

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.2097 OF 2021**

Yashwantrao Mohite Krushna  
Sahakari Sakhar Factory Ltd.

....Petitioner

V/s.

The Honourable Minister For  
Co-Operation and Marketing,  
State of Maharashtra and others

.....Respondents

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Mr. A. V. Anturkar, Senior Advocate a/w Mr. Sugandh Deshmukh i/b  
Mr. Tanaji Mhatugade for the Petitioner.

Mr. V. A. Thorat, Sr. Advocate a/w Mr. P. P. Kakade, GP a/w Mr. Y. D.  
Patil, AGP for Respondent no. 1.

Mr. Deelip Patil Bankar, Chief Standing Counsel, SCEA a/w Pooja  
Deelip Patil for Respondent no. 3.

Mr. Y. S. Jahagirdar, Sr. Advocate Mr. Surel Shah i/b Mr. Prbhanjan  
Gujar for Respondent nos. 5 to 824.

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**CORAM: NITIN W. SAMBRE, J.**

**DATE: JUNE 25, 2021**

P.C.:-

1] This Petition is by the Co-operative Sugar Factory through its  
Managing Director, questioning the order dated 20/05/2021 passed by  
Respondent No.1 in exercise of powers under Section 154 of the  
Maharashtra Co-operative Societies Act (hereinafter referred to as “the

Act” for the sake of brevity). By the aforesaid order, Respondent No.1-Minister has allowed Revision Application and has quashed and set aside the order dated 05/05/2021, thereby setting aside the order of declaration of Respondent No.5 to 824 as active members and termed them as non-active members of the Petitioner-Society.

2] The relevant facts for deciding the present Writ Petition are as under:-

3] In exercise of powers under Section 79 sub-section (1) of the Act, Respondent No.2-Regional Joint Director of Sugar issued directions to the Petitioner on certain complaints, thereby ordering categorization of members in accordance with Section 26 of the Act read with Rule 20(A), 33 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as “the Rules” for the sake of brevity) Section 79(1) contemplates power of the authority to issue directions on the complaint, whereas Section 26 provides for right and duties of the members. Rule 20(A) and 33 of the Rules provides for mode of communication of classification of non-active members whereas Rule 33

provides for the list of members to be kept by the Petitioner-Society under Section 39 of the Act.

4] Since Respondent Nos. 5 to 824 were intimated about their status as non-active members of the Petitioner-Society, feeling aggrieved, they preferred an appeal before Respondent No.2. The said appeal came to be dismissed on 05/05/2021. As a consequence, the said Respondent Nos. 5 to 824 (hereinafter referred to as “private respondents” for the sake of brevity) preferred Revision under Section 154 of the Act, before Respondent No.1. Respondent No.1 on 05/05/2021 allowed the prayer for interim relief and ordered stay to the order of Respondent No.2 passed on 05/05/2021 whereby Appeal of the private respondents was dismissed. Respondent No.1 further issued ad-interim directions to include private Respondents in the final voters list. The aforesaid order passed by Respondent No.1 was subject matter of challenge in Writ Petition No.1782 of 2021. In the said Writ Petition, on 18/05/2021 by consent of parties directions were issued to Respondent No.1 to finally decide pending Revision in time bound manner. As such, vide order impugned dated 20/05/2021, Respondent No.1 allowed the Revision

and cancelled the status of private respondents as that of non-active members. As a consequence, they continued to be remained on the final voters list.

5] The private respondents are termed as non-active members, appears to be based on report dated 07/04/2021 submitted by Special Auditor Class-1 Co-operative Society (Sugar) Satara wherein it is specifically stated that private respondents have failed to attend the Annual General Meeting from 2015 to 2019 which were respectively held on 26/09/2015, 26/09/2016, 28/09/2017, 22/09/2018 and 18/09/2019. It is also claimed that notices of the meeting were duly served on private respondents and still they neither supplied sugar cane in last five years nor attended the Annual General Meeting and as such gained status as that of non-active members.

6] Vide Notification issued by Respondent No.2 on 09/04/2021, the programme in relation to drawing of voters list was declared. The provisional voters list came to be published on 12/04/2021. The objections were invited from 12/04/2021 to 22/04/2021. The

objections were to be decided till 03/05/2021 and final voters list was to be published on 06/05/2021. The voters list was to be prepared considering the status private respondents as active members of the Petitioner-Society, considering the cut off date as on 31/01/2019 for individual and and 31/01/2018 for institutional members.

7] On 25/5/2021, this Court ordered further process of election to be subject to outcome of the Writ Petition. Since the voting is scheduled on 29/06/2021, parties to the Petition through their respective Counsel insisted for either hearing the Writ Petition for grant of interim relief or finally. As such, the matter is taken up for final disposal by consent of parties.

8] Mr. Anturkar, the learned Senior Counsel appearing on behalf of the Petitioner would urge that the Revisional Authority i.e. Respondent No.1 who is manned by Respondent No.4 has acted in malafide and biased manner. According to him, Respondent No.4 has personal bias and malafides as he is from the place Karad from where he enjoys sufficient political influence. According to him, deletion of voters list

belongs to group of Respondent No.4 who is manning the post of Respondent No.1 and with an intention to support the said private respondents, the order impugned including that of interim order of inclusion of the names of private respondents in the voters list came to be passed. Mr. Anturkar while inviting attention of this Court to the reasoning of Respondent No.1 in the order impugned, would urge that, admittedly, from 2015 to 2019 private respondents have neither supplied sugar cane nor attended the Annual General Meeting and as such were rightly categorized as non-active members. He would further claim that as the status conferred on the private respondents as non-active members is after following due process of law, the same ought not to have been interfered with by Respondent No.1. Mr. Anturkar then would invite attention of this Court to the prayers in the Revision Application so as to claim that in the absence of prayer for inclusion of the names of private respondents in final voters list, the order impugned ought not to have been passed. He would then invite attention of this Court to the provisions of Article 243ZG of the Constitution of India in relation to the election of Municipal Council. According to him, part IX-B of the Constitution of India does not create an embargo on

entertaining election petition in relation to election of Co-operative Society. By inviting attention of this Court to the provisions of Section 91 of the Act read with Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as 'the Election Rules' for the sake of brevity) he submits that the same does not give any efficacious remedy to the Petitioner. As such, according to him, Petition needs to be entertained. So as to substantiate his contentions, he would rely on the latest decision of the Hon'ble Supreme Court in the case of *State of Goa and Another vs. Fouziya Imtiaz Shaikh and Another* **2021 SCC OnLine SC 211** so as to claim that High Court under Article 227 can interfere even if election process is set in motion. He would further rely on the said judgment so as to canvas his contention that preparation of voters list is not a part of election process. He would further claim that private respondents have never objected to the election process. According to him, once Section 144E and 144X are deleted, remedy under Section 91 of the Act cannot be held to be efficacious remedy as the order of Minister cannot be questioned in election dispute before the Co-operative Court.

9] Mr. Thorat, the learned Senior Counsel appearing on behalf of Respondent No.1 would urge that election process has reached at an advance stage, as according to him, what remained is only voting as rest of the election process is already completed. According to him, the order impugned is self explanatory and contains sufficient reasons. He would further claim that preparation of voters list is a statutory act and that being so, same is integral part of election process. He would try to differentiate the judgment of the Hon'ble Apex Court in the case of *State of Goa* cited supra on the issue as was decided by the Apex Court viz delimitation of constituency by an executive order. Relying on certain observations in the very same judgment in the case of *State of Goa* and also in the matters of *N.P. Ponnuswami vs Returning Officer, Namakkal* reported in **AIR 1952 SC 64** and *Mohinder Singh Gill & Anr vs The Chief Election Commissioner, New Delhi & Others* reported in **1978(1) SCC 405**, his contentions are, election dispute is the only proper remedy. According to him, inclusion of private respondents in final voters list can be the subject matter of election dispute before the Co-operative Court. On facts, he would urge that rights of large number of private respondents, in this case about 800,

have been jeopardized politically by the office bearers of the Petitioner-Society so as to rig the election in their favour and that being so, Minister was justified in exercising revisional powers. According to Mr. Thorat, when the interim order was questioned, this Court had not shown any indulgence and that being so, at this stage, this Court should be slow in causing interference, particularly considering the stage of the election.

10] Mr. Jahagirdar, the learned Senior Counsel appearing on behalf of the private respondents would adopt arguments of Mr. Thorat. According to him, in view of the judgment of the Full Bench of this Court in the matter of *Karmaveer Tulshiram Autade and Others vs. State Election Commission Office and Others* reported in **2021 DGLS (Bom.) 1**, particularly observations made in paragraphs 15, 16, 17, 27, 54, 55, and 56, Petition itself is not maintainable. According to him, status of the private respondents, whose interest he is defending, was turned into that of non-active members without considering resistance/objections filed by them. He would invite attention of this Court to the nature of objections raised by the private respondents,

thereby claiming that in spite of the fact that they have cultivated sugar, same was not collected by the Petitioner-Society intentionally in calculated manner so as to turn their status as non-active members. Mr. Jahagirdar would also raise an objection on the maintainability of the Petition at the behest of the Petitioner-Society as, according to him, by inclusion or rejection of members, Petitioner-Society cannot be termed to be prejudiced. As such, according to him, Petitioner lacks locus. He agreed to contentions raised by Mr. Thorat, the learned Senior Counsel for Respondent No.1 that election dispute is very much maintainable.

11] Considered rival submissions.

12] Respondent No.2 on 25/4/2019 issued directions to the Petitioner to categorize the nature of membership i.e. active or non-active members which can be inferred from record and is also an admitted fact.

13] Pursuant to the said directions, private respondents to the Petition were informed about the order of declaring them as non-active members of the Petitioner-Society.

14] It appears that based on the said status, Special Auditor informed the District Election Commissioner which post is manned by Respondent No.2 and further informed that 2648 members were declared as non-active members which includes names of the private respondents to the Petition.

15] It appears that the objection raised by the private respondents through an appeal under Section 26 sub-section (2) of the Act came to be dismissed both on limitation and merit. In the said order which is passed under Section 26(2) of the Act, while dealing with the appellate claim, the authority has observed that private respondents have failed to demonstrate their act of supplying sugar cane in last five years i.e. from 2015 to 2019 and also they have not attended the Annual General Meeting and as such rejected the appeal. Rejection of appeal on the ground of limitation so also on merit perhaps prompted the private respondents to invoke the remedy of Revision under Section 154 before Respondent No.1. Respondent No.1, in my opinion, considering the election programme in relation to preparation of voters list, appears to be

justified in entertaining the prayer for grant of stay, particularly when the last date of finalization of the voters list was on 06/05/2021. It appears that Respondent No.1 while entertaining the prayer for grant of stay to the order of Respondent No.2 thereby rejecting the appeal under Section 262 was sensitive to the fact about aforesaid finality to be achieved to the voters list. As a consequence of above order, it appears that names of private respondents i.e. Respondent Nos. 5 to 824 remained included in the voters list. Further more, it appears that it is not the case of the Petitioner that Respondent No.1 has no authority to entertain the Revision Application. However, only contention is, the order of interim nature including names in final voters list was passed hastily. As far as allegation of malafides and bias against Respondent Nos. 1 and 4 is concerned, I hardly see any material to infer and sustain the claim of bias and malafides against the said Respondents. It appears that Respondent No.2 exercising appellate powers dismissed the appeal of private respondents by the order passed on 05/05/2021 and as such they were left with no other option but to approach the Respondent No.1 in revisional jurisdiction.

16] The fact remains that this Court while deciding Writ Petition at the behest of the Petitioner questioning the interim order passed by revisional authority on 05/05/2021 had not shown any indulgence and only directions issued by this Court by consent of parties were to decide the revision finally which has resulted into passing of the impugned order. As a consequence of the impugned order dated 05/05/2021 and final order dated 20/05/2021 passed by Respondent No.1, status of the private respondents as that of voters and active members of the Petitioner-Society continued and the election programme has travelled to the stage of voting. I am informed that after declaration of final voters list which includes names of private respondents, entire arrangements for election are already made. Mr. Bankar, learned Counsel who appears for Respondent No.3 would urge that election process has travelled at an advance stage and this Court should not cause interference in extraordinary jurisdiction under Article 227 of the Constitution of India.

17] As such, at this stage, it has to be inferred that election programme has travelled at an advance stage and only stage which remains to be completed is voting and counting. In the aforesaid eventuality, it will be

improper for this Court to cause any interference in the election process thereby upsetting the impugned order.

18] In similar situation, this Court had an occasion to consider issue of causing interference in the election process at intermediate stage. The Hon'ble Apex Court in the matter of *Shri Sant Sadguru Janardan Swami (Mohingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another reported in (2001) 8 SCC 509*, particularly in para 12 has taken the following view.

“12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it

would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.”

As such, the Apex Court has already held that preparation of electoral roll being an intermediate stage in the process of election of the Managing Committee, this Court should not interfere in the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.

19] In the matter of *Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd vs. Collector of Kolhapur and another* reported in 2005(4) Mh.L.J. 515, this Court while considering the similar issue has recorded a finding in para 9 that declaration of final voters list is clearly an intermediary stage of the election.

20] Even if Mr. Anturkar, the learned Senior Counsel has relied on judgment of the Apex Court in the matter of State of Goa, cited supra, particularly para 65 Clauses-VIII and IX so as to canvass his contention

that this Court can interfere even at the intermediary stage of the election process, the said judgment, in my opinion, will not help the Petitioner for claiming relief of causing interference at this stage of the proceedings, particularly when final voters list is already declared and all preparations for voting are made by Respondent No.3 as is claimed during the course of arguments. The Apex Court in the aforesaid matter in clause-V of para 65 has rather observed that even if judicial review of a State Election Commission's order is available on the grounds of review of administrative orders, however, writ court is required to adopt hands-off policy while the election process is on. It can interfere either before the process commences or after such process is completed unless interference with such order subserves and facilitates the progress of the election. Apart from above, in the aforesaid judgment of the Apex Court, challenge was in relation to delimitation or allotment of seats including preparation of electoral roll, whereas in the case in hand, challenge is only to the extent of status of the private respondents as that of non-active member and inclusion of their names in the final voters list. The factual matrix in the case of *State of Goa* cited supra was, the Petitioners therein have approached the High Court even before the

election programme was declared, whereas in the case in hand, Petitioner is seeking indulgence that too just before the voting is to be commenced. Of course, this Court even at the stage of preparation of voters list can interfere provided the same is not done in accordance with law. However, this Court cannot interfere, obstruct or delay the process of election which is likely to be done in case this Court interferes in the case in hand. Appropriate support can be drawn from the judgment of the Apex Court in the matter of *Election Commission Of India Through Secretary vs Ashok Kumar & Ors* reported in (2000) 8 SCC 216.

21] As far as issue of alternative remedy is concerned, claim of Mr. Anturkar is that same is not efficacious and he cannot question the order of Minister passed under Section 154 in election dispute under Section 91 of the Act read with Rule 78 of the Election Rules. I am not in agreement with the said contention, particularly when in election dispute it is always open to challenge about illegal inclusion of voters in the final voters list. Apart from above, it is really difficult to accept the contention of Mr. Anturkar that the Petitioner, a Co-operative Society is

prejudiced because the order of declaring non-active members was interfered with by Respondent No.1 while exercising statutory revisional powers under Section 154 of the Act. This Court does not want to go into the said aspect, particularly when this Court is not inclined to show any indulgence under Article 227 of the Constitution of India in its extraordinary jurisdiction considering the advance stage of the election.

22] In the aforesaid backdrop, in my opinion, no case for showing indulgence in extraordinary jurisdiction under Article 227 of the Constitution of India is made out. Petition as such fails and stands dismissed.

23] However, the aforesaid observations will not preclude the Petitioner from lodging any Election Dispute under Section 91 of the Act read with Rule 78 of the Election Rules before the competent forum.

( NITIN W. SAMBRE, J. )