

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 6754 OF 2022

1. Tukaram Sakharam Salpe  
age 38 years, occ. Agricultural  
r/o Kanadkhed Tq. Purna  
Dist. Parbhani
2. Gangaprasad Shivram Dadhale  
age 30 years, occ. Agricultural  
r/o as above.
3. Madhav s/o Bapurao Kadam  
age 65 years, occ. Agri.
4. Sitaram s/o Damaji Kadam  
age 55 years, occ. Agri.
5. Suresh s/o Bapurao Kadam  
age 32 years, occ. Agri.
6. Balaji s/o Pandharinath Kale  
age 50 years, occ. Agri.
7. Sanjiv s/o Vinayak Suryavanshi  
age 37 years, occ. Agri.
8. Kishan s/o Shayamrao Galande  
age 55 years, occ. Agri.
9. Shivaji s/o Balasaheb Gadhve  
age 56 years, occ. Agri.
10. Siddharth s/o Ramji Gadhve  
age 39 years, occ. Agri.
11. Nandabai Madan Giri  
age 43 years, occ. Agri.

12. Uddhav s/o Tatyarao Chandal  
age 54 years, oc. Agri.
13. Nagesh s/o Subhash Chandal  
age 38 years, occ. Agri.
14. Maroti s/o Subhashrao Jogdand  
age 37 years, occ. Agri.
15. Gangadhar s/o Dattarao Dangare  
age 63 yars, occ. Agri.
16. Kishan s/o Manika Dadhale  
age 59 years, occ. Agri.
17. Gayabai Tukaram Dadhale  
age 56 years, occ. Agri.
18. Niloba s/o Begaji Dadhale  
age 67 years, occ. Agri.
19. Bhagwan s /o Ramrao Dadhale  
age 37 years, occ. Agri.
20. Mangesh s/o Dnyaneshwar Dadhale  
age 38 years, occ. Agri.
21. Maroti s/o Bapurao Dadhale  
age 64 years, occ. Agri.
22. Rameshwar s/o Kishanrao Dadhale  
age 39 years, occ. Agri.
23. Rameshwarl s/o Manikrao Dadhale  
age 42 years, occ. Agri.
24. Shivram s/o Begaji Dadhale  
age 69 years, occ. Agri.
25. Shivaji s/o Sakharam Dadhale  
age 39 years, occ. Agri.

26. Haribhau s/o Tukaram Dadhale  
age 55 years, occ. Agri.
27. Sakharan s/o Manikrao Dadhale  
age 72 years, occ. Agri.
28. Punjaji s/o Kondiba Dadhale  
age 55 years, occ. Agri.
29. Kishan s/o Haribhau Deshmukh  
age 51 years, occ. Agri.
30. Haribhau s/o Gopal Deshmukh  
age 38 years, occ. Agri.
31. Dharba s/o Taterao  
age 32 years, occ. Agri.
32. Kundlik s/o Kishanro Dhotre  
age 37 years occ. Agri.
33. Kailas s/o Narayan Dhotre  
age 40 years, occ. Agri.
34. Suresh s/o Narayan Dhotre  
age 38 years, occ. Agri.
35. Narhari s/o Santoba Pawar  
age 70 years, occ. Agri.
36. Akhil s/o Lalkha Pathan  
age 64 years, occ. Agri.
37. Gabru s/o Hamidkha Pathan  
age 64 years, occ. Agri.
38. Anurath s/o Narayan Pawar  
age 40 years, occ. Agri.
39. Kundlik s/o Marotrao Pawar

age 70 years, occ. Agri.

40. Gangadhar s/o Manika Pawar  
age 60 years, occ. Agri.
41. Gyandev s/o Kondiba Pawar  
age 65 years, occ. Agri.
42. Gyandev s/o Pandurang Pawar  
age 40 years, occ. Agri.
43. Dnyaneshwar s/o Narayan Pawar  
age 45 years, occ. Agri.
44. Tukaram s/o Narayan Pawar  
age 62 years, occ. Agri.
45. Navnath s/o Namdev Pawar  
age 38 years, occ. Agri.
46. Narayan s/o Tukaram Pawar  
age 70 years, occ. Agri.
47. Narayan s/o Santoba Pawar  
age 60 years, occ. Agri.
48. Nivrutti s/o Kondiba Pawar  
age 55 years, occ. Agri.
49. Baliram s/o Kundlik Pawar  
age 55 years, occ. Agri.
50. Bhujang s/o Santoba Pawar  
age 65 years, occ. Agri.
51. Manika s/o Bhujangrao Pawar  
age 55 years, occ. Agri.
52. Madhav s/o Gyanba Pawar  
age 60 years, occ. Agri.

53. Marotrao s/o Sopanrao Pawar  
age 45 years, occ. Agri.
54. Munjaji s/o Namdev Pawar  
age 55 years, occ. Agri.
55. Rangnath s/o Sakharam Pawar  
age 55 years, occ. Agri.
56. Shivaji s/o Gyandev Pawar  
age 45 yeas, occ.a agri.
57. Shrirang s/o Sakharam Pawar  
age 65 years, occ.agri.
58. Hanuman s/o Bhujangrao Pawar  
age 56 years, occ. Agri.
59. Tukaram s/o Namdev Panchal  
age 40 years, occ. Agri.
60. Kondji s/o Rajaram Patale  
age 62 years, occ. Agri.
61. Munjaji s/o Gunaji Patale  
age 45 years, occ. Agril
62. Suryabhan s/o Santoba Paratkar  
age 60 years, occ. Agri.
63. Maroti s/o Bapurao Pujari  
age 42 years, occ.agri.
64. Digambar s/o Munjaji Bakhal  
age 67 years, occ. Agri.
65. Radhaji s/o Digambar Bakhal  
age 38 years, occ. Agri.
66. Gopinath s/o Baliram Bansode  
age 50 years, occ. Agri.

67. Prakash s/o Ghanshyam Bansode  
age 38 years, occ agri.
68. Chimnaji s/o Gangadhar Barse  
age 50 years, occ. Agri.
69. Govind s/o Narayan Bhalerao  
age 40 years, occ. Agri.
70. Bapurao s/o Piraji Bhalerao  
Age 62 years, occ. Agril
71. Madhav Taterao  
age 29 years, occ. Agri.
72. Madhav Shivram  
age 34 years, occ. Agri.
73. Laxman s/o Manika Vaidya  
age 60 years, occ. Agri.
74. Bhagirathbai Vitthal Shiraskhode  
age 68 years, occ. Agri.
75. Gangabai Rohidas Salpe  
age 60 years, occ. Agri.
76. Piraji s/o Rohidas Salpe  
age 34 years, occ. Agri.
77. Ravi s/o Rohidas Salpe  
age 32 years, occ. Agril.
78. Saraswati Namdev Salpe  
age 65 years, occ. Agri.
79. Nagnath s/o Namdev Salpe  
age 45 years, occ. Agri.
80. Ramchandra s/o shahuji Salpe

age 50 years, occ. Agri.

81. Sapna Tukaram Salpe  
age 37 years, occ. Agri.
82. Pandit s/o Purbhaji Suryavanshi  
age 58 years, occ. Agri.
83. Pradip s/o Vinayak Suryavanshi  
age 39 years, occ. Agri.
84. Vinayak s/o Purbhaji Suryavansi  
age 52 years, occ. Agri.
85. Ananta s/o Madhav Kadam  
age 52 years, occ. Agril
86. ghanshyam s/o Ananta Kadam  
age 40 years, occ. Agri.

Petitioners No. 3 to 86 r/o Kanadkhed  
Tq. Purna Dist. Parbhani

Petitioners

Versus

1. The State of Maharashtra  
Through its Secretary  
Cooperation Department  
Mantralaya, Mumbai.
2. The Divisional Joint Registrar  
Cooperative Societies, Aurangabad.
3. The District Deputy Registrar  
Cooperative Societies, Parbhani
4. The Assistant Registrar,  
Cooperative Societies, Purna
5. The State Cooperative Election

Authority, Pune  
Through its Secretary

6. The District Cooperative  
Election Officer and District  
Deputy Registrar, Cooperative  
Societies, Parbhani
7. The Taluka Cooperative  
Election Officer and Assistant  
Registrar, Cooperative Societies  
Purna Dist. Parbhani.
8. The Vividh Karyakari Seva Sahakari Sanstha  
Kanadkhed, Tq. Purna, Dist. Parbhani  
Through its Secretary
9. Rama Tukaram Bakhal  
age 45 years, occ. Agri.  
r/o Kanadkhed, Tq. Purna  
Dist. Parbhani.
10. Khemaji Laxman Parathkar  
age 70 years, occ. Agril.  
r/o as above.
11. Manika Kashinath Patale  
occ. Agri.  
r/o as above.

Respondents

Mr. S. B. Ghatol Patil, Advocate for the petitioners.  
Mr. K. B. Jadhavar, AGP for respondents No. 1 to 4.  
Mr. S. K. Kadam, Advocate for respondents No 5 to 7.  
Mr. V. B. Kale, Advocate for respondent No. 8.  
Mr. P. D. Bachate, Advocate for respondent No. 9.

**CORAM : M.G. Sewlikar, J.**

**DATE : 5<sup>th</sup> AUGUST, 2022.**

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent of the parties, heard finally at the stage of admission.
3. Facts leading to this petition are that the petitioners are the members of Respondent No. 8 – Society. Respondent No. 6 – The District Cooperative Election Officer and District Deputy Registrar, published the program of finalisation of voters' list of 32 societies in Parbhani District. Pursuant to the said program, the provisional voters' list was published on 3<sup>rd</sup> June, 2022, objections were to be submitted on or before 13<sup>th</sup> June, 2022, hearing on objections was scheduled between 13<sup>th</sup> June, 2022 and 23<sup>rd</sup> June, 2022 and decision was scheduled on 23<sup>rd</sup> June, 2022. The final voters' list was to be published on 28<sup>th</sup> June, 2022.
4. The petitioners have deposited membership fees and share amount with respondent No. 8 – Society. Respondent No. 8 –

Society admitted petitioners as members vide passing resolution of Managing Committee and subsequently, the General Body has confirmed the membership of petitioners. Their names are incorporated in the membership register. Petitioners are having agricultural lands and they are eligible members of respondent No. 8 – Society.

5. On 2<sup>nd</sup> June, 2022, respondent No. 6 published provisional voters' list of 163 members. Petitioners' names appeared between Serial No. 79 and 163. Respondents No. 9 to 11 raised objection against the petitioners stating that there is no record of membership of petitioners and by manipulating records, their names were added. They, therefore, requested to delete the names of petitioners from the voters' list. On 13<sup>th</sup> June, 2022, respondent No. 6 issued notice to respondents No. 7 – The Taluka Cooperative Election Officer and Assistant Register, Cooperative Societies, Purna and 8 – The Vividh Karyakari Seva Sahakari Sanstha, Kanadkhed and instructed them to conduct inquiry and submit the report. On 16<sup>th</sup> June, 2022, respondent No. 8 – Society submitted report before respondent No. 7 and pointed out that those 86 members under objection are legally enrolled members of the society. There is entry

of subsidy in Kird Register. The Managing Committee as well as the General Body has admitted them as members. Their names appear in I and J Register. Accordingly, respondents No. 7 and 8 requested not to delete the names of petitioners from voters' list. On 17<sup>th</sup> June, 2022, respondent No. 7 conducted inquiry and found that the petitioners are legally enrolled members of respondent No. 8 – Society. Out of 86 members, 17 members did not possess agricultural land. Therefore, names of 69 members were recommended to be continued in the final voters' list. Respondent No. 6, without issuing notice and without hearing the petitioners, deleted the names of petitioners observing that there is no entry of share amount in Audit Report as well as there is no name of Administrative Chairman in the resolution admitting petitioners as members. This order is impugned in this petition.

6. Initially, only 2 members had filed the petition. Petitioners No. 3 to 86 were subsequently added with the permission of the Court.

7. I have heard learned counsel Shri S. B. Ghatol Patil, for the petitioners, Shri S. K. Kadam, learned counsel for respondents

No 5 to 7 and Shri P. D. Bachate, learned counsel for respondent No. 9.

8. Learned counsel Shri Ghatol Patil submitted that petitioners had duly applied for membership by filing written application. They paid member fees and deposited share amount on 4<sup>th</sup> April, 2011 and 22<sup>nd</sup> March, 2012 respectively. The Managing Committee had passed a resolution on 6<sup>th</sup> June, 2011 and 28<sup>th</sup> March, 2012, and admitted the petitioners as members of respondent No. 8 – Society. The General Body has also approved the membership of petitioners. The names of petitioners are included in the register of members. The petitioners have complied with the requirements of membership as provided under Sections 38 and 39 and Rules 32, 33 and 65(3) of Maharashtra Co-operative Societies Act, 1960 (for short “MCS Act”). Therefore, the petitioners are entitled to exercise voting right under section 23 of the MCS Act. He submitted that respondent No. 6 ought to have considered that not taking entry of share amount and membership fees in the year 2011-2012 in the Audit Report is the mistake of respondent No. 8 and for that purpose, legally enrolled members-petitioners cannot be deprived of their valuable right of voting. He submitted that

respondent No. 6 has deleted the names of petitioners without issuing notice and without hearing them. Therefore, the order is void *ab initio*. He submitted that as per Section 23 of the MCS Act, there is open membership. He further submitted that the petitioners could not exercise their right of voting earlier because they had not completed two years. He, therefore, submitted that the petitioners are legally enrolled members and, therefore, they may not be deprived of their right of voting.

9. Learned counsel Shri Kadam and Shri Bachate submitted that the petitioners were enrolled by the Administrator. The Administrator was appointed in the year 2011 and his term continued till 2015. During this period, he enrolled 86 members. They submitted that the Administrator was not competent to enroll them as members. They placed reliance on the case of Jt. Registrar of Co-operative Societies, Kerala vs. T. A. Kuttappan and others reported in AIR 2000 Supreme Court 2378 and K. Shantharaj and another vs. M. L. Nagaraja and others reported in AIR 1997 Supreme Court 2925. They submitted that in view of these two decisions of the Honourable Supreme Court, the Administrator had no authority to enroll the petitioners as members.

10. Learned counsel Shri Ghatol Patil tried to distinguish these decisions contending that in the case of T. A. Kuttappan (supra) the act in question was Kerala Cooperative Societies Act and in the case of K. Shantharaj (supra) the act in question was Karnataka Cooperative Societies Act. He submitted that the provisions in both the cases are not in *pari materia* with the provisions of MCS Act. Section 78(6) of the MCS Act states that the decisions taken by the Administrator are binding on the new Committee. He submitted that therefore, the Committee, in the year 2015, took the decision of confirming the membership of the petitioners enrolled by the Administrator. He submitted that there is no analogous provision in the Kerala Co-operative Societies Act and Karnataka Co-operative Societies Act as that of Section 78(4) of the MCS Act. He, therefore, submitted that these two decisions of the Honourable Supreme Court are not applicable to the facts of the instant case.

11. Admittedly, petitioners were enrolled by the Administrator. The Honourable Supreme Court in the case of K. Shatharaj (supra), has observed thus :-

“..... We find that there is no force in the contention.

The power of Administrator given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, Rules and Bye-laws. The Division Bench has minutely and carefully gone into all the questions and agreed with the learned single Judge that the Administrator has no power to enroll new members; but he has the power to organise election process in accordance with the provisions of the Act, the Rules and the Bye-laws of the Society. In that view of the matter, we think that the High Court has not committed any error of law warranting interference.

Similar observations are found in the case of T. A. Kuttappan.

12. The provisions of Section 30A of the Karnataka Co-operative Societies Act and the provisions of Section 32(1)(b) of the Kerala Co-operative Societies Act are in *pari materia* with the provisions of Section 78(4) of the MCS Act. Section 78(1) of the MCS Act reads thus :-

**78. Power of suspension of committee :-**

(4) The administrator or committee of administrators so appointed shall, subject to the control of the Registrar and such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any office of the society and take all such actions as may be required in the interest of the society and shall arrange for conduct of the election, through the

State Co-operative Elections Authority, within the period specified and handover the management to the newly elected Committee in accordance with the Act, rules and by-laws of the society. The administrator or committee of administrators so appointed as aforesaid, shall notwithstanding anything contained in the by-laws, have power to call a special general body meeting of the society to review or reconsider the decisions or the resolutions taken or passed at the general body meeting called by the previous committee or to endorse the action taken by it.

13. This clearly indicates that these two provisions are in *pari materia* with Section 78(4) of the MCS Act. Therefore, these judgments squarely apply to the facts of the instant case. It is further pertinent to note that though the petitioners were enrolled as members in the year 2011 and 2012, they did not exercise their right of voting in the elections held in the year 2015. Learned counsel Shri Ghatol Patil submitted that they did not exercise their right of voting as they did not complete two years at the time of elections in the year 2015. However, nothing has been placed on record to indicate that they had not completed two years. Some of the members were enrolled in the year 2011. Naturally, they had completed four years in the year 2015. Therefore, at least, they could have exercised their

right of voting. There is nothing on record to show that the members asserted their right at any time. Therefore, as held in the case of K. Shantharaj (supra), the Administrator had not authority to enroll the members.

14. Learned counsel Shri Ghatol Patil placed reliance on the cases of Balaso Tukaram Patil vs. Chhatrapati Rajaram Sahakari Sakhar Karkhana Ltd. and others reported in **2015(4) Mh.L.J. 230**, Karbhari Maruti Agawan and others vs. State of Maharashtra and others reported in **1994 Mh.L.J. 1527**, Shri Jalindar Tukaram Kharat vs. The State of Maharashtra and others reported in **2021(6) All MR 368**, Pundlik vs. State of Maharashtra reported in **AIR 2005 SC 3746** and Writ Petition No. 3323/2022 decided on 10<sup>th</sup> March, 2022. I have carefully gone through all these decisions. In none of the decisions, the question of validity of the members was raised. In all these decisions, the members were valid members. In the case at hand, the contention of the respondents is that petitioners are not valid members.

15. The process of election has started. It is trite that once election process starts, the jurisdiction under Article 226 of the

Constitution of India should normally be not exercised. In this view of the matter, this Court is left with no alternative than to dismiss the petition. Hence, the petition is dismissed. No order as to costs. Certified copy is expedited. Rule discharged.

**( M. G. SEWLIKAR )**  
**Judge**

dyb