

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3141 OF 2023

Shri Mahajan s/o. Vitthal Dhekle,
Age : 49 years, Occu. : Agriculture,
R/o. Betmogra, Tq. Mukhed,
Dist. Nanded.

.. PETITIONER

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society.
- 2] The Taluka Returning Officer and
Assistant Registrar Co-operative Society,
Naigaon, Tq. Naigaon,
Dist. Nanded.
- 3] Dattatray Balaji Patil,
Age : 40 years, Occu. Agriculture,
R/o. Betmogra, Tq. Mukhed,
Dist. Nanded.
- 4] Vivid Karyakari Seva Sahakari Sanstha,
Betmogra, Tq. Mukhed,
Dist. Nanded,
Through its Secretary.
- 5] Prakash Trimbak Patil.
- 6] Kalpana Prakash Patil
- 7] Harihar Prakash Patil
- 8] Sachin Prakash Patil

- 9] Maroti Mahajan Dhote
- 10] Mahadev Pandurang Talne
- 11] Laxman Balasaheb Karhale
- 12] Shankar Vithal Pitalewad
- 13] Rukhaminbai Ganpatrao Khapate
- 14] Uddhav Ramchandra Pitlewad.

Resp.nos. 5 to 14 all age : Major,
Occu. : Agriculture, R/o. Betmogra,
Tq.Mukhed, Dist. Nanded. .. **RESPONDENTS**

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Mr.V.D.Salunke, Advocate for the petitioners.
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.D.J.Chaudhari, Advocate for the respondent no.3.
Respondent nos.3 to 6 and 8 to 13 served through paper
publication.
Respondent nos.7 and 14 served.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 03.04.2023

Pronounced on : 06.04.2023

JUDGMENT :

1] By way of present Writ Petition, the petitioner is
challenging the impugned order dated 10.03.2023 passed

by the respondent no. 2 – Taluka Returning Officer & Assistant Registrar, Co-operative Society, Mukhed whereby objections of the petitioner to delete the names of respondent nos.5 to 14 from the provisional voters list of the respondent no. 4 – Society has been turned down by the election authority.

2] The elections to the respondent no. 4 – Vividh Karyakari Seva Sahakari Sanstha, Betmogra was due. The election programme for preparation of the voters list was published on 23.01.2023 for the term of 5 years i.e. 2023 to 2028. As per the schedule programme, the provisional voters list was published on 24.01.2023. The objections to the provisional voters list were invited from 24.01.2023 to 02.02.2023. Hearing on the same was fixed from 02.02.2023 to 08.02.2023. The last date date for withdrawal of nomination is on 10th April, 2023 and 16th April, 2023 is the date for polls.

3] It is the case of the petitioner that the respondent nos.5 to 10, 6 in numbers, are not the members

of the respondent no. 4 society. There is no proper application for registration of their membership and thus there is no compliance of Rule 19 of the Maharashtra Co-operative Societies Rules, 1961 read with bye law no.6 of the respondent no. 4 – society, and as such, their names ought not to have been included in the final voters list as they are not members of the respondent no. 4 – society. In case of respondent nos.11 to 14, the learned counsel for the petitioner submitted that, the order passed by the respondent no. 2 – election authority is erroneous as their names did not appear in the ‘I’ and ‘J’ register and loans were not taken by the said respondents and certificates to that effect were already filed on record.

4] *Per contra*, the learned counsel for the respondent no. 3 submits that the respondent nos. 5 to 10 have receipts of payment made in respect of membership and that they have also made payment of their shares. The learned counsel further submits that ‘I’ and ‘J’ register was not produced before the election authority. In any event the

receipts for payment of membership and share capital is filed which is the evidence of payment of share capital and the membership and the same is done only after proper resolution being passed by the society. The society did not remain present with the required documents and made oral submission before the authority.

5] In view of the document in possession of the respondent nos. 5 to 10, namely, receipts, the election authority has rightfully included their names in the final voters list. The learned counsel for the respondent no.3 submits that as regards respondent nos. 11 to 14 is concerned, there was loan sanction letter to the respondent nos.11 to 14 and they have produced the said letter as proof of membership before the election authority and that the chairman of the society in order to deprive the respondent nos.11 to 14 of their voting rights, has written a letter to the Bank not to release the sanctioned loan. However, the loan was released to the respondent nos.11 to 14, as such, the learned counsel for the respondent no.3

submits that the election authority has rightly included the names of the respondent nos.11 to 14 in the final voters list.

6] The learned counsel for the respondent no.3 has relied upon the judgments in the case of **Someshwar Sahakari Sakhar Limited and others Vs. Shrinivas Patil and others** reported in MANU/MH/0072/1992 and in the case of **Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and others** reported in MANU/SC/0602/2001 and has submitted that this Court cannot interfere in the election process at this stage.

7] Having perused the order passed by the respondent no.2 – Taluka Returning Officer and Assistant Registrar, Co-operative Society, as regards the respondent nos.5 to 10, the election authority has relied upon the membership fees, share payment receipts, which were produced by the said respondents as evidence of their membership. The office bearers of the respondent no. 4 society had not produced relevant material before the election authority and have made oral arguments. As

regards respondent nos.11 to 14, the election authority has observed that crop loan has been sanctioned to the said respondents and on the basis of the crop loan, it is obvious that the crop loan is sanctioned only to the members of the society and they are held to be the members of the society. However, 'I' and 'J' register of membership was not produced by the society before the authority. On the basis of sanction letter of crop loan, membership was found to be in favour of the respondent nos.11 to 14.

8] This Court in the case of **Vaibhav Manohar Bhokare Vs. State Co-operative Election Authority through its Secretary and others** reported in **2023 SCC OnLine Bom. 133** at para no.12 held as under :

12] It is also to be noted that in the case of **Dattatray Genaba Lole and others Vs. Divisional Joint Registrar, Co-operative Societies and others** reported in 2022 (1) Bom.C.R. 471 at paras 8.3 and 8.4 this Court has held as under certain circumstances alone, this Court can interfere with the election process. Para 8.3 and 8.4 of the said judgment, reads as under :

8.3 The legal principles that emerge from the various judgments noted and discussed in detail below is that as a matter of principle, Courts have been reluctant to interfere at an intermediate stage of an election process. It has been held that every allegation of illegality or irregularity and every assertion of rights by persons being excluded from the voters list are not entertained by Courts under Article 226 of the Constitution of India at the intermediate stage of the election process. There is a strong public policy reason behind Courts being circumspect in entertaining challenges at this stage under Article 226 of the Constitution of India. This is because there is a vital public interest in the elections being completed after which various matters can be gone into. A liberal approach to interference at the intermediate stage would frequently result in election processes being halted or becoming uncertain, which by itself undermines the sanctity of such elections and the democratic object that they seek to achieve.

8.4 The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is

patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.

9] Thus, this Court would interfere in the election process only in case of patent illegality. However, I do not see that the order passed by the respondent no. 2 – Taluka Returning Officer and Assistant Registrar, Co-operative Society is patently illegal and removing the names of the respondent nos.5 to 14 may not be advisable at this stage.

10] The petitioners are at liberty to avail alternate remedy of filing appropriate proceedings.

11] In view of this, this Court has not exercised writ jurisdiction to interfere with the election process.

12] The Writ Petition is disposed of with liberty to the petitioner to seek alternate remedy as may be available in law.

[ARUN R. PEDNEKER]
JUDGE

DDC