

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

WRIT PETITION NO. 3560 OF 2022

Yogesh Vishnu Mahatre and Ors.

Vs.

State of Maharashtra, Thru. State Co-operative Election Authority, Pune, Maharashtra
and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. N.P. Lambat, Advocate for petitioners.
Mr. S.S. Ghate, Advocate for respondent No.1.
Ms. Sangita Jachak, AGP for respondent Nos.2 to 4.
Mr. P.R. Agrawal, Advocate for respondent No.7.

CORAM : MANISH PITALE J.

DATE : 08.07.2022.

By this writ petition, the petitioners who are members of the respondent No.5 – Co-operative Housing Society, approached this Court making a grievance that the election to the said society, to be conducted as per the election programme declared on 09.06.2022, was completely vitiated because of the manner in which the Returning Officer i.e. respondent No.4 had conducted the process from the initial stages. It was brought to the notice of this Court that the Returning Officer had asked one of the contesting candidate himself to assist him in conducting the process of election at various stages,

the said person being respondent No.7 before this Court. As a consequence, the respondent No.7, being a contesting candidate, himself was actively involved in the process of acceptance/rejection of nomination papers.

2. Taking note of the aforesaid extraordinary situation, indicating that the election process was *prima facie* vitiated, this Court issued notice on 30.06.2022, to the respondents for final disposal of the petition, considering the urgency of the matter.

3. The respondents appeared through counsel and attempt was made on behalf of the respondent No.4 – Society to contend that the respondent No.7 had merely assisted the Returning officer and he had not actively participated in the process. On this basis, it was submitted that since the election process had advanced to almost the final stage and only the process of voting was now remaining, this Court may not interfere with the process in the light of the settled position of law as laid down by this Court, particularly the Division Bench judgment of this Court in the case of ***Pandurang Laxman Kadam Vs. State of Maharashtra and ors., 2016 (6) Bom.C.R. 75.***

4. Mr. Ghate, learned counsel appeared for respondent No.1 and Ms. Sangita Jachak, learned AGP appeared on behalf of respondent Nos.2 to 4 and pointed out that since the Society has less than 250 members, it is for the society to choose a Returning Officer from a list of persons who could be appointed as Returning Officer, as maintained by the Office of the Co-operative Commissioner, Pune.

5. During the course of hearing, yesterday, this Court found that Communication at page No.48 of the petition dated 07.06.2022, issued by the respondent No.4 – Returning Officer to respondent No.7, clearly indicated that the said respondent No.7, despite being a contesting candidate, was invited to be actively involved in the process of election, including issuance and acceptance of nomination papers. This without doubt had the effect of vitiating the entire election process and in this backdrop, the hearing was adjourned for instructions to be taken as regards replacing the Returning Officer, particularly because a statement was made that respondent No.7 had withdrawn his nomination for contesting the election.

6. This Court is of the opinion that merely because respondent No.7 decided not to contest the election, would not cure the aforesaid fundamental defect that had occurred in the election process.

7. Today, when this petition was called out for hearing, learned counsel appearing for respondent No.5- Society, on instructions, submitted that another person from the list of persons to be appointed as Returning Officer could be chosen and a new Returning Officer could be appointed so that the election process could be completed. It was proposed that one Mr. Manoj Kawduji Khalode at Serial No.3 of the list, who is a Certified Auditor may be appointed as the new Returning Officer.

8. The learned counsel for the petitioners submitted that even if a new Returning Officer was to be appointed, the election process would have to be started afresh from the stage of issuance and acceptance of nomination papers, because the defect in the election process could be cured only if the clock was put back to the said stage. It was further submitted that the new Returning Officer ought not to indulge in any such activity as was done by the respondent No.4 – Returning Officer.

9. This Court is of the opinion that having found that the election process itself was vitiated, the present case is covered under the exceptions noted by the Division Bench of this Court in the judgment of *Pandurang Laxman Kadam (supra)* at paragraph No.12 and 13, thereby warranting exercise of writ jurisdiction.

10. Even otherwise, the respondents, particularly respondent No.5-Society itself has come forward with the proposal to appoint a new Returning Officer.

11. Accordingly, the writ petition is partly allowed in the following terms:

(1) The respondent No.4 – Returning Officer shall stand removed. Instead, Mr. Manoj Kawduji Khalode, Certified Auditor, included in the list maintained by the Office of the Commissioner's Co-operative Societies, Pune, is appointed as the new Returning Officer.

(2) In view of the election process completed thus far having been vitiated, the

existing election programme shall stand scrapped.

(3) The new Returning Officer shall now undertake the process of election as per renewed Election Programme from the stage of issuance and acceptance of nomination papers.

(4) The aforesaid new Returning Officer shall ensure that the renewed election programme and its various stages are specified and carried out strictly in terms of the provisions of the Maharashtra Co-operative Societies Act and the Rules framed thereunder.

12. The writ petition stands disposed of in the above terms.

JUDGE