

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

PRACHI
PRANESH
NANDIWADEKAR

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WRIT PETITION NO.7177 OF 2022

1. Rahul Sambhaji Gaware
Age 35 yrs., Occ. Agriculture
R/at Vithalwadi, Taluka Shirur,
District Pune.

2. Ramesh Ramchandra Palande
Age 40 yrs., Occ. Agriculture,
R/at Mukhai, Taluka Shirur,
District Pune.

3. Sudhir Balasaheb Pharate
Age 40 yrs. Occ. Agriculture,
R/AT Mandavgan, Farata,
Tal. Shirur, District Pune.

.. Petitioners

Versus

1. State of Maharashtra
Through Secretary, Department of
Co-operation, having his office at
Mantralaya, Mumbai 400 032.

2. District Co-operative Election
Officer and Regional Joint Director (Sugar),
Pune Division, Pune, having his office
at first floor, Sakhar Sankul,
Shivajinagar, Pune 411 005.

3. Raosahebdada Pawar Ghodganga
Sahakari Sakhar Karkhana Ltd.
Having its office at Raosaheb Nagar
Nhavare, Tal. Shirur, Dist. Pune.
Through its Managing Director,

4. Zilla Parishad, Pune,
Having its office at Yeshwantrao

Chavan Bhawan, 1, Wellesley Road,
Camp, Pune – 411 001.

5. Panchayat Samiti, Shirur,
Having its office at Shirur,
District Pune, through its Block
Development Officer,

6. Shirur Municipal Council, Shirur
Having office at Shirur, Dist. Pune,
Through its Chief Officer.

.. Respondents

Mr.S.S. Patwardhan a/w Ms.Mrinal A. Shelar a/w Mr.B.R. Mandlik for
the petitioners.

Mr.P.G. Sawant, AGP for the respondent no.1.

Mr.Deelip Patil Bankar, Chief Standing Counsel for the respondent no.2-
SCEA.

Mr.Vineet B. Naik, Senior Advocate i/by Mr.Sagar A. Rane for the
respondent no.3.

**CORAM : R.D. DHANUKA &
M.G. SEWLIKAR, JJ.**
DATE : 21st JUNE 2022

Oral Judgment :- (per R.D. DHANUKA, J.)

. By this petition filed under Article 226 of the Constitution of India, the petitioner prays for writ of certiorari for quashing and setting aside the order 8th June, 2022 passed by the respondent no.2 finalizing the list of voters of the respondent no.3 society. The petitioners have also prayed for writ of mandamus against the respondent nos. 4, 5 and 6 to examine the provisional list of voters prepared by the respondent no.3 for ensuing elections to its managing committee in terms of the request/terms

issued by the respondent no.2 on 31st May, 2022. Some of the relevant facts for the purpose of deciding this writ petition are as under :-

2. The petitioners claim to be the members of the respondent no.3 society. The term of the office of the Board of Directors of the respondent no.3 expired in the year 2020. The election for the Board of Directors however was postponed from time to time on account of global COVID-19 pandemic.

3. It is the case of the petitioners that in the provisional list of voters prepared by the respondent no.3, names of large number of dead members have not been deleted. On 29th April, 2022, the petitioners applied to the respondent no.3 requesting the respondent no.3 to specifically mention about such death of large number of members against the names of such members in the provisional voters list that would be prepared by the respondent no.3.

4. On 20th May, 2022, the respondent no.2 published provisional list of voters for ensuing elections to the managing committee of the respondent no.3 on 23rd May, 2022. The respondent no.2 invited suggestions/objections to the said list from 23rd May, 2022 to 31st May, 2022. The respondent no.2 fixed 8th June, 2022 to be the date for making the suggestion/objections to the provisional list of voters, before finalization of the voters list on 13th June 2022.

5. On 31st May, 2022, the petitioners submitted their objections to the provisional list of voters. The respondent no.2 addressed letters to several Village Panchayats in the area of operation of the respondent no.3

and the respondent no.2 requesting the respondent no.5 and the Village Panchayats to submit a report about the factum of death of the members of the respondent no.3 as per the objections of the petitioners and others. The respondent no.2 requested that the report be submitted before 6th June, 2022.

6. It is the case of the petitioners that the respondent no.2 directed the respondent no.3 to communicate to all the concerned Village Panchayats about the said directions issued by the respondent no.2 for collection of information and more particularly whether any of its members are dead and its effect on the list of voters.

7. It is the case of the petitioners that the concerned Village Panchayats and the stakeholders were not notified about the impending hearing on the objections to the provisional list of voters in terms of the directions dated 31st May, 2022 and 2nd June, 2022. According to the petitioners, several Village Panchayats in the area of operation of the respondent no.3 did not know that information was being solicited by the respondent no.2.

8. On 6th June, 2022, the respondent no.2 heard the petitioners and others on their objections on the provisional list of voters. The petitioners also submitted their written submissions on 6th June, 2022.

9. On 8th June, 2022, the respondent no.2 finalized the voters list by accepting the objections raised by the petitioners partly. The respondent no.2 directed the respondent no.3 to amend its original list of voters in terms of the list of members prepared by him and to submit the

revised list in order to enable him to publish the final list on 13th June, 2022.

10. Being aggrieved by the said order dated 8th June, 2022, the petitioners have filed this petition.

11. Mr.Patwardhan, learned counsel for the petitioners states that the large number of voters, estimated to the extent of 25 – 30 % of the voters mentioned in the list of voters, are dead. The respondent no.2 did not give sufficient time to raise any objection in respect of the said provisional list or to furnish the list of dead persons in the said provisional list. He submits that the entire election process as such would be totally illegal. There is a possibility of impersonation by others of the members who are already dead by casting votes against their names. He submits that only 55 of the Village Panchayats were able to submit their report as requested by the respondent no.3 in respect of the election dated 31st May, 2022.

12. The respondent no.3 also failed to carry out the directions issued by the respondent no.2. The respondent no.2 totally ignored the substantial amount of data furnished by the Village Panchayats to him.

13. Mr.Vineet Naik, learned senior counsel for the respondent no.3 on the other hand submits that the term of the existing managing committee of the society has expired on 31st May, 2020. The voters list has to be finalized six months before conducting fresh election. Learned senior counsel placed reliance on proviso 9(2) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short “the

said Rules”). He submits that under the said provision 9(2) the period of three years provided in sub-section 3 of section 27 of the Maharashtra Co-operative Societies Act is to be counted from the date of enrollment of the members to the date when the election of the society of the managing committee becomes due. The proviso to the said Rule 9(2) provides that in case of societies where the elections could not be held before the expiry of the term of the committee due to unforeseen conditions or any other reason, provisional list of the voters shall be prepared on the basis of the date fixed by the State Co-operative Election Authority. He submits that the provisional list as on 1st April, 2020 was accordingly provided by the respondent no.3 to the respondent no.2 which provisional list was published.

14. Learned senior counsel invited our attention to some of the death certificates annexed by the petitioner to the writ petition and more particularly pages 53 and 54 and would submit that even during the period between 2007 and the date of publication of the provisional list, several elections have already taken place. The said member Mr.Chokhu Sakharam Kamble expired on 4th October, 2007. None of his family members informed the respondent no.3 about the death of the said member. Also none of the family members raised any objection to the provisional list published during this period.

15. It is submitted by the learned senior counsel that on 20th May, 2022, a programme for finalization of the voters list was published. The objections were to be raised to the said provisional list during the period 23rd May, 2022 to 31st May, 2022. The petitioners raised objections on 31st May, 2022. The respondent no.2 accordingly directed the

respondent no.3 to collect the report from Village Panchayats on 2nd June, 2022. Some of the Village Panchayats furnished the reports. The respondent no.2 considered all those objections on 6th June, 2022 and passed an order of final voters list on 8th June, 2022. On 13th June, 2022, the final list of voters came to be published. On 15th June, 2022, the petitioner filed this writ petition.

16. It is submitted by the learned senior counsel that on 24th June, 2022, the election programme would be declared. Whatever sufficient and authentic documents were produced by the petitioners and the other Village Panchayats, an action was already taken by the respondent no.3 by deleting the names of the persons who are dead.

17. Learned senior counsel placed reliance on Rules 40 and 41(3)(b) of the said Rules. He also invited our attention to the averments made by the petitioners in paragraph (7) and would submit that the petitioners seeking to produce the list of such dead voters at this stage cannot be accepted. Under Rule 40 read with Rule 41(3)(b) of the said Rule, subsequent safeguards can be taken by the election officer at the polling booth.

18. Learned senior counsel placed reliance on unreported judgment of this Court delivered on 29th April 2021 in Writ Petition No.1188 of 2021 in case of **Ajit Anant Desai & Anr. Vs. State of Maharashtra & Ors.** and more particularly paragraphs 5, 7 and 14 to 16 thereof.

19. Mr.Deelip Patil Bankar, Chief Standing Counsel of the

respondent no.2 placed reliance on Rule 11(3) of the said Rules and would submit that after conducting enquiry, the Election officer has already considered the objections before finalising the voters list. Since the petitioners did not produce the death certificate in respect of large number of persons, who according to the petitioners, had expired, request made by the petitioners to delete the names of those persons could not be considered.

20. Learned senior counsel placed reliance on a detailed procedure prescribed under Rules 40 and 41 of the said Rules and would submit that the detailed procedure for identification of the voters and for challenging the identity of the voters is provided under the said Rules. This Court thus cannot interfere with the election process at this stage. He also strongly placed reliance on the judgment of this Court in case of Ajit Desai (supra).

21. Mr.Patwardhan, learned counsel for the petitioners in rejoinder submits that there cannot be any mini trial on the date of election for identification of the voters when names of large numbers of dead voters are included in the final voters list. He made an attempt to distinguish the judgment of this Court in case of Ajit Desai (supra) on the ground that large number of dead members whose names were recorded in the voters list, in that case, were negligible and thus the said judgment is distinguishable and would not assist the case of the respondents.

REASONS AND CONCLUSIONS :-

22. It is not in dispute that the term of the existing managing

committee expired on 21st May 2020. Under Rule 6 of the said Rules, a provisional list of voters shall be prepared by every society in the year in which the election of such society is due to be held. Second proviso to Rule 6 provides that in case of societies where the elections could not be held before the expiry of the term of the committee, due to unforeseen situations or any other reason, a provisional list of the voters shall be prepared on the basis of the date fixed by the State Co-operative Election Authority (SCEA). It is common ground that due to the Covid -19 pandemic, though the term of the committee members of the respondent no.3 expired on 21st May 2020, the elections of the managing committee of the said society could not be held.

23. Four copies of the authenticated provisional list of voters in print as well as preferably in digital form shall be delivered by the committee of the society to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, or as directed by the SCEA under Rule 6(3) of the said Rules within one hundred and twenty days before the date of expiry of the term of Committee. Copies of such lists shall be displayed on the notice board of the society. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer within ten days from its receipt shall invite claims and objections from the members of the society. Such list may be published on the official website of SCEA and the Co-operation Department.

24. Under Rule 8 of the said Rules, claims and objections to the provisional list of voters and the final list of voters for co-operative societies having individuals as members are included in writing. When such 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.

25. Under Rule 8 (3) of the said Rules, the election officer after making such enquiries as deemed necessary in this behalf, is required to 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. Final voters list should be published within a period of fifteen days from the last date prescribed for receiving the claims and objections. The copies of such final list of voters is required to 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. Election Officer may also cause it to be published on the official website of the SCEA, if any. Under Rule 9, provisional list of voters for the societies having society or society and individuals as members is prescribed.

26. Under Rule 16, the Returning Officer has to appoint a Presiding Officer for each polling station and such Polling Officer or Officers as he thinks necessary, but shall not appoint any person who has been employed by the concerned society or on behalf of, or has been otherwise working for a candidate in or about the election. Under Rule 17 of the said Rules, it is the general duty of the Presiding Officer at a

polling station to keep law and order and to see that the poll is taken fairly.

27. Rule 18 provides for Declaration of election programme. Rule 19 provides for Manner of publication of election programme. Rule 29 provides for appointment of Election Agents by candidates who are contesting the election for the managing committee of the society. The contesting candidates are allowed to appoint Polling Agent whose name appears in list of voters at each polling station.

28. Rule 33 provides for manner of voting at elections. Rule 40 provides that the Presiding Officer may employ at the polling station such persons as he thinks fit to help in the identification of the voters or to assist him at the time of taking poll. Each voter entering the polling station shall carry with him his Photo Identity proof as prescribed by the Election Commission of India, Central or State Government or Photo Identity Card issued by the society as per provisions in bye-laws of that society. The Presiding Officer or the Polling Officer authorized by him in this behalf, has to check the voter's name and other particulars with the relevant entry in the list of voters and then call out the serial number, name and other particulars of the voter.

29. Rule 41 specifically provides a procedure for challenging the identity of a person claiming to be a particular voter. The Polling Agent appointed by the contesting candidates is allowed to challenge the identity of a person claiming to be a particular voter by depositing certain amount in cash with the Presiding Officer for each such challenge. The Presiding Officer upon such challenge is empowered to warn the person

challenged of the penalty for personation and to read the relevant entry in the list of voters in full and ask him whether he is the person referred to in that entry. His name and address has to be entered in the list of challenged voters.

30. The Presiding Officer is thereafter required to hold a summary inquiry into the allegations and may for that purpose, require the challenger to adduce evidence in proof of the challenge and the person challenged to adduce evidence in proof of his identity. The Presiding Officer has to put to the person challenged any question necessary for the purpose of establishing his identity and require him to answer them on oath and administer an oath to the person challenged and any other person offering to give evidence.

31. Under Rule 41(4) of the said Rules, if, after the enquiry, the Presiding Officer considers that the challenge has not been established, he shall allow the person challenged to vote and if he considers that the challenge has been established, he shall debar the person challenged from voting. If the Presiding Officer is of the opinion that the challenge is frivolous or has not been made in good faith, he shall direct that deposit made under sub-rule (1) be forfeited to the Election Fund and in the other case, he shall return it to the challenger at the conclusion of the inquiry. Rule 42 specifically provides that with a view to prevent the personation of voters, every voter about whose identity the Presiding Officer or the Polling Officer, as the case may be, is satisfied shall, allow his left thumb to be inspected by the Presiding Officer or the Polling Officer and an indelible ink mark to be put on it.

32. A perusal of the aforesaid provisions clearly indicates that the full fledged detail procedure is prescribed under the said Rules for preparation of the provisional list of voters, details of the members required to be provided in such provisional list of voters, publication of such provisional list of voters, display of such provisional list of voters, procedure for invitation of claims and objections, consideration of such objections by the Election Officers followed by preparation of final voters list.

33. In this case, the respondent no.2 Officer has followed the requisite procedure for inviting claims and objections and after considering the claims and objections received by him from the Panchayats and others, has prepared the final voters list. In so far as the objection of the petitioners in this petition that the names of large number of dead voters are included in the provisional list and thereafter in the final voters list and thus would materially affect the entire election process and would cause impersonation of dead voters by the parties is concerned, in our view, these objections are totally untenable in view of full fledged procedure prescribed in the said Rules from the stage of preparation of the provisional voters list to preparation and approval of final voters list after considering the claims and objections.

34. The said Rule permits each contesting candidates to appoint Polling Agents/Counting Agents whose name appears in list of voters at each polling station. Such Polling Agent is allowed to challenge the identity of a person claiming to be a particular voter in Rule 41. An enquiry is contemplated in case of such challenge of a person claiming

to be a particular voter on deposit of amount by the Polling Agent where the summary enquiry has to be conducted by the Presiding Officer. An opportunity is given to the challenger as well as to the person challenged to adduce evidence. In view of such strict and stringent provision for challenge of identity prescribed under the said Rules, we are not inclined to accept the submission made by Mr.Patwardhan, learned counsel for the petitioners that there is a possibility of large scale impersonation of dead voters by others which would affect the entire election process.

35. If the petitioners desire to contest the election for the managing committee of the respondent no.3 society, the Polling Agent appointed by such candidates has to be one of the voters and is supposed to be aware of the factum of death of the members, if any. The family members of such dead members also can inform the society about the death of the member with a request to delete the name of such dead member from the list of voters of society.

36. A division bench of this Court comprising one of us (R.D. Dhanuka, J.) in case of **Ajit Anant Desai (supra)** has considered the identical facts and has after construing Rule 40 of the said Rules held that the apprehension of the learned counsel for the petitioners that somebody would impersonate the dead members is taken care of by the legislature under those Rules. In our view, the principles of law laid down in the said judgment apply to the facts of this case. We do not propose to take a different view in the matter. In our view, learned counsel for the petitioners could not distinguish the said judgment in case of Ajit Desai (supra).

37. There is no substance in the submission made by the learned counsel for the petitioners that there would be a mini trial at the polling booth if the objections are raised by the Polling Agent challenging any of the voters. Learned senior counsel for the respondent no.3 has already made a submission that the election program would be declared on 24th June 2022.

38. In our view, the petition is totally devoid of merit and is accordingly dismissed. No order as to costs. Parties to act on the authenticated copy of this order.

M.G. SEWLIKAR, J.

R.D. DHANUKA, J.