

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

**WRIT PETITION NO.3052 OF 2021**

**Kirti w/o Mahendra Deshmukh and another**

**...Versus...**

**The District Co-operative Election Officer and Divisional Joint Registrar,  
Co-operative Societies, Amravati and others**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

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Mr. J. B. Kasat, Advocate for Petitioners.  
Miss. T. Khan, AGP for respondent no.1  
Mr. P. S. Patil., Advocate for respondent nos.2 and 3.  
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**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 06/09/2021**

Heard Mr Kasat, learned counsel for the petitioners, who challenges the order dated 9.8.2021 passed by the respondent no.1, whereby the objection to the inclusion of the name of the respondent no.3 in the voters list for the Amravati District Central Co-operative Bank, as raised by the present petitioners has been rejected.

2. It is the case of the petitioners that in pursuance to the notice issued by the respondent no.1 at Annexure – C publishing the programme for preparation of voters list for

the elections to the Amraviti District Central Co-operative Bank, which was in pursuance to the directions of the Hon'ble Apex Court as contained in SLP No.6/21 dated 18.2.2021, directions were issued by the respondent no.1 to the member societies to hold meetings of the general body or Managing Committee within the period 26.4.2021 to 25.5.2021, by notification dated 24.4.2021, so as to nominate an authorized representative to be included in the voters list for the aforesaid election. This period due to the Covid – 2019 pandemic, came to be extended from 24.6.2021 to 8.7.2021 by the notification dated 23.6.2021. It is the contention of the petitioners that the meeting of the Managing Committee of the petitioner no.2 – Society, came to be held on 8.7.2021, in which by resolution, the name of the petitioner no.1 came to be nominated to be included in the voters list. On the same day, this copy of the resolution with the covering letter was sent to the respondent no.1 for including the name of the petitioner no.1 in the provisional voters list. When the provisional voters list was published on 20.7.2021, the petitioners found the name of the respondent

no.3 included therein. Upon inquiries, they found that the name of the respondent no.3 was including in the provisional voters list on the basis of the resolution dated 11.10.2020 passed by the general body of the petitioner 2 – Society, in its Annual General Meeting held on 11.10.2020 by virtue of resolution No.8. An objection was therefore taken contending that since the nomination of the respondent no.2, was not by way of resolution taken in a meeting held during the period as provided in the notifications dated 24.4.2021 and 23.6.2021, as indicated above, the resolution in favour of the respondent no.3 was claimed to be false and fabricated resolution, as according to the petitioners no such meeting had taken place.

3. It was also contended that there was no reason or cause to have taken a resolution on 11.10.2020, as the elections to the Amravati District Central Co-operative Bank were directed to be held by the Hon'ble Apex Court by its order dated 18.2.2021. It was therefore, submitted that the resolution dated 11.10.2020, being a non existent or bogus

resolution, the same could not have been relied upon by the respondent no.1 to include the name of respondent no.3, in the provisional voters list, which was requested to be corrected by removing the name of the respondent no.3 and including the name of petitioner no.1 in her place.

4. Mr. Kasat, learned counsel for the petitioners further submits that the impugned order dated 9.8.2021 has been passed upon an incorrect premise as the respondent no.1, was not called upon to decide the validity of the meetings in which, the resolutions claimed by the petitioner no.1 and the respondent no.3, were passed but the case was restricted only to the inclusion of the name of the petitioner no.1 by deletion that of the respondent no.3, on account of the resolution not having been passed within the time frame as contemplated by the notifications dated 24.4.2021 and 23.6.2021. He, therefore, submits that the impugned order needs to be quashed and set aside.

5. Learned counsel relies upon ***Election***

*Commission of India Vs. Ashok Kumar and others, (2000) 8 SCC 216* and specifically on the principles as enunciated in para 32 (2) and (4) in support of its contention.

6. Mr. Patil, learned counsel for the respondent nos.2 and 3, opposing the submissions, contends that in law a resolution nominating a person to be included in the voters list of the Amravati District Central Co-operative Bank has to be in consonance of the requirement of Rule 10(2) of the *Maharashtra Co-operative Societies (Election to Committee) Rules, 2014* [herein referred to as the “MCS (E & C) Rules, 2014”]], whereby the name of such a representative, has to be called by the respondent no.1, 150 days prior to the expiry of term of office of the Managing Committee. He also contends that the Managing Committee for the petitioner no.2 was elected in November 2015, the term of which is for a period five years, which stood expired in November 2020. In this context in consonance of Rule 10(2), the petitioner no.2 – Society in its Annual General Meeting held on 11.10.2020 before expiry of its term in anticipation of the

above elections being held, had nominated the name of the respondent no.3, to be included in the voters list for the election to the Amravati District Central Co-operative Bank. He also submits that any resolution passed by the general body of the petitioner no.2, cannot be side stepped or nullified by the Managing Committee and therefore, the resolution as passed by the general body in the Annual General Meeting dated 11.10.2020 shall always prevail. He submits that the petitioners cannot questioned the legality and validity of the Annual General Meeting held on 11.10.2020 and the resolution as passed therein before the respondent no.1 and there is a separate procedure for the same altogether.

7. He further submits that as per the bye-laws of the Society, copy of which has been placed on record, a person, who was in arrears of dues of the Society was ineligible to be nominated for which reliance was placed on bye-law No. 44 (9) of the petitioner no.2 – Society, which bye-laws are not disputed by Mr Kasat, learned counsel for

the petitioners.

8. Based upon these bye-laws Mr. Patil, learned counsel for the respondent nos.2 and 3 submits that the petitioner no.1, was in arrears of the Society to the tune of Rs. 45,000/- in respect of the loan availed by her on 12.2.2020 and thus, even otherwise, was ineligible to have been nominated. He therefore, submits, that even on the factual position also the petitioner no.1, was clearly ineligible.

9. Insofar as the election process is concerned, Mr. Patil, learned counsel for the respondent nos. 2 and 3 relies upon in the judgment *Pandurang Laxman Kadam and others Vs. State of Maharashtra and others*, (2016) 6 BOM CR 75, to contend that once the election process is set in motion, the Court under Article 226 would not interfere. He therefore, submits that the same dictum be followed.

10. Considering the rival contentions it is apparent that there is dispute regarding the nomination of the

respondent no.3, in respect of the inclusion of her name in the voters list for the Amravati District Central Co-operative Bank, which has been challenged by petitioners contending that it is the petitioner no.1, who is entitled to be nominated and not respondent no.3. The basic crux of the challenge lies in the authority of the nomination, inasmuch as the respondent no.3 claims it to be so done in the meeting of the general body of the Society dated 11.10.2020, whereas the petitioner no.1 claims her to be nominated in the meeting of the Managing Committee the petitioner no.2 – Society on 8.7.2021. Therefore, the validity of the nomination, in turn would clearly depend upon the validity of the meeting in which, it has been so resolved. The office of the respondent no.1 is clearly not entitled to determine such a dispute as has been rightly held by the respondent no.1, in the impugned order dated 9.8.2021.

11. It is further material to note that in the present petition, the petitioner no.2 – Society is represented by its Secretary, whereas, the respondent no.2 is the President of

the petitioner no.2 – Society which clearly indicates that there is a dispute going on between the President and Secretary of the Society and there are two factions, in which case considering that the actions and resolutions as passed by the General Body of the Society would always prevail, it is doubtful as to whether the Managing Committee of the petitioner no. 2 – Society could have passed the resolution nominating the petitioner no.1. Even otherwise, as already stated above, such dispute would not fall within the powers of the respondent no.1, and would have to be decided by an appropriate Forum, where it would lie.

12. It is further material to note, that merely because the notifications dated 24.4.2021 and 23.6.2021 indicate a particular period within which the meeting has to be held and the nomination to be sent to be included in the voters list, that by itself, would not preclude a particular Society to follow the dictum as contained in Rule 10(2) of the MCS (E & C) Rules, 2014, considering the fact, that its term is coming to an end, even though no such nomination, has been

called upon by the respondent no.1 in this regard.

13. In ***Ashok Kumar*** (supra) what has been permitted to be interfered in the matter of election is an action which sub-serves the progress of election and facilitates the completion of the election. In the instant case, in view what has been held that the question of the determination of the nomination of the petitioner no.1 or for that matter of the respondent no.3, depends upon the validity of the meeting, in which it was held which is beyond the jurisdiction of the respondent no.1, any interference as sought for by the petitioners, would clearly not fall within the parameters laid down in this regard by ***Ashok Kumar*** (supra). The process of election having already been set in motion and today being the last day of submitting the nomination form, in light of the dictum as held by the Hon'ble Apex Court, in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others***, 2002 (1) Mh. L. J. 659 that preparation of the electoral roll is an intermediate

stage in the process of election and once the same has been set in motion, the High Court under Article 226 of the Constitution would 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 which has been followed in ***Pandurang Laxman Kadam*** (supra ), would hold the field, in view of which, I do not see any reason to interfere in the impugned order. The Writ Petition is therefore dismissed. No costs.

**JUDGE**

Sarkate