

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 3111 OF 2022

Rahul Tulshiram Bansod and others -- Petitioners

Vs.

District Cooperative Election Officer and -- Respondents
others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Chintan Deopujari, Advocate for Petitioners
Mrs. S.S. Jachak, AGP for Respondent No.1
Mr. Dangre, Advocate for Respondent Nos.2 to 8
Mr. A.P. Gahlot, Advocate h/f Mr. S.S. Paliwal, Advocate for
Respondent No. 9

CORAM : MANISH PITALE, J.

DATE : 17th JUNE, 2022

Heard learned counsel for the parties.

2. The petitioners have challenged order dated 23/05/2022, passed by the respondent No.1 – District Cooperative Election Officer, whereby objections raised by respondent Nos.2 to 8 in the context of finalization of voters list for election of respondent No. 9 – Society were accepted, as a consequence of which, the names of the petitioners which were included in the provisional voters list, stood deleted from the finalized voters list.

3. It is the case of the petitioners that while the impugned order was obviously adverse to their interest, they were never put to notice by respondent No.1 and only the objectors i.e. respondent Nos.2 to 8 and the Society i.e. respondent No.9 were heard in the matter. On this short ground, the present petition is filed before this Court, apart from raising certain grounds on merits of the matter.

4. The respondents have appeared in pursuance of notice issued on 09/06/2022 and a preliminary objection is raised as regards the maintainability of the writ petition on the ground that the election process is already initiated and in terms of the settled position of law, particularly in the light of Rule 78 of the Maharashtra Co-operative Societies Election to Committees Rules, 1971, the only remedy available to the petitioners is to raise dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960. The learned counsel for the respondent Nos.2 to 8 further submitted that even if this Court was to consider the contentions of the petitioners on merits, it could be demonstrated on the face of it that there was no illegality in the order passed by the respondent No.1 and that, therefore, no case was made out for interference in the present petition. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case **Shri Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and others** reported in 2002(1) Mh.LJ. 659 and judgments of this Court in the cases of **Shriram S/o Mukundrao**

Korde Vs. State of Maharashtra & Ors. reported in 2015(4) Mh.L.J. 659; **Karmavir Autade & Ors. Vs. State Election Commission & Ors.** reported in 2021 (2) Mh.L.J. 349; **Dattatray Genaba Lole & Ors. Vs. The Divisional Joint Registrar, Cooperative Societies & Ors.** reported in MANU/MH/3767/2021 (Writ Petition No. 5878/2021 BOM, HC) and Writ Petition No. 3306/2021 (BOM HC, Nagpur Bench) **Sau. Chandatai W/o Prakash Tayade & Ors. Vs. The District Cooperative Election Officer and Divisional Joint Registrar, Cooperative Societies Amravati & Ors.**

5. On the other hand, the learned counsel for the petitioners has also relied upon judgments of this Court in the cases of **Dattatraya Kachru Chine & others Vs. State of Maharashtra & others** reported in 2006(1) Bom.C.R. 875 and **Vitthal Sahakari Sakhar Karkhana Ltd. Vs. Wadikuroli Vividh Karyakari Seva Society Ltd. & ors.** reported in 2011(4) Bom. C.R. 290.

6. As regards the preliminary objection raised on behalf of the respondents, this Court is of the opinion that there cannot be any quarrel with the proposition that when election process is initiated and the remedy in the form of an election petition is available, the Writ Court ought not to interfere in an order which is part of the election process. The law laid down in that regard is clear from the judgments on which the learned counsel for the respondent Nos.2 to 8 has placed reliance. The specific emphasis placed on Rule 78 of the aforesaid Rule is also based on the said position of law.

7. But, this Court is of the opinion that the present petition presents a peculiar situation wherein the respondent No.1 – Election Officer has proceeded to pass the impugned order dated 23/05/2022, in the blatant and flagrant violation of principles of natural justice. The impugned order shows that while the objectors i.e. respondent Nos.2 to 8 were heard through counsel and respondent No.9 - Society was also heard through counsel, none of the petitioners were even put to notice. The record also shows that the names of the petitioners were indeed part of the provisional voters list and the effect of the impugned order was to finalize the voters list.

8. While considering the objections raised by the respondent Nos.2 to 8 as objectors, the respondent No.1 – Election Officer was necessarily required to decide the right and the status of all persons whose names were found in the provisional voters list and particularly that of the persons against whom the respondent No.2 to 8 had raised specific objections. In such a situation, the least that the respondent No.1 – Election Officer was expected to do was to put such persons to notice. By only putting respondent No.9 – Society on notice, the requirements of principles of natural justice could not be said to be satisfied.

9. This is also because by the very nature of functioning of the Cooperative Societies there are situations of internecine rivalry, vested interests and controversies between the members and

voters, leading to a situation where only the Society being put to notice cannot ensure a fair representation of those against whom objections have been raised. Yet, the respondent No.1 – Election Officer, despite being a District Deputy Registrar of Co-operative Societies, did not think it appropriate to issue notices to the parties likely to be affected by the order that was to be passed on the objections raised by respondent Nos.2 to 8.

10. The question is, as to what is ultimate goal of an election process. It is to elect persons through a free and fair process of election, so that the majority of the will of valid voters is reflected in the final result. The purity of the process of election has to be zealously protected, which in fact is the duty of the Election Officer himself.

11. In this backdrop, can it be said that the Election Officer, who is supposed to ensure purity of election process, can proceed to pass orders in flagrant and blatant violation of principles of natural justice and be assured about such orders not being considered by the Writ Court, only because once the election process is triggered any and everything has to be part of challenge only in an election dispute under Section 91 of the aforesaid Act. If such a position is to be accepted then it would lead to a situation where the vested interest within societies in connivance with officials like the respondent No.1 – Election Officer could ensure that the purity of the election process is destroyed and the affected persons would be relegated on every occasion to the

rigamarole of an election dispute under Section 91 of the aforesaid Act. The law laid down in this context cannot be a carte blanche for officials like respondent No.1 to act either arbitrarily or in connivance with vested interests of the society to adversely affect interests of not only members but also the society itself, only because the law as relied upon by respondent Nos.2 to 8 says that no interference is warranted once the election process is triggered.

12. On the contrary, the Court can interfere in order to facilitate purity of the process of election and it being taken forward, in accordance with law.

13. This Court is of the opinion that the glaring facts of the present case demonstrate that the respondent No.1 - Election Officer could not have proceeded to consider the objections raised by respondent Nos.2 to 8, without notice to the petitioners herein. On this short ground, the impugned order deserves interference. Although it is pointed out by the learned counsel appearing for the respondent Nos.2 to 8 that the election process has indeed progressed and any order passed by this Court may disturb the entire election process, this Court is of the opinion that appropriate directions can be given in that regard.

14. In any case, this Court is not considering the merits of the rival contentions and the impugned order deserves interference only on the aforesaid ground of blatant and flagrant violations of principles of natural justice. In that regard, it would be

appropriate that the impugned order is set aside and the matter is relegated back to the respondent No.1 – Election Officer, for an immediate consideration of the objections raised by respondent Nos.2 to 8 in the presence of the petitioners.

15. In view of the above, the present writ petition is being allowed only to that limited extent. Accordingly, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded back to the respondent No.1 – District Cooperative Election Officer. The petitioners as well as respondent Nos.2 to 9 shall appear before the respondent No.1 on 20/06/2022. No separate notice need be issued by the respondent No.1 to the parties.

16. The respondent No.1 shall grant reasonable opportunity to the parties to place their respective stands with regard to objections raised by respondent Nos.2 to 8. The respondent No.1 shall expeditiously decide the objections and in any case on or before 24/06/2022.

17. It is made clear that the final voters list as in existence today on the basis of which election programme is presently underway shall not be disturbed, only because the matter is remitted back to respondent No.1 in the aforesaid context. If at all the respondent No.1 proceeds to dispose of the objections in a manner that may require modification of the final voters list, the

election programme shall continue by modifying the final voters list accordingly.

18. The writ petition stands disposed of.

19. It is made clear that this order shall enure to the benefit of only the petitioners before this Court.

20. Steno copy be supplied to the parties to act upon.

JUDGE