

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 400 OF 2022**

Popatrao V Patil	...Petitioners
<i>Versus</i>	
The State Of Maharashtra & Ors	...Respondents

**Mr Uday Warunjikar, i/b CP Yadav & Santosh Musale, for the
Petitioner.**

**Mr AI Patel, Addl. Government Pleader, with SS Panchpor, AGP,
for Respondent No. 1-State.**

Mr Dilip Bodke, for Respondent Nos. 2 & 7.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 14th February 2022

PC:-

1. The Petition has been amended and now assails an order dated 24th January 2022 at 'Exhibit R' to the Petition. This order was passed by the 2nd Respondent, the District Cooperative Election Officer and District Deputy Registrar Cooperative Societies, Satara. The society in question is Respondent No. 4, Kedarling Vividh Karyakari Seva Society Ltd.

2. The Petitioner approaches this Court seeking to quash and set aside a final voters' list published by the 2nd Respondent for election of the managing committee/board of directors of the 4th Respondent for the period 2021–2022 to 2026–2027.

3. The Petitioner's grievances against this voters' list are broadly two. *First*, it is said that the voters' list includes a large number of members who are deceased, and could be shown or established from official records to be so. *Second*, it is urged that the impugned voters' list includes the names of the members who stand "disqualified" because they have either moved out the area, joined another society or, more importantly, no longer hold a minimal land holding.

4. During the pendency of the Petition, the 2nd Respondent considered the Petitioner's representations and passed the impugned order at Exhibit-R. We permitted the Petition to be amended to include a challenge to this order. There is also now an Affidavit in Reply on behalf of Respondents Nos. 2 and 3 from pages 214 to 218.

5. We commence this part of the discussion with a reproduction of Section 25A of the Maharashtra Cooperative Societies Act 1960 in regard to the removal of names of members from the membership register. The Section and its proviso read thus:

“25A. Removal of names of members from membership register

The committee of a society shall remove from the register of its members the names of a person who has

ceased to be a member or who stands disqualified by or under the provisions of this Act for being the member or continuing to be the member of a society.”

6. The impugned order shows at page 189Z-10 that the 2nd Respondent accepted that 109 names were wrongly included because these persons were shown and established *inter alia* from the documents obtained from the Sarpanch of the Gram Panchyat concerned, to be deceased. Mr Warunjikar would have it that the deletion should have been of many more names. We cannot enter in this controversy. There is undoubtedly a procedure to be followed by the 2nd Respondent and the society in ascertaining what should be really an undisputed question of fact: whether a member is dead or alive. This is a simple, binary, one/zero, yes/no answer. A voter is either alive or he is dead. The ascertainment of this cannot be done on the basis of an allegation made by the Petitioners or on the basis that the Petitioner has obtained some document from a Sarpanch. The cooperative society authority must satisfy itself on the basis of an official record from the Sarpanch or other authority in charge of the maintenance in the regular course of legal duties of a register of births and deaths and on the basis of an official death certificate as to whether a member is or is not alive. It is not possible to accept the Petitioner’s version as being indubitably correct. We note from page 189Z11 that the list provided was of 320 names of persons or members said to be deceased. But the death certificates of only 109 persons could be produced by the Petitioner. We do not see how we can, in these circumstances, demand that the 2nd Respondent should accept the much larger figure propounded by the Petitioner.

7. In other words, where the voters' list undisputedly contained the names of 109 deceased persons, it was rectified and those names were deleted. The Petitioner could not substantiate his contentions about the others he claimed were deceased. This aspect of the matter must surely end at that.

8. On the question of disqualification, Mr Warunjikar's interpretation of Clause 63 of Exhibit A of the amended bye laws of the 4th Respondent is not one that commends itself. A copy of these bye-laws is at Exhibit A. Clause 63 seems to us to say that eligibility criteria for membership *inter alia* is that of a person holding 10 Are of the land. There are other conditions, but this is the one Mr Warunjikar presses. The implication of accepting this submission from Mr Warunjikar is bound to lead to an inconsistent situation. We understand this requirement as being perfectly valid and justifiable for *gaining* membership of a society. But we do not read the clause as meaning that this land holding area must be maintained for the entire duration of the membership. Let us take an example. For a society (or, for that matter, any association or club or professional body) there may well be an initial requirement of income of a certain level, i.e. a minimum income. Nobody can suggest that that qualifying income for entry must be maintained throughout the duration of the membership. In fact, it is unreasonable in the context of an income, because when a person retires from an active earning life, the income may actually drop. But that does not mean that membership ceases because the member no longer has the income he once did when he sought membership, and which qualified him for membership. In other words, this requirement applies only at the stage of the initial entry. It is not a

requirement for continued membership of the society. The same will apply equally to land. In any case, whether or not a particular member holds or does not hold 10 Are of land is a question of fact we cannot examine.

9. Mr Warunjikar submits that many of these so called disqualified members have been recently added. But that is again another disputed question of fact which cannot be entertained in this Writ Petition.

10. In the Affidavit in Reply in paragraph 7, Respondents Nos. 2 and 3 have dealt with this aspect of the matter. In the impugned order as well, the 2nd Respondent has said that some of the memberships that are assailed by the Petitioners are very old. All that this mean is that those members would have — and must have — satisfied the initial entry criteria. They cannot now be ejected from membership by merely alleging that that present land holdings have fallen below the 10 Are initial requirement. Nor can they deprived of their franchise and their right to vote. We do not believe that there is a single case where the Petitioner has alleged that a member has been recently added *without* meeting the initial entry level criteria. If that is in fact so, it should have been pointed out and demonstrated on the basis of verifiable records.

11. It has been repeatedly held that in matters such as these, i.e. those that involve judicial review of administrative action, the Court does not and will not substitute its decision for that of the authority.

It will examine the decision-making process.¹ We are satisfied that the authority has applied its mind to the provisions of law on the material and there is no infirmity in the impugned order.

12. We see no merit in the Petition. It is rejected. There will be no order as to costs.

13. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)

¹ *Sushil Kumar v State of Haryana & Ors*, 2022 SCC OnLine SC 64 (19th January 2022).