

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2969 OF 2022**

Padamsingh Hanmantrao Jadhav ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

Mr Siddhesh Pilankar, *with Uday P Warunjikar, for the Petitioner.*
Mr Dilip Bodake, *with Pooja Deelip Patil, i/b Deelip Patil Bonkar, for Respondent.*
Mr SS Panchpor, AGP, *for Respondent State.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 15th March 2022

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1. Rule.

2. We direct rule to be made returnable forthwith. We note the submission of Respondent No. 1, the District Cooperative Election Officer and of Mr Panchpor on behalf of the 3rd Respondent, the Deputy Registrar, seeking time to file a Reply. We reject that request in the extraordinary circumstances of this case. We have found after a careful consideration of the relevant documents that the District Cooperative Election Officer has acted wholly without jurisdiction from holding the Petitioners and others to be ineligible to vote at the

elections of the 2nd Respondent on the ground that the membership of the Petitioners is not established.

3. We turn straightaway to Rule 8 of the Maharashtra Cooperative Societies (Election Committee) Rules 2014 framed *inter alia* under powers conferred by sub-section (J) and (2) of Section 165 of the Maharashtra Cooperative Societies Act. Rule 8 reads thus:

“8. Claims and objections to the provisional list of voters and the final list of voters for co-operative societies having individuals as members

(1) When the provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the Society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Every claim or objection shall be in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, or as directed by the SCEA, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections.

Thereafter final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalized by the election officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any.

4. It is clear that the preparation of a list of voters is confined to certain aspects, namely to consider claims and omissions or any error in respect of the name, address or other particulars in the list. Among “other particulars” would be the correction of an omission in the list namely that a person is a member but his name has wrongly been excluded from the list.

5. What has happened in this case in the impugned order is something quite different. Here the Petitioners and others, totally 247, were not included in the voters list on the ground that they were not the members or not entitled to membership at all *inter alia* on the ground that they had not paid their dues and that the procedure for updating the register of members to show their names was left incomplete. The Election Authority upheld the said challenge. This, in our view, is not the jurisdictional remit of the Election Authority or the Returning Officer at all. Apart from the

fact that there is material before us to show in the form of a Proceeding Book that the Petitioners' names were included and amounts of Rs. 100 were shown against each of their names as having been paid, there is also a resolution admitting the Petitioners to membership. That was as far back as in 2016. If there was any question about the validity of the initial membership, that could only be decided by the jurisdictionally competent authority under the Maharashtra Cooperative Societies Act, namely the Deputy Registrar. Under no circumstances could the Returning Officer have considered this aspect of the matter, either directly or indirectly.

6. To put this into correct perspective: when a person is admitted to membership of the society, that membership carries with it the entitlement to vote. But the eligibility to vote may be taken away for other reasons as specified in the statute without affecting membership. In other words, it is entirely possible and contemplated by the statute that a person may be member but also may be ineligible to vote. If membership is called into doubt, and it is found that the person is not entitled to membership then of course there is no question of that person being eligible to vote. But deciding the eligibility to vote and deciding whether a person is or is not a member are two conceptually different things and are treated differently in the statute. The respective jurisdictions are conferred on two distinct authorities. Just as the Deputy Registrar cannot prepare a voters list, a Returning Officer or Election Authority cannot either directly or indirectly decide a question of the correctness of the membership.

7. We also note that at page 89 there is a reference to a society resolution 2nd May 2016 showing the Petitioners as members and this is in the society's written signed reply. What the Returning Officer has, however, proceeded to do is to decide on the correctness of membership and assess the society's reply for this reason.

8. The impugned decision cannot stand. Rule has to made absolute in terms of prayer clause (a) which reads thus:

“a) Be please to call for record and proceeding of order dated 10.3.22 passed by the respondent No. 1 herein and kindly quashed and set aside the said orders after going through the legality, validity and propriety of the same.”

9. The consequence of this is that the names of all 247 persons will immediately be included in the voters list. No voters list for Respondent No. 3 is to be published without the names of these 247 persons.

(Madhav J. Jamdar, J)

(G. S. Patel, J)