

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

WRIT PETITION NO. 3295 OF 2022

Shriram Siddheshwar Dubal ...Petitioner
Versus
The District Co-operative Election Officer & Ors. ...Respondents

Mr. D. W. Bhosale, for the Petitioner.

Mr. Deelip N. Patil Bankar, Chief Standing Counsel, SCEA a/w Abhishek Patil, for the Respondent No.1.

Mr. R. P. Kadam, A.G.P., for the Respondent–State.

Mr. Sarang S. Aradhya, for the Respondent No.122.

Digitally
signed by
SONALI
MILIND
PATIL
Date:
2022.05.31
15:37:24
+0530

SONALI
MILIND
PATIL

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**
DATED : 25th APRIL 2022

P.C. :

1. Heard learned counsel for the parties.
2. By this petition, preferred of Article 226 of the Constitution of India, the petitioner inter alia seeks the following substantive reliefs;

“a. That this Hon’ble Court be please to issue an appropriate writ/order to direct the Returning Officers/Election Officers, the Respondent No.1 to correct the voters list before proceeding with the main Election Programme.

b. That this Hon’ble Court be pleased to issue an appropriate writ/order to direct Respondent No.1 Election Officer/Returning Officer to delete names of Respondent No. 5 to 161 those members in the voter list who are not eligible and qualified to participate in election of the Respondent No.3 society in consonance of the provisions of the MCS Act and approved bye-laws of the society.

c. That this Hon’ble Court be pleased to issue an appropriate writ or direction under Article 226 and 227 of the Constitution of India thereby calling for record and proceeding from the Respondent No.1 and after looking into legality and propriety of the impugned order passed on 09.03.2022, the same be quashed and set aside and remove the name of those persons which is enclosed to the objection applications submitted by the Petitioner on 28.02.2022.”

3. The grievance of the learned counsel for the petitioner is that the District Election Officer issued the election programme for the respondent No.3-Society on 17th February 2022 and also published a provisional voters list on the very same day. He submitted that since the last date for filing objection with respect to the provisional voters list was 28th February 2022, the petitioner filed his objection before the District Election Officer on 28th February 2022. The objection raised by the petitioner was with respect to

the names of 155 persons i.e. the respondent Nos. 5 to 161, included in the provisional voters list, by the respondent No.3-Society. The said objections are at page 33 i.e. Exhibit-“B” to the petition. He further submits that in view of the objections, the respondent No.1 called for a report from the office of the respondent No.2 and that the office of the respondent No.2-the Assistant Registrar vide its letter dated 4th March 2022 submitted its report to the office of the respondent No.1-the District Co-operative Election Officer. The grievance of the petitioner is, that the respondent No.1 without giving an opportunity of hearing to the petitioner and without verifying the record of the respondent No.3-Society, rejected the objections filed by the petitioner, vide order dated 9th March 2022. The said order has been impugned in the present petition.

4. Learned counsel for the petitioner submits that, the said respondents i.e. respondent Nos. 5 to 161 did not have any agricultural land at village at Ajansond and that 11 of them, were not even the residents of village Ajansond. He submits that despite the same, their names were included in the provisional list of voters. He further submits that the said persons were also not within the area of operation of the respondent No.3-Society, which

is the primary criteria, as per bye-law No.6(3) of the respondent No.3-Society. He submits that in this view of the matter, the impugned order dated 9th March 2022 cannot be sustained and as such be quashed and set aside. He further submits that in view of the same, the respondent No.1-Election Officer/Returning Officer be directed to delete the names of respondent No.5 to 161 from the voters list on the ground, that there are ineligible and not qualified to participate in the election process of the respondent No.3-Society.

5. Mr. Aradhye, learned counsel for the respondent No.122 opposes the petition. Learned counsel for the respondent No.122 has tendered a compilation of judgments on behalf of the said respondent to show, that once the election process has started, it is not permissible for the Court to interfere in its writ jurisdiction, under Article 226 of the Constitution of India.

6. Mr. Deelip Patil-Bankar, Learned counsel appearing for the respondent No.1-Election Officer also opposes the petition. He submits that the election programme has been declared and that voting is scheduled on

1st May 2022. Learned counsel reiterated the submissions advanced by Mr. Aradhye, learned counsel appearing for the respondent No.122.

7. It is not in dispute that the District Election Officer published the provisional voters list on 17th February 2022; that the petitioner had filed objections before the District Election Officer on 28th February 2022; and that the said objections were rejected by the District Election Officer on 9th March 2022. The present petition has been filed against the said order passed by the District Election Officer dated 9th March 2022.

8. During the pendency of this petition, the final voters list was published on 14th March 2022 and the election programme was published on 15th March 2022. It is also not in dispute that the voting is scheduled on 1st May 2022.

9. The Apex Court in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. vs. State of Maharashtra & Ors.***¹ in paragraphs 7, 9 and 12 of the said judgment has observed as follows:-

1 2001 8 SCC 509

“7. In the light of the aforesaid provisions of Chapter XIA of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XIA was enacted and the rules were framed specially to deal with the election of the specified societies under Section 73G of the Act. Section 144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters' list must be held to be part of the election process for constituting managing committee of a specified society. In Someshwar Sahakari Sakhar Karkhana Ltd., Someshwarnagar vs. Shriniwas Patil, Collector, Pune & Ors., it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in Shivnarayan Amarchand Paliwal vs. Vasantrao Vithalrao Gurjar & Ors. However, in Karbhari Maruti Agawan & Ors. vs. State of Maharashtra & Ors., although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified

societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

9. If the contention of the appellant is that there was a breach of rule or certain mandatory provisions of the rules were not complied with while preparing of the electoral roll, the same could be challenged under Rule 81 (d)(iv) of the Rules by means of an election petition. In view that, the preparation of electoral roll in part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the tribunal.

12. In view of our finding that preparation of the electoral roll is 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. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal.”

10. This Court (Coram: S. J. Kathawalla & Milind N. Jadhav, JJ.) in the case of ***Dattatray Genaba Lole & Ors. vs. Divisional Joint Registrar, Cooperative Societies & Ors.***² was called upon to consider, whether a

2 2021 SCC OnLine Bom 4579; (2022) 1 Bom CR 471

petition, challenging an order of rejection of the Objection Application by the respondent No.1 therein i.e. Divisional Joint Registrar Cooperative Societies, could be entertained under Article 226 of the Constitution of India. The question also for consideration in the said petition was, whether the petition ought not to be entertained under Article 226 of the Constitution of India, only because the petitioner has available to it, an alternative and efficacious remedy, to challenge the election itself under the provisions of the Act r/w. the Rules. This Court after considering the various provisions of the Act held in paragraphs 42, 45, 46, 47, 79, 80, 90 and 95 as under:

“42. Question for Consideration in Paragraph 6(i): Having considered the submissions of the parties and the relevant statutory provisions and case law, we are of the opinion that there is considerable merit in the objection of the Respondents to this Court entertaining this Writ Petition under Article 226 of the Constitution of India. In reaching this conclusion we have had due regard to the fact that the challenge arises at an intermediate stage of the election process and that there is an alternative and efficacious remedy available to the Petitioner to challenge the election itself under Section 91 of the Act read with Rule 78 of the Rules.

45. The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are not entertained by Courts under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind Courts being circumspect in entertaining challenges at this stage under Article 226 of the Constitution of India. This is because

there is a vital public interest in the elections being Kanchan P Dhuri 23 / 58 WP-5878-2021.odt completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or becoming uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

46. The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.

47. In our opinion, the submission of the Petitioners to the effect that they would be without an adequate remedy if this Petition were not to be entertained at this stage is misconceived. There is a statutory remedy available to the aggrieved Petitioners to challenge the election after the final results are declared and to raise a dispute within the statutory framework at that stage. The dispute that the Petitioners would be entitled to raise would encompass a right to urge that the Objection Application was wrongly decided and that by being prevented from voting on the premise that Petitioner No. 3 is a 'defaulter', the entire process and therefore the result itself, is vitiated.

79. Whilst coming to the conclusion that we are not inclined to entertain the Writ Petition because of the alternative statutory remedy available to the Petitioners under Section 91 of the Act read with Rule 78, we are conscious of the fact that the rule of alternative remedy as a bar to maintaining a writ petition under Article 226 of the Constitution of India is not absolute. It has been described as a rule of self-limitation or discretion. In certain situations, even if there is an alternative remedy, the Courts may entertain a writ petition under Article 226 of the Constitution of

India. Some of the well-defined situations in which the existence of an alternative remedy will not usually preclude a writ petition under Article 226 of the Constitution of India being entertained are if it primarily raises a challenge under Part III of the Constitution of India for violation of fundamental rights; it challenges an order which is entirely without jurisdiction; when such alternative remedy is demonstrably inefficacious; or the petition asserts a clear violation of the principles of natural justice. We note this only because according to us the case in the Writ Petition does not fall within any of these categories.

80. In addition to the judgments discussed above, all the parties before us have cited and distinguished judgments on the specific aspect of the scope of interference under Article 226 of the Constitution of India at the intermediate stage of the election process. Whilst we have already expressed our opinion on the same based on the principles gathered from a collective reading of these judgments, we will now proceed to examine these judgments.

*90. The judgments in the case of **Pundlik and Ahmednagar Zilla S.D.V. & P. Sangh Ltd.**, supra, are a clear indication and guide to when the normal rule of non-interference at an intermediate stage can be varied. That would usually be in cases where a binding provision is ignored such that its existence itself is rendered nugatory; or when a part of the election process is carried out on the basis of non-existent rules. We are not suggesting that this is the entirety of circumstances to justify a departure from the well settled and normal approach of non-interference. However, the nature of the challenge must be analogous to the circumstances that warranted interference in these two judgments. In other words, every alleged illegality or irregularity and minor deviation in the election process cannot justify intervention of this Court at an intermediate stage under Article 226 of the Constitution of India. As noted above, in **Narsing Ganpatrao Nikam**, supra, a learned Single Judge of this Court considered Ahmednagar Zilla S.D.V. & P. Sangh Ltd., but held that on facts the case before him was governed by the ratio in **Shri Sant Sadguru**.*

95. Having regard to the above judgments we reiterate that the challenge in the present case does not fall within the limited scope

of interference in the election process at the intermediate stage under Article 226 of the Constitution of India. Respondent No. 1, in Kanchan P Dhuri 57/58 WP-5878-2021.odt the present case, has acted, on the face of it, in exercise of power conferred upon it under the Act and Rules to adjudicate upon the Objection Application. In exercise of that power and discretion under Rule 11 of the Rules, a decision has been taken that the relevant date for determining whether the Petitioner No. 3 was a defaulter would be the cut-off date and not a later date, even though the election has been postponed. Such kinds of decisions at an intermediate stage, which arise more from an application of provisions to individual cases in exercise of express powers to draw up a provisional voters list by no means fall within the category of cases in which patently illegal processes have been followed as mentioned above. We are not at this stage opining on the merits of a challenge on this ground that may be raised after the elections have concluded under Section 91 of the Act read with the Rules. We are, however, of the view that this kind of challenge at an intermediate stage of the election process would not justify exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India at this stage.”

11. In conclusion, in paragraph 97, this Court held as under:-

“97. We accordingly uphold the preliminary objection as raised by the Respondents and conclude that we are not inclined to entertain the present Writ Petitions challenging the Impugned Order, being a part of the intermediate stage of the election process. The Petitioners are at liberty to file an election petition under Section 91 read with Rule 78 after the election result is declared. That petition, if filed, will be decided on its own merits uninfluenced by any observation that has been made in this Order. There shall, however, be no order as to costs.”

12. In another case, this Court, in ***Letters Patent Appeal No.219 of 2010 in Writ Petition No. 6638 of 2010, Shri Vithal Sahakari Sakhar Karkhana Ltd. vs. The Collector, Solapur & Ors.*** was called upon to consider,

whether the learned Single Judge was justified in interfering with the election process, it being a settled principle of law, that the publication of a voters list is an intermediate stage in the election process i.e. whether a direction could be given to the Collector to include in the voters list the names of the 610 persons, whose names were mentioned in the petition. This Court in paragraphs 12, 15 and 16 of the said judgment observed as under:-

*“12. The provisions of Rules 4, 5 and 6 came up for consideration before a Division Bench of this court in **Dhondiba Parshuram Lakade and others Vs. Someshwar Sahakari Sakhar Karkhana Ltd.** 3 The Division Bench, while construing the provisions of Rule 6 observed as follows.*

“From Rule 6(1) emerges the extent of the powers or jurisdiction of the Collector. Under this Rule, certain things can be brought to the notice of the Collector. What can be brought to the Collector’s notice? And by whom? The answers are to be found in Rule 6(1) itself; An omission or error regarding the name or address or other particulars in the list can be brought to his notice, not by anyone, but only by the Member of the Society who himself is a voter. This is the plain reading of Rule 6(1). There is no reason to give to this Rule a different interpretation or to induct a concept other than what the plain reading thereof reveals. Thus it would be open under this Rule to the voter to bring to the notice of the Collector, that the particulars required in the voters’ list are erroneous inasmuch as they do not tally with the particulars in the Register of Members. Thereupon, under this Rule, the Collector would be competent to correct the provisional voters’ list so as to bring it on a par with the particulars in the Register of Members. Hence, the identity of the voter is assured. Furthermore, the phraseology in Rule 6(1), “or other particulars in the list”, is significant. The nature of the particulars in the voters’ list is to be found in Rule 5 which is headed, “Particulars to be included in provisional list of voters”.

What those particulars are, have already been stated above. Thus the words in Rule 6(1), “other particulars in the list”, necessarily have reference to Rule 5. Rules 5 and 6 are complementary of each other and as such they must be read in their plain and natural meaning”.

15. In **Someshwar Sahakari Sakhar Karkhana Limited Vs. Shrinivas Patil and others**, 4 a learned Single Judge of this court held that it would not be proper for this court to interfere in a petition under Article 226 when the dispute relates to an intermediate stage in the process of election and it would indeed be better to leave parties to raise a dispute by way of a substantive election petition as provided for under Section 144T of the Maharashtra Cooperative Societies Act, 1960. This decision has been cited with approval in the judgment of the Supreme Court **Sant Sadguru Janardan Swami Vs. State of Maharashtra and ors.** 5 The Supreme Court held that the preparation of the voters’ list forms part of the election process and in fact, is an intermediate stage in the process of the election of a specified society governed by the Maharashtra Specified Cooperative Societies Elections to Committee Rules, 1971. The Supreme Court held that having regard to this principle, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged breach of a rule while preparing the electoral roll.

16. In a subsequent decision in **Ahmednagar Zilla S.D.V. And P. Sangh Ltd. Vs. State of Maharashtra**, 6 the Supreme Court had occasion to revisit its earlier decision in Sant Sadguru (supra). In the subsequent decision, an amendment to the bye laws of a Specified Society was held to be illegal by the Joint Registrar of Cooperative Societies. Both the revisional authority and, this court in a petition under Article 226, affirmed that decision. Consequent upon the amendment of the bye laws, a voters’ list had been prepared for holding elections to the Managing Committee of the society. The Supreme Court held that the decision in Sant Sadguru deals with a situation where a voters list has been prepared in terms of the extant rules but certain irregularities were committed therein. However, in a situation where the voters list has been prepared on the basis of non existent rules, the voters’ list would be

illegal. In other words, once a conclusion was arrived at that the amendments to the bye laws was contrary to law, the electoral roll prepared on the basis of an invalid bye law would not stand scrutiny . Hence, in the judgment of the Supreme Court in the Ahmednagar Zilla case, a distinction has been drawn between a situation where a voters list is prepared under existing rules. In such a situation, if there are irregularities in the preparation of the voters' list, the interference of the High Court under Article 226 would not be justifiable once the election process is under way. However, where a voters list has been prepared on the basis of a bye law which is invalid for contravention of a mandatory requirement, the voters list would necessarily have to be disregarded once the bye law itself is invalidated. In the present case there is no issue of the amended bye laws being challenged as invalid. There is no challenge to the amended bye laws. Hence, the situation which arose before the Supreme Court in the subsequent decision in Ahmednagar Zilla did not arise in the case at hand. The learned Single Judge should have therefore, followed the ordinary rule of non interference when the election process had commenced.”

13. From the aforesaid judgment it is evident that in matters concerning election, the jurisdiction under Article 226 has to be exercised with circumspection and in a manner consistent with the statutory provisions.

14. Preparation of the provisional voters list is an intermediate stage of the election process. Considering the same, it is not possible to interfere with the election process at this intermediate stage under Article 226 of the Constitution of India. Even otherwise, election programme has been declared and voting is scheduled on 1st May 2022. Reliance placed by the

learned counsel for the petitioner on a Division Bench judgment of this Court in *Padamsingh Hanmantrao Jadhav vs. The State of Maharashtra & Ors*, is misplaced. The facts of the said case are clearly distinguishable from the facts in hand.

15. As far as the Section 11 application is concerned, which is pending, we deem it appropriate to direct the concerned authority to decide the said application filed by the petitioner as expeditiously as possible and in any event within four months from the date of the receipt of this order. Needless to state, that on merits of the said Application, all contentions of all parties are kept open.

16. Needless to state that, the petitioner is also at liberty to file appropriate proceedings in accordance with law. The petition is accordingly dismissed with aforesaid directions.

17. All concerned to act on an authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.