

respondent nos.3 to 10, 115, 116 and 117 in the present petition was to the effect that the petitioners are not qualified to be the members of the co-operative society in as much as they were elected on the basis of an illegal voters list, which contained names of respondent nos.2 to 119 who were not eligible to be the members as they were operating out side the jurisdiction of the co-operative society.

4. The learned trial judge after going through the record thought it appropriate that as the list of voters was not prepared as per rules and there was no opportunity to raise objections to such voters list, the voters/respondent nos.21 to 119 were not eligible to vote and allowed the petition by setting aside the election of managing committee members of opponent society in terms of the following order:-

ORDER

1. Election petition is allowed.
2. It is hereby declared that the election of opponent no.4 to 16 for the period of 2017-18 and 2022-23 is illegal and void.
3. The election of managing committee members of opponent society held for period of 2017-18 to 2022-23 is hereby set aside and State Co-operative Election Authority is directed to take re-election in opponent no.3 society in accordance with the Maharashtra Co-operative Societies Election to committees Rules 2014.
4. Opponent no.3 society to furnish the copy of the judgment to the State Co-operative Election Authority.
5. Both parties are directed to bear their own cost.
6. Award be drawn up accordingly.
7. Judgment and order pronounced in open court.”

5. Being aggrieved by the said order, the petitioners approached the Maharashtra State Co-operative Appellate Court at Pune. The learned member of the Appellate Court by the impugned order, dismissed the petitioners' appeal. The observations as made in paragraph 35 of the impugned order are required to be noted which read thus:-

“35. In the present case admittedly the provisional voters list as well as final voters list have been prepared. However according to the disputants the act is not done as per the procedure prescribed. Therefore once particular act is allegedly performed, as per Sec. 114(e) of Evidence Act official act presumed to have been regularly performed. Therefore the opponent No.1 and 2 have allegedly not performed duties in regular course of business needs to be proved by the disputants which is not done. Therefore the inference drawn by the trial Court that the opponent failed to lead evidence resulting into acceptance of case of disputants in respect of non publication of voters list is not correct. Therefore objection of the disputants that the provisional as well as final voters list were not duly published and therefore the disputants did not get opportunity to record objection in respect of inclusion of names of opponent No.21 to 119 in the voters list is not acceptable.”

6. If such observations made in paragraph 35 by the appellate Court certainly the findings as recorded by the learned trial court that respondent nos.21 to 119 were not qualified to vote stands upset. In fact such observations as made by the appellate court finds no fault in the voters list. Despite such findings, the petitioners' appeal has been dismissed.

7. In the aforesaid circumstances, a case for admission of this petition is certainly made out. Mr. Patwardhan has pointed out that there was initially

an ad-interim order which was passed in favour of the petitioners on 31 August, 2021 which was subsequently continued by further orders and lastly by an order dated 5 October, 2021, however, which was not continued as per the observations made by this Court in the order dated 13 December, 2021. It needs to be observed that Mr. Patwardhan has pointed out that from 29 October, 2021 when the ad-interim protection ceased to exist being not continued by a further order till 13 December, 2021, during such period no material change in the position has taken place and the elections were not declared.

8. In the above circumstances, in my opinion, the petitioners would be entitled to an interim relief in terms of prayer clause (b) which shall operate till the final disposal of this petition.

9. In view of the above order, interim application would not survive. It is accordingly disposed of.

10. List this petition for final hearing in the first week of February, 2022.

(G. S. KULKARNI, J.)

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