

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

WRIT PETITION NO. 12571 OF 2021

Sambhaji Sudam Tidke

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Mr. S. P. Salgar, Advocate h/f Mr. Niteen V. Gaware, Advocate for the Petitioner.

Mr. S. K. Tambe, AGP for Respondents/State.

Mr. V. H. Dighe, Advocate for Respondent Nos. 3 to 5.

**CORAM : S. V. GANGAPURWALA &
 R. N. LADDHA, JJ.**

DATED : 24th November, 2021.

PER COURT:-

. The petitioner seeks directions against the respondents to forthwith conduct the elections of respondent No. 7 society from the stage where the elections of respondent No. 7 society were stopped.

2. Mr. Salgar, learned counsel for the petitioner strenuously contends that the last elections of respondent No. 7/society were held on 08.02.2015. Six months prior to the expiry of the term of the managing committee, the respondent No. 3 was under obligation to hold the elections of respondent No. 7/society. Accordingly steps were undertaken for holding the elections and the election programme for

finalizing the voters list of respondent No. 7 was published on 17.01.2020. The provisional voters list was published on 18.01.2020. However, the elections could not be held because of Covid-19 pandemic. The elections were postponed. Now, the respondents have passed an order of preparing fresh provisional voters list. The same is illegal. The term of the managing committee of respondent No. 7 is of five years. It would have lapsed on 07.02.2020. The cut off date has to be commensurate with the date of expiry of the term of the managing committee. The learned counsel refers to Section 27 and 73AAA of the Maharashtra Co-operative Societies Act (hereinafter referred to as 'MCS Act'). According to the learned counsel, the term of the managing committee cannot be extended in view of Article 243ZJ of the Constitution of India. When the term of the committee is provided by the Constitution the same has to be adhered to. Proviso to sub-section 3 of Section 73AAA of the MCS Act only provides 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. The said proviso only provides that the committee members would continue and that the administrator is not to be appointed. The said proviso would not be read to mean that the term of the managing committee is extended.

According to the learned counsel, Rules 6 and 9 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as 'Rules of 2014') will have to be reckoned keeping in mind the term of the managing committee. The term of the managing committee can never be extended. The learned counsel relies upon the order passed by the Division Bench of this Court at the Principal Seat at Bombay in Writ Petition No. 2690 of 2020 dated 11.01.2021.

3. Mr. Dighe, learned counsel submits that the provisional voters list published earlier on 18.01.2020 was not finalized. Prior to the finalization of the said voters list the elections were stopped and/or postponed because of Covid-19 pandemic. Now, the fresh election process is commenced. Reliance is placed by the learned counsel on Rule 6 of Rules of 2014. The learned counsel submits that, initially when the provisional voters list was published, there were 17 members. Now, there are 478 members.

4. According to Mr. Salgar, learned counsel there are 88 members now. The learned counsel for the respondents submits that 88 members are newly added after the publication of the fresh provisional voters list after the objections were raised by the parties. The valid members are 478 who would be eligible to vote in view of the cut off date fixed as 31.08.2021. The said has been fixed by the Societies as per the order

passed by the State Co-operative Election Authority dated 13.09.2021 for all societies.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. Sub-rule 2 of Rule 6 of Rules of 2014 prescribes that the period of two years as provided in sub section 3A of section 27 of the MCS Act is to be counted from the date of enrollment of the member to the date when the election of managing committee of the society becomes due. As per section 27 (3A) of the MCS Act, an individual member is not entitled to vote for the period of two years from the date of his enrollment. In normal course, the period of two years as provided under sub section 3 of section 27 of the MCS Act is to be counted from the date of enrollment to the date when the election of managing committee of the society becomes due. Second proviso to sub-rule 2 of Rule 6 of Rules of 2014 provides that in case of the societies where the elections could not be held before the expiry of the term of the committee due to unforeseen situations or any other reason, a provisional list of voter shall be prepared on the basis of the date fixed by the State Co-operative Election Authority.

7. This Court can take a judicial notice of the fact that from March

2020 an exceptional and extraordinary situation existed because of Covid-19 pandemic. For some part of the year the activities had come to a stand still. Naturally, the elections that were due could not be held, though under order dated 11.03.2020 in Writ Petition No. 2924 of 2020 we had held that the respondents cannot postpone the elections. However, subsequently considering the national lock-down issued from 22.03.2020, we had clarified the said order in an application moved by the State Election Authority that considering the exceptional circumstances if the elections are not held the same would not amount to the contempt of the orders. In such a scenario, second proviso to Rule 2 of Rule 6 of Rules of 2014 would be applicable and the SCEA would have discretion to fix the cut off date. The cut off date now has been fixed on 31.08.2021.

8. It is not disputed that when earlier programme for finalization of the voters list was published on 17.01.2020, the said programme had not concluded, till the finalization of the voters list. It was operated only until the stage of provisional voters list.

9. On 18.01.2020 the provisional voters list is published. There were only 17 valid members eligible to vote. Now, as per the election authority the said figure has risen to 478, whereas, according to the

petitioner its 88 members.

10. Be that as it may, there is a substantial increase in the number of valid members eligible to vote. The purpose of election is to elect the members by the majority. If the contention of the petitioner is accepted valid members would be deprived of the voting and the election of the members would not be certainly by the majority of the members eligible to vote. The same cannot be a purport of any election. It cannot be said that the cut off date fixed by the Election Authority under its general order dated 13.09.2021 is malafide, nor it can be said to be arbitrary.

11. In the light of the above, we do not see any reason to interfere in the matter. Writ petition, as such is disposed of. No costs.

(R. N. LADDHA)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.