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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3604 OF 2022**

Yamai Vividh Karyakari Sahakari Seva Sanstha
Marayadit & Ors ...Petitioners
Versus
The District Co-operative Election Officer & Ors ...Respondents

Mr Prashant Bhavake, *for the Petitioners.*
Mr Dilip Bodke, *for Respondent No 1.*
Mr Ruturaj P Pawar, *for Respondent Nos 2 and 3.*
Mr A I Patel, *Addl G P with Mr K S Thorat for the State/Respondent.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 31st March 2022

PC:-

1. The Petition is by a society and some 27 other members assailing a decision and order of 10th March 2022 at Exhibit-M at pages 102 and 103 passed by the 1st Respondent, the District Co-operative Election Officer. The Officer had before him a complaint filed by Respondent Nos 2 and 3.

2. Those two complainants had (and have) very many complaints to make about the society, its office bearers and so on. We are not concerned with those complaints. Our concern is with

the manner in which the 1st Respondent dealt with the complaint/s. He did not, as page 102 shows, issue notice to any of the individuals whose eligibility to vote was being questioned. He did not afford a hearing to any of these. He did not even issue notice to the office bearers of the society. Apparently, he summoned some society records from or through an employee of the 1st Respondent society, studied them and came to a conclusion that what the complainant said was correct, namely, that these 27 members had never paid the fees or obtain/taken necessary membership forms.

3. We are not concerned with the decision but with the decision making process. That process is entirely vitiated. The rule of *audi alteram partem* is one of the fundamental rules of natural justice and it informs almost every aspect of judicial review of administrative action. In Courts, which conceivably and arguably enjoy greater latitude, we almost never pass orders without notice. When we are persuaded to make ex parte orders, we always note reasons for issuing notice and we make only interim, time-limited orders. No final orders are made without affording the opponent an opportunity of a hearing. If that opportunity is not taken, then the hearing may proceed — but an opportunity must be given. Even the Code of Civil Procedure, 1908 makes it clear that an interim order without notice is an exception and never the rule. Order XXXIX Rule 3 of the Code of Civil Procedure says that in all cases except where it appears that the object of granting an injunction will be defeated by delay before granting injunction notice to that application must be given to the office. The proviso says that where an injunction is proposed to be granted without notice, the reasons for not giving notice must be noted.

4. It is unclear to us how the 1st Respondent purported to arrive at a final conclusion of the complaint without giving a minimal notice to the 27 individuals and the office bearers of the 1st Petitioner society. There is no explanation as to why no notice was given. He just proceeded immediately to determination on merits.

5. The impugned order cannot be sustained. It is quashed and set aside. The so-called disqualification of Petitioner Nos 2 to 28 cannot continue. If the two complainants intend to make an application of any kind to the 1st Respondent against any of these Petitioners, the 1st Respondent will decide that application strictly in accordance with law, and by this we mean in exercise of a jurisdiction that is conferred on him (without assuming a jurisdiction not conferred on him) and only after following every rule of natural justice, including issuing a notice and affording an opportunity for a hearing.

6. The consequence of this is that the names of Petitioner Nos 2 to 28 will need to be restored to the final voters list.

7. We dispose of the Petition under these terms. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)