

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**WRIT PETITION NO. 13115 OF 2022**

1] Babasaheb S/o Sominath Gaikwad,  
Age : 38 years, Occu. : Agril.,

2] Nana S/o Anna Palaskar,  
Age : 45 years, Occu. : Agril.,

Both R/o. Palashi, Tq. and  
District – Aurangabad

.. PETITIONERS

VERSUS

1] The State of Maharashtra  
Through its Principal Secretary,  
Co-operation & Textile Deptt.,  
Mantralaya, Mumbai – 400 032

2] The State Co-operative Election  
Authority, MS, Pune

3] District Deputy Registrar,  
Co-operative Societies,  
Aurangabad

4] Taluka Deputy Registrar,  
Co-operative Societies,  
Aurangabad

5] The Returning Officer &  
Co-operation Officer-1,  
Under the Taluka Dy. Registrar,  
Co-operative Societies,  
Aurangabad

.. RESPONDENTS

...

Advocate for petitioner : Mr. S.S. Thombre  
AGP for the respondents 1, 3 and 4 : Mr. S.B. Yawalkar  
Advocate for the respondents 2 and 5 : Mr. S.K. Kadam

...

**CORAM : MANGESH S. PATIL &  
Y. G. KHOBRADE, JJ.**

**DATE : 20 DECEMBER 2022**

**ORDER (MANGESH S. PATIL, J.) :**

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP waives service for respondents nos. 1, 3 and 4 and Mr. Kadam waives service for respondents nos. 2 and 5. At the joint request of the parties, the matter is heard finally at the stage of admission.

3. The petitioners are invoking the powers of this Court under Article 226 of the Constitution of India to question the legality of the decision taken by the respondent no. 5 who is the Returning Officer appointed by the respondent no. 3 – District Deputy Registrar of Co-operative Societies for holding elections of the chairman and vice chairman of a primary agricultural society pursuant to the Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder and the Maharashtra Co-operative Societies (Elections to Committees) Rules, 2014 (hereinafter **the Act** and **the Rules**), whereby the respondent no. 5, who was presiding over the meeting, *in spite* of accepting the nominations of the petitioners and when they were to be declared elected unopposed, instead of granting such a declaration, has adjourned the meeting for want of quorum.

4. The learned Advocate Mr. Thombre would vehemently submit that election program was published by the respondent no. 5 on

17-12-2022 for holding elections to elect the chairman and vice chairman of the society. The program stipulated the timeline for submission of nomination papers, its scrutiny, declaration of valid nominations, time to withdraw the nominations and declaration of the final list of nominations and even for casting votes and declaration of result.

He would submit that there were three directors present at the meeting. The petitioners submitted nominations for the post of the chairman and vice chairman respectively. The nominations were filed in time. The time stipulated for withdrawing the nominations was 10.30 am to 11.00 am, however, even before 11.00 'O' clock in spite of there being no opposition, instead of declaring the result the respondent no. 5 illegally adjourned the meeting for want of quorum at 10.35 am. He would submit that such an action of the respondent no. 5 is clearly contrary to the bye-law 9(5). Specific application was also submitted by the petitioners to the respondent no. 5 then and there still he was bent upon to adjourn the meeting and recorded the minutes adjourning it for want of quorum. The action is illegal. There was no such option available since it was not a meeting of the committee but was a special meeting held under the chairmanship of the respondent no. 5 - Returning Officer and for which the regulations regarding the quorum would not apply.

5. Per contra, the learned Advocate Mr. Kadam by referring to the bye-laws of the society would point out that in order to provide for constitution of a committee, regulation 9 prescribes the provisions. According to clause 4, the election for the chairman and vice chairman has to be conducted by the Election Officer within 15 days of the constitution of the committee. Clause 5 prescribes quorum of 7 or members and prescribes further procedure to be followed if the meeting is to be adjourned for want of quorum. He would submit that since admittedly, only 3 out of 13 members of the committee were present, the quorum was not full and there was no fault in the decision of the respondent no. 5 - Returning Officer who adjourned the meeting for want of quorum.

6. We have carefully gone through the papers and the bye-laws and considered the rival submissions. There is no dispute on facts.

7. The respondent no. 5 had convened the meeting for electing the chairman, vice chairman in accordance with the bye-law 9 clause 4. Admittedly, out of 13 directors / members of the committee, only 3 were present and according to clause 5 of bye-law 9, the quorum for the meeting of the committee is prescribed as minimum of 7 members of the committee. If such was the state-of-affairs, obviously

there was a clear absence of quorum and the meeting could not have commenced at the first place.

8. Be that as it may, if according to clause 4 of bye-law 9, a chairman and vice chairman is to be elected in a meeting of the committee to be presided over by the Returning Officer, no distinction can be made in the bye-laws as far as the meeting of the committee for transacting usual business and a meeting of the committee to be convened especially under the chairmanship of the Returning Officer for electing the chairman and vice chairman. Therefore, it cannot be said that the provision regarding quorum in clause 5 of bye-law 9 would not be applicable to such a meeting of the committee in which the chairman and vice chairman are to be elected.

Therefore, the submission of learned advocate Mr. Thombre making out a distinction between a meeting of the committee to be held according to bye-law no. 9 and a meeting under the very same provision to be conducted by Returning Officer for electing the chairman and vice chairman, is not acceptable.

9. Once we conclude that even for a meeting to be presided over by the Returning Officer convened for electing chairman and vice chairman has to be conducted under bye-law 9, even the provisions regarding quorum under clause 5 would apply to it.

10. The respondent no. 5 - Returning Officer could have waited for the quorum to be filled before proceeding to accept the nominations. But then it is just possible that he must have been waiting for other members of the committee to arrive. Having waited till 10.30 am, by which time the nomination papers were to be published and having found that in all probability, in the absence of quorum, the proceedings would be invalid, he seems to have decided to adjourn it. Merely because he proceeded to reach up to a particular stage of the election process, could not have enabled him to complete the process in the absence of quorum in accordance with bye-law 9 clause 5.

11. In our considered view, no illegality was committed by the respondent no. 5 in adjourning the meeting and publishing a fresh program to be conducted in the meeting on 23-12-2022.

12. The petition is dismissed.

13. Rule is discharged.

**[ Y. G. KHOBRADE ]**  
**JUDGE**

arp/

**[ MANGESH S. PATIL ]**  
**JUDGE**