

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8858 OF 2022

Akshada Shivaji Madval] .. Petitioner

Vs.

- | | | |
|--|---|----------------|
| 1. The State of Maharashtra, |] | |
| Through the Principal Secretary, |] | |
| Department of Co-operation, Mumbai. |] | |
| 2. The Commissioner of Co-operative Dept., Pune |] | |
| 3. The State Co-op. Election Commissioner, Pune |] | |
| 4. The District Co-op. Election Officer @ |] | |
| District Deputy Registrar, Sindhudurg |] | |
| 5. The Taluka Co-op. Election Officer @ |] | |
| Asstt. Registrar, Co-op. Societies, Kankavli. |] | |
| 6. Kiran Vasant Nikam, Election Decision Officer |] | |
| 7. Chintamani Park CHS, Kankavli |] | |
| Through the Administrator Mr. R.S. Khandekar |] | .. Respondents |

Mr. Anand S. Patil for the Petitioner.

Mr. V.S. Gokhale, B Panel Counsel, for Respondent Nos.1 and 2.

Mr. Deelip Patil-Bankar, Chief Standing Counsel, SCEA, for Respondent Nos.3 to 6.

**CORAM : PRASANNA B. VARALE &
KISHORE C. SANT, JJ.**

DATE : 26TH JULY, 2022.

ORAL JUDGMENT :

1. Heard counsel for the petitioner at length. The principal prayers in the petition are prayer clauses (a) and (b) and the said prayers read thus :-

- “(a). This Hon’ble Court may call for the Record & Proceedings on the file of Respondent Nos.5 and 6 and after perusal of the same, by suitable writ, order or direction, this Hon’ble Court may be pleased to direct the Respondent Nos.5 and 6 to decide the objections raised by the petitioner on 2nd June 2022 (Exhibit-E) immediately.*
- (b). This Hon’ble Court may hold and declare that the entire election program undertaken by the respondent nos.5, 6 and 7 is wrong, faulty, illegal and against the provisions of Maharashtra Co-operative Societies Act, 1960, Rules, 1961 and against the Maharashtra Co-operative Societies (Elections to Committee) Rules, 2014 and thereafter may direct the respondent nos.5 and 6 to conduct the programme afresh.”*

2. The petitioner is one of the members of the co-operative housing society, namely, Chintamani Park Co-operative Housing Society situated in the town of Kankavali, Taluka Kankavali, District Sindhudurg. Respondent no.3 through respondent no.6 declared election programme for electing the members to the Managing Committee of the said society. By way of a proclamation dated 26th May 2022, the election programme was declared. Copy of the same is placed on record at Exhibit-A to the petition. As per the election programme, the draft voters’ list was to be published on 27th May 2022 at 12 noon and objections thereto were to be submitted in writing during the period from 27th May 2022 to 6th June 2022 from 11:00 a.m. to 2:00 p.m. The Election Officer was to conduct an enquiry and intimate / inform the decision on 13th June 2022 from 11:00 a.m. to 2:00 p.m. Then the

other formalities of the election programme are referred to in Rule No.76-G dated 21st June 2022, annexed at page 26 to the petition, viz. publication of Final Voters' List as per the election programme, date and time of voting is scheduled on 29th July 2022 from 11:00 a.m. till 1:00 p.m. As per the election programme, after the voting is over and result of the election is declared on 29th July 2022, meeting of the society is to be held so as to consider whether on certain posts there is requirement of election and whether certain posts are to be declared on the basis of no candidate and such candidate will have to be declared as unopposed elected candidate. In case of need of electing the candidate, a further process is to be conducted such as election and declaration of results. So as to complete the formalities of election, necessary steps were taken.

3. It may not be out of place to state that an Administrator was appointed to look after the affairs of the society. Perusal of the documents placed on record further reveals that the former Secretary of the society Shri Vishwanath Dattaram More submitted an application dated 28th January 2022 to the Administrator of the society as well as the Assistant Registrar of Co-operative Societies, Kankavli raising certain objections as well as seeking certain documents.

4. Now be that as it may, on declaration of the Draft Voters' List, the petitioner, along with six other members of the society, raised objection to the Draft Voters' List. Perusal of the objections raised to the Draft Voters' List,

which are annexed as Exhibit-E to the petition, reveal that as many as 7 points were raised in the nature of objections. As per the election programme, the Election Officer was to decide the objections and inform the decision on or before 13th June 2022. By way of a communication dated 20th June 2022, the petitioner and others were informed that their objections have been decided and the decision is communicated to them on 13th June 2022 by ordinary post. It was also informed to the petitioner that further election programme is in the process and the petitioner's co-operation in the election was sought for.

5. The counsel for the petitioner vehemently submitted that the respondents and particularly the Election Officer failed to follow mandate of Section 26 of the Co-operative Societies Act, 1960. It was also the submission of learned counsel for the petitioner that one of the objections raised by the petitioner is in relation to certain members whose names appeared in the Draft Voters' List qua the defaulters and, thirdly, there is a failure of observance of principles of natural justice. The counsel submits that as the Final Voters' List is now published without following the principles of natural justice, the election programme declared by respondent no.6 be deferred.

6. Per contra, learned counsel Mr. Patil-Bankar appearing for respondent no.3 as well as respondent no.6 vehemently submitted that the petition proceeds on assumptions and presumptions and relying on a particular provision, which is not applicable in the present petition. The learned counsel Mr. Patil-Bankar submitted before this court that the Maharashtra Co-

operative Societies Act of 1960 has undergone a recent change by way of an amendment to the said Act. He further submits that the present co-operative society falls in the category of “Group E Societies”. Considering the nature of these particular societies which fall in “Group E Societies”, a stricter adherence to Section 26 is diluted by the amendment. The learned counsel submits that the aim and object of the amendment is to avoid uncalled delay in the process of election, as in various co-operative housing societies, due to unforeseen difficulties, the elections were not conducted on the scheduled time and now the elections of the Managing Committees of such societies are due. In such situation, further delay would adversely affect the administration of the societies. Considering these aspects, the amendment was effected. By inviting our attention to the amendment, learned counsel Mr. Patil-Bankar submitted that now in the present scenario, the ground raised in the petition of non-adherence to Section 26 of the Co-operative Societies Act is of no consequence. The learned counsel Mr. Patil-Bankar as well as learned AGP Mr. Gokhale then submitted that the petitioner on one hand raised an objection and prayed for deferment of the election and on the other hand, submitted her candidature for the election and was found eligible for contesting election. The petitioner herself has placed on record the list of valid nomination forms after scrutiny and the petitioner’s name finds place at serial nos.1 and 2 in the list of valid nomination forms. Her nomination was from two categories; firstly, it was from “Other Backward Class” and, secondly, it was for “Women Representative”. It is also submitted before this court by the

learned AGP Mr. Gokhale as well as learned counsel Mr. Patil-Bankar that firstly the objection of the petitioner was decided on the scheduled date i.e. 13th June 2022. Her nomination form was declared as valid nomination form on 4th July 2022 and the petition is filed in this court on 19th July 2022. Thus, the submission was to the effect that there is an unexplained delay in filing the petition.

7. After hearing the learned counsel for the petitioner as well as learned AGP for the State and learned counsel Mr. Patil-Bankar appearing for respondent no.3-Election Commissioner and respondent no.6-Election Officer, we found considerable merit in the submissions of Mr. Patil-Bankar and he was justified in submitting before this court that on the backdrop of an amendment in the Co-operative Societies Act, particularly to Section 26, the challenge raised in the petition on the basis of a scenario pre-amendment is unsustainable. There is also some merit in the submission of learned counsel Mr. Patil-Bankar that the decision was informed to the petitioner on 13th June 2022 and the petitioner had approached this court on 19th July 2022 and there is no justifiable explanation for approaching this court late, which can be treated as a belated approach considering the typical grievance raised in the petition. The learned counsel Mr. Patil-Bankar submitted before this court that as the election process is now initiated and is at the verge of its final stage i.e. of voting, indulgence or interference of this court at this stage may not be advisable.

8. Mr. Patil-Bankar in support of his submissions placed heavy reliance on the judgment of the Hon'ble Apex Court in the matter of *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. Vs. State of Maharashtra and Ors.*, (2001) 8 SCC 509, particularly para 12 thereof. For ready reference, we may quote the relevant observations of the Hon'ble Apex Court and it reads thus :-

"12. In view of our finding that preparation of the electoral roll 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."

9. In view of our finding that preparation of a electoral roll is at intermediate stage in the process of election of the Managing Committee of a specific society and the election process having been set in motion, it is well settled that High Court should not stay continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. Thus, in our opinion, the petition is devoid of merits and deserves to be dismissed.

10. Before parting, we may observe that though the Election Officer communicated the decision to the petitioner on 13th June 2022 and it was within time as per the election programme, the communication dated 20th

June 2022 was by way of a simple postal service. The communication dated 20th June 2022 also refers to the decision of the Election Officer published on 14th June 2022. In our opinion, the respondent no.6-Election Officer is duty bound to conduct the elections in free and fair manner and as such a due intimation of the decision within a reasonable period to an objector is certainly a prerequisite of free and fair elections. The Election Officer adopted the mode of communication as ordinary postal service. In this mode of communication, there is no assurance as to on which date, the communication is forwarded from the addressor and on which date the communication is received by the addressee. As such, it would be only a guess work insofar as these aspects are concerned. Now in the changing times, other faster modes of communications are available. Even the Postal Department is adopting modern ways and is maintaining the track reports in the cases of communications being forwarded by the registered post method. The tracking report refers to the better particulars such as dispatch of the consignment and receipt of the consignment. It also refers to the places of the consignment. There is no harm if the Election Commissioner adopts such a transparent, reliable and fast mode of communication, lending an assurance that the communication reached to the addressee within a reasonable period. There are also modern methods of communication available in the form of e-mail or alike modes. We hope and trust that the State Election Commissioner may change its way in accordance with the changing times and may adopt the faster mode of communication and accordingly would issue necessary

guidelines in co-ordination and co-operation with the State Government and such exercise would be completed as early as possible so that in future necessary care is taken.

11. With the aforesaid observations, the Petition is disposed.

[KISHORE C. SANT, J.]

[PRASANNA B. VARALE, J.]