pravin S. Dighe.
AGP for Respondent No.1-State : Mr. S. S. Dande.
Advocate for Respondent Nos.2 & 3 : Mr. S. K. Kadam.
Advocate for Respondent No.4: Mr. D. B. Thoke.

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947 WRIT PETITION NO.12220 OF 2021

PRADEEP RAMRAO DESHMUKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V. D. Sapkal (Senior Counsel)
i/b Mr. Pravin S. Dighe.

AGP for Respondent No.1-State : Mr. S. S. Dande.
Advocate for Respondent Nos.2 & 3: Mr. S. K. Kadam.
Advocate for Respondent No.4: Mr. A. B. Kale.

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948 WRIT PETITION NO.12221 OF 2021

PRADEEP RAMRAO DESHMUKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. V. D. Sapkal (Senior Counsel)
i/b Mr. Pravin S. Dighe.

AGP for Respondent No.1-State : Mr. S. S. Dande.
Advocate for Respondent Nos.2 & 3: Mr. S. K. Kadam.
Advocate for Respondent No.4: Mr. D. B. Thoke.

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949 WRIT PETITION NO.12222 OF 2021

DHARMPAL ANNARAO DEVSHETTYA
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioner : Dr. Tawshikar Swapnil D.
I/c GP for Respondent No.1-State : Mr. D. R. Kale.
Advocate for Respondent Nos.3 & 5: Mr. S. K. Kadam.
Advocate for Respondent No.4: Mr. D. J. Choudhary.

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950 WRIT PETITION (STAMP) NO.29855 OF 2021

NANA PANDURANG PATIL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V. D. Hon (Senior Counsel)
i/b Mr. Patil Vinod Prakash.

AGP for Respondent No.1-State : Mr. P. S. Patil.
Advocate for Respondent Nos.2, 3 & 4: Mr. V. H. Dighe.
Advocate for Respondent No.5: Mr. V. D. Salunke.

951 WRIT PETITION (STAMP) NO.29882 OF 2021

DILIP SHRIRAM PATIL
VERSUS
THE DIVISIONAL JOINT REGISTRAR COOPERATIVE
SOCIETIES,NASHIK

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Advocate for Petitioner : Mr. V. D. Hon (Senior Counsel) i/b
Mr. Hon Ashwin V.

I/c GP for Respondent No.1-State : Mr. D. R. Kale.
Advocate for Respondent No.2: Mr. S. K. Kadam.

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952 WRIT PETITION (STAMP) NO.29896 OF 2021

MADHURI CHANDRASHEKAR ATTRADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. K. N. Shermale.
AGP for Respondent Nos.1 & 2 – State : Mr. S. S. Dande.
Advocate for Respondent Nos.3 & 5: Mr. V. H. Dighe.

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CORAM : R.N.LADDHA, J.
[Vacation Court]
DATE : 05.11.2021

P.C. :

The controversy relates to elections to the
Managing Committee of the Jalgaon and Latur District
Central Co-operative Banks.

2. When the hearing of the petitions commenced, the learned Counsel for the respondents indicated that they proposed to raise the preliminary objection. They put the preliminary objection on the ground that the Maharashtra Co-operative Societies Act, 1960 is a self-contained Code under which the petitioners have a specific alternate remedy and therefore interference by this Court under its writ jurisdiction is not warranted. The question of law involved in this batch of petitions is common and therefore, these petitions are taken up for hearing together. To appreciate the controversy raised in these petitions, a few relevant facts in the first petition may be described.

3. The respondent no. 3 Returning Officer published the election programme of the election to the Managing Committee of respondent no.5 Bank. As per the election programme, the nomination forms were to be submitted between 11/10/2021 and 18/10/2021. The scrutiny was fixed on 20/10/2021 and final list of the eligible candidates would be published on 09/11/2021. A copy of the Election Programme is annexed to the petition as Exhibit-A. The name of the petitioner, in the capacity of delegate of Vividh Karyakari Seva Sahakari Society Ltd. Talegaon (BHO), is included in the Voters List. Govind son of Arjunrao Biradar, respondent no. 4 herein, has submitted his nomination paper on 14.10.2021 from Primary

Agricultural Credit Society's Deoni constituency as a contesting candidate. On 20.10.2021, during scrutiny of the nomination papers, the petitioner had raised objection to the nomination paper of respondent no. 4, *inter alia*, contending that the respondent no. 4 and his family members were the directors of the company registered under the Companies Act, 1956. They were doing the business of trade and commerce and thus had substantial interest in the company and therefore, by virtue of Section 10A of Banking Regulation Act, 1949, respondent no.4 attracted disqualification for becoming a member of the Managing Committee of the respondent Bank. The returning Officer/ Respondent no. 3 rejected the objection raised by the petitioner and accepted the nomination paper of respondent no. 4 by the impugned Order dated 21.10.2021.

4. Aggrieved by the aforesaid Order of respondent no. 3 the petitioner filed the present Writ Petition before this Court. By way of interim relief, the petitioner is also seeking stay to the execution, implementation and operation of the impugned Order dated 21.10.2021. In some of the petitions, it is the grievance of the petitioners that their nomination forms were rejected and in some of the petitions the objections raised by them to the nomination of respondents were rejected resulting in acceptance of the nominations of the respondents and in

one petition prayer is made to add the petitioner's name in the Voters List.

5. I have heard the learned Counsel for the petitioners, learned counsel for respondents - Returning Officers as also the learned Additional Government Pleader and learned Counsel for contesting parties.

6. The learned Counsel for the petitioners raised several contentions. According to them, the respondent Returning Officers have committed an error of law while scrutinizing the nomination papers and since the respondent Returning Officers have acted contrary to law their decisions deserve interference and if interim relief as prayed for is not granted, serious prejudice will be caused to the interest of the people at large. According to them the Hon'ble Supreme Court in the case of *N.P. Ponnuswami Vs Returning Officer, AIR 1952 S.C. 64* nowhere deals with the election to the Co-operative Banks. In their view, in such cases, the only remedy available to the petitioners is to invoke Article 226/227 of the Constitution of India.

7. On the other hand, the learned Counsel for the contesting respondents, learned counsel for the respondent Returning Officers, as also learned AGP have submitted that the election process is already set in motion, it has now to be completed in accordance with the provisions of the

relevant Statute and grant of any interim relief will result in protracting and interfering in the election process. According to them the Statute provides alternate remedies such as election petition and where a right or liability is created by a Statute which provides a special remedy for enforcing it, the remedy provided by such Statute only should be availed of. Learned Counsel also relies on the Judgment of the Hon'ble Supreme Court in the case of *N.P. Ponnuswami* (Supra) to contend that though the Hon'ble Supreme Court in the aforesaid case did not deal with the election process of the Co-operative Banks, still the same principles will apply to the elections to the Co-operative Banks. Relying on the aforesaid case of *N.P.Ponnuswami (supra)*, they contended that the High Court under Article 226/227 of the Constitution of India cannot entertain a Writ Petition assailing the rejection / acceptance of nomination paper on whatsoever ground.

8. Having given my anxious consideration to the respective contentions, the question that arises for consideration is whether the High Court would be justified in interfering with the election process of such Co-operative Banks under Article 226 and 227 of the Constitution of India.

9. Recently a Full Bench of this Court at the Principal Seat in the case of ***Karmaveer Tulshiram Autade***

and Ors Vs State Election Commission, Mumbai and Ors, 2021 (2) Mh. L.J. 349, has enunciated the law as under:

“53. The common thread that emerges from a reading of the decisions in *N.P. Ponnuswami* (supra), *Mohinder Singh Gill* (supra) and *Ashok Kumar* (supra) is that, in respect of challenge laid to an electoral process or any step connected therewith before the result of elections, covered by Part XV of the Constitution is declared, the door of the writ jurisdiction of a High Court would stand closed if any order were sought and rendered which has the tendency or effect of interrupting or postponing a reasonable imminent poll. This is amply clear from our understanding of decisions of high authority as follows:

(i) Article 226 of the Constitution is **pushed out** by Article 329 (b), as held in *N. P. Ponnuswami* (supra);

(ii) the jurisdiction of the High Court under Article 226 of the Constitution **suffers an eclipse** because of Article 329 (b), as held in *Mohinder Singh Gill* (supra); and

(iii) if the petition presented to the Court 'calls in question an election', the **bar** of Article 329(b) **is attracted**; else it is not [as held in *Ashok Kumar* (supra)].

54. In all the aforesaid decisions, provisions of Part XV of the Constitution together with the provisions of the Representation of the People Act, 1951 were under consideration. The law laid down therein admits of no doubt that a petition under Article 226 of the Constitution would not be maintainable if it calls in question a step-in election and such questioning before the Court

may have the effect of interrupting, obstructing or protracting the election.

55. Article 243-O is *pari materia* with Article 329. While Article 329(b) as of necessity would have to be read with the Representation of the People Act, 1951, Article 243-O has to be read with sections 15 and 15-A of the MVP Act. We have noted above what Sections 15 and 15-A provide. Applying the reasoning of the Supreme Court in relation to cases covered by Part XV of the Constitution, there could be no valid and justifiable reason for not applying the same reasoning to cases covered by Part IX of the Constitution relating to "The Panchayats" in which Article 243-O and the other Articles limiting the life of every Panchayat and ordaining periodic elections to the Panchayats find place. Thus, it would seem to be an open and shut case for recording that the writ petitions are not maintainable. However, the controversy has arisen in view of the Division Bench decisions in *Smt. Mayaraju Ghavghave* (supra) and *Sudhakar s/o Vitthal Misal* (supra) wherein views have been expressed, in contravention to the view of an earlier Division Bench in *Vinod Pandurang Bharsakade* (supra). We may note here that in *Vinod Pandurang Bharsakade* (supra), Hon'ble C. K. Thakker, C.J. speaking for the Division bench had the occasion to look into all the relevant authorities and treatises on the point and returned a finding that the writ petition before the Division Bench challenging a step in the election was not maintainable.

And further in paragraph no. 68, it has been observed that:

"68. For the reasons aforesaid, while agreeing with the view in *Vinod Pandurang Bharsakade*

(Supra), we answer the fundamental question as formulated in paragraph 27 in the negative. As a sequel thereto, we answer the questions referred by the Division Bench in the manner as follows:

- (i) Allowing a challenge in a writ petition to rejection of nomination form to contest an election and granting the relief claimed by setting aside such order of rejection is definitely not a step to sub-serve the progress of election and/or facilitate its completion in the sense enunciated in *Mohinder Singh Gill* (Supra) and explained in *Ashok Kumar* (Supra) though it may not always amount to intervention, obstruction or protraction of the election;
- (ii) Article 243-O (b) of the Constitution of India is a Bar for entertaining a Writ Petition under Article 226 of the Constitution against an Order passed by the Returning Officer rejecting nomination paper and such provision would clearly be attracted whenever a Writ Petition is presented before a Court for its consideration; and
- (iii) The law laid down in *Vinod Pandurang Bharsakade* (Supra) represents the correct view of law; consequently, we hold that the decision in *Smt. Mayaraju Ghavghave* (Supra) and *Sudhakar s/o Vitthal Missal* (Supra) do not lay down the correct law;

69. The reference is answered accordingly.”

10. The point that has been sought to be canvassed by the learned Counsel for the petitioners is that in all these cases the applicability of Articles 226/227 of the Constitution in relation to the elections to the Gram Panchayats, was in question. However, in the case on hand, the applicability of the said Articles 226/227 in relation to an election to a Co-operative Bank is required to be decided. Therefore, the principles enunciated in the cases cited above would not be applicable to the present case because there is a bar under Article 243-O of the Constitution of India in the cases of Grampanchyats etc.

11. This argument is *prima facie* unacceptable because the Village Panchayat Act also contains a provision for filing an Election Petition which is in *pari materia* with the provision contained in the Maharashtra Co-operative Societies Act, 1960, by which a right or liability is created by a Statute which provides a special remedy for enforcing it, and therefore, the remedy provided by such special Statute only should be availed of. The question of prohibition contained in Article 243 of the Constitution was used as an additional ground to repeal the contention of the Petitioners in *Karmaveer* (supra) along with the specific provision contained in the Village Panchyat Act, providing for the remedy of an Election Petition. Therefore, in my

view, the principles enunciated in the case of *Karmaveer* (Supra) would fully apply to the present case.

12. It has always been recognised that the elections should be concluded as early as possible according to the time line. All controversial questions and all issues arising out of the elections should be redressed by resorting to the appropriate remedy made in the relevant particular Statute. The right to vote and stand for election to the office of Managing Committee of the respondent banks is a creature of the Statute, that is, the Maharashtra Co-operative Societies Act, 1960 and it must be subject to limitations imposed by it. Therefore, the election process to the office of Managing Committee could be challenged only in accordance with the procedure prescribed by that Act and in no other way. It is also well settled principle of law that where there is an appropriate and efficacious remedy available, the Court should keep its hands off, more so where there is a statutorily prescribed remedy which is almost spelt out in a mandatory form. The same is the case in all these writ petitions.

13. Moreover, in all these writ petitions disputed questions of facts are involved which would require investigation and enquiry inasmuch as the parties herein are questioning the correctness of the documents relied upon by their opponents.

14. In the circumstances, I am not inclined to entertain these writ petitions. The petitioners are at liberty to file an election petition or such other proceedings as are permissible in law. In that event, all contentions are kept open. Accordingly, all these writ petitions are disposed of.

R.N.LADDHA, J.

DDC