

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12619 OF 2021

- 1) Eknath Kundlik Aadhav,
Age 73 years, Occ. Agriculture.
 - 2) Rajaram Govind Aadhav,
Age 65 years, Occ. Agriculture.
 - 3) Kakasaheb Anandrao Supekar,
Age 52 years, Occ. Agriculture.
 - 4) Arjun Anandrao Supekar,
Age 63 years, Occ. Agriculture.
 - 5) Machindra Gaba Aadhav,
Age 65 years, Occ. Agriculture.
 - 6) Navnath Sakharam Navale,
Age 51 years, Occ. Agriculture,
All r/o. Sarola Somwanshi,
Tq. Srigonda, Dist. Ahmednagar.
- ... **Petitioners.**

VERSUS

- 1) State of Maharashtra,
Through Secretary
For Department of Co-Operation
and Marketing of Textile
Mantralaya, Mumba- 32.
- 2) District Co-Operative Returning Officer,
and District Deputy Registrar of
Co-Operative Society, Ahmednagar
3rd Floor, ADCC Bank, Station Road,
Ahmednagar, Tq. & Dist. Ahmednagar.
- 3) Assistant Registrar,
of Co-Operative Society,
Tq. Srigonda, Dist. Ahmednagar.
- 4) Tulja Bhawani Vividh Karyakari Seva
Sahakari Sanstha Maryadit, Sarola
Somwanshi, Tq. Srigonda, Dist. Ahmednagar,

Through its Secretary.

- 5) State Co-Operative Election Authority,
Maharashtra State, Central Building
Pune.

... Respondents.

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Advocate for the Petitioners : Mr. P. V. Barde.
A.G.P for the Respondent No. 1 : Mr. Y.G. Gujrathi.
Advocate for Respondent Nos. 2 and 5 : Mr. S. K. Sadam.
Advocate for the Respondent No. 4 : Mr. N.V. Gaware.

CORAM : MANGESH S. PATIL, J.
DATE : 18.11.2021.

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. With the consent of the parties the matter is heard finally at the stage of admission.

2. The petitioners are taking exception to the order passed by the respondent No. 2, who is the District Co-Operative Returning Officer, rejecting their objection to the provisional voters list published under the Maharashtra State Co-Operative Societies (Election to the Committee) Rules, 2014 (hereinafter 'Election Rules'). The respondent No. 4 is a Co-Operative Society duly registered as such under the provisions of the Maharashtra Co-Operative Societies Act, 1960 (hereinafter 'the Act'). The respondent No. 3 is the Assistant Registrar of the Co-Operative Societies under whose jurisdiction the respondent No. 4 -Society operates. The respondent No. 2 is the District Co-Operative Returning Officer under the Election Rules and respondent No. 5 is the State Co-Operative Election Authority.

3. According to the petitioners the respondent No. 4 Society came into existence in the year 2013 with 41 founder members. In view of the election a provisional voters list prepared under Section 26 of the Act was published which was finalized on 28.01.2020. However, due to pandemic the elections were not held. Subsequently, the State Government by

amending Act vide Maharashtra Act XI of 2021 dated 16.06.2021 permitted all the members including the defaulters to participate in the elections. However, their names were illegally excluded from the provisional voters list that was published on 22.10.2021 under the Election Rules. Therefore, they raised the objection with the respondent No. 3, who conducted the hearing and by the impugned order the respondent No. 2 has rejected the objection.

4. According to the learned advocate for the petitioners, the impugned order is not only illegal but even has been passed without observing the principles of natural justice. Though the hearing was conducted by the respondent no. 3 the final decision has been taken by the respondent No. 2. The order in fact is no order as it does not assign any reasons. Merely on a report submitted by the respondent No. 3 about the petitioners having tendered resignations and a resolution having been passed in the year 2017 that their objection has been turned down. No such resignations were ever tendered. Consequently, the order being illegal be quashed and set aside and their names may be directed to be included.

5. The learned advocate Mr. Gaware for the respondent No. 4-Society submits that there is no illegality. While conducting an enquiry under Rule 8 of the Election Rules the respondent No. 2 was not competent to go into the disputed questions of facts. The respondent No. 3 had submitted his report who has overall control over the affairs of the respondent No. 4 Society. He having submitted a report on the basis of the record demonstrating that the petitioners had tendered resignations on 27.08.2017 and the Society having accepted it by a Resolution No. 3 dated 30.08.2017, the respondent No. 2 could not have been expected to rather had no jurisdiction to enter into the controversy as regard the dispute touching the aspect of resignations and its acceptance. The fact remains that the names of the petitioners were not there on the record in the form of register maintained pursuant to the provisions of the Act and in the absence of which no illegality can be found in the impugned order in rejecting the objection. In support of his

submission, the learned advocate Mr. Gaware would place reliance on the decision of a Division Bench of this Court in the matter of **Dhondiba Parshuram Kakade Vs. Someshwar Sahakari Sakhar Karkhana Ltd. And Others; 1979 Mh. L. J.311.**

6. Mr. Gaware would further submit that as has been laid down in the case of **Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra; 2001 A.I.R. (SC) 3982,** preparation of voters list is an intermediate stage in the process of election and the appropriate remedy for the petitioners would be to raise a dispute under Section 91 of the Act and not for the first time before the respondent No. 2 under Rule 8. He would further submit that there are several disputed questions of facts which could neither have been decided by the respondent No. 2 or for that matter by this Court in the present petition while exercising writ jurisdiction.

7. Lastly, Mr. Gaware would submit that the preparation of voters list being an intermediate stage in the impending election, in view of the full bench decision of this Court in the case of **Karmaveer Tulshiram Autade and Ors. Vs. State Election Commission, Mumbai and Ors.; 2021(2) Mh.L.J. 349** this Court cannot exercise the writ jurisdiction. Though the decision was rendered in respect of the elections under the Maharashtra Village Panchayat Act, the analogy can be fruitfully borrowed and applies to the facts and circumstances of the present case. He also points out the decision of this Court in the case of **Bhagwan Ramchandra Patil Vs. The State of Maharashtra and others in Writ Petition No. 12006 of 2021 and connected matters** dated 05.11.2021 expressing a view that the decision in the case of **Karmaveer Tulshiram Audate (supra)** can be followed by way of analogy.

8. The learned A.G.P. and the learned advocates for rest of the respondents adopt the arguments advanced by Mr. Gaware.

9. It is a matter of record that there are vital disputed questions of facts

on which the right of the petitioners would depend. Though they assert that they continue to be the members of the respondent No. 4 Society, the respondent No. 3 in his report submitted with respondent No. 2 as mentioned in the impugned order has specifically referred to the record of his office demonstrating that the petitioners had tendered resignations and those were accepted by the Society by a resolution as mentioned herein above. If this is the state of affairs, apart from any thing else, for the very reason this Court while exercising the writ jurisdiction cannot undertake a scrutiny in respect of the factual disputes, the Writ Petition is not maintainable.

10. Considering the scheme of the Election Rules and particularly the provision of Rule 8, the objection regarding any omission or error in respect of the names and addresses and other particulars is to be decided by a District Co-Operative Election Officer. The scope of such enquiry would have inherent limitations as has been pointed out in the case of **Dhondiba Parshuram Kakade** (supra). Though it was a matter which was arising out of the predecessor of the Election Rules namely Maharashtra Specified Co-Operative Societies (Election to Committee) Rules, the provisions contained in those Rules were clearly analogous to the provisions of the Election Rules. The provision contained in Rule 8 of the Election Rules is analogous to Rule 6 of the earlier Rules and the following observations from paragraph No. 43 would be relevant :

“43. It must also be remembered that the scope of the inquiry by the Collector under Rule 6 is not only limited in nature, but is also of an extremely summary nature. Under Rule 4(2), the voters list must reach the Collector by July 15 and copies of the voters list must be displayed by July 20. Under Rule 6(2), the claimant or objector who makes a petition before the Collector must do so by July 31 and under Rule 6(4) the Collector must give his decision on such claim or objection within ten days, namely by August 10. These four dates, namely July 15, July 20, July 31 and August 10

emphasise the summary nature of the inquiry contemplated by Rule 6. There is nothing in this rule from which it can even remotely be inferred that the Collector is authorised or empowered to hold a detailed inquiry as done in the instant case, call for documents to establish eligibility to membership, examine or cross-examine witnesses or otherwise dwell on the question whether a member deserves to be included in the Membership Register or not. The fact that the inquiry under Rule 6, is of a summary nature is also reflected from the fact that against his decision, no appeal has been provided. This emphasises that the inquiry, such as it is, under Rule 6 is not only a very summary inquiry, but also mechanical (though not without responsibility), limited only to the aspects set out in the rule itself and no more.”

In view of such long standing view of this Court, it would be apposite to conclude that the respondent No. 2 could not have entered into and decided the dispute as regards membership of the petitioners while conducting a summary enquiry. *Prima facie* a register of members maintained under the Act and the Rules framed thereunder, as has been observed in the case of **Dhondiba Parshuram Kakade** (supra) in paragraph No. 40 would be a *prima facie* evidence of membership. In the absence of which, even if the petitioners have a genuine dispute to be raised and decided under Section 91 of the Act, the respondent No. 2 could not have undertaken such an exercise and decided the dispute. Paragraph 40 reads thus :

“40. Thus, under Rule 6(1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voters list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters u/s 38(2) of the Societies Act, the Register of Member is prima facie

evidence of membership. It is not open to the Collector to upset that Register by holding an inquiry under Rule 6(1), which contemplates a very summary inquiry, confined only to the aspects set out in that rule and nothing else.”

11. In view of such state of affairs, without indulging into further scrutiny I am not inclined to grant any relief to the petitioners.
12. The Writ Petition is dismissed.
13. The Rule is discharged.

(MANGESH S. PATIL, J.)

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