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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3109 OF 2022**

Ananda Dattatraya Belkar ...Petitioner

Versus

1. The State of Maharashtra ...Respondents

2. Assistant Registrar Co-operative Societies,
Ajara, Taluka Ajara, Dist. Kolhapur.

3. District Co-operative Election Officer as also
the District Deputy Registrar, Co-operative
Societies, Kolhapur.

4. Shri. Bhaveshwari V.K.S. Sahakari Seva
Sanstha Ltd., Chimane Taluka Ajara, Dist.
Kolhapur.

**WITH
WRIT PETITION NO. 3114 OF 2022**

Mahadev Gundu Patil ...Petitioner

Versus

1. The State of Maharashtra ...Respondents

2. Assistant Registrar Co-operative Societies,
Ajara, Taluka Ajara, Dist. Kolhapur.

3. District Co-operative Election Officer as also
the District Deputy Registrar, Co-operative
Societies, Kolhapur.

4. Chalobadev Vividh Karyakari Sahakari Seva
Sanstha Ltd., Ite, Taluka Ajara Dist. Kolhapur.

Mr. Chetan G. Patil, for the Petitioner in both WPs.

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Mrs. S. D. Vyas, 'B' Panel Counsel, for the Respondent-State in WP/3109/2022.

Mr. Deelip N. Patil-Bankar-Chief Standing Counsel SCEA i/b Mr. Dilip Bodake, for the Respondent No.3 in WP/3109/2022.

Mr. Manoj A. Patil, for the Respondent No.4 in WP/3109/2022.

Mr. P. G. Sawant, AGP, for Respondent Nos. 1 & 2-State in WP/3114/2022.

Mr. Deelip N. Patil-Bankar-Chief Standing Counsel SCEA a/w Mr. Abhishek Patil for the Respondent No.3 in WP/3114/2022.

Mr. Sachin Kankal, for the Respondent No.4 in WP/3114/2022.

**CORAM Revati Mohite Dere &
 Madhav J. Jamdar, JJ.**

DATED: 21st April 2022

ORAL ORDER:- (Per Revati Mohite Dere, J.)

1. Heard learned counsel for the parties.
2. Since the issues involved in both the petitions are identical, the same are being decided by a common order.
3. By these petitions, the petitioners seek identical substantive reliefs, which are reproduced hereinunder:-

*“(a) That this Hon’ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ thereby directing the Respondent No.2 herein to decide the Application under Section 11 of the Maharashtra Co-operative Societies Act, 1960 (**Exhibit “B” hereto**) expeditiously and within a time bound period, prior to the finalization of the Voters List for the ensuing election to the managing committee of the Respondent No.4 Society.*

(b) That this Hon'ble Court may be pleased to issue appropriate writ, order or direction in the nature of writ thereby restraining the Respondent No.3 herein from publishing the final voters list of the Respondent No.4 Society and from declaring the election programme for the election of respondent no.4 herein till the final decision of the respondent no.2 on the application under Section 11 of the Maharashtra Co-operative Societies Act, 1960 (Exhibit"B" hereto)."

4. Learned counsel for the petitioners submits that out of the total members in each of the respondent No.4-Society i.e. Shri. Bhaveshwari V. K. S. Sahakari Seva Sanstha Ltd., Chimane, Tal. Ajara, Dist.Kolhapur and Chalobadev Vividh Karyakari Sahakari Seva Sanstha Ltd., Tal. Ajara, Kolhapur, almost 98 and 100 members respectively in the aforesaid petitions, are *ex-facie* ineligible and not qualified to be enrolled as members of the said respondent No.4-Society, as they are neither the residents of the command area of operation of the respondent No.4-Society nor do they hold any agricultural land within the said area of operation of the respondent No.4-Society, which are the primary requirements for enrolling any person as a member of respondent No.4-Society. He submits that the petitioner time and again had sought information about the members of the respondent No.4-Society (in each of the petitions), from the office bearers of the said Society, however, no information was provided to the petitioner. He submits

that even the application seeking information under the Right to Information Act, has not been decided by the respondent No.2 till date. He further submits that hence, the petitioner in each of the petitions were constrained to file applications under Section 11 of the Maharashtra Cooperative Societies Act, 1960, thereby, bringing to the notice of the said authority i.e. respondent No.2, that 98 and 100 members respectively, of the respondent No.4-Society were ineligible and not qualified to be the members of the said Society and hence they should be removed from the said Society. Learned counsel for the petitioners submits that despite the Section 11 application having been filed before the respondent No.2 on 3rd January 2022 and 24th February 2022 respectively (in each of the petitions), the same has not been decided till date. He submits that the Respondent No.2 failed to perform his statutory duty, in as much as, Respondent No.2 ought to have expeditiously disposed of the Petitioner's applications filed under Section 11 of the said Act. Learned counsel submits that when the Section 11 applications were pending before respondent No.2, the respondent No.3 could not have declared the programme for finalization of voters list of the respondent No.4-Society. He submits that the election process cannot be permitted to be continued in these circumstances.

5. Learned counsel appearing for the respondents, in particular, learned counsel appearing for the respondent Nos. 3 and 4 opposed the petitions. They submitted that since the election programme was declared on 17th April 2022 and 20th April 2022 respectively, no interference was warranted in the said petitions. Learned counsel for the respondents relied on the Division Bench judgments of this Court in ***Dattatray Genaba Lole & Ors. vs. Divisional Joint Registrar, Cooperative Societies & Ors***¹, ***Shri. Vitthal Sahakari Sakhar Karkhana Ltd. vs. The Collector, Solapur & Ors.***² and the judgment of the Hon'ble Apex Court in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. vs. State of Maharashtra & Ors***³.

6. Before we advert to the facts in these petitions, it would apposite to discuss the legal position, as to whether the election process can be interfered with, in the facts.

7. This Court (Coram:S. J. Kathawalla & Milind N. Jadhav, JJ.) in the case of ***Dattatray Genaba Lole & Ors. vs. Divisional Joint***

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

2 Letters Patent Appeal No.219/2010

3 (2001) 8 SCC 509

Registrar, Cooperative Societies & Ors.⁴ was called upon to consider, whether a 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.”

8. 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.”

9. 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 Co-operative 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 by 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.”

10. Accordingly, the Division Bench held that the directions issued by the learned Single Judge were wholly unsustainable and that interference in the election process was unwarranted.

11. The Apex Court, in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. vs. State of Maharashtra & Ors.**⁵ in paragraphs 7, 9 and 12 of the said judgment has observed as follows:-

“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

5 2001 8 SCC 509

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 Shivrinarayan 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.”

12. In both these petitions, the grievance of the petitioners in that 100 and 98 members respectively, were not eligible or qualified to be members of the Respondent No.4-Society, as they were not the residents of the village, which is the command area of respondent No.4 society, but were residents of other villages. The further grievance of the petitioner in the petitions is, that though they raised the grievance with the respondent No.2, by filing an application of Section 11 of the said Act, when the said applications were pending adjudication, the respondent No.3 declared the programme for finalisation of voters list of the respondent No.4-Society. As per the said programme, the provisional voters list was to be published on 7th March 2022, objection to the provisional voters list was to be submitted by 17th March 2022, hearing on the objection was to be held on 28th March 2022. The final voters list was to be published

within 15 days from 7th March 2022. It appears that according to the said programme, the provisional voters list was published and the names of the said 100 and 98 members, against whom Section 11 application have been filed, were included in the said list. The aforesaid petitions were filed on 11th March 2022 and heard by us on 20th April 2022.

13. Having regard to the judicial pronouncements, it appears that a consistent view has been taken, that preparation of a provisional list, is also an intermediate stage, in the election process. In these circumstances, drawing up of a provisional list, by no means would fall within the category of cases, as spelt out in the judgments referred hereinabove, warranting our interference in writ jurisdiction. It is also pertinent to note, that none of the 100/98 members, whose names were included in the list, and who's membership is called into question, have been arraigned in these petitions, as respondents. Since the election process has began, we would not be justified in exercising our extraordinary jurisdiction nor is the situation exceptional, warranting our interference, under Article 226 of the Constitution of India.

14. It is not in dispute that the application filed by the petitioners under Section 11 is pending before the respondent No.2, and that the same, has not been decided till date. By prayer clause (a) in both the petitions, the petitioners are seeking a direction to the respondent No.2-Assistant Registrar, Cooperative Societies to decide the said Section 11 application expeditiously within a time bound period.

15. As far as prayer clause (a) is concerned, in as much as, it seeks a direction to the respondent No.2 to decide the petitioners' applications under Section 11 of the Maharashtra Cooperative Societies Act, 1960, we direct the respondent No.2 to decide the said application filed by the petitioners in both the petitions, as expeditiously as possible and in any event, within four months from the date of the receipt of this order.

16. As far as prayer clause (b) is concerned, the petitioners have sought a direction to the respondent No.3 to restrain them from publishing the final voters list of the respondent No.4-Society till their Section 11 application is decided by the respondent No.2.

17. It is not in dispute, that the election programme was declared, on 12th April 2022 and 17th April 2022 respectively in both the petitions and that nomination forms have been submitted on 21st April 2022 and 25th April 2022 respectively and as such, we decline to entertain these petitions, on the said premise, having regard to what is stated in the aforesaid paras.

18. We make it clear that we have not gone into the merits of these petitions and as such all contentions of the parties on merits, are kept open, to be raised in appropriate proceedings.

19. The petitions are dismissed with the aforesaid directions. Both the petitions are accordingly disposed of.

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

(Madhav J. Jamdar, J.)

(Revati Mohite Dere, J.)