

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5878 OF 2021

1. Dattatray Genaba Lole,)
Aged 67 years, Occ. Agriculture,)
Residing at : At & Post : Sangvi Sandas,)
Taluka : Haveli, District : Pune.)
2. Santosh Kundlik Lole,)
Aged 37 years, Occ. Agriculture,)
R/o At & Post : Sangvi Sandas,)
Taluka : Haveli, District : Pune.)
3. Sangvi Sandas Vividh Karyakari Seva)
Sahakari Society Ltd.,)
R/o. At & Post : Sangvi Sandas,)
Taluka : Haveli, District : Pune.)... Petitioners

Versus

1. The Divisional Joint Registrar,)
Cooperative Societies, Pune Divn.)
Pune @ District Coop. Election Officer,)
Pune at Pune.)
2. Dy. Registrar, Coop. Societies,)
Pune City (4), Pune, Tal. Haveli, District : Pune.)
3. The Chief Executive Officer,)
Pune District Central Coop. Bank, Pune,)
having address at 5 B.J. Road, Pune – 411 004.)
4. State of Maharashtra)... Respondents

Mr. Prasad D. Dani, Senior Advocate instructed by Mr. Prashant D. Patil for the Petitioners.

Mr. Dilip Bodake for Respondent No. 1 .

Mr. A.Y. Sakhare, Senior Advocate alongwith Mr. Joel Carlos instructed by Mr. R.S. Mirpury for Respondent No. 3.

Mr. Vineet Naik, Senior Advocate alongwith Mr. P.P. Kakade, Govt. Pleader, Mr. Sukand Kulkarni and Mr. S.S. Panchpor, AGP for the State.

**CORAM : S.J. KATHAWALLA AND
MILIND N. JADHAV, JJ.**

**RESERVED ON : 12th OCTOBER, 2021
PRONOUNCED ON : 26th NOVEMBER, 2021**

JUDGMENT (PER S.J. KATHAWALLA & MILIND N. JADHAV, JJ.) :

1. Petitioner Nos. 1 and 2 are members of the Petitioner No. 3 Society. Petitioner No. 3, Sangvi Sandas Vividh Karyakari, is itself a cooperative society under the Maharashtra Cooperative Societies Act, 1960 (“**the Act**”). Petitioner No. 3 is a member of Pune District Central Coop. Bank, also a cooperative society under the Act and more specifically a federal society. Respondent No. 1 is the Divisional Joint Registrar, Cooperative Societies, Pune Division @ District Coop. Election Officer, Pune. Respondent No. 2 is the Deputy Registrar, Cooperative Societies, Pune. Respondent No. 3 is the CEO of the Pune District Central Cooperative Bank.

CHALLENGE IN BRIEF

2. As a member, Petitioner No. 3 in the ordinary course would have a right to vote in the elections of office bearers of Respondent No. 3. Petitioner No. 3 would be entitled to exercise its vote through representatives duly nominated by it.

3. The present Petition challenges an Order of Respondent No. 1 dated 29th September 2021 (“**the Impugned Order**”) by which Objection Application No. 54/2021 (“**Objection Application**”) was rejected. The Objection Application was filed by Petitioner No. 1. The Objection Application took exception to the exclusion of the name of Petitioner No. 3 from the Preliminary Voters List prepared in relation to the elections to be held of Respondent No. 3 Society, of which Petitioner No. 3 is a member. The Objection Application was rejected by Respondent No. 1 inter alia because on the cut-off date for determining the eligibility of voters as part of the election process of Respondent No. 3, i.e., 4th May 2020, Petitioner No. 3 was in arrears of dues payable to Respondent No. 3 and that the dues were repaid only 16 months thereafter. Another relevant date taken into consideration whilst rejecting the Objection Application was 6th January 2020, which was when Petitioner No. 3 passed a resolution appointing its Director to represent it in the voting at the proposed elections of Respondent No. 3. The Impugned Order also holds that on that date too Petitioner No. 3 was a defaulter. Petitioner No. 3 cleared these dues 16 months later by 13th September 2021. Respondent No. 1 was of the view that Petitioner No. 3’s status as ‘defaulter’ on the cut-off date disentitled it to vote or feature in the Preliminary Voter List. Thus, on this ground the Objection Application was rejected by the Impugned Order.

FACTS

4. The facts and circumstances leading to the Impugned Order are briefly set out below.

4.1 On 17th December 2019 a notification was issued by Respondent No. 1

notifying the elections of the Managing Committee of Respondent No. 3 – Pune District Central Coop. Bank. Pune District Central Coop. Bank is a federal society. The tenure of erstwhile Managing Committee was to expire on 4th May 2020. The new Managing Committee would be elected for a term of five years from 2020-2025. The members of Pune District Central Coop. Bank that are entitled to vote are those persons/societies that have been members of the federal society for a certain minimum duration prior to the cut off or qualification date of 4th May 2020. The required duration of membership to be so eligible depends upon whether the member is a society, such as Petitioner No. 3 (for which a 3 year prior membership is required), or an individual member (for which a 2 year prior membership is required).

4.2 The last date for filing resolutions by the members of Pune District Central Coop. Bank for the purpose of election of such proposed persons to the Managing Committee of Pune District Central Coop. Bank was 16th January 2020. The Petitioner No. 2 was nominated by Petitioner No.3 as part of this process on 6th January 2020. The time for filing such resolutions was thereafter extended upto 22nd February 2021.

4.3 On 25th August 2021, the provisional list of voters was forwarded by Respondent No. 3 to Respondent No. 1. This is a requirement under Rule 9(1) of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 (“**the Rules**”).

4.4 Between 3rd September 2021 and 13th September 2021, Respondent No. 1

published the provisional voters list (described in the Petition as the Preliminary Voters List) as per Rule 9(3) of the Rules and invited claims and objections in respect of the same.

4.5 The Petitioners filed the Objection Application in response to the provisional or preliminary voter list. By the Objection Application, the Petitioners sought inclusion of Petitioner No. 3's name in the preliminary voter list by asserting that on the date of publication of the list, Petitioner No. 3 is not a defaulter.

4.6 Respondent No. 3 responded to the Objection Application by stating that on the date of notification of elections of Pune District Central Coop. Bank and also on the cut-off date, Petitioner No. 3 was a defaulter and was therefore ineligible to vote. It was also stated that Petitioner No. 2's nomination as the authorized person of Petitioner No. 3 was ineffective because he was an office bearer of Petitioner No. 3.

4.7 On 17th September 2021, Respondent No. 1 passed the Impugned Order, which has already been summarized above. Essentially, it holds that Petitioner No. 3 was a defaulter on the cut-off date of 4th May 2020 and that it cleared its dues only 16 months later. A more detailed reference to the Impugned Order will be made hereinafter.

4.8 On 22nd September 2021, this Writ Petition came to be filed challenging the Impugned Order.

4.9 On 27th September 2021, the final voter list was published in accordance with Rule 18 of the Rules. The election programme for nomination was to be published between 7th October 2021 and 17th October 2021. This was kept in abeyance in view of this Writ Petition pending before this Court.

SUBMISSIONS OF THE PARTIES

5. Shri Sakhare, learned Senior Advocate for Respondent No. 3 and Shri Vineet Naik, learned Senior Counsel for Respondent No. 1 have, as part of their oral and written submissions, raised the issue of maintainability of the Writ Petition. Shri Prasad Dani, learned Senior Advocate for the Petitioners has sought to contend, by way of oral and written submissions, that the Writ Petition is maintainable even at this stage of the election process.

5.1 Shri Sakhare and Shri Vineet Naik, on behalf of Respondent Nos. 3 and 1 respectively, have sought to raise the issue of maintainability of the Writ Petition as a preliminary issue. Their contention is that the dismissal of the Objection Application and the preparation of the provisional voter list, from which the Petitioners name was excluded, are intermediate stages in the election process contemplated under the Act and Rules. The remedy, if any, to the Petitioners would be to challenge the result of the election under Rule 78 of the Rules read with Section 91 of the Act. In view of the alternate statutory remedy available to the Petitioners this Court ought not to interfere in its discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India from a challenge at the intermediate stage of the electoral process.

5.2 It was also contended that any interference at this stage will disturb and delay the electoral process and it is of paramount importance that the same should reach its conclusion. Moreover, it was contended that even assuming there is some irregularity or alleged illegality in the intermediate stages of an electoral process, the view expressed by Courts has been to refrain from interfering and entertaining all such challenges.

5.3 In support of their submissions, Shri Sakhare and Shri Vineet Naik relied upon various provisions of the Act and Rules, including, Sections 27 and 91 and Rules 9, 10, 11, 18 and 78.

5.4 Shri Sakhare, for Respondent No. 1, has relied upon the following judgments of the Supreme Court and this Court in support of his submission :

- i. Someshwar Sakhar Karkhana Limited v. Shrinivas Patil & Ors.¹;
- ii. Shri Sant Sadguru Janardan Swami (Monigiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. v. State of Maharashtra & Ors.²;
- iii. Pandurang Laxman Kadam v. State of Maharashtra³;
- iv. Karamveer Tulshiram Autade & Ors. v. State Election Commission, Mumbai & Ors.⁴;
- v. Himat v. Rajendra & Ors.⁵;

1 1992 (1) Bom. C.R. 590 at paragraphs 1,4,10,11,15-17, 22-24

2 (2001) 8 SCC 509 at paragraphs 4, 7, 9 and 12

3 (2016) 1 AIR Bom. 336 at paragraphs 1,3,5,6,8,9,10

4 2021 (2) Mah. L.J. 349 at paragraph 68

5 Civil Appeal No. 905 of 2021 (Arising from SLP (C) No. 3099 of 2021) being Order and Judgment dated 15th March 2021

vi. Shriram Sahakari Dudh Utpadak Sanstha Maryadit & Anr. v. State of Maharashtra⁶ (his judgment was distinguished by Shri Sakhare in his opening written submissions at paragraph 10(vi)).

5.5 Shri Vineet Naik, for Respondent No. 1, in addition to relying upon some of the judgments relied upon by Shri Sakhare, also relied upon or dealt with the following judgments:

- i. Karbhari Maruti Agawan v. State of Maharashtra⁷;
- ii. Shantaram Punjali Aher v. The Vasantrao Dada Patil Sah Sakhar Karkhana Ltd. and others⁸;
- iii. Shaji K. Joseph v. V. Vishwanath⁹;
- iv. Pundlik v. State of Maharashtra¹⁰ (which further relies upon the judgment in *Ahmednagar Zilla S.D.V.& P. Sangh Ltd. V. State Maharashtra, reported in (2004) 1 SCC 133* and explains when the ratio of *Sant Sadguru, supra*, would and would not apply);
- v. Narsing Ganpatrao Nikam v. State of Maharashtra¹¹.

5.6 Shri Prasad Dani, learned Senior Advocate for the Petitioners, contended that the Writ Petition was maintainable and ought to be entertained at this stage of the election process itself. He submitted that the rule of alternative efficacious remedy for not entertaining a Petition is a rule of discretion and looking to the illegality complained of, this Court ought to

6 2021 SCC Online Bom 1091 at paragraphs 2,4,5,6,8,40-55

7 1994 (2) Mah. L.J. 1527

8 Order dated 24th October 2002 in Writ Petition 5539 of 2002

9 (2016) 4 SCC 429

10 (2005) 7 SCC 181

11 Order and Judgment dated 30th January 2020 in Writ Petition 805 of 2020

entertain the Petition. It was also submitted that the present Petition had been filed at a very early stage of the election process.

5.7 It was then contended that there is no alternative remedy under Rule 78 to challenge an order or decision that is part of the intermediate stage of the election process. As regards the availability of an alternative remedy to challenge the election itself under Rule 78 of the Rules read with Section 91 of the Act, it was submitted that the remedy of Section 91 would not be available to the Petitioners as Petitioner Nos. 1 and 2 are not members of Respondent No. 3 and the dispute would not fall within the ambit of Section 91 of the Act. It was also submitted that the remedy available under Article 226 of the Constitution of India is available whenever there is a patent illegality, and no such restriction can be read into the exercise of such powers.

5.8 Shri Dani also sought to distinguish the judgments relied upon by the Respondents by submitting that those were cases where the Courts refused to entertain Writ Petitions from intermediate stages in light of the existence of Chapter XI-A of the Act, which contained express provisions including Section 144T for resolution of disputes by way of election petitions for specified societies defined in the erstwhile Section 73G of the Act. It was then submitted that after Chapter XI-A was deleted by the Maharashtra Amendment Act 16 of 2013 dated 13th August 2013, that statutory scheme is no longer available. Accordingly, the ratio of the decisions that were based on these provisions—to hold that challenges from an intermediate stage should not be entertained under Article 226 of the Constitution of India

—would not be of any relevance or applicable to this Writ Petition.

5.9 Shri Dani, also relied upon a part of the judgment in *Shri Sant Sadguru, supra*, to submit that a High Courts consistent interpretation of a State Act would generally not be disturbed by the Supreme Court unless it ceased to be good law in view of a subsequent amendment to the State Act. It was submitted that the deletion of Chapter XIA was precisely such an amendment or change in law that denuded the decisions, inter alia in *Someshwar and Sant Sadguru, supra*, of their binding authority and applicability in the present case. More specifically, it has been contended in the written submissions, at paragraph 4, filed by Shri Dani that this change in law “... *changes and obliterates view taken in both the said cases and in view of language of Rule 78 [as amended], there is no alternate remedy available to the Petitioners.*”

5.10 Shri Dani then sought to distinguish the other important judgment relied upon by the Respondents in *Pandurang Laxman Kadam, supra*. That judgment was not and could not be distinguished on the basis of a change in law by deletion of Chapter XI-A, since it arose after its deletion. However, the submission was that it does not consider the point urged by Shri Dani namely that the dispute as raised in the Writ Petition would not fall within the ambit of Section 91 of the Act.

5.11 Shri Dani also relied upon the following judgments:

- i. Pundlik v. State of Maharashtra¹²;

¹² (2005) 7 SCC 181 at paragraphs 14 to 18

- ii. Poonam w/o Rajesh Pawar v. Returning Officer for the Elections of 2017 of Zilla Parishad of Nanded¹³;
- iii. Chandrashekhar Shivram Mudkanna v. State of Maharashtra & Ors.¹⁴;
- iv. Shriram Sahkari Dudh Utpadak Sanstha Maryadit & Anr v. State of Maharashtra¹⁵ (which, according to Shri Dani, distinguishes the judgment in *Shri Sant Sadguru* and restricts its application to cases where there was a very belated challenge to the election process at the intermediate stage).

QUESTION FOR CONSIDERATION

6. Having considered the above submissions of the parties, we are of the opinion that the following question arises for consideration:

- i. Whether this Petition ought not to be entertained under Article 226 of the Constitution of India because the Petitioner has available to it an alternative and efficacious remedy to challenge the election itself under the provisions of the Act read with the Rules ?

RELEVANT STATUTORY PROVISIONS

7. Before dealing with the submissions and answering the question that has arisen for consideration, it would be necessary to refer to the relevant statutory provisions of the Act and the Rules.

¹³ (2017) 4 Mah. L.J. 85 at paragraph 22

¹⁴ (2016) 2 Mah. L.J. 818 at paragraph 13

¹⁵ 2021 SCC Online Bom 1091 at paragraph 71 and 72

7.1 Section 27 of the Act deals with voting powers of members. It recognizes the right of each member to vote (subject to sub-sections 2 to 7). It also stipulates that every right to vote must be exercised personally and not by proxy. Section 27(7) of the Act, deals with voting in relation to federal societies (such as Respondent No. 3). It provides that the voting right of individual members shall be regulated by the Rules and by the bye-laws of the federal society. Section 27(10) of the Act, which deals with the consequence of being a defaulter on the right to vote, reads as follows:

“10.If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the Explanation to clause (i) of sub-section (1) of section 73CA, have no right to vote in the affairs of the society]:

Provided that, a member shall not be deemed to be a defaulter, if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.”

7.2 Section 73CA of the Act deals with disqualification of a committee and its members due to a default committed by them. This section was previously Section 73FF of the Act but was renumbered by the amendment made to the Act on 13th August 2013 w.e.f. 14th February 2013 (by which Chapter XI-A was also deleted). The purpose behind this provision, just like Section 27(10) of the Act, is to provide for consequences in the event of a member being in default especially given that defaults by members may affect the very purpose and objects of cooperative societies. Section 73CA, in its relevant part, reads as follows:

“73CA - Disqualification of committee and its members

[(A-1)] In the case of a society, which gives loans to members for purchasing machinery, implements, equipments, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society.

.....

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he—

(i) is a defaulter of any society ;

Explanation.—For the purposes of this clause, the term “ defaulter ” includes—

.....

(b) in the case of term lending society, a member who defaults the payment of any installment of the loan granted to him ;

.....

(2) A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

(3) A member of a committee who has ceased to be a member thereof, on account of having incurred disqualification under sub-section (A1) and clauses (i) to (ix) of sub-section (1) shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of the committee till the expiry of the period of next term of five years of

the committee from the date on which he has so ceased to be a member of the committee.”

7.3 Although these provisions that stipulate consequences for default do not directly affect the right to vote, they underline the significant impact that being a defaulter has on the right of participation in the affairs of a cooperative society. Sub-section (3) precludes such defaulting member from being re-elected or otherwise being a part of the committee for a sufficiently long period of time. There are consequences of disqualification also that follow from defaults, in certain situations.

7.4 Section 91 of the Act, which is of primary significance to the issue that arises for consideration, in its relevant part reads as follows:

“91. Disputes

(1) Notwithstanding [anything contained] in any other law for the time being in force, any dispute touching the constitution, [election of the committee or its officers] conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, [to a Co-operative Court], if both the parties thereto are one or other of the following: —

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society [or the Official Assignee of a de-registered society] ;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society [or person who

claims to be a member of the society] ;

.....

(3) Save as otherwise provided under [sub-section (2) of section 93], no Court shall have jurisdiction to entertain any suit or other proceeding in respect of any dispute referred to in sub-section (1).”

7.5 Our reasons and findings on the scope of Section 91 of the Act, in the context of the Petitioners submission that it would not apply, are discussed below.

7.6 The Rules, which have been framed to regulate the conduct of elections to the Cooperative Societies were notified on 11th September 2014. These Rules have replaced Maharashtra Specified Co-operative Societies to Elections to Committee Rules, 1971 (“**the 1971 Rules**”).

7.7 Shri Vineet Naik, learned Senior Advocate for Respondent No. 1, has tendered a comparative chart of the 1971 Rules and the Rules that are presently in force. In several material respects the 1971 Rules and the Rules are *in parimateria*, obviously with changes in the numbering of equivalent Rules. It also appears to us that there are certain Rules which correspond to some of the provisions of the sections forming part of the deleted Chapter XI-A. So, in other words, what may have been provided for in Chapter XI-A for the specified societies governed by the erstwhile Section 73G, is now provided for in the Rules such as Rules 65, 66, 79, 80-86 and most importantly Rule 78. This aspect of the matter will also be discussed below when dealing with Shri Dani’s submissions on the effect of deletion on

Chapter XI-A.

7.8 Rule 2(9) defines ‘election’ to mean and election to elect Committee or committee member and office bearers of a Co-operative Society. Rule 2(17) defines ‘SCEA’ to mean the State Co-operative Election Authority constituted by the State Government under Section 73CB of the Act.

7.9 Rule 4 sets out the type of societies. Within this bifurcation, societies are classified as Types ‘A’ to ‘E’. Serial No. (8) of Type ‘A’ mentions ‘*All District Central Co-operative Banks*’. This would therefore apply to Respondent No. 3.

7.10 Rule 9 deals with provisional list of voters for the societies having society or society and individuals as members. This Rule applies to Respondent No. 3. It reads as follows:

“9. Provisional list of voters for the societies having society or society and individuals as members

(1) A provisional list of voters shall be prepared by every society in the year in which the elections of such society are due to be held. The active members who have completed minimum two years as members from the date of their enrolment up to the date of expiry of term of existing managing committee and in case of society being a active member who has completed minimum three years from the date of enrolment to the date of expiry of period of existing managing committee; shall be included in the provisional list as laid down in section 27. If different constituencies are provided in the bye-laws, the

names of voters shall be arranged constituency wise as laid down in the bye-laws.

Explanation. – For the purpose of this sub – rule, “the date of expiry of term of existing managing committee” means the date on which the existing managing committee completes the period of five years from the date of election.

(2) The period of three years provided in sub-section (3) of section 27 of the Act is to be counted from the date of enrolment of member to the date when election of the managing committee of the society becomes due:

Provided that, in case of societies where the elections could not be held before the expiry of the term of the committee due to unforeseen conditions or any other reason, provisional list of the voter shall be prepared on the basis of the date fixed by the SCEA:

.....

(3) Four copies of the authenticated provisional lists of voters shall be delivered in print as well as preferably in digital form by the committee of the society to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, or as directed by the SCEA one hundred and twenty days before the date of expiry of the term of Committee. Copies of such lists shall be displayed on the notice board of the society. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, within ten days from its receipt, call for inviting claims and objections from the members of the society.”

7.11 Rule 10 deals with particulars to be included in the provisional list of voters. Rules 10(2) to (4), that would apply to the present case, sets out how a society that is a member of another society (such as Petitioner No. 3 of Respondent No. 3) will have to send a resolution of the former society identifying a representative of the former society for voting

on its behalf in the elections of the latter society. These Rules read as follows:

“10. Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members.-

.....

(2) Where a society or firm is the member of Society, the District Co-operative Election Officer or the Taluka or Ward Co-operative Election Officer shall publish a date for calling the name of representative, one hundred and fifty days prior to the date of expiry of term of office of the Committee. And such society shall send the name of representative duly authorized to vote at the election on behalf of the society or firm, so as to reach it to the office of the District Cooperative Election Officer or Taluka or Ward Co-operative Election Officer at least one hundred and twenty days prior to the date of expiry of term of office of the Committee. The representative authorized by the member society shall be an active member of the member society.

(3) While communicating the name of the representative to the society the affiliated society shall enclose a copy of the resolution of the annual general body meeting of the society or its committee, where the representative is so authorized. The society shall include in the list of voters the names of all such representatives as have been communicated to it before the date fixed for publication of the provisional list of voters by the District Cooperative Election officer or Taluka or Ward Co-operative Election Officer. the list shall contain the name of the affiliated societies, their registration numbers and addresses, (and the name of representative if any).

(4) A society which has communicated the name of its representative shall, by like resolution, be permitted to change the name of its representative only in case of death of the representative or where there is newly elected committee of the member society not later than

five days before the last date for making nominations.”

7.12 Rule 11 sets out the procedure for receiving claims and objections to the provisional list prepared under Rules 9 and 10 and the adjudication of those claims and objection by the concerned District Co-operative Election Officer (in this case Respondent No. 1). Once these claims and objections are decided in the manner contemplated by sub-rule (3), the list as finalized by the District Co-operative Election Officer shall be the final list of voters. This final list is then required to be displayed on the notice board of the society. Since, the Impugned Order is the adjudication made under this Rule, it would be relevant to refer to it.

“11. Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and individuals as members.—

(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society concerned who is a voter or any representative authorized to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer during office hours, before the last date published for inviting claims and objections. Such claims or objections shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, after making such enquiries as deemed necessary in this regard, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections and final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list as finalized by the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any.

(5) If any change in the final voters list in accordance with sub-rule (4) of rule 10 is required, the District Co-operative Election Officer or the person authorized by him, after making such inquiry as he deems fit, make necessary changes in the final voter list.”

7.13 After the publication of the final voter list in terms of Rule 11, Rule 18 would come into play. It deals with the declaration of the election programme. The timelines for each step of the election, forming part of this election programme is set out therein. Rule 19 deals with the publication of the election programme so declared. Rule 20 deals with nomination of candidates from amongst members whose names appear in the final voter list.

7.14 Rule 78, which is significant to the determination of this Writ Petition, deals

with election disputes. It states:

“78.No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in section 91.”

REASONS AND FINDINGS

8. Question for Consideration in Paragraph 6(i): Having considered the submissions of the parties and the relevant statutory provisions and case law, we are of the opinion that there is considerable merit in the objection of the Respondents to this Court entertaining this Writ Petition under Article 226 of the Constitution of India. In reaching this conclusion we have had due regard to the fact that the challenge arises at an intermediate stage of the election process and that there is an alternative and efficacious remedy available to the Petitioner to challenge the election itself under Section 91 of the Act read with Rule 78 of the Rules.

8.1 Shri Dani, for the Petitioner, has submitted that the Petition has been filed at the beginning of the election process. He has also submitted, in paragraph 1 of the Petitioners Written Submissions, that *“Rule 78 provides only a dispute to challenge the election. It does not provide for any redressal forum at an intermediate stage and even on this count, there is no alternate remedy available to the Petitioners.”* Thus, although there seems to be an acceptance by the Petitioner that the elections are at an intermediate stage, we would first independently ascertain that issue. This would also have a bearing on the main issue of whether the Petition ought to be entertained because of various judgments that have specifically held that Courts ought to be very hesitant to entertain challenges to the election process at an intermediate

stage (subject to very limited exceptions as will discussed when considering those judgments).

8.2 In considering this aspect of the matter, it is necessary to reiterate that the elections of the Managing Committee of Respondent No. 3 have been notified on 17th December 2019 and the cut-off date was determined as 4th May 2020. The preparation of the provisional voter list had commenced and objections, such as those of the Petitioners, to have Petitioner No. 3's name included have already been rejected by Respondent No. 1. The election programme for nomination was to be published between 7th October 2021 and 17th October 2021, but has been held in abeyance as noted above. It is at this stage that the present Petition came to be filed. There have been significant events in the election process that have taken place thereafter as well, such as publishing the final voters list and publication of the election programme. Thus, the election process was very much underway and at an intermediate stage even when the Petition was filed.

8.3 The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are not entertained by Courts under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind Courts being circumspect in entertaining challenges at this stage under Article 226 of the Constitution of India. This is because there is a vital public interest in the elections being

completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or becoming uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

8.4 The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.

8.5 In our opinion, the submission of the Petitioners to the effect that they would be without an adequate remedy if this Petition were not to be entertained at this stage is misconceived. There is a statutory remedy available to the aggrieved Petitioners to challenge the election after the final results are declared and to raise a dispute within the statutory framework at that stage. The dispute that the Petitioners would be entitled to raise would encompass a right to urge that the Objection Application was wrongly decided and that by being prevented from voting on the premise that Petitioner No. 3 is a ‘defaulter’, the entire process and therefore the result itself, is vitiated.

8.6 The alternative remedy that would, in our opinion, be available to the

Petitioners is in filing an election petition under Section 91 of the Act. In fact, Rule 78 specifically recognizes that no election shall be called in question except by an election petition presented to the Co-operative Court as laid down in Section 91 of the Act. We are not at all suggesting that Rule 78 ousts this Courts' extraordinary jurisdiction under Article 226 of the Constitution of India. All that Rule 78 reinforces is that the generally available remedy to question or challenge an election is an election petition under Section 91 of the Act.

8.7 On a perusal of Section 91 of the Act, we are of the clear opinion that a dispute challenging an election of the committee members of a federal society such as Respondent No. 3 at the instance of Petitioner No. 3 (an aggrieved society member of the federal society) would clearly be covered by Section 91 of the Act. Section 91 begins with a non-obstante clause that applies against any other law for the time being in force. Section 91(1) of the Act, which identifies the subject areas of disputes that it covers, expressly provides for disputes touching the elections of the committee or its office bearers and management of a society. Importantly, Section 91(1) also contemplates in its language disputes involving a federal society of which a society is a member, such as the present situation.

8.8 Section 91(1) of the Act also requires both the parties to the dispute to satisfy one of the requirements as set out in clauses (a) to (e) of Section 91(1) of the Act. In the present facts there is no dispute that this requirement too would be satisfied because Respondent No. 3, is a society (being a federal society) under sub-clause (a). Petitioner No. 3 is a society that is a member of Respondent No. 3. It therefore satisfies the requirement of

sub-clause (b).

8.9 In considering the applicability of Section 91 of the Act as an alternative remedy, it is the inter se relationship of Petitioner No.3 and Respondent No. 3 and that both fall within sub-clauses (a) to (e) of Section 91, that would have to be looked at. There can be no doubt that the primary dispute as raised in this Petition pertains to the alleged right or entitlement of Petitioner No. 3 to vote in the elections of Respondent No. 3.

8.10 Petitioners No. 1 and 2 are representatives or officers or authorized persons of Petitioner No. 3, who would represent Petitioner No. 3 in the voting process of Respondent No. 3's election. They are not, in any direct sense, aggrieved persons. If at all they are aggrieved, it is because they are constituents or members themselves of Petitioner No. 3 and would represent Petitioner No. 3 in the voting or election process of Respondent No. 3. However, we are further of the view that given the nature of the dispute raised in the facts of the present case, even Petitioner Nos. 1 and 2 would be covered by Section 91(1)(b) of the Act as they would fit the description of '*a person claiming through a member*'. Thus, for the reasons noted above Section 91 read with Rule 78 are an efficacious alternative remedy to be exercised at the stage of challenging the election itself.

8.11 We find no merit in the submission of Shri Dani that the alternative remedy of Section 91 of the Act would not be applicable to the Petition, as filed by the present Petitioners, because all the Petitioners are not members of Respondent No. 3. We are of the

view that this is a disingenuous plea to overcome the objection of maintainability of the Petition. If, according to Shri Dani, the presence of Petitioner Nos. 1 and 2 as petitioners prevents Section 91 from applying, it raises the question as to why they were joined in the first place when the entire dispute is about the alleged right of Petitioner No. 3 to vote in the elections of Respondent No. 3.

8.12 It is not even the Petitioners case that the right to vote or to be named in the provisional voter list inheres in Petitioner No. 1 and 2 individually. According to the Petitioners, the right to vote or be a part of the provisional voter list is that of Petitioner No. 3, of which Petitioners No. 1 and 2 are members or representatives. If Petitioner No. 3 were allowed to vote or to be a part of the provisional list, Petitioner Nos. 1 and 2 would only be exercising the vote of Petitioner No. 3. It is only in that capacity that they have been joined as Petitioners to the Petition. The fact that they have been arrayed as the first and second Petitioner does not change the position that the real affected person, if at all, is Petitioner No. 3. To put it differently, this Writ Petition could not have been filed without Petitioner No. 3 being a petitioner. It could, however, have been filed without Petitioner Nos. 1 and 2 so long as Petitioner No. 3 was a petitioner filing the Petition through an authorized officer.

8.13 It, accordingly, follows that any assessment as to the availability of an alternative remedy must be by keeping in mind the alleged rights of the aggrieved person, namely, Petitioner No. 3. Be that as it may, even if Petitioner Nos. 1 and 2 are to be regarded as aggrieved persons with an independent right to assail the election result and process, as

already noted above, they too would fall within the qualifications of Section 91(1)(b) of the Act as they would be persons claiming through a member (Petitioner No. 3) against a society (Respondent No. 3 federal society).

8.14 Look at from any perspective, Section 91 read with Rule 78 would be an available remedy at a later stage of challenging the election itself, if the need should so arise. Moreover, we have already noticed the relevant provisions of the Act and Rules that would govern the substance of the dispute as and when raised under Section 91 of the Act. Those provisions expressly regulate matters pertaining to disqualification from voting because of the member being a defaulter; the making of a provisional voter list; the raising of an objection by filing an Objection Application and the adjudication of the same; and the consequent preparation of a final voter list. All these matters and provisions will undoubtedly be invoked by parties to the dispute by way of an election petition under Section 91 of the Act. These will constitute the basis of challenge. We are obviously not expressing any view on the merits of same but are only noticing these provisions in support of our finding above that Section 91 of the Act is both an alternative and efficacious remedy for redressal of statutory grievances as raised by the Petitioners.

8.15 Our views as noted above are supported by various judgments cited by Respondent No. 3 and 1. However, before referring to some relevant observations it would be appropriate to note the main submission of Shri Dani to get out of the ratio of these various decisions. He contended that they have no application now that Chapter XI-A of the Act has

been deleted and the alternative remedy inter alia under Section 144T and Section 144X is no longer in the statute books. He submits that the judgments mainly relied upon by the contesting Respondents were decided against the maintainability of those petitions because of these statutory provisions that are no longer in existence.

8.16 Before the deletion of Chapter XI-A of the Act, that Chapter dealt with the election of the committee of management and officers of certain specified societies referred to in Section 73G of the Act. Section 144T of the erstwhile Chapter XIA provided that disputes relating to an election shall be referred to a tribunal and that tribunal was conferred with powers akin to a Court in respect of the matters enumerated therein. Section 144T(4) of the deleted Chapter XIA provided for expeditious disposal of election petitions filed under those provisions. Section 144X of Chapter XIA contained a specific rule making power without prejudice to the power to make rules elsewhere in the Act. It is pursuant to this power that the State Government framed the 1971 Rules. The 1971 Rules were intended to supplement the scheme of Chapter XI-A and provided for various matters starting from the preparation of the provisional voter list till actual polling of an election.

8.17 Since the scheme for filing an election petition in respect of specified societies was covered by Chapter XIA read with the 1971 Rules, disputes arising in relation to such matters were, during the time that Chapter XI-A was in force, expressly excluded from the purview of Section 91 of the Act. Even at that time, it may be noted, the scheme under Chapter XI-A only covered societies in Section 73G and not all societies under the Act.

8.18 This position changed by the enactment of the Maharashtra Act 16 of 2013 dated 13th August 2013 (w.e.f. 14th February 2013) by which Section 73G and Chapter XI-A were deleted. However, that by itself does not affect the existence of an efficacious and alternative remedy for disputes relating to elections under the Act because at the same time the provisions of Section 91 of the Act were also amended to expand its scope and application. This was achieved by deleting from Section 91 of the Act the exclusion of disputes that were previously covered by Section 73G read with Chapter XI-A. In other words, the disputes previously encompassed by Section 73G read with Chapter XI-A were consciously and deliberately brought into the fold of Section 91 of the Act by the legislature. Notably, this change to the language of Section 91 of the Act was brought into effect by the same Amending Act 16 of 2013 that effected the deletion of Chapter XI-A.

8.19 To ensure that the present scheme for filing election petitions is complete and exhaustive, after the amendments to the Act in 2013, new Rules (referred to above as “**the Rules**”) of 2014, notified on 11th September 2014, have come into force. In fact, in yet another indication that the old regime of election disputes was to give way to the amended Section 91 of the Act and the Rules, by a Government Notification of 30th August 2014, Chapter VA (dealing with Election to Notified Societies etc. containing Sections 56A to 56Z and Section 56A-1 to 56A-35) of the Maharashtra Co-operative Society Rules, 1961 was also deleted.

8.20 By Rule 78 of the Rules, also noted above, all election petitions would lie

before the Co-operative Court. The Co-operative Court is a forum with trappings of a Court. It has been constituted under Section 92 of the Act. Its powers of procedure and as regards the taking of evidence are set out in Section 94 of the Act. It includes summoning or enforcing the attendance of witnesses and the taking of evidence on oath. It also has the powers to make necessary interlocutory orders under Section 95. Thus, it has adequate powers to deal with issues that may be raised for determination in an election petition as is, in that sense, also an efficacious remedy.

8.21 Additionally, it may be noted that the Objection Application that has given rise to this Writ Petition has also been filed under Rule 11 by Respondent No. 1. That is a statutory recourse that has been exercised by the Petitioners. It is implausible that the adjudication of the Objection Application under Rule 11 of the Rules would then, if assailed, not be covered by Rule 78 (of the same Rules) read with Section 91 of the Act.

8.22 Therefore, we find there is no merit in the submission advanced by Shri Prasad Dani that the amendments and changes to the Act take away the existence of an alternative remedy or an efficacious alternative remedy to adjudicate the dispute raised by this Writ Petition. We also find merit in the submissions of the Respondents and in this regard especially the submission of Shri Vineet Naik for Respondent No. 1 that the change in the statutory scheme when properly viewed and understood does not affect the existence of an alternative remedy to a person aggrieved.

8.23 Our opinion in regard to the availability of an alternative remedy and the

principles that govern interference under Article 226 of the Constitution of India at an intermediate stage, is fortified by various judgments which we have proceeded to discuss below.

8.24 In *Pandurang Laxman Kadam*, *supra*, this Court was considering a similar challenge to the exclusion of the petitioners names from the voter list. This Court refused to entertain the challenge on merits because of the alternative remedy under Section 91 of the Act and the Rules. Significantly, this case was after the deletion of Chapter XI-A of the Act despite which Section 91 of the Act read with the Rules was held to be an efficacious alternative remedy. This judgment is therefore a complete answer to Shri Dani's submission that the deletion of Chapter XI-A and Section 73G would enable this Court to distinguish earlier judgments and entertain the Writ Petition at this stage itself. Some of the relevant observations from this judgment, with which we are in respectful agreement, are as follows:

“5. After having heard Mr. Oak learned counsel for the petitioners at great length and on perusing with his assistance the petition and all the annexures thereto, so also the recently notified The Maharashtra Cooperative societies (Election to Committee) Rules 2014 we are unable to agree with him. These Rules have been notified and from the definitions it is apparent that the term “Committee “has been defined to mean the Committee of management or board of directors or the governing body or the directing body of a co-operative society, by whatever name called, in which the management of the affairs of a society is entrusted. The term “corrupt practice” is defined in Rule 2 (7) to mean any of the practices specified in the rule 79. The term “election” is defined in Rule 2 (9). The term “list of voters” has been defined in rule 2 (10) and there is definition of the term “Returning

Officer” of a co-operative society in Rule 2(16).

6. After the Rules set out the powers of the State Cooperative Election Authority, what is relevant for our purpose is part III which deals with “Preparation of Electoral Roll” and which contains rules for enabling preparation of provisional list of voters. The particulars to be included in the provisional list of voters for cooperative societies, claims and objections to the provisional list of voters and the final list of voters for cooperative societies having individuals as members are inter alia the matters provided therein. (See Rule 6 to Rule 11). After setting out the complete administrative machinery for the conduct of elections in part IV, what is relevant is the procedure for holding of elections. In the present case, all steps prior to poll as envisaged by part VI of these Rules have been completed. What remains is the polling and which is scheduled on 19 June 2015. Apart from these aspects, we are not impressed with the petitioner’s submissions that the remedy provided of an Election Petition under section 91 by raising an election dispute before the Co-operative Court is inefficacious or incomplete. After all matters are dealt with in the Rules and equally the Rules setting out as what would be termed as ‘corrupt practices’ then definitely the challenge to the election dispute can be filed raising appropriate grounds. They would include the challenge to the validity to the list of voters at the elections or illegalities committed in its preparation. It is not possible to agree with Mr. Oak learned counsel for the petitioners that when a remedy is provided to a Court and which is pre-existing, that Court is powerless and cannot grant appropriate reliefs by applying the principles and which are to be found and relatable to election disputes in relevant and applicable statutes. It is not as if every single aspect has to be provided by the legislature. There are enough guidelines in law as well as in the 2014 Rules, the Maharashtra Cooperative Societies Act, 1960 and based on which challenge to elections can be raised. The Rules themselves set out the entire procedure and right up to counting of

votes. They also provide for election expenses and apportionment thereof. They also set out the corrupt practices (See Part I clause 7). In the circumstances, there is a complete remedy and which is equally efficacious for challenging the elections. Once the legislature has provided for challenge to the elections by raising a dispute under section 91 of the Act, then all provisions substantive as well as procedural in so far as powers of the competent Court to deal with such disputes are attracted. The necessity of making this provision appears to be to preserve the purity and sanctity of elections and the process as a whole and to deal with issues vitiating them and which could be raised. The Co-operative Court will be in a position to take a note of the same and decide them in accordance with law.

7. Mr. Oak learned counsel for the petitioners has urged that there is nothing in the Rules which would enable the party like the petitioners to decide as to how to present and file such disputes and who would be necessary parties thereto and on what grounds the elections can be challenged. To our mind, this argument overlooks substantive provisions in the Maharashtra Co-operative Societies Act, 1960 namely section 91 to 94 thereof and the Maharashtra Co-operative Societies rules, 1961 (see Rules 77-E and 77-F thereof) which contains the procedural aspects. Thus, there are enough provisions and to deal with various aspects of a election dispute. As far as the grounds on which a election can be challenged, the principles are far too well settled to require any reiteration. In a Full Bench decision of this Court reported in 77 Bombay Law Reporter 1975 page 533 (DATTATRAYA NARHAR PITALE v. VIBHAKAR DINKAR GOKHALE) these principles are discussed. At pages 538-540, 542-543 of the report their Lordships held as under:

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8. Thus, the election can be challenged on the grounds available in law and whether all or some of them can be invoked and raised depends on the facts and circumstances in each case. If there are no

restrictions or limitations placed by the statutory provision, then, the above principles would be clearly attracted. There are no limitations placed by the present provision, namely, section 91 of the Maharashtra Cooperative Societies Act, 1960. In this case, the words employed are not restricted or limited. In a decision reported in 2008 (4) All Maharashtra Reporter, 223 (*KRISHNAGANPATRAO KAMDJI v. LILADHAR W/o LAXMAN PATHODE*) this Court held as under:

.....

9. Hence, all grounds including validity of the electoral roll, validity of nominations, corrupt practices, irregularities and illegalities in electoral process as a whole can be raised in the dispute. The parties to the dispute, necessary and proper, the reliefs that can be sought and granted all depends upon the facts and circumstances in each case. No general rule can be laid down in that behalf. The decided cases under the statutes dealing with elections provide sufficient guidelines in that behalf. The legal principles would have to be applied to the facts in each case. However, merely alleging irregularities and illegalities would not be enough. In all such cases, proof will have to be brought and which would demonstrate that the purity and sanctity of the electoral process is adversely and prejudicially affected. Further, it will have to be proved that the breach, if any, is of a mandatory or procedural provision. In this behalf, a reference can be made to the recent pronouncement of the Hon'ble Supreme Court in *VIPULBHAIM. CHAUDHARY v. GUJRAT COOPERATIVE MILK MARKETING FEDERATION LIMITED* reported in 2015 (3) ABR 472. The Court holds thus:

.....

10. As far as the second argument of Mr. Oak learned counsel for the petitioners is concerned, once we have noted the scheme of the Rules and there is a complete remedy to challenge the elections, then, issues on merits need not be gone into. The authority while dealing with the claims and objections has held there is divergence or difference

between those identified as eligible slum dwellers and those whose names were found in the provisional voter's list. Similarly, there are reasons assigned as to why other persons could not be enrolled and enlisted as voters. We are not in a position to interfere with the same in our limited jurisdiction. We are not concerned presently as to who were eligible. We cannot scrutinize the list and find out as to whether all compliances have been made. Merely because the list of eligible slum dwellers prepared by the authorities is placed side by side, we cannot assume that names therein are necessarily to be included in the voter's list and without any further scrutiny. What scrutiny could have been undertaken and to what extent are all matters raising disputed questions of fact and which cannot be decided in our writ jurisdiction. Even if there is no power to make any further scrutiny or verification and as contended, that issue can be conveniently raised in a election dispute.

13. In the Division Bench matter in the case of *SHIVAJI MAROTRAO SURYAWANSHI SUPRA*, the issue was somewhat identical. There were 363 non-borrowers voters, out of which 122 persons were not residents of the village in question. All these persons though included in the voter's list could not be the members of the society. The Division Bench found that the question was not of one or two voters but the entire list of 352 voters appeared to be bogus. These non-borrower voters outnumbered the borrower members by great margin. Thus, in both the decisions, in peculiar facts and circumstances this Court exercised its writ jurisdiction. These judgments do not laydown any general principles of law but are rendered essentially in the factual background about which there was never any dispute. They do not assist the petitioner before us.”

8.25 The judgment in the case of *Pandurang Laxman Kadam, supra*, has been followed by a Single Judge of this Court (Nagpur Bench) in *Sau Chandatai w/o. Prakash*

Tayade and another v. The District Co-operative Election Officer and Divisional Joint registrar and another¹⁶. In that case too, the Petitioners name, which was in the provisional voter list, was thereafter deleted. The learned Single Judge in considering the challenge, observed as follows:

“12. In the instant matter, the election to the Amravati District Central Co-operative Bank has been directed, in pursuance of order dated 18.2.2021, passed by the Hon'ble Apex Court in SLP No. 6 of 2021. The programme for finalizing the voter's list was first published on 24.4.2021 and was to commence from 26.4.2021 and ended on 28.6.2021, which was extended by the Notification dated 23.6.2021 till 13.8.2021.

.....

14. In the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra) it has been held that the preparation of a voter's list is a part of the election process and the election process having been set in motion, it was held that the High Court could not interfere under the Article 226 of the Constitution, so as to stall the election.

15. Without going into the merits of the impugned order even if presuming that the impugned order may be incorrect, and is now corrected the consequences thereto would be the correction of the final voter's list, which has already been published before 31.8.2021 and that would clearly amount to interfere in the process of election which has now gone too far and is at the stage of withdrawal of the nominations. Any correction in the final voter's list, presuming the acceptance of the contention of the petitioners, cannot be termed as an action which would subserve the progress of the election as held in Ashok Kumar (supra) and for the same reason Wamanrao Satpute (supra) would also not be applicable.

16. This position has been considered also by this Court in

Pandurang Laxman Kadam Vs. State of Maharashtra, 2015 SCC OnLine Bom 5840 and in the case of Raju V. Gawade and anr., Vs. The District Co-op. Election Officer and the Regional Joint Director (Sugar) Pune Region, Pune and Ors, 2016 SCC OnLine Bom 2467, wherein the plea of inclusion of the names of the persons in the voters list, was turned down. In the case of Basawraj and Ors. Vs. The State of Maharashtra and Ors, MANU/MH/0830/2015 the situation was different inasmuch as it was held, that if the election process was not in conformity with the relevant statutory provisions interference was permissible, which was so found which however is not the case in the present matter.

17. In view of the above position, I find that any plea or claim, which the petitioner no.1 may have, in respect of the impugned order depriving him of a right to vote can always be made the subject matter of an election petition and considering the stage at which, the election is at present, the matter needs no interference and also for the reason that any adjudication of the matter on merits, would also involve disputed questions of facts. The Writ Petition is, therefore, dismissed.”

8.26 Similarly, another learned Single Judge of this Court (Nagpur Bench) in the case of *Pundlik*, *supra*, has also followed the Division Bench view in *Pandurang Laxman Kadam*, *supra*. The challenge in that case was to the process of preparation of electoral rolls for election to the District Central Co-operative Bank Ltd. Yavatmal, under the Act. The grievance in that case was to either the deletion or inclusion of names to the electoral rolls. In this background the learned Single Judge observed as follows:

“5. When these writ petitions are called out for hearing, an objection is raised that the nature of dispute sought to be raised in these writ petitions pertains to the question of inclusion or deletion of names from the electoral roll. The petitions raise challenge directly to the orders passed by the Election Officer in that context. It was submitted

by learned counsel appearing for the parties opposing the present writ petitions that the nature of dispute sought to be raised in these writ petitions could and ought to be raised by recourse to statutory remedy provided under Section 91 of the aforesaid Act read with Rule 78 pertaining to the election dispute under the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014. It was pointed out that the forum for raising such a dispute was the Cooperative Court under Section 91 of the aforesaid Act, particularly for the reason that the dispute could be properly decided before the Court affording proper opportunities for the rival parties to lead evidence in respect of the controversy sought to be raised. Rule 78 of the said Rules provides for election petition to be presented before the Cooperative Court, as laid down in Section 91 of the said Act, which pertains to raising of disputes before the Cooperative Court.

6. Attention of this Court was invited to a judgment of the Division Bench of this Court in the case of Pandurang Laxman Kadam and others vs. State of Maharashtra and others, 2015 SCC OnLine Bom 5840. It was submitted that in the said judgment, the Division Bench of this Court referred to earlier judgment of this Court and the Hon'ble Supreme Court to conclude that the jurisdiction of the Cooperative Court under Section 91 of the said Act is in substance very wide and that dispute raised by the petitioners therein pertaining to inclusion of certain names in the list of voters for the election, could certainly be decided by raising an appropriate election dispute in terms of the statutory provisions. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of Laxmibai vs. Collector, Nanded and others, 2020 SCC OnLine SC 187, in support of the aforesaid contentions.

7. This Court has perused the nature of the orders impugned in all these writ petitions. Undisputedly the impugned orders pertain to the grievance raised on behalf of the petitioners with regard to inclusion or deletion of names of persons in the electoral roll, which is a

controversy similar to the one before the aforesaid Division Bench of this Court in the case of *Pandurang vs. State of Maharashtra* (supra). This Court is of the opinion that the ratio of the aforesaid judgment is squarely applicable to the facts of the present petitions. The aggrieved parties in these writ petitions can certainly raise the grievance sought to be raised in a properly presented petition before the Cooperative Court under Section 91 of the said Act read with Rule 78 of the aforesaid Rules. Therefore, this Court declines to exercise writ jurisdiction in these writ petitions on the ground that the petitioners herein can very well approach the Competent Court under Section 91 of the said Act read with Rule 78 of the aforesaid Rule.”

8.27 In the case of *Narsing Ganpatrao Nikam*, supra, a Single Judge of this Court did not entertain a Writ Petition challenging the provisional voters list on the ground that most of the voters are ‘non-active members’ of the Karkhana. The objection as to maintainability of the Writ Petition and the Respondents reliance on Section 91 of the Act was upheld. The learned Single Judge considered a submission that Section 91 of the Act was not an efficacious remedy. The learned Single Judge also had occasion to deal with and distinguish certain Supreme Court decisions, in the cases of *Vinod Krushnaraoji Wankhede & Anr. v. Collector*¹⁷ and *Ahmednagar Zilla S.D.V.*, supra, which we will address below. The relevant observations of the Court are as follows:

“8. In contemplation of an objection about availability of an alternate remedy by raising a dispute under Section 91 of the said Act, challenging, final outcome of the election, the learned counsel submitted that it is not an effective, nor efficacious remedy in the facts and circumstances of the case. On behalf of the Petitioner, reliance is placed on the decision of this Court in the case of *Vinod Krushnaraoji*

¹⁷ (2006) 6 Bom CR 631

Wankhede v. Collector and the decision of the Supreme Court in the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra in order to submit that in a given case, this Court can interfere even after the commencement of the election process, and there is no absolute rule, preventing this Court in the exercise of its extraordinary and/or supervisory jurisdiction from interfering with the election process, once the same has commenced. In the submission of the learned counsel for the Petitioner, looking to the grave irregularity in the preparation of the voters' list, this is a fit case where this Court should set aside the order of finalisation of the voters' list and direct the postponement of the election, particularly in view of the fact that the tenure of the existing Board of Directors is yet to expire.

9. In the submission of the learned counsel for the Petitioner, after 97 Constitutional Amendment, the concept of a 'specified society' has now been done away with, and therefore, the sugar factories, which were earlier designated as "Specified Society", now there are no rules governing the election petition of such Societies. The learned counsel pointed out that presently, the Karkhana is classified as a Type "A" Society. In the submission of the learned counsel for the Petitioner, Rule 57 which provides for the challenge to the election being raised in the form of a dispute under Section 91 of the Act, does not take into consideration these aspects and in any event in the absence of the grounds, as raised in this petition, being unavailable to be raised in a dispute under Section 91 of the Act, the said remedy cannot be said to be efficacious.

10. Mr. Jahagirdar, learned senior counsel for the Karkhana has raised a preliminary objection about maintainability of the petition on two grounds, viz. (i) with reference to Rule 57 of the Rules, which provides that challenge to the election has to be raised only way of a dispute under Section 91 of the Act; and (ii) the voters, who according to the Petitioner, are not qualified to be included in the voters' list on

account of being allegedly non-active members, have not been made parties as respondents, and therefore, the petition cannot be entertained. For this purpose, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra and the order passed by the Division Bench of this Court in the case of Popatrao Danghe v. Kadava Co-op. Sugar Factory Ltd. It is submitted that in the meeting dated 14 September, 2019, condonation has been granted to the members from non-attendance at the AGM. The learned senior counsel was at pains to point out that the Petitioner has not challenged the said resolution and thus, now cannot contend that some of the members are non-active members on account of non attendance at the AGM. It is submitted that the election process has already commenced, and therefore, this Court would not interfere in the said election process, inasmuch as the Petitioner has efficacious remedy of challenging the election, if so advised, by raising a dispute under Section 91 of the Act.

11. I have given my anxious consideration to the rival circumstances and the submissions made.

12. As noticed earlier, the election programme is already declared on 15 January, 2020 and currently the withdrawal of the nomination is in process upto 5 February, 2020. It transpired during the course of the arguments at bar, that the Petitioner has filed his nomination and is a contesting candidate at the said election. Normally, this Court would be extremely slow in interfering with the democratic process, once the election programme is declared and the election process has commenced. This has been consistently held in various decisions of the Hon'ble Supreme Court and the High Courts. In the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra), Hon'ble Supreme Court has held that the dispute regarding preparation of electoral roll on the ground that it is in breach or noncompliance with the mandatory provisions of the

Rules, can be challenged in an election petition. The learned counsel for the Petitioner has submitted that the said legal position has undergone a change after 97 Amendment to the Constitution of India. I do not find that the contention, as raised, can be accepted. The Division Bench of this Court in the case of Popatrao Danghe (supra), which is a decision rendered after the 97 Amendment, has refused to interfere with the election programme after its commencement, placing reliance on the decision of the Supreme Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra). The grievance in that petition was that 'non producer members' of the Karkhana would be participating in the voting to elect 'producer members'.

13. Reliance placed on the decision of the Hon'ble Supreme Court in the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra), and of this Court in the case of Vinod Wankhede (supra), to my mind is misplaced, inasmuch as, the aforesaid decisions turned on their own facts. In the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra), the electoral roll was prepared in view of certain amendments in the byelaws, which amendment was struck down by the appellate authority. The Supreme Court found that the preparation of the voters' list on the basis of "non-existent Rules" would be illegal. The Supreme Court found that in the case of Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra) the voters' list was prepared in terms of extant rules but certain irregularities were committed therein unlike in the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra) where the electoal roll was found to be prepared on the basis of non-existed rules. In my considered view, the present case would be similar to the factual situation, as in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra) than the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra) where the bye-laws on the basis of which voters' list was prepared were

struck down by the appellate authority.

14. In the case of Vinod Wankhede (supra), the Respondent No. 2 got herself elected as mayor of the Amravati Municipal Corporation claiming to be a permanent resident of Amravati. On the basis of that status, she also got elected on the Board of Directors of Jijao Commercial Co-operative Bank Ltd., Amravati. On facts, it was found that Respondent No. 2 had failed to bring on record any material to show that she was permanent resident of village Suregaon. In that case, Respondent No. 2 had produced a communication dated 31 March, 2006 before this Court, issued by the Manager of the said cooperative bank stating that her resignation from the Directorship of the Bank was accepted on 26 May, 2006. This Court found that the said fact was not pointed out to the election officer when the impugned order was passed. It is in these special circumstances, that this Court found that Respondent No. 2 was trying to abuse process of law, and is trying to force herself in the Wardha district, though she was not permanent resident of the said district. In my considered view, the case clearly turned on its own facts.

15. Now, coming to the present case, prima facie there is no objection raised qua individual voter, which could have then be decided as to whether any such voter is a non-active member within the meaning of Section 2(19)(a-1) of the Act. Prima facie, at this stage, there is a resolution dated 14 September, 2019 granting condonation from attendance at the AGM. It is necessary to note that the Petitioner has not challenged the resolution adopted in the meeting dated 14 September, 2019. Rule 51 of the Rules clearly provides that the challenge to any such election has to be by way of dispute under Section 91 of the said Act. Considering over all circumstances, I do not find that any case for interference is made out.”

has relied upon the judgment of this Court in the case of *Shriram Sahakari Dudh Utpadak Sanstha Maryadit & Anr., supra*. In our view, this judgment would not be of any assistance to the Petitioners for various reasons. This was a case in which the elections were halted at a time even before the election process for preparation of the provisional voters list had commenced. As the elections were to take place at a later date than originally contemplated, the Petitioners made a representation to the election authorities to extend the cut-off date so that more members would be eligible to vote. This representation was decided against the Petitioners. The challenge under Article 226 of the Constitution of India was to this decision of refusing to extend the cut-off date at a time when the process of preparing the provisional voter lists had not even commenced and this stage had not arrived. It is this fact that was emphasized by this Court in the course of explaining the reason for entertaining a challenge under Article 226 of the Constitution of India to the decision refusing to extend the cut-off date despite the election itself being postponed by a considerable length of time. In these facts and circumstances the Court considered the impugned decision as being arbitrary. In fact, in paragraph 70 of the judgment, the Court considers and distinguishes the judgment in *Pandurang Laxman Kadam, supra*, on the basis that:

“..... Since in this case the stage of raising claims and objections to the provisional voters list has not reached, the question of the petitioners raising any objection to the said provisional voters did not arise. The decision that would have been taken by the Election Authority to extend the cut of date if any would have bearing on the preparation of the provisional voters list in which the petitioners seek inclusion of voters. The judgment of the court in case of Pandurang Laxman Kadam (supra) is thus clearly distinguishable on the facts of this case and would not assist the case of the respondents.”

8.29 Thus, it is evident that the corresponding stage of the election process in that case being even before the preparation of the provisional voters list was held to be of utmost importance, apart from the fact that the challenge was to non-extension of the cut-off date. As already noted, in the present case the provisional voter list was prepared after following the procedure under the Rules (including Rules 9 to 11). The Petitioners Objection Application has been decided. Thereafter, the final voters list has been prepared. That is not a fact which we are giving importance to since it was after the filing of the Writ Petition. Even if that is disregarded, the election process has clearly commenced in the present case unlike the case of *Shriram Sahakari Dudh Utpadak Sanstha Maryadit & Anr., supra.*

8.30 This is also not a case in which we find any clear and manifest arbitrariness in the Impugned Order so as to warrant an application of the approach taken in *Shriram Sahakari Dudh Utpadak Sanstha Maryadit & Anr., supra.* That was a case with much wider implications affecting a large body of voters who would have become eligible during the extended period for holding an election. It was not a fact specific dispute of whether a person who is said to be a defaulter as on the cut-off date is entitled to vote only because the debt has been repaid on a later date (in a situation where the election has been postponed). We are therefore of the view that this decision is inapplicable to the facts of the present case and of no assistance to the Petitioners.

8.31 Whilst coming to the conclusion that we are not inclined to entertain the Writ

Petition because of the alternative statutory remedy available to the Petitioners under Section 91 of the Act read with Rule 78, we are conscious of the fact that the rule of alternative remedy as a bar to maintaining a writ petition under Article 226 of the Constitution of India is not absolute. It has been described as a rule of self-limitation or discretion. In certain situations, even if there is an alternative remedy, the Courts may entertain a writ petition under Article 226 of the Constitution of India. Some of the well-defined situations in which the existence of an alternative remedy will not usually preclude a writ petition under Article 226 of the Constitution of India being entertained are if it primarily raises a challenge under Part III of the Constitution of India for violation of fundamental rights; it challenges an order which is entirely without jurisdiction; when such alternative remedy is demonstrably inefficacious; or the petition asserts a clear violation of the principles of natural justice. We note this only because according to us the case in the Writ Petition does not fall within any of these categories.

8.32 In addition to the judgments discussed above, all the parties before us have cited and distinguished judgments on the specific aspect of the scope of interference under Article 226 of the Constitution of India at the intermediate stage of the election process. Whilst we have already expressed our opinion on the same based on the principles gathered from a collective reading of these judgments, we will now proceed to examine these judgments.

8.33 In the case of *Someshwar Sahakari*, *supra*, the challenge was to a decision by

the election authority, in that case the Collector, to delete the names of 505 persons from the voters list as they were not growing sugarcane. A petition challenging that decision was decided by a learned Single Judge of this Court. The Court considered various prior judgments in deciding two questions. The first of them was: whether the preparation of the list of voters for elections to the Managing Committee of a specified society is an intermediate stage in the process of election? In answering this question, the Court held that this issue is no longer *res integra* and is concluded by two Division Bench decisions directly on the point that the preparation of the voters list in accordance with the provisions of the Act and the 1971 Rules is just an intermediate stage in the process of election. The second and related question that the Court addressed itself to was: if the answer to the first question is in the affirmative, whether the Court should interfere in a petition under Article 226 of the Constitution of India and hold up the election process or whether it should leave the parties to raise the necessary dispute by way of a substantive election petition as provided for under Section 144T of the Act? This question was answered in the negative by relying upon the said two Division Bench decisions that were relied upon even for answering the first question.

8.34 In paragraph 10, the Court referred to the Division Bench decision in *Ganesh Sahakari Sakhar Karkhana* (“***Ganesh Karkhana***”). The Division Bench in *Ganesh Karkhana* held that that question of persons names being wrongly included in the voters list cannot be raised before the election is held and can be raised thereafter only by means of an election petition and that no writ petition lies under Article 226 of the Constitution of India to challenge an intermediate stage of the election. The Division Bench went on to dismiss the

petition in limine. This the Division Bench in *Ganesh Karkhana* did after analysing the scheme under the Act and Rules as to the preparation of the provisional list of voters and after noticing prior decisions of this Court and the Supreme Court in *N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency*¹⁸. The Division Bench then made the distinction between the scheme of the provisions of the Representation of Peoples Act, 1950 and the Act and the 1971 Rules. It would be relevant to set out a short passage from *Ganesh Karkhana*, which has also been quoted in paragraph 10 of *Someshwar Sahakari, supra*.

“The question whether certain persons were wrongly included in the list of voters is a question which arises in the process of election (or is just a stage in the whole process of election), and, in view of the Division Bench decision of this Court in *Madhukar Ganpatrao v. Sheshrao*, which in turn had relied upon two decisions of the Supreme Court, such a question cannot be raised until the election is held and, thereafter, only by means of an election petition and no writ petition lies to High Court under Art. 226 of the Constitution to challenge an intermediate stage of the election. The present writ petition, which merely seeks to challenge the orders passed by respondent No. 2 at an intermediate stage of the election is, therefore, liable to be dismissed in limine.”

8.35 In paragraph 11 of *Someshwar Sahakari, supra*, the learned Single Judge then referred to another Division Bench decision in *Osmanabad District Central Co-op Bank Ltd.* in Writ Petition Nos. 1823, 1825 and 1907 of 1988 (“*Osmanabad Election Case*”). This was also a case where names of persons were deleted from voters lists. This was challenged. The relevant portion of the judgment and the view of the learned Single Judge on the same in

18 AIR 1952 SC 64

Someshwar Sahakari, are reproduced below:

“11. The second decision on which reliance has been placed by the respondents is also a Division Bench decision of this Court in the case of the election to the Managing Committee of the Osmanabad District Central Co-op. Bank Ltd., viz, the decision of Pendse and Sugla, JJ. in Writ Petition Nos 1823, 1825 and 1907 of 1988 (for short, the 'Osmanabad Bank Election' case) decided on 28th April, 1988. This was a case where the names of the petitioners were deleted from the final list of voters published in respect of the election to the Managing Committee of the Osmanabad District Central Co-op. Bank Ltd. After the petition was filed at the Aurangabad Bench of this Court, certain directions were issued to the Collector to submit the election programme and the programme was announced. The petitioners approached this Court complaining that the Collector was in error in deleting their names from the final list of voters by the order dated 25th March, 1988. An objection was raised by the respondents that the petition would not be maintainable on the ground that the 1960, Act and the 1971 Rules provide for filing of an election petition after the elections are concluded and, therefore, this Court need not exercise its powers and hold up the election process which was set in motion. The relevant portion of the judgment dealing with this preliminary objection raised by the respondents can be reproduced below:--

"The submission is that the Act and the Rules provide for filing of an Election Petition after the elections are concluded and the results are declared and this Court should not exercise powers to disturb the election programme declared by the Collector. It was submitted that once the election programme is put in motion, then it is well settled that the Court should not restrain continuation of the exercise, even assuming that there are some irregularities and illegalities. In our judgment the

submission urged on behalf of the respondents deserve acceptance. It is not in dispute that the election process commences by preparation of provisional list of voters and inviting claims and objections by the Collector to such list. It is undoubtedly true that the final list of voters is to be declared under Rule 7 after consideration of claims and objections. It is also not in dispute that the remedy is available to an aggrieved party to file an election petition to challenge the election of the returned candidate on the ground of illegality committed in conducting the election. It has been repeatedly stressed by the Supreme Court that it is not appropriate for the High Court to interfere with the election process at an intermediate stage i.e. after the commencement of the election process and before the declaration of the results."

The Division Bench in Osmanabad Bank Election case (1989 CTJ 45) (Bom) thereafter, referred to two Supreme Court decisions viz. —

- (i) Lakshmi Charan Sen v. A.K.M. Nassan Uzzaman, reported in AIR 1985 SC 1233; and
- (ii) S. T. Muthusami v. K. Natarajan.

Relying upon the said decisions the learned Judges in Osmanabad Bank Election case upheld the preliminary objection and concluded as under:

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"In view of these decisions, it is obvious that even assuming that the grievance of Dr. Naik is right, it is not permissible for this Court to disturb the election programme by entertaining this petition. In our judgment, the petitioner may seek relief in Election Petition, if so advised."

The Division Bench of Pendse and Sugla, JJ., was, therefore, of the view that even assuming that the grievances of the petitioners were right, the

preliminary objection had to be upheld.”

8.36 In paragraph 19 of *Someshwar Sahakari, supra*, the learned Single Judge expressed agreement in following the decisions of the Division Benches as noted above and proceeded to answer both questions against the petitioner. The Court held it would not be proper for this Court to interfere in a petition under Article 226 of the Constitution of India when the disputes relate to the intermediate stage in the process of election.

8.37 We are in respectful agreement with the views as expressed by the learned Single Judge in *Someshwar Sahakari, supra*, and also with the decisions of the Division Benches in *Ganesh Karkhana* and the *Osmanabad Election Case*. We have no hesitation in following the clearly enunciated principles in the present case. We have already held that the attempt on the part of the Petitioners to distinguish this and other cases on the basis that they dealt with challenges to elections under the erstwhile framework of Chapter XI-A of the Act is without any merit and that the new scheme comprised in Section 91 of the Act (as amended) and the Rules provides a similar and equally efficacious alternative remedy. Therefore, notwithstanding the change in law in 2013, these judgments would continue to be relevant to the question of maintainability of a petition under Article 226 of the Constitution of India at an intermediary stage of the election process.

8.38 In *Shri Sant Sadguru, supra*, the Supreme Court upheld and followed the consistently held view of the Bombay High Court that the preparation of electoral roll is an

intermediate stage of the election process and interference is not warranted under Article 226 of the Constitution of India.

8.39 The Supreme Court, in paragraph 7 analyzed the scheme under Chapter XI-A and the 1971 Rules. After this, the Supreme Court observed, in paragraphs 7 and 12 as follows:

“7. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XI-A of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XI-A and the Rules framed thereunder is an intermediate stage in the process of election for constituting the Managing Committee of a specified society.

.....

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 returned candidate, if aggrieved, by means

of an election petition before the election tribunal.”

8.40 We reiterate that the amendments noted above do not change the applicability of the earlier High Court views to the question of maintainability arising after the amendment by deleting Chapter XI-A. Having closely analysed the amendments we find no merit in the argument that a mere change in law by deletion of Chapter XI-A makes this or the other judgments in applicable or irrelevant.

8.41 The judgment in *Shri Sant Sadguru, supra*, was considered and distinguished by the Supreme Court in *Pundlik, supra*. In paragraph 8 and 9 of this decision the Supreme Court noticed the normal rule of non-interference by the Courts at the interim stage of preparation of voters list. In paragraph 12, 13 and 16 the Court explained that the ratio of *Shri Sant Sadguru* was not being followed because there was a patent illegality in the failure to follow the mandate of Rule 5(2) of the 1971 Rules in a matter that left no discretion to the Collector. In paragraph 17, the Court upheld the submission that the action of the Collector if allowed to stand would render sub-rule (2) of Rule 5 nugatory and otiose. In paragraph 18, the Court referred to a decision in *Ahmednagar Zilla S.D.V. & P. Sangh Ltd., supra*, where electoral rolls were prepared on the basis of bye-laws that were held to be illegal. In the context of such a challenge, the Supreme Court reversed the High Court and distinguished *Shri Sant Sadguru* and held that where the voters list has been prepared on the basis of non-existent rules, it would be illegal, and the Court could not interfere under Article 226 of the Constitution of India.

8.42 The judgments in the case of *Pundlik* and *Ahmednagar Zilla S.D.V. & P. Sangh Ltd., supra*, are a clear indication and guide to when the normal rule of non-interference at an intermediate stage can be varied. That would usually be in cases where a binding provision is ignored such that its existence itself is rendered nugatory; or when a part of the election process is carried out on the basis of non-existent rules. We are not suggesting that this is the entirety of circumstances to justify a departure from the well settled and normal approach of non-interference. However, the nature of the challenge must be analogous to the circumstances that warranted interference in these two judgments. In other words, every alleged illegality or irregularity and minor deviation in the election process cannot justify intervention of this Court at an intermediate stage under Article 226 of the Constitution of India. As noted above, in *Narsing Ganpatrao Nikam, supra*, a learned Single Judge of this Court considered *Ahmednagar Zilla S.D.V. & P. Sangh Ltd.*, but held that on facts the case before him was governed by the ratio in *Shri Sant Sadguru*.

8.43 We also find that the judgment in *Poonam w/o Rajesh Pawar, supra*, is of no assistance to the Petitioners. That was a case where a learned Single Judge of this Court, in paragraph 12, held that the District Judge applied the incorrect provisions of law in relation to voters list of the Legislative Assembly. Because of the fundamental nature of the error made by the District Judge, this Court treated the matter as an exceptional case where there was need to prevent a mandatory provision of law being rendered nugatory, as noted in paragraph 22. It was in this context that this Court interfered under Article 226 of the Constitution of India, by following, inter alia, the line of judgments including *Pundlik, supra*. Similarly, the

judgment in *Chandrashekhar s/o Shivram Mudkanna, supra*, also does not assist the Petitioners. In paragraph 12, a learned Single Judge of this Court explained the reason for interfering under Article 226 of the Constitution. This was because the Court took a view as a matter of law that after a poll is countermanded on the death of a candidate, the process of election has to be commenced from the beginning in all respects from the date of declaring a programme of various stages of election as laid down in the applicable rules. This again is an instance where mandatory provisions of law would be rendered nugatory if correct and timely intervention does not occur. Neither of these two decisions bear any resemblance to the nature of challenge in the present Writ Petition.

8.44 The Supreme Court in *Shaji Joseph, supra*, at paragraph 15, has again referred to the judgment in *Shri Sant Sadguru* as expressing the settled position of law of non-interference after the process of election has commenced. The rationale for this, as expressed by the Supreme Court is that:

“... Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.”

8.45 In *Bapu Maruti Rakshe*¹⁹, the Division Bench of this Court was considering a challenge to the election process primarily on the ground that Rule 56(B) of the Maharashtra

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Co-operative Societies Rules, 1961, requiring 15 days publication of the provisional voters list, had not been complied with. In paragraph 10, this Court referred to decisions after *Shri Sant Sadguru* in *Ahmednagar Zilla S.D.V. & P. Sangh Ltd.* that explained the decision in *Shri Sant Sadguru*. Having regard to both sets of views as noted above, the Court in paragraphs 12 and 13, observed as follows:

“12 In our opinion, the petitioners therefore have not made out a case for the Court to interfere in the exercise of extra-ordinary jurisdiction. We may also note that the Supreme Court in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra) had distinguished Shri Sant Sadguru (supra), by holding that the Court would interfere if the voters list was prepared on the basis of non-existent rules and not in a case where irregularities have been committed. In the instant case the highest therefore, if there was a failure to publish the voters list, it would be an irregularity.

13. For all the aforesaid reasons, in our opinion, this would not be a fit case for us to exercise our extra-ordinary jurisdiction.....”

8.46 This judgment too supports the conclusion that we have reached that the nature of challenge in the present case clearly does not fall within the narrow ambit of the exception that would permit for interference with the Impugned Order—being a part of the intermediate stage of preparing the provisional voters list—by us under Article 226 of the Constitution of India.

8.47 Having regard to the above judgments we reiterate that the challenge in the present case does not fall within the limited scope of interference in the election process at the intermediate stage under Article 226 of the Constitution of India. Respondent No. 1, in

the present case, has acted, on the face of it, in exercise of power conferred upon it under the Act and Rules to adjudicate upon the Objection Application. In exercise of that power and discretion under Rule 11 of the Rules, a decision has been taken that the relevant date for determining whether the Petitioner No. 3 was a defaulter would be the cut-off date and not a later date, even though the election has been postponed. Such kinds of decisions at an intermediate stage, which arise more from an application of provisions to individual cases in exercise of express powers to draw up a provisional voters list by no means fall within the category of cases in which patently illegal processes have been followed as mentioned above. We are not at this stage opining on the merits of a challenge on this ground that may be raised after the elections have concluded under Section 91 of the Act read with the Rules. We are, however, of the view that this kind of challenge at an intermediate stage of the election process would not justify exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India at this stage.

8.48 For all the above reasons we would answer the issue, as framed by us in paragraph 6(i), in the affirmative.

CONCLUSION

9. We accordingly uphold the preliminary objection as raised by the Respondents and conclude that we are not inclined to entertain the present Writ Petitions challenging the Impugned Order, being a part of the intermediate stage of the election process. The Petitioners are at liberty to file an election petition under Section 91 read with Rule 78 after

the election result is declared. That petition, if filed, will be decided on its own merits uninfluenced by any observation that has been made in this Order. There shall, however, be no order as to costs.

(MILIND N. JADHAV, J.)

(S.J. KATHAWALLA, J.)