

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

WRIT PETITION (ST.) NO. 22824 OF 2022

Raosahebdada Pawar Ghodganga
Sahakari Sakhar Karkhana Limited
Registered under MCS Act, 1960
Having its address at Raosaheb Nagar,
Post Nhavare, Taluka Shirur, District Pune
Through its Managing Director
Pravin S. Shinde

... Petitioner

V/s.

1. The State of Maharashtra
Through the Secretary, Co-operative.
Irrigation and Textile Department,
Madam Cama Road, Hutatma Rajguru
Chowk, Mantralaya, Mumbai – 400 032
(Copy to be served upon Government
Pleader – A.S. (Writ Cell))
2. The Desk Officer, Government of
Maharashtra
(Copy to be served upon
Government Pleader – A.S. (Writ Cell))
3. The Maharashtra State Co-operative
Society Election Authority
Having Office at Old Central Building
Ground Floor, Pune – 411 001
4. The Co-operative Society,
Election Officer,
Regional Joint Director (Sugar)

Pune Region, Pune
Having Office at 1st Floor,
Sahakari Sankul, Shivaji Nagar,
Pune – 411 005

5. The Returning Officer, Raosahebdada
Pawar Ghodganga Sahakari Sakhar
Karkhana Ltd., Raosahebnagar,
Nhavare, Taluka Shirur, District Pune ... Respondents

with
INTERIM APPLICATION (ST.) NO. 23498 OF 2022
in
WRIT PETITION (ST.) NO. 22824 OF 2022

Rahul Sambhaji Gaware ... Applicant

In the matter between

Raosahebdada Pawar Ghodganga
Sahakari Sakhar Karkhana Limited ... Petitioner
V/s.

The State of Maharashtra and Ors. ... Respondents

with
WRIT PETITION (ST.) NO. 22826 OF 2022

1. Narendra Annasaheb Mane
Adult Indian Citizen, Occ. Farmer
Residing at Shirasgaav Kata,
Taluka Shirur, District Pune
2. Sambhaji Shivaji Pharate
Adult Indian Citizen, Occ. Farmer
Residing at Mandavgan Pharata,
Taluka Shirur, District Pune

3. Prabhakar Narayan Pachundkar
Adult Indian Citizen, Occ. Farmer
Residing at Ranjangaon Ganpati,
Taluka Shirur, District Pune ... Petitioners

V/s.

1. The State of Maharashtra and Ors.
Through the Secretary, Co-operative,
Irrigation and Textile Department,
Madam Cama Road, Hutatma Rajguru
Chowk, Mantralaya, Mumbai – 400 032
2. The Desk Officer,
Government of Maharashtra
3. The Maharashtra State Co-operative
Society Election Authority,
Having Office at Old Central Building
Ground Floor, Pune – 411 001
4. The Co-operative Society
Election Officer, Regional Joint
Director (Sugar), Pune Region, Pune
Having Office at 1st Floor, Sahakari
Sankul, Shivaji Nagar, Pune – 411 005
5. The Returning Officer,
Raosaheb Pawar Ghodganga Sahakari
Sakhar Karkhana Ltd.,
Raosaheb Nagar, Nhavare,
Taluka Shirur, District – Pune
6. Raosaheb Dada Pawar Ghodganga
Sahakari Sakhar Karkhana Limited,

Having its address at Raosaheb Nagar,
Post – Nhavare, Taluka Shirur,
District Pune,
Through its Managing Director

... Respondents

with
INTERIM APPLICATION (ST.) NO. 23495 OF 2022
in
WRIT PETITION (ST.) NO. 22826 OF 2022

Rahul Sambhaji Gaware

... Applicant

In the matter between

Narendra Annasaheb Mane and Ors.
V/s.

... Petitioners

The State of Maharashtra and Ors.

... Respondents

with
WRIT PETITION NO. 9499 OF 2022

Raosahebdada Pawar Ghodganga
Sahakari Sakhar Karkhana Limited
Registered under MCS Act, 1960
Having its address at Raosaheb Nagar,
Post Nhavare, Taluka Shirur, District Pune
Through its Managing Director
Pravin S. Shinde

... Petitioner

V/s.

1. The State of Maharashtra
Through the Secretary, Co-operative.
Irrigation and Textile Department,
Madam Cama Road, Hutatma Rajguru
Chowk, Mantralaya, Mumbai – 400 032

(Copy to be served upon Government
Pleader – A.S. (Writ Cell))

2. The Desk Officer, Government of
Maharashtra
(Copy to be served upon
Government Pleader – A.S. (Writ Cell))
3. The Maharashtra State Co-operative
Society Election Authority
Having Office at Old Central Building
Ground Floor, Pune – 411 001
4. The Co-operative Society,
Election Officer,
Regional Joint Director (Sugar)
Pune Region, Pune
Having Office at 1st Floor,
Sahakari Sankul, Shivaji Nagar,
Pune – 411 005
5. The Returning Officer, Raosahebdada
Pawar Ghodganga Sahakari Sakhar
Karkhana Ltd., Raosaheb Nagar,
Nhavare, Taluka Shirur, District Pune ... Respondents

and

WRIT PETITION NO. 9503 OF 2022

1. Narendra Annasaheb Mane
Adult Indian Citizen, Occ. Farmer
Residing at Shirasgaav Kata,
Taluka Shirur, District Pune
2. Sambhaji Shivaji Pharate
Adult Indian Citizen, Occ. Farmer

Residing at Mandavgan Pharata,
Taluka Shirur, District Pune

3. Atul Tanaji Bendre
Adult Indian Citizen, Occ. Farmer
Residing at Aambale,
Taluka Shirur, District Pune

... Petitioners

V/s.

1. The State of Maharashtra and Ors.
Through the Secretary, Co-operative,
Irrigation and Textile Department,
Madam Cama Road, Hutatma Rajguru
Chowk, Mantralaya, Mumbai – 400 032
2. The Desk Officer,
Government of Maharashtra
3. The Maharashtra State Co-operative
Society Election Authority,
Having Office at Old Central Building
Ground Floor, Pune – 411 001
4. The Co-operative Society
Election Officer, Regional Joint
Director (Sugar), Pune Region, Pune
Having Office at 1st Floor, Sahakari
Sankul, Shivaji Nagar, Pune – 411 005
5. The Returning Officer,
Raosaheb Pawar Ghodganga Sahakari
Sakhar Karkhana Ltd.,
Raosaheb Nagar, Nhavare,
Taluka Shirur, District – Pune

6. Raosahebdada Pawar Ghodganga
Sahakari Sakhar Karkhana Limited,
Having its address at Raosaheb Nagar,
Post – Nhavare, Taluka Shirur,
District Pune,
Through its Managing Director ... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate i/b. Ashish Pawar for the
Petitioner in WP (St.) 22826/22

Mr. Sagar Amrut Rane for the Petitioners in WP(St.) 22824/22

Mr. Deelip Patil Bankar, Chief Standing Counsel SCEA a/w. Pooja
Deelip Patil and Suhas Rohile for Respondents 5 and 3

Ms. Kavita N. Solunke, AGP for the State

Mr. Ajinkya Udane for the Intervener

***CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.***

DATE : 17 OCTOBER 2022

Judgment (Per Nitin Jamdar, J.) :-

This group of Writ Petitions concern the election to a
Co-operative Society. The Co-operative Society in question is
Raosahebdada Pawar Ghodganga Sahakari Sakhar Karkhana Ltd.,
the Karkhana.

2. Rule. Rule is made returnable forthwith. The

Respondents waive service. Taken up for disposal. The Petitions have been argued together and are disposed of by this common judgment.

3. In Writ Petition (St.) No. 22824 of 2022 and Writ Petition (St.) No. 22826 of 2022, the challenge is to the action of the Respondent No.3 – Maharashtra State Co-operative Societies Election Authority (the State Election Authority) countermanding the election to the managing body of the Karkhana in view of the death of one of the candidate. An Intervention Application is filed by one candidate to support the decision to countermand the election.

4. In Writ Petition No. 9503 of 2022 and Writ Petition No. 9499 of 2022 the challenge is to the decision dated 15 July 2022 taken by the State Government to defer the elections to the Co-operative Societies in the State of Maharashtra till 30 September 2022. The controversy involved in these Petitions is worked out. In a group of Petitions, Writ Petition Nos. 8845 of 2022 and Ors., challenged this decision of the State. On 19 September 2022, a statement was made on behalf of the State Government that the election to the Co-operative Societies in the State would commence on 30 September 2022. Recording this statement, the group of Petitions was deferred to 3 October 2022 only for compliance. On 3 October 2022, as the learned Counsel for the appearing parties

pointed out that the challenge to the decision/notification dated 15 July 2022 no longer survives, and the elections would commence from the stage they were postponed. This group of petitions were disposed of on 3 October 2022 as the challenge was rendered infructuous. Writ Petition No. 9503 of 2022 and Writ Petition No. 9499 of 2022 also could have disposed of on that day, however, the elections to the Karkhana could not commence in view of the order passed by the State Election Authority of countermanding the election, which is the subject matter of Writ Petition (St.) Nos. 22824 of 2022 and 22826 of 2022. Therefore Writ Petition No. 9499 of 2022 and Writ Petition No. 9503 of 2022 were adjourned to be heard with the petitions challenging the order of countermand.

5. Turning now to the facts and challenge in Writ Petition (St.) Nos. 22824 of 2022 and 22826 of 2022. In addition to the pleadings, the Petitioners have circulated a note elaborating factual details, upon which there is no dispute.

6. Raosahebdada Pawar Ghodganga Sahakari Sakhar Karkhana Ltd. is a Co-operative Sugar Factory. It was registered on 16 May 1990. Its area of operation is Shirur Taluka in Pune District. Writ Petition (St.) No. 22824 of 2022 is filed by the Karkhana. The Petitioners in Writ Petition (St.) No. 22826 of 2022 are the members of the Karkhana who are contesting the elections of the Managing Board and their nominations are held to be valid. The

Regional Joint Director (Sugar), Pune, on 11 November 2014, approved the Bye-Laws which govern the Karkhana. As per By-Law 26, the Board of Directors/Managing Committee of the Karkhana is to be elected from the Individual Producer Members and Society Producer Members. The term of five years of the Board of Directors of the Karkhana ended on 21 May 2020. Due to the Covid 19 Pandemic, these elections were postponed, and the earlier Board of Directors is functioning till the new Board of Directors is elected.

7. Elections to the Board of Directors of the Karkhana were notified on 24 June 2022 by Respondent Nos. 3 to 5 in terms of the Maharashtra Co-operative Societies (Election to Committee) Rules 2014 (the Rules of 2014). Total twenty one directors are to be elected from six constituencies. These are as follows:

“(a) Constituency No.1: 6 Gats and each Gat to elect a minimum of 2 and maximum of 3 Directors. Total of 15 Directors (on a rotation basis) to be elected from 'Individual Producer Members'.

(b) Constituency No.2 : One from the 'Society Producer Members' of the Karkhana.

(c) Constituency No.3: One from the Scheduled Caste/Scheduled Tribe (SC/ST) category to be elected.

(d) Constituency No.4 : Two Women Directors.

(e) Constituency No.5 : One belonging to the Other Backward Caste ("OBC").

(f) Constituency No.6 : One Director belonging to "VJNT" to

be elected.”

A list of valid nominations was published on 4 July 2022. Names of a total of 138 candidates were included in the said list. The Petitioner Nos. 1,2 and 3 in Writ Petition (St.) No. 22826 of 2022 are included in the said list from the Individual Producers Constituency, Gat Nos. 2, 1 and 6.

8. As per the election programme, the last date for withdrawal of nomination was 18 July 2022. 19 July 2022 was fixed for publication of the list of Contesting Candidates. On 15 July 2022, the Government of Maharashtra issued a Resolution/Order postponing the elections to the Co-operative Societies in the State (with some exceptions) till 30 September 2022 in view of excessive rainfall situation.

9. One Mr. Baburao Pacharne, whose nomination was accepted as valid from Individual Producers Constituency Gat No.6, expired on 11 August 2022. In view of Mr. Pacharne's demise, the State Election Authority wrote to Respondent No.5 – The Election Officer, to take steps as per Rule 31 of the Rules of 2014 and submit a revised election programme for approval. On 13 September 2022, Respondent No.5 passed an order countermanding the elections to the Karkhana citing the demise of Mr. Baburao Pacharne as the reason. Challenging this order, the Petitioners are before us.

10. Reply affidavit is filed on behalf of the State Election Authority. The interveners have supported the stand taken by the State Election Authority.

11. We have heard Mr. Y.S. Jahagirdar, learned Senior Advocate for the Petitioner in WP (St.) 22826/22, Mr. Sagar Amrut Rane for the Petitioners in WP(St.) 22824/22, Mr. Deelip Patil Bankar, Chief Standing Counsel for Respondents 5 and 3 -The State Election Authority, Ms. Kavita N. Solunke, Asstt. Govt. Pleader for the State and Mr. Ajinkya Udane for the Intervener.

12. Before we refer to and deal with the rival contentions, a brief overview of the governing statutory scheme relevant for the controversy at hand is necessary, and it is thus. The Maharashtra Co-operative Societies (Election to Committee) Rules 2014 are framed in the exercise of powers conferred under Section 165 of the Maharashtra Co-operative Societies Act, 1960. Part II of the Rules deal with the type of societies. Part III is regarding the preparation of the electoral roll. Part IV lays down the administrative machinery for conducting elections. Conduct of elections is dealt with under Part V of the Rules and contains the Rules relevant to the matter at hand. Rule 18 lays down the programme for various stages of the election.

"18. Declaration of election programme.—

(1) The Returning Officer, with prior approval of the SCEA, shall draw and declare a programme of various stages of election, within ten days of the display of final list of voters of the society, which shall be as follows :—

(i) Date of declaration of election programme. - Date to be announced at the time of declaration of programme.

(ii) Last date for making nominations. - 5 days from the date of declaration of election programme.

(iii) The date of publication of list of nominations received. - As and when received till the last date fixed for making nominations.

(iv) Date of scrutiny of nominations. - Next day of the last date for making nominations.

(v) Date of publication of list of valid nominations after scrutiny. - Next day after the date of completion of scrutiny.

(vi) Date by which candidature may be withdrawn. - Within 15 days from the date of publication of list of valid nominations after scrutiny.

(vii) Date of publication of final list of contesting candidates and allotment of election symbols. - The day next succeeding the last day fixed for withdrawal of candidatures.

(viii) Date and time during which and the place/ places at which the poll shall be taken, if necessary. - Not earlier than 7 days but not later than 15 days from the date of publication of final list of contesting candidate (time and place to be fixed by the Returning Officer)

(ix) Date, time and place for counting of votes. - Not later than 3rd day from the date of which the poll shall be taken (Time and place to be fixed by the Returning Officer).

(x) Date of declaration of results of voting. - Immediately after the counting of votes.

Explanation. —

(a) If the date in reckoning dates as specified in the above cases is a public holiday, the next succeeding working day shall be fixed for the respective events;

(b) The proportion of polling station to number of voters at each polling stations and the place of polling stations shall be fixed in consultation with the SCEA or District Co-operative

Election Officer. Where the polling Stations are spread over entire district, town or village in the District, the Returning Officer shall make arrangement to get all the ballot boxes or Electronic Voting machines to the office of the Returning Officer or to the concerned Registrar's office or to the societies' or to such other safe place as he may deem fit."

(emphasis supplied)

The first stage is the date of the election programme. The second stage is the last date for filing a nomination. The third stage is the date of publication of a list of nominations received. The fourth stage is of scrutiny of nominations. Fifth stage is the date of publication of valid nominations after scrutiny. Thereafter, sixth

stage is the date by which candidature may be withdrawn, and the seventh stage is the date of publication of the Contesting Candidates' final list and allotment of election symbols.

13. The fifth stage regarding the date of publication of valid nominations is dealt with under Rule 26. Rule 26 states that immediately after all the nomination papers have been scrutinized and the decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of candidates whose nominations have been accepted. Immediately on the next day after the scrutiny is over, the Returning Officer shall affix the list on his notice board and shall record the date on which and the time at which the list was affixed. The date by which the candidature may be withdrawn is dealt with in Rule 27, and preparation of the final list of candidates is specified under Rule 28. Under Rule 27, any candidate may withdraw candidature by giving notice in writing to the Returning Officer in Form E-6. The notice is to be delivered before 3.00 p.m. on the last date fixed under Rule 18 for withdrawal of the candidature.

14. Thereafter, Rule 28 follows, which is important, and reads thus:-

28. Preparation of list of contesting candidates and allotment of symbols.—

(1) On the day next succeeding the last date fixed for

withdrawal of candidature, the Returning Officer shall prepare and publish in FORM 'E-7', a list of contesting candidates, that is to say, the candidates whose names have been finally accepted and who has not withdrawn their candidatures within the prescribed time on the notice board of his office.

(2) The said list shall contain the names in alphabetical order with reference in the names of candidates having surnames and the names proper of other candidates, in the language and manner in which the list of voters is prepared and the addresses of the contesting candidates as given in the nomination papers.

(3) Where a poll becomes necessary, the Returning Officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall—

(a) allot a different symbol to each contesting candidate in conformity as far as practicable, with his choice ; and

(b) if more than one contesting candidates have indicated their preference for the same symbol, then symbols shall be allotted on the basis of 'first come first serve' and such allotment shall be final.

(c) If more than 30% of candidates of the total contesting seats come together and form the group and demand a common symbol by common written application signed by all the concerned candidates, then the Returning Officer may allot them a common symbol.

(4) Every candidate shall forthwith be informed of the symbol allotted to him and be supplied with a specimen provided by the SCEA thereof by the Returning Officer."

(emphasis supplied)

This Rule states that on the day next succeeding the last date fixed for withdrawal of candidature, the Returning Officer shall prepare and publish in Form E-7, a list of Contesting Candidates, that is to say, the candidates whose names have been finally accepted and who has not withdrawn their candidatures within the prescribed time on the notice board of his office. Form E-7 reads thus:-

Form E-7
[See Rule 28]
Final list of Contesting Candidate

*Election to the committee member
of Co-operative Society
Ltd.,, Tahsil,
District from the
.....
Constituency.*

<i>Serial No.</i>	<i>Name of the Candidate</i>	<i>Address of the Candidate</i>	<i>Symbol allotted to the Candidate</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>

--	--	--	--

Place:

Date: *Signature of Returning Officer.*

N.B.—

1. *Names shall be arranged in alphabetical order of surname. If no surname then first name and for other Publication of the list of contesting candidates shall be made on the notice board of the office of the Returning Officer and the registered office of the Society.*

(emphasis supplied)

The next relevant rule is Rule 31, This rule empowers the Election Authority to countermand the election. It reads thus:-

"31. Death of candidate before poll

If a contesting candidate dies and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of candidate, countermand the poll and inform the SCEA of District Co-operative Election Officer along with the proceedings with reference to the election, and the election shall be commenced in all respect, as if for a new election.

Provided that, no further nomination shall be necessary in the case of a person who was a contesting candidate at the time of the countermanding of the poll:

Provided further that, no person who has given a notice

of withdrawal of his candidature under Rule 27 before the countermanding of the poll shall be eligible for being nominated as a candidate for the election after such countermanding.

Provided also that, no fresh notice of withdrawal by the candidate whose nomination is accepted before the countermanding shall be accepted by the returning officer for the election after such countermanding."
(emphasis supplied)

Thus, if a contesting candidate dies and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of candidate, countermand the poll.

15. The Rule 2(17) of the Rules of 2014 defines the "State Co-operative Election Authority" as the one constituted by the State Government under Section 73CB. Section 73-CB of the Maharashtra Co-operative Societies Act, 1960 states that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the State Cooperative Election Authority, as may be constituted by the State Government in that behalf. Every general election of the members of the committee and election of the office-bearers of society, including any casual vacancy, to the extent applicable, shall be held as per the procedure prescribed. The powers of the State Election Authority are specified under Rule 3 of the Rules of 2014. The relevant portion of Rule 3 of the Maharashtra

Co-operative Societies (Election to Committee) Rules, 2014 reads thus :

"3. Powers of State Co-operative Election Authority (SCEA)

In order to conduct the elections of the co-operative societies, the SCEA shall have the following powers, namely :-

(i) ...

(ii) ..

(iii) ...

(iv) ...

(v) to issue such special or general orders or directions for fair and free elections, which shall not be inconsistent with the provisions of the Act and the Rules.

(vi)

This is in short, the relevant scheme of the Rules of 2014 as regards the conduct of the elections to a Co-operative Society in the context of the controversy at hand.

16. On 18 April 2022, the State Election Authority issued a clarification/order purportedly under Rule 3(v) read with Rule 31 of the Rules. It was stated therein that various clarifications were sought from the State Election Authority about procedure to be followed upon the death of a candidate. The clarification/order dated 18 April 2022 stated that those candidates whose nomination paper has been accepted and those who had not withdrawn their nomination, if such a person expires, then the election be countermanded under Rule 31

of the Rules of 2014.

17. Reverting to the submissions of the parties. Mr. Y.S. Jahagirdar, submitted briefly as follows. The countermanding the election to the Co-operative Societies in the State is governed by the Rules of 2014. Part V of the Rules 2014 deals with the Conduct of Elections, and it is specifically provided in Rule 28 that on the day next succeeding the last date for withdrawal of candidature, the Returning Officer shall prepare a list of contesting candidates. Rule 28 defines that the contesting candidate means those whose names have been finally accepted and those who have not withdrawn his candidature within the prescribed time. The only rule under Rules of 2014 which permits countermanding of the poll is under Rule 31. Only upon the death of a contesting candidate the election can be countermanded. Since Mr. Baburao Pacharne expired prior to the last date of withdrawal of nomination, he was included in the list of Contesting Candidate as per Rule 28, no order could have been passed under Rule 31 countermanding the election on his death. Any other interpretation will make the Rule 31 and the provisos thereunder otiose. The instructions/order issued by the State Election Authority on 18 April 2022 referring to Section 73CB of the Maharashtra Co-operative Societies Act, 1960 and Rule 31 of Rules 2014 cannot be contrary to the statutory rules and will not apply if the jurisdictional facts referred to in Rule 28 read with Rule

31 are not present. This issue is squarely covered in the decision of this Court in the case of *Vivek Bhaiyasaheb Deshmukh and Anr. v/s. Returning Officer-cum-Collector and Ors.*¹ in Writ Petition No.1412 of 2011 decided on 22 March 2011, where this Court interpreting the *pari materia* provisions of Rules 26 and 29 of Maharashtra Specified Co-operative Societies (Election to Committee) Rules, 1971 has held that the elections could be countermanded only if the candidate whose name has appeared in the list of contesting candidate has expired before the commencement of poll. The exercise of countermanding the election is, therefore, illegal and without jurisdiction. Therefore, the elections to the Karkhana should proceed from the stage they were deferred by the general directions issued by the State of Maharashtra on 15 July 2022, like other co-operative societies in the State.

18. Mr. Deelip Patil Bankar, the learned Counsel for the Election Authority, submitted that there is no illegality in the impugned action. Though it is correct that the name of Mr. Pacharne was not included in the list of Contesting Candidates, it was because he had expired prior to that date, and not much importance that can be attached to the phrase 'Contesting Candidate' which is used in general sense under the Rules of 2014. This position was clarified by this Court in the case of *Rameshlal Khialdas Tejvani v/s. Collector, Jalgaon and Ors.*². The impugned

¹ 2011(4) Bom.C.R.415

² 1992 Mh.L.J. 175

order is passed under Rule 31 of the Rules of 2014 along with clarification/notification issued by the State Co-operative Election Authority on 18 April 2022. The State Election Authority, constituted under Section 73CB of the Act of 1960, is empowered to hold the elections as per the procedure, guidelines and manner, including using the latest technology and expertise. Rule 3(v) of Rules of 2014 empowers the Authority to issue special or general orders or directions for fair and free elections. Since various clarifications were sought from the State Election Authority regarding the procedure to be followed upon the death of a candidate, the order/clarification was issued on 18 April 2022. Therefore, reading Rule 31 along with the clarification/order dated 18 April 2022, those candidates whose nomination paper has been accepted and had not withdrawn their nomination, if such a person expires, then the election can be countermanded under Rule 31 of the Rules of 2014. Therefore, the fact that a person appears as a contesting candidate in a list maintained under Rule 28 is not relevant. In the present case, Mr. Baburao Pacharne had expired after his nomination was accepted; therefore, the elections were rightly countermanded. Countermanding the election has not caused any prejudice to the Petitioners; consequently, they cannot make any grievance. As held by the Hon'ble Supreme Court in the case of *I.K. Gujral v/s. Election Commission of India*³, countermanding the election is not unconstitutional, arbitrary and in fact if an integral

3 1993 Supreme (Del) 210

part of the election and a step towards the completion of the election. Therefore, there is no merit in the Petition, and the petition be dismissed.

19. Mr. Ajinkya Udane, learned Counsel for the Intervener, whose intervention was opposed by the Petitioners, supported the contentions of the State Election Authority and, in addition, submitted that the Petitioner should have joined the other contesting candidates as Respondents and apart from the grounds taken by the State Election Authority on this ground also the Petition be dismissed.

20. The dispute before us is briefly as follows. According to the State Election Authority, as per the clarification/order dated 18 April 2022, purportedly issued under Rule 3(v) read with Rule 31 in case of the death of those candidates whose nomination paper has been accepted and have not withdrawn their nomination, the election can be countermanded, and he doesn't need to be in the list of Contesting Candidate, which is only a description. According to the Petitioner, the statutory scheme is clear that only on the death of a contesting candidate, as defined under Rule 28, that an election can be countermanded under Rule 31 and by mere issuing of some procedural directions, the statutory scheme cannot be modified.

21. It is settled that the primary principle of statutory

interpretation is giving effect to the plain language used in the statute. If the plain language leads to absurdity or unworkability, then purposive interpretation can be resorted to. We find that despite the statutory provisions being clear and unambiguous, the State Election Authority is needlessly looking for ambiguities.

22. It is to be noted that a candidate becomes a Contesting Candidate for the first time in the Rule 28. There is no reference to the concept of contesting candidates prior to this stage under the Rules. The contention of the State Election Authority that the phrase Contesting Candidate is a general term, is not borne out by the Rules. In fact this argument seeks to change the express language of the Rules. The language of the Rule 28 is clear. This Rule states that on the day next succeeding the last date fixed for withdrawal of candidature, the Returning Officer shall prepare and publish in FORM 'E-7', a list of contesting candidates, that is to say, the candidates whose names have been finally accepted and who has not withdrawn their candidatures within the prescribed time on the notice board of his office. As per Rule 31, the death of the Contesting Candidate is the trigger for the exercise of Rule 31. The use of the phrase “that is to say” is clear and deliberate. Not only a term Contesting Candidate is used but it is defined as what it means. There no merit in the stand of the State Election Authority that this is not a definition or it is only in the context of symbols. Nowhere

else in the Rules the phase Contesting Candidate is defined. The concept of Contesting Candidate is as per Rule 28, read with Form E-7. The State Election Authority endeavours to shift the stage of candidate becoming a contesting candidates, to stages prior to the fifth under Rule 26. They would be contrary to the language of Rule 28 and the scheme of Rules of 2014. There is no definition of the contesting candidate to be found in the Rules of 2014 apart from the one mentioned in Rule 28 of the Rules of 2014. In the body of Rule 31, there is a specific reference to a Contesting Candidate. This Rule states that if a Contesting Candidate dies and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of candidate, countermand the poll. There is no ambiguity in this Rule. Though it is contended that the heading of Rule 31 refers only to a 'Candidate', the heading cannot be read in isolation and cannot change the meaning of the Rule, which is otherwise clear. We find no ambiguity in these Rules.

23. Thus the plain reading of the Rules of 2014 show that the Contesting Candidate is one whose name appears in the list in Form E-7 and upon the death of this Contesting Candidate, the election can be countermanded under Rule 31. As to our repeated query to the learned Counsel for the State Election Authority as to what would be the absurdity if this plain meaning of Rules is adopted, the learned Counsel for the Election Authority could only

refer to one situation. That is if the Election Authority does not have knowledge of the death of the candidate before the last date of withdrawal of nomination and because of which name appears in the list of Contesting Candidates. However, this fact situation is entirely different. It is a situation of a mistake. It does not arise for consideration in the present case. Furthermore, it is also not that in this situation, there is no guidance under the Rules of 2014. Rule 31 refers to the “report of the death of the contesting candidate” being received by the Returning Officer before the commencement of the poll. The decision of the Division Bench of this Court in the case of *Rameshlal Tejvani* relied upon by the State Election Authority arose from the fact situation where a candidate, whose nomination paper was accepted, passed away before the withdrawal of nomination. As the information of his death was not available, he figured in the list of contesting candidates. It is in this context the Division Bench observed that the contesting candidate could not be given an inflexible meaning because if he has passed away, his inclusion in the list of contesting candidates would not be of much relevance. Further, we don't need to comment and conclude on this situation as it does not arise for consideration in this case. The case at hand is the one where the candidate has expired before the withdrawal of nomination, his name does not appear in the list of the contesting candidates, and the information of his death was received prior to the commencement of the poll.

24. This Court in the case of *Vivek Bhaiyasaheb Deshmukh* has interpreted Rules 26 and 29 of the Maharashtra Specified Cooperative Societies Election to Committee Rules, 1971. There is no dispute that the language of these Rules and Rules 28 and 31 of the Rules of 2014 is the same. The judgment squarely covers the issue; therefore, a substantial part of the same is reproduced as below:-

"2. By this petition, the petitioners impugn the order passed by the Collector, Yavatmal postponing the election to respondent no.3 Society from the Cotton Growers Constituency. The Collector, Yavatmal had invoked the provisions of Rule 29 of the Maharashtra Specified Cooperative Societies Election to Committee Rules, 1971 as, one of the candidates, who had filed his nomination form, had expired on 08.03.2011.

3. The respondent no.2 had published the election program for electing the Board of Directors of respondent no.3 Sut Girni. The petitioners and certain other persons had filed their nomination papers from Cotton Growers Constituency as seven directors were to be elected from Cotton Growers Constituency. According to the election program, the nomination forms were to be filed on or before 23.02.2011 and the dates for withdrawal of the nomination form was 25.02.2011 to 11.03.2011. Before the last date for withdrawal of the nomination, one of the persons, who had filed the nomination, namely Rajabhau Yenkar, expired on 08.03.2011. Though Shri Rajabhau Yenkar had expired before the list of contesting candidates was declared or before the last date of withdrawal of nominations, the Collector, Yavatmal, by exercising

power under Rule 29 of the Rules of 1971 stayed and postponed the election from the Cotton Growers Constituency. The order dated 10.03.2011 is impugned by the instant petition.

4. Shri Parkhi, the learned counsel for the petitioners, took this Court through the provisions of Rule 26 and Rule 29 of the Rules of 1971 to canvas that Rajabhau Yenkar was not a candidate, whose nomination paper was finally accepted by the Returning Officer and, hence, he was not a "contesting candidate" within the meaning of the term under Rule 29 of the Rules of 1971. The learned counsel for the petitioners submitted that the provisions of Rule 29 could have been invoked by the Collector only if one of the "contesting candidates" died and a report of his death was received by the Returning Officer. In this case, according to the learned counsel for the petitioners, Shri Rajabhau Yenkar could not have been said to be a "contesting candidate" as he had expired before the last date of withdrawal of nominations. Hence, since his name did not appear in the list of "contesting candidates", as prepared by the Returning Officer, according to the learned counsel for the petitioners, the Collector, Yavatmal had no jurisdiction to stay or postpone the election.

5. Shri Dharmadhikari, the learned Assistant Government Pleader appearing on behalf of the respondent nos.1 and 2, submitted that Rajabhau Yenkar had filed his nomination form and since he was a "contesting candidate" till the date of his death on 08.03.2011, the Collector, Yavatmal rightly invoked the jurisdiction under Rule 29 of the Rules of 1971 to stay and postpone the elections. The learned Assistant Government Pleader sought for the dismissal of the writ

petition.

6. *Shri Narwade, the learned counsel for the respondent no.3, supported the case of the petitioners and submitted that the impugned order dated 10.03.2011 suffers from a jurisdictional error and the same is liable to be set aside.*

7. *On hearing the learned counsel for the parties and on a perusal of the Rules of 1971, it appears that the Collector, Yavatmal did not have jurisdiction to pass the order dated 10.03.2011 staying and postponing the election from the Cotton Growers Constituency. On a reading of Rule 26 of the Rules of 1971, it is clear that the list of contesting candidates is prepared on the date succeeding the last date fixed for withdrawal of the candidature and this list includes the candidates, whose nomination papers have been finally accepted. In the instant case, the name of Rajabhau Yenkar could not have been included in the list of "contesting candidates" as he expired on 08.03.2011, before the list of contesting candidates was declared by the Returning Officer on 12.03.2011. Shri Rajabhau Yenkar was, therefore, surely not a "contesting candidate" as he had expired before the last date of withdrawal of nomination, and his name could not have appeared in the list of contesting candidates. A reading of Rule 29 shows that the provisions of Rule 29 can be invoked by the Collector for postponing or for declaring the new election program only if a "contesting candidate" dies before the commencement of the poll. In the instant case, no doubt, Rajabhau Yenkar had died before the commencement of the poll, but, he was not the "contesting candidate" as his name did not appear in the list of contesting candidates, declared by the Returning Officer on 12.03.2011. Since Rajabhau Yenkar expired before the last date of withdrawal of nomination and*

since his name did not appear in the list of contesting candidates, the Collector, Yavatmal did not have jurisdiction to stay or postpone the elections by invoking the provisions of Rule 29 of the Rules of 1971. The impugned order dated 10.03.2011 suffers from a jurisdictional error and is, therefore, liable to be quashed and set aside.

(emphasis supplied)

The view taken by the learned Single Judge in *Vivek Bhaiyasaheb Deshmukh* follows the well settled principles of statutory interpretation. In that case also it was urged by the Respondent – Election Authority that the candidate had filed his nomination form and thus he be treated as a contesting candidate till the date of his death. This argument was expressly negatived relying on the language of the Rules. By referring to the factual situation which is totally different than the one at hand, the State Election Authority cannot distort the plain scheme of the Rules of 2014.

25. As we have observed the scheme of Rule 28 read with Rule 31 is clear and the present case will be governed by the joint reading of Rule 28 and Rule 31 of the Rules of 2014 only and the directions dated 18 April 2022 cannot over ride the same to that extent. Under Rule 3(v) of Rules of 2014, which is relied upon by the State Election Authority, the State Election Authority has powers to issue special or general orders or directions for free and fair election which directions are not to be inconsistent with the

provisions of the Act and the Rules. This is a residuary power to cover the areas not specifically covered by the Act and Rules to make the conduct of the election free and fair. Plain reading of Rule 3(v) is that the statutory scheme under the Act or the Rules framed therein cannot be modified by exercise of powers under Rule 3(v). Therefore, the directions issued by the State Election Authority on 18 April 2022 under Rule 3(v) will have to be harmoniously read along with the Act and Rules. Therefore, wherever there is specific provision under the Act or the Rules, the same will override the directions dated 18 April 2022. These directions will govern only those areas which the Act and Rules do not specifically cover. As to whether in situations other than the one at hand, the directions dated 18 April 2022 would apply or not is a question that has not arisen for our consideration.

26. The contention that the Petitioners are not prejudiced and the other candidates are not joined overlooks the main thrust of the Petitioner's argument that the order of countermand is without jurisdiction. The power to countermand the election is conferred on the State Election Authority not to be exercised at the own sweet will but the jurisdictional facts for the exercise of this power must exist. If the jurisdictional facts are absent, then the order countermanding the election will be without jurisdiction. We have found that the impugned order of countermanding the election is contrary to the scheme of Rules of 2014 and the jurisdictional facts were not present.

The impugned order of countermanding the election is, without jurisdiction.

27. The contention of the State Election Authority based on the decision of the Hon'ble Supreme Court in the case of *I.K.Gujral* is misplaced. In this case, it was argued that countermanding of an election is not permissible as it thwarts the course of the election. It is in this context the Hon'ble Supreme Court held that countermanding, being an integral part of the election, cannot thwart the election. The Petitioners have also not argued that countermanding *per se* is not permissible. The argument of the Petitioner is that countermanding is permissible in a particular fact situation which, if does not exist, the exercise of countermanding will not be permissible. Neither the Petitioners contend that empowering the Election Authority to countermand the election process is unconstitutional; therefore, the observations of the Hon'ble Supreme Court that conferment of such powers on the State Election Authority is not unconstitutional or illegal, does not arise for consideration.

28. Therefore, to conclude, that the exercise by the State Election Authority to countermand the election to the Karkhana, on the ground that the candidate - Mr. Baburao Pacharne has expired is without jurisdiction as Mr. Baburao Pacharne was not a contesting

candidate whose name had appeared in the list of contesting candidates in Form E-7. Therefore, the order of countermanding, being without jurisdiction, will have to be quashed and set aside. The State Election Authority will have to be directed to proceed with the election of the Karkhana from the stage it was postponed on account of the order dated 15 July 2022 issued by the State of Maharashtra.

29. In Writ Petition (St.) No. 22824 of 2022 and Writ Petition (St.) No. 22826 of 2022, the impugned order of countermand by the State Election Authority dated 30 September 2022, is quashed and set aside. The Respondent Nos.3 to 5 will start the election process of Raosahebdada Pawar Ghodganga Sahakari Sakhar Karkhana from the stage it was deferred in view of the order dated 15 July 2022 passed by the State Government. Rule is made absolute in the above terms in these Petitions.

30. As regards Writ Petition Nos. 9499 of 2022 and 9503 of 2022, the impugned resolution dated 15 July 2022 has ceased to operate beyond 30 September 2022 and, therefore, the challenge in these Petitions does not survive. These Writ Petitions are accordingly disposed of. The Interim Applications are also disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date:
2022.10.17
19:29:31 +0530

JYOTI
PRAKASH
PAWAR