

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO.2784 OF 2022

SAHAKAR MAHARSHI KASHTI VIVIDH KARYAKARI SEVA SAHAKARI
SANSTHA KASHTI, THROUGH ITS SECRETARY AND OTHERS

VERSUS

THE DISTRICT CO-OPERATIVE ELECTION OFFICER / DISTRICT
DEPUTY REGISTRAR AND OTHERS

...
Mr. R. N. Dhorde, Senior Counsel, i/b Mr. Pravin S. Dighe, Advocate for
Petitioners.

Mr. S. K. Kadam, Advocate for Respondent Nos.1 & 2.

Mr. Mahesh S. Deshmukh, Advocate for Respondent No.3.

...

AND

WRIT PETITION NO.2785 OF 2022

SAHAKAR MAHARSHI KASHTI VIVIDH KARYAKARI SEVA SAHAKARI
SANSTHA KASHTI, THROUGH ITS SECRETARY AND OTHERS

VERSUS

THE DISTRICT CO-OPERATIVE ELECTION OFFICER / DISTRICT
DEPUTY REGISTRAR AND OTHERS

...
Mr. R. N. Dhorde, Senior Counsel, i/b Mr. Pravin S. Dighe, Advocate for
Petitioners.

Mr. V. H. Dighe, Advocate for Respondent Nos.1 & 2.

Mr. Mahesh S. Deshmukh, Advocate for Respondent No.3.

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CORAM : **SHRIKANT D. KULKARNI, J.**

RESERVED ON : 26th February, 2022.

PRONOUNCED ON : 28th February, 2022.

ORDER:

. The petitioners are seeking following reliefs by invoking

writ jurisdiction of this Court under Article 227 of the Constitution of India:

- “B) Quash and set aside the impugned order dated 21.0.2022 passed by Respondent No.1 – District Co-operative Election officer thereby accepting the objection of the Respondent Nos.3 to 48 (in Writ Petition No.2784 of 2022) and Respondent Nos.3 to 29 (in Writ Petition No.2785 of 2022) and including their names in the final voters list and for that purpose issue necessary orders;
- C) Pending the hearing and final disposal of this Writ Petition grant stay to the impugned order dated 21.02.2022 passed by the Respondent No.1 – District Co-operative Election officer thereby accepting the objection of the Respondent Nos.3 to 48 (in Writ Petition No.2784 of 2022) and Respondent Nos.3 to 29 (in Writ Petition No.2785 of 2022) and including their names in the final voters list and for that purpose issue necessary orders;
- D) Pending the hearing and final disposal of this Writ

Petition grant an injunction restraining the respondent nos.3 to 48 (in Writ Petition No.2784 of 2022) and Respondent nos.3 to 29 (in Writ Petition No.2785 of 2022) from participating in any further election process of the petitioner no.1 – Society and for that purpose issue necessary orders;

E) Pending the hearing and final disposal of this Writ Petition grant stay to the further process of election including the finalization of the voters list and further stages of the elections of the petitioner no.1 – society and for that purpose issue necessary orders;”

2 Mr. S. K. Kadam, learned counsel submits that he has instructions to appear on behalf of respondent Nos.1 and 2 (Co-operative Election Authority) in Writ Petition No.2784 of 2022 and Mr.V.H. Dighe, learned counsel submits that he has also instructions to appear on behalf of respondent Nos.1 and 2 (Co-operative Election Authority) in Writ Petition No.2785 of 2022.

3 Mr. Mahesh S. Deshmukh, learned counsel submits that he has instructions to appear on behalf of respondent No.3 in both the

writ petitions. He seeks leave to place on record the affidavit-in-reply filed on behalf of respondent No.3. Leave granted. The affidavit-in-reply filed on behalf of respondent No.3 is taken on record. A copy of the same is provided to the petitioners.

4 Heard Mr. R. N. Dhorde, learned senior counsel instructed by Advocate Mr. Pravin S. Dighe, for petitioners in both the writ petitions, Mr. Mahesh S. Deshmukh, learned counsel for respondent No.3, Mr. S. K. Kadam, learned counsel and Mr. V. H. Dighe, learned counsel appearing for respondent Nos.1 and 2 in respective petitions.

5 The dispute relates to election of Managing Committee of petitioner / Sahakar Maharshi Kashti Vividh Karyakari Seva Sahakari Sanstha Kashti, Taluka Shrigonda, District Ahmednagar.

**SUBMISSIONS OF MR. R. N. DHORDE, LEARNED SENIOR
COUNSEL ON BEHALF OF PETITIONERS IN BOTH PETITIONS**

6 Mr. R. N. Dhorde, learned senior counsel for the petitioners submitted that Respondent Nos.3 to 48 (in Writ Petition No.2784 of 2022) and Respondent Nos.3 to 29 (in Writ Petition No.2785 of 2022) had moved applications to petitioner No.1 – Society for membership. Their applications were not accepted. The above said two groups of respondents approached the Assistant Registrar

Co-operative Societies. The Assistant Registrar had directed to petitioner No.1 – Society to take decision thereon. The Managing Committee of petitioner – Society considered the applications of above said two groups of respondents and was pleased to reject those applications. Aggrieved thereby, the above said two groups of respondents preferred Appeal No.1 of 2016 and Appeal No.2 of 2016 before the Assistant Registrar, Co-operative Societies, Shrigonda. The Assistant Registrar, Co-operative Societies, Shrigonda was pleased to dismiss both the appeals under order dated 10th November, 2016 and 5th December, 2016.

7 Aggrieved thereby, the above said two groups of respondents filed Revision Application No.25 of 2017 and Revision Application No.37 of 2017 before the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik. Both the revision applications came to be rejected and order passed by the Assistant Registrar came to be confirmed.

8 Feeling aggrieved by said order, respondent Nos.3 to 48 (in Writ Petition No.2784 of 2022) preferred Writ Petition No.3448 of 2019 and respondent Nos.3 to 29 (in Writ Petition No.2785 of 2022) preferred Writ Petition No.3470 of 2019 before this Court. He submitted that on 7th August, 2020 the Managing Committee in its

meeting passed resolution vide Resolution No.5/4 and took decision to confer membership upon the above said two groups of respondents. On that basis, Writ Petition Nos.3448 and 3470 of 2019 came to be disposed of under order dated 17th December, 2020.

9 Mr. Dhorde, learned senior counsel submitted that respondent No.1 – District Co-operative Election Officer published the program on 2nd February, 2022 for finalization of voters list of petitioner – Society by publishing the provisional voters list and called objections. The above said two groups of respondents submitted their objections with respondent No.1 – Authority since their names were not included in the provisional voters list. The petitioner No.1 – Society filed its in detail reply and contended that the above said two groups of respondents are not eligible to stand in the provisional voters list since they have not completed two years statutory period from the date of conferring membership. He submitted that respondent No.1 – Authority has allowed the objections and directed the petitioner – Society to include the names of above said two groups of respondents in the final voters list.

10 Mr. Dhorde, learned senior counsel vehemently submitted that respondent No.1 – Authority cannot sit over the decision of the Divisional Joint Registrar, Cooperative Societies, Nashik Division,

Nashik and pass contrary order. He submitted that the order passed by the respondent No.1 – Election Authority is bad in law. The petitioners have challenged the said impugned order passed by respondent No.1 – Authority by way of these two writ petitions. He submitted that the impugned decision is perverse and contrary to the provisions of Section 27(3A) of the Maharashtra Co-operative Societies, Act 1960 (hereinafter referred to as the “Act” for the sake of convenience). Mr. Dhorde, learned senior counsel invited my attention to Section 27(3A) of the Act and submitted that the respondents are not eligible for voting in the affairs of the Society for a period of two years from the date of their enrollment as a member of such Society. The Authority has completely overlooked that legal position and passed impugned order, which is *ex-facie* illegal and liable to be quashed and set aside.

11 Mr. Dhorde, learned senior counsel also invited my attention to the by-laws of the petitioner No.1 – Society, more particularly by-laws No.6, which relates to membership of the Society. He submitted that the above said two groups of respondents did not fulfill the eligibility criteria to enroll themselves in the final voters list. They have not completed the period of two years from the date of their membership. He submitted that as per the program declared by respondent No.1 – authority, 28th February, 2022 is the date for

publication of final voters list, which is scheduled on Monday. There was no option before the petitioners except to invoke the writ jurisdiction in the above scenario.

12 Mr. Dhorde, learned senior counsel submitted that the writ petitions are maintainable though efficacious alternate remedy is available in the Act and Rules of 1961. The Division Bench of this Court in case of ***Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar, Cooperative Societies, Pune and others*** (Writ Petition No.5878 of 2021, dated 26th November, 2021) though held that in view of availability of alternate efficacious remedy under Section 91 of the Maharashtra Co-operative Societies, Act 1960 read with Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, the petitions are not maintainable, Mr. Dhorde, learned senior counsel invited my attention to the old decision of the Division Bench of this Court in the case of ***Madhukar Ganpatrao Somvanshi Vs. Sheshrao Narayanrao Biradar***, reported in, ***1971 Mh.L.J. 961***. By placing reliance on this old decision of the Division Bench of this Court, Mr. Dhorde, learned senior counsel referred the recent judgment of the Division Bench of this Court in the case of ***Dattatray Genaba Lole and others*** (supra).

13 Mr. Dhorde, learned senior counsel submitted that while deciding the petition filed by *Dattatray Genaba Lole and others*, the Division Bench of this Court has neither considered the earlier Division Bench judgment of this Court in the case of ***Madhukar Ganpatrao Somvanshi*** (supra) nor referred the same. Therefore, Mr.Dhorde, learned senior counsel vehemently submitted that the decision of the Division Bench of this Court in the case of ***Madhukar Ganpatrao Somvanshi*** (supra) still holds the field. He submitted that in view of the decision of the Division Bench of this Court in the case of ***Madhukar Ganpatrao Somvanshi*** (supra), the High Court can entertain the writ petition in respect of election dispute when *ex-facie* the Election Authority has committed patent legal error. By placing reliance in the case of ***Madhukar Ganpatrao Somvanshi*** (supra), he submitted that instant petition under Article 227 of the Constitution of India is maintainable in the above scenario.

14 Mr. Dhorde, learned senior counsel also invited my attention to the citation in the case of ***Pandurang Hindurao Patil Vs. State of Maharashtra and others***, reported in, ***1983 Mh.L.J. 1081***, wherein it is held that the writ petition under Article 226 of the Constitution challenging an order of Returning Officer rejecting or accepting a nomination paper cannot be rejected on the ground that such a petition does not lie. Mr. Dhorde, learned senior counsel also

placed reliance on the decision of the Division Bench of this Court in the case of ***Shriram Sahakari Dudh Utpadak Sanstha Maryadit and another Vs. State of Maharashtra through the Secretary and others***, reported in, ***2021 SCC OnLine Bom 1091***, on the point of maintainability of the petition.

15 Mr. Dhorde, learned senior counsel also referred the citation in the case of ***Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane***, reported in, ***AIR 1990 Supreme Court 261***, wherein it is held by the Honourable Supreme Court that the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority.

16 Mr. Dhorde, learned senior counsel also placed his reliance on the following citations in support of his argument:

- a) ***Kabul Singh Vs. Kundan Singh and others***, reported in, ***1969 (2) Supreme Court Cases 452***;
- b) ***Union of India Vs. Rajendra N Shah & Anr***, (Civil Appeal Nos.9108-9109 of 2014) decided by the Honourable Supreme Court on 20th July, 2021 ;and

- c) *Punjab National Bank Vs. Union of India & Ors*,
reported in, *2022 LiveLaw (SC) 208*.

17 Mr. R. N. Dhorde, learned senior counsel urged to allow
both the petitions by taking help of above stock of citations.

SUBMISSIONS OF MR. S. K KADAM AND MR V. H. DIGHE,
LEARNED COUNSEL APPEARING FOR RESPONDENT
NOS.1 AND 2 IN RESPECTIVE PETITIONS

18 According to Mr. S. K. Kadam and Mr. V. H. Dighe, learned
counsel for respondent Nos.1 and 2 / Election Authority, the impugned
order passed by the District Co-operative Election Authority is not bad
in law. They submitted that the authority has taken its decision within
four corners of law having regard to the facts of the case. There is no
perversity in the impugned decision. They further submitted that
efficacious alternate remedy provided under the provisions of the
Maharashtra Co-operative Societies, Act 1960 and Rules, 1961, is
available to the petitioners. The petitioners can very well avail that
remedy. The petitions cannot be entertained when the process of
election of Managing Committee of petitioner No.1 – Society is in
progress and final voters list is to be published on 28th February, 2022.

19 It is submitted that in view of recent decision of this Court

in the case of ***Dattatray Genaba Lole and others*** (supra), the writ petitions cannot be entertained and liable to be dismissed. They further pointed out that it is the consistent view of this Court, Bench at Aurangabad, after the decision in the case of ***Dattatray Genaba Lole and others*** (supra) not to entertain election dispute by way of writ petition. They submitted that both the petitions are liable to be dismissed *in limine*.

SUBMISSIONS OF MR. MAHESH S. DESHMUKH,
LEARNED COUNSEL FOR RESPONDENT NO.3

20 Mr. Mahesh S. Deshmukh, learned counsel for respondent No.3 argued on similar lines advanced by Mr. S. K. Kadam and Mr.V.H.Dighe, learned counsel appearing for the Election Authority. Mr. Deshmukh, also invited my attention to the provisions of Section 91 of the Act and Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. He vehemently submitted that efficacious alternate remedy is available to the petitioners. The writ petitions cannot be entertained when efficacious alternate legal remedy is given under the Statute and Rules. The scheme of the Act needs to be followed in a letter and spirit and not to give go-bye to a particular provision and rule.

21 Mr. Deshmukh, learned counsel also invited my attention to the decision of this Court in the case of ***Dattatray Genaba Lole and others*** (supra). He took me through the said decision thoroughly. He pointed out that the Division Bench of this Court has considered number of citations and after making in detail analysis arrived at conclusion that when alternate and efficacious remedy is available under the Act and Rules, the petition is not maintainable relating to election dispute.

22 Mr. Deshmukh, learned counsel for respondent No.3 invited my attention to various orders passed by this Court, Bench at Aurangabad, in respect of election dispute arising out of Co-operative Society. He submitted that after the decision in the case of ***Dattatray Genaba Lole and others*** (supra) this Court has not entertained any petition challenging the election dispute. Mr. Deshmukh, learned counsel for respondent No.3 also invited my attention to the reply filed on behalf of respondent No.3 and argued on merits as to how respondent No.3 is eligible to confer the membership of the petitioner – Society. He argued that the petitioner – Society is playing mischief by allowing certain persons to confer membership right from the date of passing of resolution. The petitioner – Society with political agenda has not allowed respondent No.3 and others to

confer membership from the date of resolution.

23 Mr. Deshmukh, learned counsel for respondent No.3 submitted that both the petitions are liable to be dismissed in view of the decision of this Court in the case of ***Dattatray Genaba Lole and others*** (supra) as well as various decisions rendered by this Court, Bench at Aurangabad, by relying upon the decision in the case of ***Dattatray Genaba Lole and others*** (supra).

24 I have considered the submissions of Mr. R. N. Dhorde, learned senior counsel appearing for petitioners in both the petitions, Mr. S. K. Kadam and Mr. V. H. Dighe, learned counsel appearing for respondent Nos.1 and 2 in respective petitions and Mr. Mahesh Deshmukh, learned counsel appearing for respondent No.3 in both the petitions. I have gone through the affidavit-in-reply filed on behalf of respondent No.3. Further I have gone through the impugned order passed by the Election Authority and other orders as well as documents and papers relied upon by both the sides.

25 The petitioner No.1 is a village level Co-operative Society duly registered under the Maharashtra Co-operative Societies, Act 1960. The provisions of the Act and Rules made thereunder are applicable to petitioner No.1 – Society. Equally by-laws of the Society

need to be followed strictly.

26 By way of first round of litigation, the applications for membership moved by the contesting respondents came to be rejected right from the petitioner – Society to the Divisional Joint Registrar, Cooperative Societies, Nashik Division, Nashik. Respective groups of contesting respondents filed Writ Petition No.3448 of 2019 and Writ Petition No.3470 of 2019 before this Court. During pendency of these two writ petitions, petitioner No.1 – Society passed resolution in the meeting of Managing Committee held on 7th August, 2020 and took decision to confer membership to the above stated two groups of respondents. On that basis the above said two writ petitions came to be disposed of. Now, the dispute is centered around from what date membership is to be conferred on the respective respondents and whether they fulfill eligibility criteria as provided under Section 27(3A) of the Act. The Election Authority after giving an opportunity of being heard to all the parties, passed order that the contesting respondents are eligible members and directed to include the names of two groups of contesting respondents in the final voters list. Conferring membership and from a particular date is a mixed question of law and facts. The Authority has taken the impugned decision on the basis of facts, evidence on record and provisions of law. That decision is not reached its finality. As per the program declared by the Election

Authority, final voters list is to be published on 28th February, 2022.

27 According to Section 91 of the Act, any dispute touching the Constitution, elections 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 the Co-operative Court if both the parties thereto are one or other of the following:

A member, past member of a person claiming through a member, past member of a deceased member of society, or a society which is a member of the society or a person who claims to be a member of the society.

28 Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 makes very clear provision. Rule 78 reads thus:

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

29 Having regard to the above legal provision, it is very much clear that efficacious alternate remedy is available to the petitioners to raise the dispute about election of the Managing Committee of petitioner No.1. According to the scheme of the Act, the legislature has set up such forum to decide the election disputes of a co-operative society. In catena of decisions, it has been held that the writ petition under Article 226 / 227 of the Constitution should not be entertained when efficacious alternate remedy is available under the Act and Rules unless exceptional circumstances are made out. In the case of *Harnek Singh Vs. Charanjit Singh and others*, reported in, **(2005) 8 Supreme Court Cases 383**, it is held by the Honorable Supreme Court that when the remedy of challenging an election is provided in an enactment, the writ petition challenging an election of an office shall not be entertained.

30 The powers of the High Court under writ jurisdiction are sacrosanct. In exceptional and extraordinary cases the High Court may entertain the petition under Article 226 / 227 of the Constitution even in election dispute. The scope is very much limited.

31 At the same time, the existence of an alternative remedy is no ground for refusal to entertain the petition where it appears on the face of the proceedings that the Authority has acted without jurisdiction

or in excess of jurisdiction, or contrary to the fundamental principles of natural justice. Where there had been a complete lack of jurisdiction in those exceptional cases the petition can be entertained by invoking writ jurisdiction. Whenever there is equally alternative, efficacious remedy available then in such case more particularly involving disputed questions of facts, writ Court is not expected to entertain such petition. In other words, when there is specific provision of appeal under the Statute or the Rules made thereunder to assail the order/decision, then in such case bypassing such provision cannot take shelter under the umbrella of writ jurisdiction.

32 The Division Bench of this Court in the case of ***Dattatray Genaba Lole and others*** (supra) after considering various decisions of this Court as well as the Apex Court and after analyzing the same, held that petition under Article 226 of the Constitution of India cannot be entertained relating to election dispute under the Co-operative Societies Act when an alternate and efficacious remedy to challenge the election itself is available under the provisions of the Act and Rules.

33 The decision of the Division Bench of this Court in the case of ***Dattatray Genaba Lole and others*** (supra) has been followed by this Court, Bench at Aurangabad, in the following petitions and the petitions came to be dismissed:

- a) ***Sarjerao Dattatraya Pachpute Vs. The State of Maharashtra and others***, Writ Petition No.2783 of 2022, (Coram : Nitin B. Suryawanshi, J.) dated 24th February, 2022 ;
- b) ***Balasaheb s/o Digambar Gholap Vs. The State of Maharashtra and others***, Writ Petition No.5 of 2022, (Coram : Nitin B. Suryawanshi, J.) dated 3rd January, 2022 ;
- c) ***Popat s/o Sambhaji Mane Vs. The State of Maharashtra and others***, Writ Petition No.6 of 2022, (Coram : Nitin B. Suryawanshi, J.) dated 3rd January, 2022 ;
- d) ***Sandip s/o Balbhim Nagawade Vs. The State of Maharashtra and others***, Writ Petition No.10 of 2022, (Coram : Nitin B. Suryawanshi, J.) dated 3rd January, 2022 ;
- e) ***Machindra Dada More Vs. The State of Maharashtra through its Secretary and others***, Writ Petition No.22 of 2022, (Coram : Nitin B. Suryawanshi, J.) dated 4th January, 2022 ; and
- f) ***Bhaskar Ramchandra Khaladkar Vs. The State of Maharashtra and others***, Writ Petition No.859 of 2022, (Coram : Shrikant D. Kulkarni, J.) dated 18th February, 2022.

34 It is important to note that Writ Petition No.2783 of 2022 decided on 24th February, 2022, pertains to the same petitioner No.1 – Society wherein inclusion of name of respondent in final voters list and rejection of his objection to the same was challenged. The said writ petition was not entertained and came to be dismissed with liberty to the petitioner to avail alternate remedy.

35 Having regard to the recent decision of the Division Bench of this Court in the case of *Dattatray Genaba Lole and others* (supra) and in view of the earlier decisions of this Court, Bench at Aurangabad (supra), these petitions cannot be entertained when the petitioners have alternate efficacious remedy available under the Maharashtra Co-operative Societies, Act and Rules. Hence, the following order is passed:

ORDER

- I. Both the writ petitions stand dismissed as not maintainable with liberty to the petitioners to avail appropriate legal remedy available under Section 91 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014.

- II. All the contentions of the petitioners in both the writ petitions are kept open.
- III. The petitions are accordingly disposed of.
- IV. No order as to costs.

[SHRIKANT D. KULKARNI, J.]

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