

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.992 OF 2022

GOVIND S/O BABURAO JADHAV AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Mr. V. S Panpatte
AGP for Respondent No.1-State : Ms. Vaishali Patil Jadhav
Advocate for Respondent No.2 : Mr. S. K. Kadam

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-01-2022.

ORDER :

1. The controversy relates to elections to the Managing Committee of 'Seva Sahakari Sanstha M. Hindola, Taluka Loha District Nanded'. Respondent No.2 had published the election program of the election to the Managing Committee of above said Seva Sahakari Sanstha (Hereinafter referred to as the "society"). As per that schedule, the voters list was to be published on 06-12-2021, objections were invited between 06-12-2021 to 15-12-2021, hearing on those objections was contemplated between 17-12-2021 to 20-12-2021, decision on those objections were to be given on 24-12-2021, and on 29-12-2021 the final voters list was to be published. Copy of the election program has been annexed with the petition as Exhibit 'A'. Respondent No.4 is the

society of which the elections were to be held and the respondents No.2 and 3 are the employees/officers of respondent No.1-State. The petitioners raised objection on 09-12-2021 before respondent No.2 contending that they are the members of the society, however, their names, except petitioner No.4, have not been included in the provisional voters' list due to political pressure. A copy of the final voters' list prepared for the election of 2010 to 2015 and voters list of 2019 have been submitted by the petitioners. Petitioners submitted that the final voters list published by respondent No.2 is not legal and valid. Though the petitioners have lodged objections on 09-12-2021 with documentary proof, respondent No.2, without granting sufficient opportunity of being heard and without considering the evidence, has published the final voters list. Therefore, the petitioners are before this Court praying for the exercise of Constitutional powers of this Court under Article 226 and 227 of the Constitution of India.

2. Heard learned Advocate Mr. V. S. Panpatte for petitioners, learned AGP Ms. Vaishali Patil Jadhav for respondent No.1-State, and learned Advocate Mr. S. K. Kadam for respondent No.2.

3. It has been vehemently submitted on behalf of the petitioners

that when voters list was published in the year 2010 in respect of the elections for the period 2010 to 2015, it included the names of the petitioners as valid voters. Annexure Exhibit 'A' has been submitted to support the said statement. Thereafter, the secretary of respondent No.4 had issued certificate on 30-06-2021 stating that the petitioners No.1, 2, 3, 4 and 8 are the members and had taken loan from the society. Now when the voters list is prepared, the names of the petitioners, except petitioner No.4, are not included in that provisional voters list, and therefore, the petitioners had lodged prompt objection on 09-12-2021. They have contended that they are the members of respondent No.4 society. It was also pointed out that the provisional voters list include names of those persons also who are not the members, and therefore, objections were also raised on 13-12-2021. However, without paying any attention to those representations, final voters list has been published on 29-12-2021. That list is not legal and valid. Respondent No.2 under some political pressure has deleted the names of various valid members and included names of those members who are not having land within the jurisdiction of respondent No.4 society. In fact, the petitioners are the persons who had received compensation on account of loss caused due to heavy rain and flood situation from the

government as they are resident of that village. There was no reason for not including their names in the list. The final voters list is illegal, and therefore, by issuing a writ of mandamus or other such writ, direction needs to be given to respondents No.2 to 4 to include the name of the petitioners in the final voters list and also to correct the name of petitioner No.9, and also directions need to be given to delete the names of persons appearing in the final list of voters which is illegal at the serial numbers 15, 26, 29, 38, 39, 60, 65, 76, 80, 95 ,100, 117, 118, 146 and 161.

4. Learned Advocate Mr. Panpatte representing petitioners relied on the decision in *Kondiba s/o Babarao Manorkar vs. The State of Maharashtra and others, (Writ Petition No.7195 of 2015)* by the *Division Bench of this Court, decided on 11-08-2015*, wherein after considering that about 90 members were kept away from the process of election, this Court had interfered and issued the writ.

5. Per contra, the learned Advocate for respondent No.2 and learned AGP for respondent No.1-State strongly opposed the petition as well as took preliminary objection about the maintainability of the writ petition. It was submitted that when there is specific provision in Maharashtra Co-operative Societies Act giving a procedure, then

this Court cannot exercise the powers under Section 226 and 227 of the Constitution of India. The petition has been filed only to stall the election process. They relied on the decision in Writ Petition No.12006 of 2021 with companion matters, decided by this Court on 05-11-2021. Though, in that case the elections were in respect of a co-operative bank, the act which could be applicable for those elections was also under the Maharashtra Co-operative Societies Act. Relying upon the Full Bench decision of this Court at the Principal Seat in *Karmaveer Tulshiram Autade and Ors. Vs. State Election Commission, Mumbai and Ors.*, reported in 2021 (2) Mh.L.J. 349, wherein it was observed that :-

“Though the said case before the Full Bench was in respect of Village Panchayat Act, yet provisions in respect of filing Election Petition are *pari materia* with the provisions contained in Maharashtra Co-operative Societies Act, 1960, by which a right or liability is created by a Statute which provides a special remedy for enforcing it.”

The petitioners are at liberty to file Election Petition or take appropriate step as stated in the Maharashtra Co-Operative Societies Act.

6. Learned Advocate for respondent No.2 relied on the decision in Division Bench decision in *Dattatray Genba Lole and others vs. The Divisional Joint Registrar Co-operative Societies, Pune Division (Writ Petition No.5878 of 2021)*, decided on 26-11-2021, wherein it has been held that :-

“The disputed questions of fact cannot be gone into and the impugned order being part of intermediate stage of election process, the petitioners were given liberty to file an Election Petition under Section 91 read with Rule 78 after the election were declared.”

7. Further, in *Machindra Dada More vs. The State of Maharashtra Through its Secretary and others*, (Writ Petition No.22 of 2022) decided on 04-01-2022, this Court refused to entertain the writ petition of the petitioners in respect of concerned members whose names were sought to be deleted by him from the provisional voters list.

8. At the outset, this Court in Writ Petition No.12006 of 2021 has given a detailed order and had take a note of the earlier decisions by the Hon'ble Apex Court as well as the Full Bench decision of this Court in *Karmaveer Autade (Supra)*. In that case also the objection that was raised was in respect of voters list and nomination papers.

Further, it is to be noted from the program that the objections were invited between 06-12-2021 to 15-12-2021 and the hearing was contemplated between 17-12-2021 to 20-12-2021. Now if the petitioners were not called for hearing between that period, they ought to have come to this Court immediately before the final voters list would have been published. For what reasons the petitioners waited for final list to be published, has not been stated by the petitioners. Therefore, when the program has ended and now after a delay the petitioners are approaching this Court, further if at all the petitioners have right, they can exercise the same as per the provisions of the Maharashtra Co-operative Societies Act.

9. As aforesaid, in view of *Dattatray Genba Lole (Supra)* as well as *Machindra Dada More (Supra)*, no case is made out for exercise of the powers under Article 226 and 227 of the Constitution of India, and therefore, by keeping all the contentions of the petitioners open, the writ petition stands disposed of.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-