

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8020 OF 2022

Dnyandev S/o Nagorao Mohite
Age: 44 years, Occu: Agri.
R/o At Mahagaon, Post. Kalgaon,
Tq. Purna, Dist. Parbhani.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through its Secretary,
Co-operation Department,
Mantralaya, Fort, Mumbai-32.
2. The Divisional Joint Registrar,
Co-operative Societies,, Aurangabad
Kranti Chok Aurangabad.
3. The District Deputy Registrar,
Co-operative Societies, Parbhani.
4. The Assistant Registrar,
Co-operative Societies, Purna,
Tq. Purna, Dist. Parbhani.
5. The State Co-operative Election Authority,
Maharashtra State, Pune.
6. The District Co-operative Election Officer &
District Deputy Registrar,
Co-operative Societies, Parbhani.
7. The Taluka Co-operative Election Officer &
Assistant Registrar, Co-operative Societies,
Purna, Tq. Purna, Dist. Parbhani.
8. Vividh Karyakari Seva Sahakari Society Ltd.,
Dhanora (Motya) (A)

Tq. Purna, Dist. Parbhani.
Through its Secretary.

9. Ganpati S/o Manika Gaikwad
Age: 55 Years, Occ: Agri.
10. Shivaji S/o Ganpati Gaikwad
Age: 35 years, Occ: Agri.
11. Revan S/o Santaya Vibhute
Age: 30 years, Occ: Agri.
12. Parvati Rangnath Shinde
Age: 40 years, Occ: Agri.
13. Vyankati S/o Dattarao Shinde
Age: 50 years, Occ: Agri.
14. Maroti S/o Ghanshyam Jadhav
Age: 70 years, Occ: Agri.
15. Subhash S/o Ranba Jadhav
Age: 35 years, Occ: Agri.
16. Suresh S/o Shesherao Jadhav
Age: 30 years, Occ: Agri.
17. Anil S/o Bhagwan Bhalerao
Age: 24 years, Occ: Agri.
18. Anusaya Shankar Bhalerao
Age: 65 years, Occ: Agri.
19. Indubai Ganesh Bhalerao
Age: 50 years, Occ: Agri.
20. Kamlabai Pavhar Bhalerao
Age: 45 years, Occ: Agri.
21. Kirankumar S/o Ganesh Bhalerao
Age: 30 years, Occ: Agri.

22. Daivshala Keshavrao Bhalerao
Age: 60 years, Occ: Agri.
23. Pooja Parasram Bhalerao
Age: 26 years, Occ: Agri.
24. Meenakshi Subhash Lendale
Age: 30 years, Occ: Agri.
25. Pranita Balaji Bhalerao
Age: 22 years, Occ: Agri.
26. Ratnabai Kisanrao Chandne
Age: 75 years, Occ: Agri.
27. Mahananda S/o Parasram Bhalerao
Age: 40 years, Occ: Agri.
28. Nandabai Ranba Jadhav
Age: 50 years, Occ: Agri.
29. Saraswati Rangnath Bhalerao
Age: 65 years, Occ: Agri.
30. Shivaji S/o Suryakant More
Age: 35 years, Occ: Agri.
31. Govind S/o Vitthalrao Mohite
Age: 35 years, Occ: Agri.
32. Shital Kirankumar Bhalerao
Age: 29 years, Occ: Agri.
33. Shivkanya Gajanan Bhalerao
Age: 36 years, Occ: Agri.
34. Somnath S/o Sidhram Mohite
Age: 36 years, Occ: Agri.
35. Shivhar Keshav Bhalerao

Age: 29 years, Occ: Agri.

36. Shridevi Sahebrao Bhalerao
Age: 31 years, Occ: Agri.
37. Siddheshwar Keshav Bhalerao
Age: 24 years, Occ: Agri.
38. Priyanka Baban Lendale
Age: 22 years, Occ: Agri.
39. Ganesh S/o Parmeshwar Lendale
Age: 23 years, Occ: Agri.
40. Sunita Ramesh Bhalerao
Age: 29 years, Occ: Agri.
41. Shivmala Kailas Lendale
Age: 28 years, Occ: Agri.
42. Swati Chandrakant Bhalerao
Age: 35 years, Occ: Agri.
43. Shivkannya Munjaji Lendale
Age: 33 years, Occ: Agri.
44. Parvati Shankarrao Lendale
Age: 60 years, Occ: Agri.
45. Priyanka Shivaji Lendale
Age: 30 years, Occ: Agri.
46. Munjaji S/o Dattarao Lendale
Age: 35 years, Occ: Agri.
47. Vaishanavi Kashinath Lendale
Age: 26 years, Occ: Agri.
48. Bhagirathi Nagorao Lendale
Age: 65 years, Occ: Agri.

49. Santosh S/o Honaji Rodge
Age: 30 years, Occ: Agri.
50. Ram S/o Dilip Mohite
Age: 25 years, Occ: Agri.
51. Sakharam S/o Dattarao Rodge
Age: 50 years, Occ: Agri.
52. Yogesh S/o Bhanuydas Lendale
Age: 22 years, Occ: Agri.
53. Rohini Akash Lendale
Age: 30 years, Occ: Agri.
54. Shivcharan S/o Devidas Lendale
Age: 21 years, Occ: Agri.
55. Sunita Suresh Lendale
Age: 27 years, Occ: Agri.
56. Kalpana Bhagwat Lendale
Age: 32 years, Occ: Agri.
57. Kaveri Harihar Lendale
Age: 30 years, Occ: Agri.
58. Kailas S/o Somaji Lendale
Age: 28 years, Occ: Agri.
59. Gangasagar Manmath Lendale
Age: 30 years, Occ: Agri.
60. Ganesh S/o Bhanudas Lendale
Age: 25 years, Occ: Agri.
61. Gokarna Dattarao Lendale
Age: 50 years, Occ: Agri.
62. Chandrakant S/o Hanumant Lendale
Age: 34 years, Occ: Agri.

63. Navnath S/o Devidas Lendale
Age: 24 years, Occ: Agri.
64. Pradip S/o Manmath Lendale
Age: 19 years, Occ: Agri.
65. Omkar S/o Dattarao Lendale
Age: 25 years, Occ: Agri.
66. Nirmala Maharudra Lendale
Age: 35 years, Occ: Agri.
67. Jayshri Ankush Lendale
Age: 30 years, Occ: Agri.

.. Respondents

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Advocate for Petitioner : Mr. Ghatol Patil Shahaji
APP for Respondent-State: Mr. K.B. Jadhavar
Advocate for R/2 to 5 : Mr. S.K. Kadam
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CORAM : M.G. SEWLIKAR, J.
DATE : 1st August, 2022

JUDGMENT :-

Rule. Rule made returnable forthwith. With consent of the parties taken up for final hearing at the admission stage.

2. Petitioner, by this writ petition is challenging the order dated 21st July, 2022 passed by respondent no.6-District Co-operative Election Officer (DCEO) whereby he added respondent nos.9 to 67 in voters list illegally.

3. Facts in brief are that the petitioner is the member of the

respondent no.8-society.

4. Respondent no.6-District Co-operative Election Officer published a programme for finalisation of voters of respondent no.8-society. Provisional voters list was published on 30th June, 2022. Claims and objections were invited till 11th July, 2022. Date of inquiry on these objections was scheduled on 21st July, 2022 and final voters list has been published on 26th July, 2022.

5. On 21st February, 2022, respondent no.8 illegally included the names of respondent nos.9 to 67 in provisional voters list, though they are not legally enrolled members of respondent no.8-society. Therefore, petitioner and four other members raised objection on provisional list and requested to delete the names of respondent nos.9 to 67 from final voters list.

6. On 28th February, 2022 respondent no.8 appeared before respondent no.7-Taluka Co-operative Election Officer & Assistant Registrar, Co-operative Societies, Purna and mentioned that as per the audit report the strength of members has increased, however, no record was produced to that effect showing that respondent nos.9 to 67 are illegally enrolled members and they are not having voting rights. Respondent no.8 without perusing the record has accepted the remarks of respondent no.7-Taluka Co-operative Election Officer. Addition of these members is not in accordance with law

and therefore their names deserve to be deleted.

7. Heard learned counsel Shri Ghatol Patil for the petitioner, Shri S.K. Kadam for respondent nos.2 to 5 i.e. Divisional Joint Registrar, District Deputy Registrar, Assistant Registrar & State Co-operative Election Authority.

8. Shri Ghatol Patil submits that the respondent nos.9 to 67 are not the members of the society and they cannot become members of the society as they do not fulfill the requirements of the rules. He submitted that none of the members possess any land in village Mahagaon. He submitted that they did not apply in writing to the respondent no.8-society seeking membership. There is no resolution of managing committee as well as of respondent no.8 for adding them as members. They have not paid membership entrance fees and the share amount. Society has not issued share certificate in their favour. He submitted that respondent nos.9 to 67 in collusion with the Secretary of respondent no.8-society prepared a page attached to audit showing increasing strength of members. However, fact remains that there is no increase in share amount. He submits that the audit report in question and the earlier audit reports are contradictory with each other. He submitted that only on the basis of audit report the names of the members have been added by Chief Election Officer-respondent no.6, which is clearly illegal. He submitted that there is no absolute rule that Court should not interfere once the election process

commences. If there is patent illegality, then Court should intervene in such matters. He placed reliance on the case of **Pundlik V/s. State of Maharashtra and Ors.** reported in **AIR 2005 SUPREME COURT 3746**. He submits that, therefore, this Court can exercise its jurisdiction under Article 226 of the Constitution of India.

9. Learned counsel for the respondent nos.2 to 5 submits that election process has commenced. He submits that in the case of **Dattatray Genaba Lole V/s. Divisional Joint Registrar** reported in **2022 (1) Bom CR 471**, this Court has considered the entire case law and has come to the conclusion that once election process starts it cannot be stalled. He submits that in case of **Sant Sadguru Janardan Swami (Moingiri Mahakari) Sahkari Dugdha Utpadak Sanstha V/s. State of Maharashtra** reported in **AIR 2001 SC 3982**, the Hon'ble Supreme Court has held that preparation of the electoral role is an intermediate stage in the process of election of the Managing Committee and it amounts to setting in motion the election process and at this stage this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India.

10. Learned counsel Shri Ghatol Patil tried to distinguish this authority by contending that the decision in **Sant Sadguru Janardan Swami** cited (supra) case has been distinguished by the Hon'ble Supreme Court in the

case of **Pundlik** cited (supra). He submits that this is not an absolute rule but where there is grave illegality this Court under Article 226 of the Constitution of India must step in to cure the illegality. It is thus clear that this Court under Article 226 of the Constitution of India can interfere in a challenge to an election process at an intermediate stage only when the order or action under challenge is patently and demonstrably illegal viz. 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 should be for assisting the process of the election rather than thwarting or stalling it. Such is not the case here. It was not pointed out that any non-existent rule has been made applicable. In the case of **Pundlik** cited (supra) the position was completely different.

11. It is settled law as held in the case of **Sant Sadguru Janardan Swami** cited (supra) that once election process starts it cannot be stalled. It has been held in the case of **Sant Sadguru Janardan Swami** cited (supra) thus:

“12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.”

12. In the case of **Dattaray Genaba Lole** cited (supra) this Court held thus:

“8.1 Shri Dani, for the Petitioner, has submitted that the Petition has been filed at the beginning of the election process. He has also submitted, in paragraph 1 of the Petitioners Written Submissions, that "Rule 78 provides only a dispute to challenge the election. It does not provide for any redressal forum at an intermediate stage and even on this count, there is no alternate remedy available to the Petitioners." Thus, although there seems to be an acceptance by the Petitioner that the elections are at an intermediate stage, we would first independently ascertain that issue. This would also have a bearing on the main issue of whether the Petition ought to be entertained because of various judgments that have specifically held that Courts ought to be very hesitant to entertain challenges to the election process at an intermediate stage (subject to very limited exceptions as will discussed when considering those judgments).

8.2 In considering this aspect of the matter, it is necessary to reiterate that the elections of the Managing Committee of Respondent No. 3 have been notified on 17 th December 2019 and the cut-off date was determined as 4 th May 2020. The preparation of the provisional voter list had commenced and objections, such as those of the Petitioners, to have Petitioner No. 3's name included have already been rejected by Respondent No. 1. The election programme for nomination was to be published between 7 th October 2021 and 17th

October 2021, but has been held in abeyance as noted above. It is at this stage that the present Petition came to be filed. There have been significant events in the election process that have taken place thereafter as well, such as publishing the final voters list and publication of the election programme. Thus, the election process was very much underway and at an intermediate stage even when the Petition was filed.

8.3 The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are not entertained by Courts under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind Courts being circumspect in entertaining challenges at this stage under Article 226 of the Constitution of India. This is because there is a vital public interest in the elections being completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or becoming uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

8.4 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.”

It further held as under:

*“9. Hence, all grounds including validity of the electoral roll, validity of nominations, corrupt practices, irregularities and illegalities in electoral process as a whole can be raised in the dispute. The parties to the dispute, necessary and proper, the reliefs that can be sought and granted all depends upon the facts and circumstances in each case. No general rule can be laid down in that behalf. The decided cases under the statutes dealing with elections provide sufficient guidelines in that behalf. The legal principles would have to be applied to the facts in each case. However, merely alleging irregularities and illegalities would not be enough. In all such cases, proof will have to be brought and which would demonstrate that the purity and sanctity of the electoral process is adversely and prejudicially affected. Further, it will have to be proved that the breach, if any, is of a mandatory or procedural provision. In this behalf, a reference can be made to the recent pronouncement of the Hon'ble Supreme Court in **VIPULBHAIM. CHAUDHARY v. GUJRAT COOPERATIVE MILK MARKETING FEDERATION LIMITED** reported in*

2015 (3) ABR 472. The Court holds thus:”

It further held as under:

“13. Reliance placed on the decision of the Hon'ble Supreme Court in the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra), and of this Court in the case of Vinod Wankhede (supra), to my mind is misplaced, inasmuch as, the aforesaid decisions turned on their own facts. In the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra), the electoral roll was prepared in view of certain amendments in the byelaws, which amendment was struck down by the appellate authority. The Supreme Court found that the preparation of the voters' list on the basis of "non-existent Rules" would be illegal. The Supreme Court found that in the case of Shri sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra) the voters' list was prepared in terms of extant rules but certain irregularities were committed therein unlike in the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra) where the electoal roll was found to be prepared on the basis of non-existed rules. In my considered view, the present case would be similar to the factual situation, as in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha (supra) than the case of Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (supra) where the bye-laws on the basis of which voters' list was prepared were struck down by the appellate authority.”

13. In the case of **Pundlik** cited (supra), it is true that the case of **Sant Sadguru Janardan Swami** cited has been distinguished on facts. In the case of **Pundlik** cited (supra), the Supreme Court reiterated that preparation of voters list is an integral process of election and the Court could not interfere at that stage. In para 17 the Supreme Court held thus:

“17. In our opinion, the learned counsel for the appellant is also right in submitted that if the order passed by respondent No.2 is upheld, the provisions of sub-rule (2) of Rule 5 will become nugatory and otiose. When the rule making authority conferred power on the Sangh to change the name of its representative/delegate by expressly permitting the change of representative/delegate and intimating the said fact to the Collector, such right cannot be taken away or interfered with. Since the last date as per the communication of the respondent No.2 - Collector was June 10, 2005, the action of respondent - Sangh was within the four corners of Rule 5(2). The High Court was, therefore, in error in not allowing the petition and granting the relief to the appellant.”

14. The Division Bench of this Court in the case of **Dattatray Genaba Lole** cited (supra) has distinguished the case of **Pundlik** in para 8.41 and 8.42. The Division Bench held thus:

“8.41 The judgment in Shri Sant Sadguru, supra, was considered and distinguished by the Supreme Court in Pundlik, supra. In paragraph 8 and 9 of this decision the

Supreme Court noticed the normal rule of non-interference by the Courts at the interim stage of preparation of voters list. In paragraph 12, 13 and 16 the Court explained that the ratio of Shri Sant Sadguru was not being followed because there was a patent illegality in the failure to follow the mandate of Rule 5(2) of the 1971 Rules in a matter that left no discretion to the Collector. In paragraph 17, the Court upheld the submission that the action of the Collector if allowed to stand would render sub-rule (2) of Rule 5 nugatory and otiose. In paragraph 18, the Court referred to a decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd., supra, where electoral rolls were prepared on the basis of bye-laws that were held to be illegal. In the context of such a challenge, the Supreme Court reversed the High Court and distinguished Shri Sant Sadguru and held that where the voters list has been prepared on the basis of non-existent rules, it would be illegal, and the Court could not interfere under Article of the Constitution of India.

8.42 *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.”

15. Thus the position that emerges from the above decisions is that preparation of electoral roll is an intermediate stage and is a part of election process. Once the election process starts, it should not be stalled unless while preparing voters list some non-existent rules are made applicable. In the case at hand, it is not the case of petitioner that any non-existent rule has been made applicable. The remedy of the petitioner would be to raise these objections by way of an election petition. Therefore, I do not find any merit in the Writ Petition. It is devoid of any substance and hence it is dismissed.

16. Rule is discharged.

[M.G. SEWLIKAR, J.]