

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2889 OF 2022

ASHOK BABURAO TATHE AND OTHERS
VERSUS
THE STATE CO OPERATIVE ELECTION THROUGH SECRETARY AND
OTHERS

...
Advocate for Petitioners : Mr. V. D. Hon, Senior Advocate i/b.
Mr. Laxman H. Kawale
Advocate for Respondents No.1 and 2 : Mr. S. K. Kadam
AGP for Respondent - State : Mr. S. N. Kendre
Advocate for Respondent No. 3 : Mr. K. J. Suryawanshi
Advocate for Respondents No. 4 to 7 : Mr. S. S. Thombre

...
WRIT PETITION NO.2938 OF 2022

KARBHARI UMAJI DHEPLE AND OTHERS
VERSUS
THE STATE CO OPERATIVE ELECTION AUTHORITY THROUGH
SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. V.D. Hon, Senior Advocate i/b.
Mr.Ashwin V. Hon.
AGP for Respondent-State : Mr. S.B. Pulkundwar.
Advocate for Respondents No.1 and 2 : Mr. S. K. Kadam
Advocate for Respondent No. 3 : Mr. K.J. Suryawanshi.
Advocate for Respondent No. 4 and 7 : Mr. Sunil B. Kakade

...
WRIT PETITION NO.2970 OF 2022

HARIBHAU YADAV KALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. V.D. Sapkal, Senior Advocate i/b.
Mr.Prasad D. Jarare
AGP for Respondents-State : Mr. S.B. Pulkundwar
Advocate for Respondents No.1 and 2 : Mr. Vithal H. Dighe
Advocate for Respondent No. 3 : Mr. K.J. Suryawanshi.
Advocate for Respondent No. 4 and 7 : Mr. S.B. Kakade

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 08-03-2022

ORDER:-

1. Heard. Learned advocates for the respective parties waive service of notice. Considering the urgency in the matters, they are taken up for hearing at the admission stage.
2. Petitioners to pay deficit court fees, if any, by 10th March, 2022.
3. Since the order impugned in these petitions is the same and as these petitions involve similar questions of facts and law, they were heard together and are being disposed of by this common order.
4. These petitions take exception to the order passed by respondent No.2, thereby deleting names of petitioners from the voters' list of respondent No.3 bank.
5. It is the case of the petitioners that they are members of respondent No.3 bank and as the elections of respondent No.3 bank are due, respondent No.2 – election authority, called upon respondent No.3 bank to submit voters' list. Accordingly, the bank submitted the voters' list to respondent No.2, wherein names of the petitioners were included. Respondent No.2 published

provisional voters' list on 3rd February, 2022 in which names of the petitioners were included. Claims and objections on the voters' list were invited up to 14th February, 2022.

6. On 14th February, 2022 respondents No. 4 to 7 raised objection before respondent No.2 alleging that the bank has enrolled 1666 members in the meeting dated 22nd March, 2018, who were not qualified and could not have been enrolled as members. In the objections, the names of the petitioners or 1666 members are not mentioned.

7. Respondent No.2 kept hearing on the objections on 15th February, 2022. Respondent No.2 published a public notice on 15.02.2022, without giving names of the members, whose names were objected, stating that the objections are raised in respect of inclusion of the 1666 members in the voters' list of the bank and due to paucity of time, it is not feasible to serve RPAD / Speed Post notices to all the 1666 members. By this public notice, they were called upon to appear and submit their say on 21.02.2022 at 3.00 p.m. It is further mentioned that the list of these 1666 members was displayed on the notice board of the said bank.

8. Notice was also issued to respondents No.4 to 7 asking them to remain present for the hearing on the objections on 21st February, 2022 along with evidence. On 21st February, 2022, after

conducting hearing, which was not attended by any of the 1666 members, by the impugned order passed purportedly under Rule 8 (1) (3) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter, referred to as 'Rules of 2014') respondent No.2 deleted the names of 1823 members of respondent No.3 bank from the final voters' list. Out of 1666 members, names of 62 members were retained in the final voters' list. The petitioners are aggrieved by deletion of their names from the final voters' list of respondent No.3 bank.

9. Heard the learned Senior Advocates Mr. Hon and Mr. Sapkal, appearing for the petitioners. They would urge that in terms of Rules 7 and 8 of the Rules of 2014, only error in respect of names, addresses or particulars of the members is to be corrected. Respondent No.2 had no jurisdiction to delete names of the petitioners and other members. Names of the petitioners and 1666 members are mentioned in the register maintained by respondent No. 3 bank and, therefore, names of the petitioners and others were there in the voters' list forwarded by respondent No.3 to respondent No.2. The bank had specifically submitted before respondent No.2 by filing reply that the petitioners and other members are valid members of the bank and their names are there in the register maintained by the bank in terms of the Rules. It is further pointed out that respondents No. 4 to 7 have

challenged resolution dated 22nd March, 2018 passed by the bank, by which membership has been granted to the petitioners and others, by filing Dispute No. 94 of 2021 and the same is pending for adjudication. In Revision No. 20 of 2021, as per order dated 10th November, 2021, an inquiry under section 11 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter for short "the said Act") is also pending before respondent No.2. It is further submitted that 1666 members, including the petitioners are not made party in the said Dispute. They further submit that, no separate, individual objections are raised by respondents No.4 to 7 and a common objection is raised against 1666 members. Further submission is that the objections raised by respondents No.4 to 7 are vague and the impugned order is passed in gross violation of the principles of the natural justice. In support of their submissions, learned senior advocates placed reliance on the following judgments :

1. *"Ahmednagar Zilla S. D. V. & P. Sangh Ltd V/s State of Maharashtra (2004) 1 SCC 133*
2. *"Pundlik V/s State of Maharashtra" (2005) 7 SCC 181*
3. *"Shriram Sahakari Dudh Utpadak Sanstha Maryadit V/s State of Maharashtra" (2021) 6 Bom C R 464*
4. *"Dattatray Genaba Lole V/s Divisional Joint Registrar" 2021 SCC Online Bom 4579*

5. *“Dhondiba Parshuram Kakade V/s Someshwar Sahakari Sakhar Karkhana Ltd” (1979) 81 Bom L R 31*

10. By relying on aforesaid judgments, it is submitted that in the facts of the present case, alternate remedy cannot be said to be a bar to exercise writ jurisdiction under Article 226 of the Constitution of India. According to them, alternate remedy is not an efficacious remedy. They, therefore, urged to allow the writ petitions.

11. Learned Advocate Mr. Thombre appearing for the respondents No. 4 to 7, on the other hand, supported the impugned order, stating that there is substantial compliance by respondent No.2 as public notice was issued and the list of the 1666 members was displayed on the notice board of the Bank. He sought to rely upon the observations in the impugned order to the effect that, the bank has not produced register and the relevant documents to show that, these 1666 persons were validly given membership. He placed reliance on the following judgments.

1. *“Pandurang Laxman Kadam and Others V/s State of Maharashtra and Others” 2016 (4) ALL MR 629*
2. *“N. P. Ponnuswami and Others V/s Returning Officer, Namakkal Constituency and Others” AIR 1952 SC 64*
3. *“Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Others V/s State of Maharashtra*

and Others” AIR 2001 SC 3982

4. *Writ Petition No. 4719 of 2021 (Dilip Motiram Andhare and Others V/s State of Maharashtra and Others)*
5. *“Balasaheb Bhikaji Gadhave and Others V/s Ganesh Sahakari Sakhar Karkhana Ltd” 1975 U.C.R. (Bom) 308*
6. *“Taluka Shetkari Sakahari Kharedi Vikri Sangha Maryadit V/s Collector, Osmanabad” Laws (Bom) 1988-4-44*
7. *“Someswar Sahakari Sakhar Karkhana Limited V/s Shrinivas Patil and Others” 1992 (1) Bom. C.R. 590*
8. *“Dattatray Genaba Lole V/s Divisional Joint Registrar” 2021 SCC Online Bom 4579*

12. By relying on aforesaid judgments, he would urge that since preparation and finalization of the voters’ list is an intermediate stage of election process and as this Court has consistently taken a view that in view of alternate remedy of filing election dispute, the petitions are not entertained. He submits that the petitions may be dismissed.

13. The learned Advocates Mr. Kadam and Mr. Dighe, appearing for respondents No. 1 and 2 would urge that, by issuing public notice, the 1666 members were called upon to appear, however, they failed to appear before the respondent No.2. According to them, sub clause (3) of Rule 8 of the Rules of 2014 contemplates an inquiry by the election officer, which is summary in nature. In

the present cases, the election officer has conducted an inquiry and then has passed the order impugned in the present writ petitions. It is pointed out that in the impugned order it is observed that the bank has failed to produce evidence to show that membership was validly given to 1666 persons.

By relying on the decision of the Division Bench in "*Dattatraya Genaba Lole*" (*supra*), they would submit that since the Division Bench as well as the Apex Court in various decisions has held that preparation and finalization of the voters' list is the intermediate stage in the election process, this Court may dismiss the petitions, being not maintainable.

14. By the impugned order, names of 1666 members are deleted from the final voters' list without giving them an opportunity of hearing. The public notice issued by respondent No.2 cannot be said to be sufficient notice calling upon petitioners and other members to reply the objections filed by respondents No. 4 to 7. The approach of respondent No. 2 that it is not feasible to give RPAD/speed post notices to all the 1688 (1666+22) voters' cannot be countenanced. Respondent No.2 could not have passed the impugned order adverse to the interest of the members, whose names are deleted from the voters' list without hearing them. The impugned order, on the face of it, is patently erroneous and the

same is apparently passed in gross violation of the principles of natural justice. Admittedly, in all names of 1823 members of the said Bank are deleted by the impugned order without hearing a single member out of them. In these peculiar facts, I am inclined to entertain the writ petitions, as in my view, it will be improper to ask the petitioners and the members to wait till entire process of the election is over and then challenge that order by way of election petition under section 91 of the Maharashtra Co-operative Societies Act.

15. In "***Pandurang Hindurao Patil V/s State of Maharashtra and Others***" 1983 Mh.L.J. 1081, the Division Bench has held that a writ petition under Article 226 of the Constitution of India challenging order of the returning officer, rejecting or accepting the nomination paper cannot be rejected on the ground that such a petition does not lie. However, whether in a given case, this Court will entertain the petition or interfere or not will depend on the facts and circumstances of each case. In the said judgment, the division bench of this Court has also held -

"23. The argument which has been advanced on behalf of the respondents in the instant case on the basis of earlier decisions really comes to this that every petition filed against a wrongful rejection or acceptance of a nomination paper must be rejected in limine out of hand merely on the ground that it is filed against the order of a Returning Officer and could not be entertained at all and

the petitioner must be asked to file an election petition after the election. This, in our view, would be a wholly erroneous approach in view of the fact that powers and jurisdiction of this Court under Article 226 of the Constitution can never be taken away even by a statute. It can never be argued that in no case can a petition under Article 226 be filed in an election matter even though the provisions of Article 329 are not attracted to the facts of the case. That such petitions against wrongful rejection or acceptance of nomination paper have been entertained on earlier occasions is clear from observations of a Division Bench of this Court in Suleman v. Municipal Commissioner AIR 1963 Bom. 183. That was a case arising out of the provisions of the Bombay Provincial Municipal Corporations Act. When the order of the Returning Officer, namely, the Municipal Commissioner overruling the objections to the validity of a nomination paper was challenged under Article 226 of the Constitution, it was contended before the Division Bench that the election was still to be held and that it would be open to the petitioner to challenge the election on the ground that the nomination papers of opponent No. 2 have been wrongly accepted and the High Court should not exercise its powers under Articles 226 and 227 and reliance was also placed on the decision in H. P. Ponnuswami's case. The Division Bench pointed out that Ponnuswami's case was one under the Representation of the People Act, which had to be decided in the light of Article 329 of the Constitution under which no election can be called in question except by an election petition presented after the election is over. The Division Bench referred to a decision of the Calcutta High Court in Narendra Nath v. Bally Municipality AIR 1962 Cal 53, in which the Calcutta High Court after referring to the decision in Ponnuswami's case held that the High Court had jurisdiction to and may interfere even at the pre-election stage, if it finds that the candidate's nomination paper for a municipal election

had been improperly rejected. The respondents in that case had also relied on an earlier decision of this Court in Shankar Nanasaheb v. Returning Officer, Kolaba AIR 1952 Bom 227, which was again a case of an election to the Bombay Legislative assembly and it was held that in view of Article 329 (b) of the Constitution, the only way in any matter relating to or in connection with such an election can be called in question is by an election petition and that consequently the High Court could not issue a writ under Article 226 of the Constitution in order to correct the decision of a Returning Officer before the election was held. The Division Bench after referring to Shankar Nanasaheb's case observed as follows:—

“Since then numerous cases have come before this Court, in which this Court has interfered at the pre-polling stage or before the election took place. It seems to us that it would not be right or proper to lay down any hard and fast rule in this matter. In Dr. Narayan Bhaskar Khare V. Election Commission of India AIR 1957 SC 694 : 1957 SCR 1081, it has been stated that “the well-recognised principle of election law, Indian and English, is that election should not be held up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that election should be gone through according to the time schedule”. Ordinarily the High Court should not therefore stay an election or pass any order which will result in the election being postponed. Where, however, the matter is brought before the High Court sufficiently in advance, where the matter can be heard and disposed of before the polling is due to take place and where there is on error apparent on the face of the record, we see no reason why this Court should not correct that error. For instance, if a returning officer rejects a nomination on wholly inadequate grounds, it would save public time and money, as well as expense, inconvenience and hardship to

the parties, if the returning officer's action is corrected before the election takes place. In our opinion, therefore, relief should not be refused merely because the petitioner can pursue another remedy by filing an election petition after the election is held. Each case should be considered on its own facts and where without staying or postponing the election it is possible to put matters right before the election takes place, it may in appropriate cases be desirable to do so.”

16. In **"Pundlik"** (*supra*) the Apex Court reiterated rule of non interference in the election programme at the interim stage of preparation of voters' list. In paragraphs No. 12, 13 and 16, it explained that the ratio of **"Shri Sant Sadguru"** (*supra*) was not followed because there was patent illegality in following Rule 5 (2) of the 1971 Rules.

17. There can be no dispute about the settled legal position that preparation of final voters' list is an intermediate stage and this Court would normally decline to interfere at that intermediate stage, it is so held by the Division Bench judgment of this Court in **"Dattatray Genaba Lole"** (*supra*), which is heavily relied on by learned advocate for the respondents. In the same judgment it is also observed : -

“46. 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.

90. *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.”*

18. It is consistently held in catena of decisions by this Court as well as by the Apex Court that in the cases, wherein challenge is raised to an order, which is entirely without jurisdiction, when an alternative remedy is inefficacious and where the petition asserts a clear violation of principles of natural justice, alternate remedy is

not a bar to interfere in writ jurisdiction under Article 226 of the Constitution of India.

19. Coming to the facts of the present case, though much reliance is placed on sub rule (3) of Rule 8 of Rules of 2014, which contemplates an inquiry by the Collector, essentially, the same is summary in nature and the word "*inquiry*" used in the sub rule presupposes opportunity of hearing to be given to the person who is likely to be adversely affected by the orders passed pursuant to the said inquiry. Since, in the facts of the present case, the petitioners and other members, whose names are deleted from the voters' list, are not heard, the impugned order is patently illegal and unsustainable in law and facts of the case. As the impugned order is passed in utter violation of the principles of the natural justice, alternate remedy of filing election petition cannot be said to be an efficacious remedy available to the petitioners and the members whose names are deleted from the voters' list.

20. Since large number of members are deprived of their voting right by the arbitrary order passed by respondent No.2, without hearing them, interference at this stage is warranted in the peculiar facts of the present case. In the present case, voters' list is finalized on 4th March, 2022 and within 20 days from the date of finalization of the same, election programme will have to be

published by respondent No.2. In that view of the matter also interference by this Court, at this stage, in the peculiar facts of the present case, would not amount to interference in the holding up of the election process. As the impugned order is passed in gross violation of the principles of the natural justice, it is patently illegal, arbitrary and unsustainable in the facts of the present case. As the election programme is yet to be declared, the wrong committed by respondent No.2 can be set right by asking him to give an opportunity of hearing to the petitioners and other members, who are willing to oppose the objections raised by respondents No.4 to 7.

21. By setting aside the impugned order this Court is not interfering in the election programme and / or not stalling the election process, in view of the peculiar facts, these petitions are entertained.

22. For the aforestated reasons, following order is passed :

ORDER

- a. Impugned order dated 23rd February, 2022 passed by respondent No.2 thereby deleting names of the petitioners and other members from the final voters' list, is hereby quashed and set aside.

- b. The petitioners, as well as the other Members whose names are deleted and respondents No.4 to 7 shall appear before respondent No. 2 on 14th March, 2022 at 11.00 am.
- c. Formal notice of hearing on objections is dispensed with.
- d. Respondent No.2 shall give hearing to all concerned who appear before him on 14th, 15th and 16th March, 2022 and decide the objections raised by respondents No.4 to 7 afresh and render his decision on the same on 19th March, 2022.
- e. Till the objections are decided, the final voters' list, published on 4th March, 2022, shall remain stayed.
- f. After decision on the objections of respondents No. 4 to 7, respondent No.2 shall act according to the same, if necessary, by correcting the final voters' list.
- g. Respective contentions of the parties are kept open.
- h. It is made clear that this Court has not expressed any opinion on the merits of the objections or contentions raised by the petitioners opposing the said objections.

- i. Respondent No.2 shall decide the objections, in accordance with law, on its own merits, without being influenced by the observations made in this order.
- j. Writ petitions are disposed of in above terms. No costs.

(NITIN B. SURYAWANSHI)
JUDGE

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