

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

WRIT PETITION NO.3142 OF 2023

- 1] Dhanraj Dattatray Patil,
Age- 30 year.
- 2] Madhukar Sambhaji Pitlewar,
Age-40 year.
- 3] Balaji Vitthal Ansapure,
Age-52 year.
- 4] Shivraj Shankarrao Patil,
Age-70 year.
- 5] Megha Maroti Mukkawar,
Age-55 year.
- 6] Hanmant Datta Barhale,
Age-44 year.
- 7] Bhaganbai Ramchandra Doibale,
Age-75 year.
- 8] Gajanan Shivdas Doiphode,
Age-37 year.
- 9] Shivkant Vitthal Ansapure,
Age-43 year.
- 10] Chitrakalabai Dattatray Patil,
Age-47 year.
- 11] Bhagratbai Ramchandra Patil,
Age-78 year.

- 12] Dhanraj Shivraj Patil,
Age-45 year.
- 13] Maroti Laxman Mukkawar,
Age-64 year.
- 14] Shivaji Bhaurao Patil,
Age-45 year.
- 15] Ramakant Laxman Ansapure,
Age-67 year.
- 16] Bhanudas Ramchandra Doibale,
Age-51 year.
- 17] Shivdas Madhav Doibale,
Age-56 year.
- 18] Khandu Sambhaji,
Age-50 year.
- 19] Shivling Nama Talne,
Age-74 years,
- 20] Kaushalyabai Kishanrao Patil,
Age 77 year.

All Occu. Agriculture,
R/o. Betmogra, Tq. Mukhed,
Dist. Nanded.

.. **PETITIONERS**

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,

Mukhed, Tq. Mukhed,
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.

.. **RESPONDENTS**

...
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 no. 4 served through paper publication
...

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 03.04.2023
Pronounced on : 06.04.2023

JUDGMENT :

1] Rule. Rule made returnable forthwith and heard finally.

2] By way of present Writ Petition, the petitioners are challenging the impugned order dated 10.03.2023 passed by the respondent no. 2 – Taluka Returning Officer & Assistant Registrar, Co-operative Society, Mukhed, deleting

the names of the petitioners from the provisional voters list for being defaulters under Section 73 (CA) (1), 75 (2) and 27 (10) of the Maharashtra Co-operative Societies Act, 1960 [for short 'the Act of 1960'].

3] The elections to the respondent no. 4 – Vivid 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 scheduled 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. The names of the petitioners were in the provisional voters list and the objections were raised against the petitioners that 12 petitioners are the members of Madhav Upsa Jal Sinchan Co-operative Society and they have taken loans from the

said society and have defaulted on the repayment of the loans. Remaining 8 petitioners are the legal heirs of the defaulter members of Madhav Upsa Jal Sinchan Co-operative Society.

4] The facts in this matter are not disputed that out of 20 petitioners, 12 petitioners are defaulters of the Madhav Upsa Jal Sinchan Co-operative Society and remaining 8 petitioners are the legal heirs of the defaulters members of the said society. However, none of the petitioners are the defaulters of the respondent no. 4 – Vividh Karyakari Seva Sahakari Sanstha, for which elections are held.

5] On the objection raised, the respondent no. 2 – Taluka Returning Officer and Assistant Registrar, Co-operative Society, Mukhed passed the impugned order dated 10.03.2023 wherein it has held that as per the provisions of the Maharashtra Co-operative Societies Act, a voter or family member of the voter should not be a defaulter of any society, therefore, considering the provisions of the Act of

1960, the names of the petitioners are not included in the final voters list as they are defaulters of some other society. The respondent no. 2 – Returning Officer held that if the petitioners or his family members are defaulters of any Co-operative Society, they are barred under Section 73 (CA) (1) read with 75 (2) and 27 (10) of the Act of 1960, from voting in the election to any co-operative society.

6] The question of law that arises for consideration in this case is that “If the member of a society is a defaulter of any other society whether he is barred from casting vote in the elections of the society of which he is not a defaulter?

7] The relevant provisions of Section 27 (10), 73CA and 75 (2) of the Maharashtra Co-operative Societies Act, 1960, are as under :

27. Voting powers of members

[(10) [If a member has taken a loan from the society, such member shall, whenever he is a defaulter, as provided in the *Explanation* to clause (i) of sub-section (1) of Section 73CA have no right to vote in the affairs of the society]:

Provided that, a member shall not be deemed to be a defaulter if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.

[73CA]. [Disqualification of committee and its members]

(AI) In the case of a society, which gives loans to members for purchasing machinery, implements, equipment, commodities or other goods, or which deals in such goods, no member, who or whose member of the family is a dealer in such goods or is a director of a company or a partner in a firm carrying on business in such goods, in the area of operation of the society shall be eligible for being elected or nominated as a member of the committee of such society;

Explanation.- For the purposes of this sub-section, the expression "family" shall have the same meaning as explained in the Explanation 1, to sub-section (2) of section 75.

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he -

- (i) **is a defaulter of any society;**

Explanation.- For the purposes of this clause, the term “defaulter” includes -

(a) in the case of a primary agricultural credit society, a member who defaults the repayment of the crop loan on the due date;

(b) in the case of term lending society, a member who default the payment of any instalment of the loan granted to him;

(c) in the case of any society, -

(i) a member who has taken *anamat* or advance; or

(ii) a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such *anamat* or advance or pay the price of such goods or commodities or charges for such service, after receipt of notice of demand by him from the concerned society or within thirty days from the date of withdrawal of *anamat* or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier;

(d) in the case of non-agricultural credit societies, a member who defaults the payment of any instalment of the loan granted;

(e) in the case of housing societies, a member who defaults the payment of dues to the society within three months from the date of service of notice in writing served by post under certificate of posting demanding the payment of dues;

[(f) in the case of District Central Co-operative Bank or of the State Co-operative Bank, a member, if he,-

(i) is a person who represents a society other than a primary agricultural credit co-operative society on the board of a District Central Co-operative Bank or the State Co-operative Bank, if the society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;

(ii) is a person who is a defaulter of a primary agricultural credit co-operative society or is an office bearer of a defaulting primary agricultural co-operative credit society,

(iii) is a person who represents a society whose Managing Committee is superseded.]

(ii) has, in the opinion of the Registrar, deliberately committed breach of co-operative discipline with reference to linking up of credit with co-operative marketing or co-operative processing: or

[(ii-a) ****]

(iii) has been held responsible under section 79 or 88 or has been held responsible for payment of costs of inquiry under section 85; or

(iv) has incurred any disqualification under this Act or the rules made thereunder [or by-laws of the society); or

[(v) carries on business of the kind carried on

by the society either in the area of operation of the society or in contravention of the provisions of "[clause (b) of sub-section (A1), or]

Explanation. - [***]

(vi) is a salaried employee of any society (other than a society of employees themselves) or holds any office of profit under any society, except when he holds or is appointed to the office of a Managing Director or any other office declared by the State Government by general or special order not to disqualify its holder or is entitled to be [or is nominated as functional director on the committee of a society under sub-section (2) of section [73AAA]].

[(vii) has more than two children:

Provided that, a person having more than two children on the date of commencement of the Maharashtra Co-operative Societies [Third Amendment] Act, 2001 [hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.

Explanation. - For the purpose of this clause.-

(a) where a couple has only one child on or after the date of such commencement,

any number of children born out of a single subsequent delivery shall be deemed to be one entity;

(b) “child” does not include an adopted child or children.]

[(viii) is held guilty for any offence under section 146 and convicted under section 147; or

(ix) is convicted with imprisonment of not less than one year for an offence under the provisions of any law for the time being in force;]

(2) A member who has incurred any disqualification under sub-section (1), shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant.

[(3) A member of a committee who has ceased to be a member thereof, on account of having incurred disqualification under sub section (A1) and clauses (i) to (ix) of sub-section (1) shall not be eligible to be re-elected, re-co-opted or re-nominated as a member of the committee till the expiry of the period of next term of five years of the committee from the date on which he has so ceased to be a member of the committee.

[(3A) In case of an insured Co-operative Bank, if an order for supersession of its Committee, as per the requisition of the Reserve Bank of India, is made under section 110A, [***], then no member of such Committee shall be eligible for being re-appointed, re-nominated, re-elected or re-co-opted on the Committee of such bank or, for being a member, or for being appointed, nominated, elected or co-opted, as a member of

Committee of such bank or any other bank, for a period of two terms of the Committee from the date of order of supersession of the Committee.]

(4) A member of a committee who has ceased to be a member thereof, on account of having incurred any disqualification other than disqualifications, referred to in sub-section (3) shall, unless otherwise specifically provided in this Act, be eligible to be re-nominated, re-co-opted or re-elected as a member of the committee as soon as such disqualification ceases to exist.]

75. [Annual general body meeting.]

[(2) At every annual general body meeting of a society, the committee shall lay before the society, -

(i) a statement showing the details of the loans, if any, given to any of the members of the committee or any member of the family of any committee member, including a society or firm or company of which such member or members of his family is a member, partner or director, as the case may be; the details of repayment of loan made during the preceding year and the amount outstanding and overdue at the end of that year;

(ii) annual report of its activities;

(iii) plan for disposal of surplus;

(iv) list of amendments of the bye-laws of the society, if any;

(v) declaration regarding date and conduct of its election of its committee, when due;

(vi) audit report of the preceding financial year;

(vii) rectification report of earlier audit;

(viii) annual budget for next year;

(ix) any other information required by the Registrar in pursuance of any of the provisions of the Act and rules; and

(x) such other business will be transacted as may be laid down in the by-laws and of which due notice has been given.

Explanation I.- For the purposes of this subsection, the expression “family” means a wife, husband, father, mother, brother, sister, son, daughter, son-in-law or daughter-in-law;

Explanation II.- In the case of a society not carrying on business for profit, an audited income and expenditure account shall be placed before the society at the annual general body meeting instead of audited profit and loss account, and all references to audited profit and loss account, and to “profit” or “loss” in this Act, shall be construed in relation to such society as references respectively to the “excess of income over expenditure”, and “excess of expenditure over income.”]

8] Bare reading of Section 27 (10) of the Act of 1960 would indicate that if a member has taken a loan from

the society, such member shall, whenever he is a defaulter, as provided in the *Explanation* to clause (i) of sub-section (1) of Section 73CA have no right to vote in the affairs of the society. Section 73CA of the Act of 1960 deals with disqualification of committee and its members. In the instant case, the objections are invited to the provisional voters list. The disqualification to vote is provided in Section 27 (10) of the Act of 1960 and in the instant case Section 73CA of the Act of 1960 has no relevance as it provides for the disqualification of Committee members.

9] Section 27 (10) of the Act of 1960 provides that in the event of the member of a society takes loan from the society and whenever he becomes the defaulter of the said loan, then he loses the right to vote in the affairs of the society of which he is a defaulter. The word 'defaulter' is explained in Explanation of sub-section (1) of section 73CA. Explanation to clause (1) of Section 73CA explains the term "defaulter" to include for example, in the case of a primary agricultural credit society, a member who defaults the

repayment of the crop loan on the due date. A member who commits 'default' in terms of explanation as provided in explanation to Section 73CA (1) is barred from voting in the society for which he commits 'default' and not barred from voting in any other society of which he is a member.

10] In the instant case, the petitioners or their family members are the defaulters of Madhav Upsa Jal Sinchan Co-operative Society and are not defaulters of the respondent no. 4 – Vividh Karyakari Seva Sahakari Sanstha, of which elections are held and as such the petitioners are not barred from voting in the elections of the respondent no. 4 – Vividh Karyakari Seva Sahakari Sanstha.

11] Section 73CA of the Act of 1960 deals with the bar to contest elections to the Committee members of a society. In case a member is a 'defaulter' of any society as provided in Explanation to Section 73 CA (1) of the Act of 1960, he is disqualified from contesting the elections to the Committee members of all the cooperative societies of which he is a member in view of clause (i) of Section 73CA

(1). However, there is no bar under Section 27 (10) of the Act of 1960 for the defaulter of any other society, to vote in the elections of the society of which he is not a defaulter.

12] The law on the subject shall be crystallized as under:

(a) In the event a member of a society is a defaulter in terms of Explanation to Section 73CA (1) of the Act of 1960 he would be barred under Section 27 (1) of the Act of 1960 from being a voter of the said society of which he is a defaulter. However, in the event the member is a defaulter of any other society, he is not barred from being a voter of the society of which he is not defaulter.

(b) The disqualification under Section 73CA of the Act of 1960 is for the elections to the Committee members of a society and it comes into play when the voters / member is a defaulter of any society.

13] In the admitted fact of this case that the petitioners are not defaulter of the respondent no. 4 –

Vividh Karyakari Seva Sahakari Sanstha but are the defaulters of some other society, and thus the petitioners can be voters of the respondent no. 4 – Vividh Karyakari Seva Sahakari Sanstha. However, the petitioners cannot contest the elections of the managing committee of the respondent no.4 – society since they are defaulters of the some other society, namely, Madhav Upsa Jal Sinchan Co-operative Society.

14] 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.

15] 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 considering the Division Bench Judgment of this Court in the case of **Dattatray Genaba Lole**, 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.

16] In the case of **Dattatraya Lole** [supra], the Division Bench of this Court has considered the earlier judgment of this Court and the Hon'ble Supreme Court and has held that there is no absolute bar for exercise of the writ

jurisdiction of this court in interfering with election process to the co-operative societies. However, the same has to be exercised only in case of patent illegality coupled with other factors such as stage of election and the effect the interference will cause on the ongoing elections. In the instant case, admittedly, the impugned order passed by the respondent no. 2 – the Taluka Returning Officer and Assistant Registrar, Co-operative Society, Mukhed is patently illegal and the said order would deprive 20 voters from participating in the elections.

17] Since the order passed by the respondent no. 2 is patently illegal, directions can be issued to include the names of the petitioners in the final voters list without disturbing the election process. Thus, the directions are issued to the respondent no. 2 – Taluka Returning Officer and Assistant Registrar, Co-operative Societies, Mukhed and other authorities that may be involved in the election process, to include the names of the petitioners in the final voters list and final voters list be modified accordingly. As

none of the petitioners have claimed their right to contest elections, no further modification is required in the election programme. The directions to include the names of the petitioners would not materially affect the elections and the same can be done without materially interfering with the election process.

18] Rule is made absolute. The Writ Petition is allowed in above terms.

[ARUN R. PEDNEKER]
JUDGE

DDC