

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

WRIT PETITION NO.10458 OF 2022

Shivaji Bapurao Raut

Age : 40 years, Occu : Agri,

R/o. Ardhamasala, Tq. Georai,

Dist. Beed.

.. Petitioner

Versus

1. The Returning Officer,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed

2. The Secretary,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed

3. Shri. Subhash Seshrao Pimpale
Age : 42 years, occu : Agri,
R/o. Ardhamasala, Tq. Georai,
Dist. Beed.

4. Gramsevak
Grampanchayat Ardhamasala
Tal. Georai, Dist. Beed.

.. Respondents

...
AND

WRIT PETITION NO.10460 OF 2022

Shivaji Bapurao Raut

Age : 40 years, Occu : Agri,

R/o. Ardhamasala, Tq. Georai,

Dist. Beed

.. Petitioner

Versus

1. The Returning Officer,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed

2. The Secretary,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed
3. Shri. Vilas Eknath Dhapase
Age : 36 years, Occu : Agri,
R/o. Ardhamasala, Tq. Georai,
Dist. Beed.
4. Gramsevak
Grampanchayat Ardhamasala
Tal. Georai, Dist. Beed. .. Respondents

...
AND

WRIT PETITION NO.10461 OF 2022

Shivaji Bapurao Raut
Age : 40 years, Occu : Agri,
R/o. Ardhamasala, Tal. Georai,
Dist. Beed .. Petitioner

Versus

1. The Returning Officer,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed
2. The Secretary,
Vividh Karyakari Seva Sahakari Sanstha
Marya., Ardhamasala, Tq. Georai,
Dist. Beed
3. Shri. Subhash Magan Jadhav
Age : 43 years, Occu : Agri,
R/o. Ardhamasala, Tq. Georai,
Dist. Beed.
4. Gramsevak
Grampanchayat Ardhamasala
Tal. Georai, Dist. Beed. .. Respondents

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In all the matters:

Advocate for Petitioners : Mr. Kamlakar J. Suryawanshi

Advocate for Respondent No.1 : Mr. V.H. Dighe

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CORAM : SANDEEP V. MARNE, J.**DATE : 11-10-2022****ORAL JUDGMENT :**

. Rule. It is made returnable forthwith. Mr. V.H. Dighe, learned Counsel waives service of notice for the respondent no.1. At the joint request of the learned counsel appearing for the parties, the petitions are heard finally at the admission stage.

2. By these petitions, the petitioners have assailed rejection of their objection for acceptance of nomination of respondent no.3 in each petition for election of respondent no.2 - Society.

3. As the factual matrix in all the three matters is similar, facts in Writ Petition No.10458 of 2022 are discussed for the sake of convenience. The election of the Managing Committee of respondent no.2 - Society has been declared on 27.09.2022. The petitioner as well as respondent no.3 are the members of respondent no.2 - Society. The last date for submission of nomination form was 03.10.2022 and the scrutiny was to be conducted on 04.10.2022.

Respondent no.3 submitted his nomination form to contest the election from general category on 03.10.2022. His nomination was accepted on 06.10.2022 by respondent no.1 - Returning Officer. The petitioner raised objection to the nomination form submitted by respondent no.3 on the ground that he has three children viz. Shivaji born on 11.07.1999, Shalini born on 28.02.2002 and Shivam born on 13.01.2008. In support, the petitioner has relied upon the birth certificates issued by Anganwadi Sevika of village Ardhamasala, Tal. Georai, Dist. Beed. By order dated 06.10.2022, the Returning Officer has rejected the objection of the petitioner on the ground that as per the certificate issued by the Gramsevak, no child has been born after 13.09.2001. The petitioner is questioning the order rejecting his objection in the present petition.

4. At the outset, an objection was raised about maintainability of the petition in view of the judgment of this Court in **Dattatray Genaba Lole & Others vs. Divisional Joint Registrar, Cooperative Societies and Others, (2022) 1 Bom CR 471** in which it has been held that writ petitions would not be maintainable challenging any intermediate stage of election process and that the only remedy available to the aggrieved party is to file election petition under Section 91 of the Maharashtra Cooperative Societies

Act, 1960 (hereinafter referred to as the 'Act of 1960') read with Rule 78 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as the 'Rules of 2014').

5. Mr. Suryawanshi, the learned counsel for the petitioners submits that in **Dattatray Genaba Lole** (*supra*) this Court has carved out certain exceptions where writ petitions would be entertained despite availability of remedy of filing the election petition. He relies upon para - 46 and 79 of the judgment, which read 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.

79. Whilst coming to the conclusion that we are not

inclined to entertain the Writ Petition because of the alternative statutory remedy available to the Petitioners under Section 91 of the Act read with Rule 78, we are conscious of the fact that the rule of alternative remedy as a bar to maintaining a writ petition under Article 226 of the Constitution of India is not absolute. It has been described as a rule of self-limitation or discretion. In certain situations, even if there is an alternative remedy, the Courts may entertain a writ petition under Article 226 of the Constitution of India. Some of the well-defined situations in which the existence of an alternative remedy will not usually preclude a writ petition under Article 226 of the Constitution of India being entertained are if it primarily raises a challenge under Part III of the Constitution of India for violation of fundamental rights; it challenges an order which is entirely without jurisdiction; when such alternative remedy is demonstrably inefficacious; or the petition asserts a clear violation of the principles of natural justice. We note this only because according to us the case in the Writ Petition does not fall within any of these categories.'

6. Mr. Suryawanshi submits that the present case involves the gross situation which warrants interdiction at the hands of this

Court in exercise of its writ jurisdiction. He also relies upon decision of this Court, Bench at Nagpur in **Ankushbhai Juglal Baghele & Others vs. State of Maharashtra & Others**, Writ Petition No.1686 of 2022 decided on 13.04.2022, which has considered the decision in **Dattatray Genaba Lole** (*supra*) and has held in para - 6 and 7 as under:

‘6. In the factual matrix, what is discernible from the decisions impugned, is patent illegality of such nature and extent as would reduce the democratic process of election to a farcical and orchestrated ritual. Illustratively, the record reveals that the Secretary of the Society, who is but a paid servant, approached the District Election Officer imploring that 50 persons be included in the final voters list on the premise that after the publication of the provisional voters list the unpaid share money is paid in March, 2022. The District Election Officer was presumably oblivious to the provisions of Rule 8 of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 which mandates that an objection to the provisional voters list can be raised by, and entertained at the behest of, any member of the Society. Having at the benefit of perusing the relevant record, and the candid responses by the learned counsel who appears on behalf of the District

Election Officer, who is present in the Court, I have not come across any objection raised by any member of the Society on the basis of which the 50 persons could have been included in the final voters list. Similarly, the objection that 71 persons whose names are recorded in the register of members which has a presumptive value under Section 38 of the Maharashtra Co-operative Societies Act, 1960 (Act) is brushed under the carpet with a laconic observation that no documentary evidence is furnished in support of the objection. Concededly, the entire record was available with the District Election Officer, who is expected to be aware of the statutory provisions and the objection could not have been rejected on the premise that the members did not furnish documentary material or proof in support of the objections. The entry in the register of members has a presumptive value. It is always open for any member or person to show that the entry in the register of members is incorrect since the presumption is not a conclusive presumption of law. Be that as it may, the least which was expected from the District Election Officer is to ascertain the eligibility or entitlement of the 71 persons for inclusion in the final voters list on the basis of the material which the Secretary was otherwise eager to produce, as in the case of 50 persons referred to supra. On

the basis of similar reasoning, the manner in which the District Election Officer has disposed of the objection to the inclusion of the 33 persons on the premise that the said persons were declared to be inactive members of the Society, leave a lot to be desired. The District Election Officer further did not address the question whether after the publication of the provisional voters list, a member of the Society was entitled to pay the unpaid share capital and in a way remove the ineligibility.

7. The illegality is not of minor or technical nature and the writ Court cannot turn a blind eye and be a mute spectator on the jurisprudential logic that the election process has commenced and the writ Court ought to be loathe to interfere. The 'Laxman Rekha' as I have observed supra, can be crossed, as long as the writ Court treads cautiously and with extreme circumspection.'

7. Mr. Suryawanshi also relies upon the decision of this Court in **Ashok Baburao Tathe and others vs. The State Co-operative Election through Secretary and others**, Writ petition No.2889 of 2022 decided on 08.03.2022 to contend that in a case involving the gross illegality, this Court would be justified in entertaining writ petition.

He relies upon para - 19 of the judgment, which reads thus:

‘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.’

8. Mr. Suryawanshi submits that the Returning Officer has ignored birth certificates produced by the petitioner clearly demonstrating birth of third child on 13.01.2008 and has blindly relied upon certificate issued by Gramsevak. He further submits that

the certificate issued by Gramsevak is not a genuine document. He relies upon letter dated 06.10.2022 issued by Gramsevak stating that the Gramsevak does not have power to issue certificate certifying the number of children.

9. Per contra, Mr. Dighe, the learned counsel appearing for respondent no.1 opposes the petition. He submits that the petitioner has alternate and efficacious remedy of filing election petition under Section 91 of the Act of 1960 read with Rule 78 of the Rules of 2014. He relies upon order of this Court in **Sardar Dallu Tadvi vs. The State of Maharashtra, Writ Petition No.4679 of 2022** decided on 28.04.2022 wherein this Court declined to interfere after declaration of election program.

10. Mr. Dighe submits that the present case involves disputed questions of facts. He submits that Anganwadi Sevika is not empowered to issue birth certificate and therefore the certificate issued by the Gramsevak, who has necessary jurisdiction to do so, has rightly been relied upon by the Election Officer for repelling the objection raised by the petitioner. He prays for dismissal of the petition.

11. Rival contentions of the parties now fall for my consideration.

12. In **Dattatray Genaba Lole** (*supra*) this Court has considered the issue of maintainability of the writ petition in election matters and has held that writ petitions would not be maintainable. The only remedy that is available to the aggrieved person is to file election petition under Section 91 of the Act of 1960 read with Rule 78 of the Rules of 2014. Undisputedly, acceptance of nomination forms is a part of intermediate stage for election process. The only distinction that Mr. Suryawanshi has attempted to draw in the present case is that the facts of the case are so gross that this Court would be justified in entertaining the present petitions. For that purpose, Mr. Suryawanshi has relied upon para nos.46 and 79 of the decision in **Dattatray Genaba Lole** (*supra*).

13. Let us therefore examine whether the present case can be fitted into the exception created by para nos.46 and 79 of the decision in **Dattatray Genaba Lole** (*supra*). Mr. Suryawanshi is relying upon the birth certificate issued by Anganwadi Sevika, whereas Mr. Dighe submits that Anganwadi Sevika is not empowered to issue birth certificate. It is the contention of Mr. Dighe that

Gramsevak maintains birth and death register and therefore he alone is empowered to certify number of children of any person. Faced with this situation, Mr. Suryawanshi contends that the certificate issued by Gramsevak is not a genuine document and for that purpose he has impleaded Gramsevak as party respondent. Mr. Suryawanshi has also relied upon letter of Gramsevak stating that he is not empowered to issue certificate certifying number of children. Whether Gramsevak can issue a certificate certifying number of children to a person can be a debatable proposition, however it is beyond dispute that the Gramsevak maintains birth and death register. Number of children can be certified only on the basis of entries made in the birth register. Anganwadi Sevika undeniably, does not maintain such register nor can have excess to the same. I do not wish to delve more in this regard. Suffice it to say that there are disputed questions of law and fact relating to the eligibility of respondent no.3 to contest the election. By no stretch of imagination, it can be contended that the facts of the case are admitted and the present is a gross case where interference by this Court in exercise of the writ jurisdiction is warranted.

14. What is left now to deal with the decision relied upon by Mr. Suryawanshi. In **Ankushbhau Juglal Baghele** (*supra*), there was a

patent illegality having effect of reducing the democratic process of election to a farcical and orchestrated ritual. In that case, the case involved exclusion of names of 50 persons and inclusion of names of 33 persons in the voters list without deciding the objection about their eligibility. In **Ashok Baburao Tathe** (*supra*) the case involved deletion of names from voters list without granting an opportunity of hearing. Therefore, both the decisions are of no avail to the petitioner.

15. Rather the decision relied upon by Mr. Dighe in **Sardar Dallu Tadvi** (*supra*) is apposite to the present case as election programme has already been declared and the voting is to take place on 03.11.2022.

16. In the facts and circumstances of the present case, I do not find that any case is made out for taking a departure from the principles laid down by this court in **Dattatray Genaba Lole** (*supra*). The petitions are not maintainable and deserve to be dismissed. However, this would not preclude the petitioners from filing election petitions under Section 91 of the Act of 1960 read with Rule 78 of the Rules of 2014.

17. It is clarified that the observations made in this order are only *prima facie* and while deciding the election petitions, if filed by

the petitioners, the court shall not be influenced by the same. Writ petitions are accordingly dismissed without any orders as to costs. Rule is discharged.

(SANDEEP V. MARNE, J.)

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