

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3323 OF 2022
WITH CA/3367/2022 IN WP/3323/2022

TIRUPATI MOTIRAM MOHITE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS

...
Advocate for Petitioners : Mr. Pralhad D. Bachate
AGP for Respondent-State : Mr. S. W. Munde
Advocate for Respondents No. 2 to 4 : Mr. V. H. Dighe
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 10-03-2022

ORDER :-

Heard. Learned advocates for the respective parties waive service of notice. Considering the urgency in the matter, it is taken up for hearing at the admission stage.

2. Petitioners to pay deficit court fees, if any, by 11th March, 2022.

3. By this petition filed under Article 226 of the Constitution of India, the Petitioners challenge the order of Respondent No. 3 thereby deleting the names of the Petitioners from the final voters list of Respondent No. 5-Society (for short, "A" Society).

4. The Petitioners are valid members and voters of "A" Society . Their names were included in the provisional voters list forwarded by "A" Society to Respondent No 3-Election Officer. The objections to the provisional voters list were to be taken between 11.02.2022 to 21.02.2022. The Respondent No 3 considered objection to the inclusion of Petitioners names (67 members), which was to the effect that the election of Vividh Karyakari Society Dhanora Motya (B), Taluka Purna, District Parbhani, (for short, "B" Society'), were held in the year 2021 and the 67 names were in the provisional and final voters list of "B" Society. The same names appear in the provisional voters list of "A" Society. Therefore, these names should be deleted from the final voters list of "B" Society. Remarks of Respondent No. 4 were called. He submitted that as per bylaw No. 6(9) of A Society, if new society is to be formed within its area of operation, for becoming a member of the proposed society, the member has to tender resignation of his membership and to clear the dues payable to the "A" Society, then only the member can join new society. Therefore, he recommended deletion of 67 names from the final voters list of "B" Society. The recommendation was accepted by Respondent No. 3 by order dated 0303.2022. However, on the same day by corrigendum, the Respondent No. 3 deleted the 67 names from the final voters list of A Society. The Petitioners are aggrieved by this corrigendum/order.

5. Mr. Bachate, learned advocate for the Petitioners assails the impugned order on various grounds. He submits that, the impugned order is passed without hearing the Petitioners. In terms of Rule 8 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 [hereinafter, referred to "Rules-2014"], when the provisional voters list is published, the claims and objections are to be raised by members and not by anybody else. According to the Petitioners, no member of "A" Society has objected to their names in the provisional voters list. Next contention is that the objection to the names of the Petitioners was not raised within the stipulated time i.e. between 11.02.2022 to 21.2.2022, as the impugned order does not show that the objection is raised within the said period. Further contention is that the "A" Society is formed earlier and "B" Society is formed subsequently. In terms of bylaw No. 6(9), the Petitioners cannot become member of "B" Society unless they resign from "A" Society and clear their dues. At no point of time the Petitioners have tendered resignation of "A" Society. In that view, the Petitioners can be said to ineligible to vote in the election of "B" Society, but they cannot be deprived of their right to vote in the election of "A" Society. According to the Petitioners, therefore, the impugned order is liable to be quashed and set aside.

6. Mr. Dighe, learned Advocate for respondents no. 2 to 4, on the other hand, by relying on section 73(C)(b) of the Maharashtra Cooperative Societies Act, 1960, submits that, respondent no. 2 - State Cooperative Election Authority has power of superintendence and control on electoral roll and has to conduct all the elections as per procedure prescribed. He submits that, therefore, respondent no. 3 was entitled to correct the voters list. He submits that, since the impugned order is passed on the basis of record available with respondent no. 3 and as the names of petitioners were found in the provisional and final voters list of "B" Society, the names of petitioners are rightly directed to be deleted from final voters list of "A" Society by the Election authority.

By relying on **"Dattatray Genaba Lole V/s Divisional Joint Registrar"** 2022(1) Bom CR 471, he submits that since preparation and finalization list of voters is an intermediate stage of election process this Court has consistently refused to entertain the writ petitions in similar facts as the petitioners have alternate efficacious remedy of filing election petition after declaration of the result. He therefore submits that writ petition may be dismissed.

7. It is not disputed that the Petitioners are members of "A" Society and "B" Society is formed subsequently. As per the objection considered by Respondent No. 3, names of 67 members

were sought to be deleted from the final voters list of “B” Society. The Respondent No. 4 has also recommended deletion of 67 names from final voters list of “B” Society and the Respondent No. 3 had agreed with the said remarks. In that view of the matter, the names of the Petitioners could have been removed from final voters list of “B” Society and not from “A” Society. The Petitioners being valid members of “A” Society, their statutory right to vote and participate in the election process cannot be denied in such an arbitrary manner. The Respondent No. 3 has committed error apparent on face of record in misinterpreting bylaw No. 6(9) and ignoring the fact that the “B” Society is formed subsequently and unless the Petitioners clear their dues and resign from the membership of “A” Society, they are not eligible to become member of B Society. This important aspect is ignored by Respondent No. 3 while issuing corrigendum, deleting the names of Petitioners from final voters list of “A” Society.

8. Admittedly, the petitioners are not given an opportunity of hearing. In that view of the matter, the impugned order passed by respondent no. 3 is patently illegal, erroneous and the same is passed in utter violation of the principles of natural justice. Though it is settled legal position that the preparation of voters list is an intermediate stage in the election process and in view of Division Bench decision of this Court in *Dattatray Genaba Lole V/s*

Divisional Joint Registrar (supra), in view of availability of alternate remedy, this Court normally does not entertain the writ petitions raising similar challenge. However, in the peculiar facts of the present case as the impugned order is patently illegal and the same is passed in violation of principles of natural justice, this Court is inclined to entertain the writ petition.

9. 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.

10. In *Dattatray Genaba Lole V/s Divisional Joint Registrar (supra)*, the Division Bench has held thus:

“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.”

11. 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.

12. Coming to the facts of the present case, since the impugned order is passed in gross violation of principles of natural justice and Respondent No. 3 has misinterpreted bylaw No. 6(9), the impugned order is patently illegal, arbitrary and is unsustainable in the peculiar facts of the present case.

13. Since large number of members are deprived of their voting right by the arbitrary order passed by respondent No.3, 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 8th March, 2022 and within 20 days from the date of finalization of the same, election programme will have to be published by respondent No.3. As the election programme is yet to

be declared, wrong committed by Respondent No. 3 can be set right by asking him to give an opportunity of hearing to the Petitioners and other members whose names are deleted from the final voters list and who are willing to oppose the objection. Interference by this Court at this stage in the facts of the present case would neither amount to interference in the election process nor would it hold up the election process.

14. For the aforestated reasons following order is passed.

ORDER

- (i) Impugned order dated 3rd March, 2022 passed by respondent no. 3, thereby deleting names of the Petitioners from the final voters list of A Society is hereby quashed and set aside.
- (ii) The petitioners are directed to appear before respondent no. 3 on 14th March, 2022.
- (iii) Respondent No. 3 after hearing the Petitioners on 15th March, 2022 shall take the decision on the objection in respect of inclusion or non inclusion of names of Petitioners in the final voters list of "A" Society/Respondent No. 5-Society.

- (iv) Till the said decision is taken by Respondent No. 3, the final voters list shall remain stayed.
- (v) After the decision on the objections in respect of Petitioners is taken, the Respondent No. 3 shall act according to the same, if necessary, by correcting the final voters list.
- (vi) The Respondent No. 3 shall decide the objection on its own merits without being influenced by the observation of this Court in this order.
- (vii) Writ petition is disposed of in above terms.

(NITIN B. SURYAWANSHI)
JUDGE