

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2121 OF 2022**

Narayan Dattaram Jadhav

...Petitioner

Versus

The State of Maharashtra & Ors

...Respondents

Mr Anand S Patil, for the Petitioner.

Mr KS Thorat, AGP, for Respondent No.1-State.

Ms Shraddha Pawar, i/b Deelip Bankar Patil, for Respondent No. 2.

Mr Ruturaj Pawar, for Respondent No. 3.

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

DATED: 2nd March 2022

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1. Heard. The challenge in this Petition is to a failure by 2nd Respondent, District Cooperative Election Officer, in deciding the Petitioners' objection to the preparation of a voters list of the 3rd Respondent Society. A copy of the objection is at page No. 65.

2. The Petitioner is a member of the 3rd Respondent society. There are four points in the representation of objections at page 65. Only the first is really an objection to the voters list. What the Petitioner says is that some members do not fall in the definition of

agriculturists and are therefore ineligible to the members of the 3rd Respondent society. Ex facie this is not an objection to the preparation of the voters list at all. It is an objection to the admission into membership of some persons. It seeks in substance a correction or rectification of the register of members and the ejection or disqualification of members from continuing to be members of the 3rd Respondent society.

3. Apart from anything else, this would require individual members to be joined as Respondent to the Petition. That has not been done.

4. Second, it is well settled that membership carries with it certain obligations but also certain privileges and entitlements. Among these privileges and entitlements is the right to stand for elections and the right to vote at elections. If a member is to be disqualified from contesting an election or from voting at a election, it must be provided specifically by the statute.

5. Membership of the society and the election process are two distinct things. A voters list is a step in preparation for an election. It is not possible to attack a voters list preparation by assailing the membership of a particular Society member. The State election authority has no power or jurisdiction to decide the question of membership. That is a dispute between member and member or member and society and can only be addressed by an authority so empowered under the Maharashtra Cooperative Societies Act, 1960 following the procedure under the Act. Specifically, such an

application would have to be made under Section 11 of the Act to the Registrar empowered under the Act. It cannot be made to the Cooperative Election Authority.

6. The 2nd Respondent passed an order on 10th February 2022. Mr Patil for the Petitioners says that it is fraudulent, backdated and so on. All this will raise disputed questions of fact that cannot be gone into in a Writ Petition but only in a civil suit or other appropriate proceeding.

7. Further, the point that Petitioner made in his representation at page 65 is squarely addressed in point No. 4 of the 10th February 2022 order, where the election officer has referred to the 16th July 2021 amendment which is operative in respect of elections until 31st March 2022. This amendment by a proviso removes the statutory provisions for ineligibility that were earlier provided in the Maharashtra Cooperative Societies Act. The election authority can only decide whether an existing member is or is not disqualified from voting, not whether he or she is or is not entitled to be a member in the first place. Thus the election authority has correctly declined to accept the Petitioner's representation.

8. For these reasons we see no merit in the Petition. The Petition is rejected. There will be no order as to costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)