

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

WRIT PETITION NO. 3547 OF 2023

Chimnaji Vyanka Babhale,
Age : 65, Occu. : agri
and Chairman of Jaimata Vadar Samaj
Magasvargiya Sanstha, Mukhed,
Tq. Mukhed, Dist. Nanded. **.. PETITIONER**

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.
- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
- 3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.
- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. **.. RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

...

WITH

WRIT PETITION NO. 3605 OF 2023

Shrinivas s/o. Dhanaji Jadhav,
Age : 38 years, Occu. : Labour and

Chairman of Shri Balaji Magasvariya Va
Building Works and Painter Majoor
Sahkari Sanstha Maryadit, Marvali,
Tq. Naigaon, Dist. Nanded.

.. PETITIONER

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.
- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
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Tq.Mukhed, Dist. Nanded.
- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. .. RESPONDENTS

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Mr.S.A.Nagarsoge, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.PD.Suryawanshi, Advocate for the respondent no.4.

...

WITH

WRIT PETITION NO.3548 OF 2023

Balaji Pedanna Metkar,
Age : 62, Occu. : agri
and Chairman of Renukadevi
Majoor Sahakari Sanstha Marya.
Chikhalwadi, Tq. Dist. Nanded.

.. PETITIONER

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.
- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
- 3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.
- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. .. **RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

...

WITH
WRIT PETITION NO. 3549 OF 2023

Gopal Hanmantrao Kanote,
Age : 65 years, Occu. : Labour
and Chairman of Gramin Mazdur
Sahakari Sanstha, Kabnoor,
Tq. Mukhed, Dist. Nanded. .. **PETITIONER**

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.

- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
- 3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.
- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. .. **RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

...

WITH**WRIT PETITION NO. 3550 OF 2023**

Sanjay Kisanrao Bhange,
Age : 48, Occu. : Agri
and Chairman of Annabhau Sathe Magasvargiya
Wa Majoor Sahakari Sanstha, Marya.
Gadaga, Tq. Naygaon,
Dist. Nanded. .. **PETITIONER**

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.
- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
- 3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.

- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. .. **RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner.
Mr.K.B.Jadhavar, AGP for the respondent-State
Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2
Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

...

WITH
WRIT PETITION NO. 3551 OF 2023

Manohar Mahajan Sakare,
Age 70, Occu. : Agri.,
and Director of Sanjay Majoor
Sahakari Sanstha, Marya. Karna,
Tq. Mukhed, Dist. Nanded. .. **PETITIONER**

VERSUS

- 1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.
- 2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.
- 3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.
- 4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. .. **RESPONDENTS**

...

Mr.V.D.Salunke, Advocate for the petitioner.

Mr.K.B.Jadhavar, AGP for the respondent-State

Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2

Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

...

WITH

WRIT PETITION NO. 3606 OF 2023

Balaji s/o. Eknath Patil,

Age : 60, Occu. : Labour and

Chairman of Karkheli Majoor Sahkari Sanstha,

Maryadit, Tq. Dharmabad,

Dist. Nanded.

.. PETITIONER

VERSUS

1] State Co-operative Elections Authority,
Through DDR, Nanded and District
Co-operative Election Officer,
Co-operative Society, Nanded.

2] District Co-operative Election Officer
and District Deputy Registrar
Co-operative Societies, Nanded.

3] Assistant Registrar Co-operative Society,
Tq.Mukhed, Dist. Nanded.

4] Nanded Zilla Labour Contract
Co-operative Federation Limited,
Nanded, through its Secretary. **.. RESPONDENTS**

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Mr.S.A.Nagarsoge, Advocate for the petitioner.

Mr.K.B.Jadhavar, AGP for the respondent-State

Mr.S.K.Kadam, Advocate for the respondent nos.1 and 2

Mr.P.D.Suryawanshi, Advocate for the respondent no.4.

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 11.04.2023

Pronounced on : 13.04.2023

JUDGMENT :

1] All the Writ Petitions involve common issues and taken up for consideration together.

2] The facts are taken from Writ Petition No. 3547/2023.

3] By the present Writ Petitions, the petitioners are challenging the order dated 17.03.2023 passed by the District Co-operative Election Officer and D.D.R. Co-operative Society, respondent no.2, whereby the respondent no.2 has rejected the objections of the petitioners to include their names in the final voters list of the respondent no. 4 - Nanded Zilla Labour Contract Co-operative Federation Limited [for short 'federal society'] for being defaulter of the respondent no. 4 – federal society.

Facts in brief are as under:

4] The respondent no. 4 is Nanded Zilla Labour

Contract Co-operative Federation Limited, a federal society. Jaimata Vadar Samaj Magasvargiya Sanstha, Mukhed is registered under the provisions of the Maharashtra Co-operative Societies Act and is a member society of respondent no. 4 – federal society. The elections to the respondent no. 4 – federal society were due, as such, the resolutions were called to send the names of representatives of the member societies. The District Deputy Registrar [for short ‘D.D.R.’] published a list of resolutions in which the names of the petitioners were shown. The provisional voter list was published on 28.02.2023. The objections to the provisional voter list were invited on 10.03.2023. The D.D.R. published a provisional voters list of 235 societies in which the name of the petitioners were not included, and thus, the petitioners raised objections before the respondent no. 2 – District Co-operative Election Officer stating that the petitioners are the members of the federal society but their names are not appearing in the provisional voters list.

5] The respondent no. 2 – District Co-operative Election Officer & D.D.R. Co-operative Societies, Nanded called report from the respondent no. 4 – federal society. The respondent no. 4 – federal society in their reply submitted to the respondent no. 2 – District cooperative Election Authority that the petitioners are not the defaulters of the federal society. They have made payment of dues and their names be included in the final voters list. However, the respondent no.2 dismissed objections raised by the petitioners herein. Therefore, the petitioners are challenging the said order by way of filing present Writ Petitions.

6] It is the contention of the learned counsel for the petitioners that the resolutions were called from the various societies, who are the members of the federal society to give the names of the representatives of the societies. Thereafter, the petitioners – societies submitted resolutions to the District Deputy Registrar indicating the names of the petitioners as the member societies representatives to be included in the voters list, as such,

their names ought to have included in the provisional voters list. The learned counsel for the petitioners relies upon the Rule 10 of the Maharashtra Co-operative Societies [Election to Committee] Rules, 2014 [for short 'Election Rules, 2014'] and submits that the names of the petitioners ought to have included in the provisional voters list. The names of the petitioners being not included, the provisional voters list is defective. All further process undertaken is also defective and prays that directions be given to include the names of the petitioners in the final voters list.

7] It is further contention of the learned counsel for the petitioners that Section 27 (10) of the Maharashtra Co-operative Societies Act is also not applicable in the instant case as no notice is issued to the petitioners in respect of any default, and thus, the names of the petitioners ought to have included in the final voters list. The learned counsel for the petitioners relies upon the judgment in the case of **Ramesh Rajaram Patil Vs. Additional Commissioner and others** reported in 1995 (2)

Bom.C.R. 264, in the case of **Ramchandra Ganpat Shinde Vs. State of Maharashtra** reported in 1993 DGLS (SC) 616 [para 7], in the case of **Dudhganga Vikas Sewa Sanstha, Maryadit Vs. Distt.Collector Kolhapur & Ors.** reported in 2006 DGLS (SC) 377 [para 9] and in the case of **Pandurang Baburao Lhase and others Vs. Returning Officer alias Co-operative Officer and others** reported in 2015 DGLS (Bom.) 714.

8] *Per contra*, the learned counsel for the respondent nos. 1 and 2 submits that in the instant case the elections were due and the cut-off date prescribed was 1st April, 2022 and that existing term of the federal society expired on 09.10.2022 and the election to the Committee of respondent no. 4 society was postponed by the State Government vide order dated 18.03.2020, under Section 73CC of the Act and by subsequent orders due to covid-19 Pandemic situation. The respondent no.1 – State Co-operative Election Authority directed to hold postponed elections in phase-wise manner and the process of election

of the respondent no. 4 – federal society was initiated as per the order dated 29.03.2022 issued by the respondent no.1 State Co-operative Election Authority. As per Rule 9 (2) of the Election Rules, 2014, in case of societies where the elections could not be held before the expiry of the term of the committee, the provisional list of voters of respondent no. 4 – federal society is prepared on the basis of the date fixed by the respondent no.1 – State Co-operative Election Authority and the provisional list in the instant case is prepared on the basis of the cut-off date 01.04.2022, which is fixed by the respondent no.1 vide order dated 29.03.2022.

9] The learned counsel for the respondent nos.1 and 2 submits that the respondent no. 2 – District Co-operative Election Officer had published a notification dated 15th June, 2022 in a daily news paper seeking resolutions of names of representatives from members societies of respondent no. 4 – federal society within a period of date 17.06.2022 to 18.07.2022 and the respondent no. 2 had

authorized all Deputy / Assistant Registrars in the District vide its letter dated 16.06.2022 to accept the resolutions with the names of the representatives from the member societies of the respondent no. 4 – federal society, thus, the resolutions were forwarded by the petitioners to the Assistant Registrar showing their authorization to represent the member societies.

10] However, the State Government again postponed the elections of the Co-operative Societies at the stage where it was stopped [as per published programme], by order dated 15.07.2022 from the date of the order till 30.09.2022. Due to postponement order dated 15.07.2022, the balance three days period from 16.07.2022 to 18.07.2022 prescribed for submission of resolutions of representatives by member societies of respondent no. 4 – federal society was remaining as the stay became effective from 16.07.2022 and when the process was re-initiated further period of three days were provided for inviting resolutions, and as such resolutions were further called

from 03.11.2022 to 07.11.2022. Resolutions along with the names of the representatives for the election of respondent no. 4 – federal society were received by the Assistant Registrar in the District and the same were forwarded to the respondent no.2. Thereafter, respondent no.2 forwarded the resolutions to the respondent no. 4 – federal society for preparation of provisional list of voters in E-3 format vide letter dated 28.12.2022.

11] The list of 261 resolutions which were received by the office of respondent no.2 – District Cooperative Election Officer includes the name of the petitioners. The said list was forwarded to the respondent no.4 society.

12] The respondent no. 4 – federal society after receipt of 261 resolutions, prepared the provisional list of voters in ‘E-3’ format consisting 235 eligible voter representatives and submitted it with the office of the respondent no.2 along with a list of 26 members which were not included in the provisional voters list. The provisional voters list comprising of 235 eligible

representatives was published vide notification dated 28.02.2023 seeking claims and objections till 10.03.2023. The petitioners have submitted their claim for inclusion of their names in the voters list on the ground that they have repaid the default amount of advance and monthly contribution due to the respondent no.4 federal society. Thus, it is the contention of the learned counsel for the respondent nos. 1 and 2 that the only members who were eligible on the cut off date to be included in the final voters list.

13] Having considered the rival submissions, the petitioners, as per the respondent no.4, federal society, were defaulters members as on the cut-off date. The preparation of the voters list is based on the eligibility as on the cut-off date. The judgment relied by the learned counsel for the petitioners that no notice was issued to the petitioners in respect of default and as such unless there is proper notice of default, the petitioners cannot be held to be a defaulter and reliance placed on the judgment in the case of

Vinodchandra H. Doshi and another Vs. Echjay Forgings Private Limited and others reported in 2002 [4] Bom..C.R. 438 and in the case of **Ramesh Rajaram Patil Vs. Additional Commissioner and others** reported in 1995 (2) Bom.C.R. 264 to contend that unless there is notice of default, the petitioners could not have been held to be defaulters. However, the claim raised by the petitioners before the respondent no.2 itself indicates that the petitioners have paid their dues after the cut-off date and therefore prayed that their names be included in the final voters list. The contention of the learned counsel for the petitioners that there are no dues and that there is no notice issued in respect of payment of dues and as such they are eligible to cast vote, cannot be accepted without evidence being led and the same cannot be done by summary jurisdiction.

14] It is the contentions of the petitioners that cut off date cannot be fixed one year prior to the elections and for that purpose he placed reliance in the case of **Ramchandra Ganpat Shinde Vs. State of Maharashtra**

reported in **1993 DGLS (SC) 616**. Para 7 of the said judgment reads as under:

7. We have already noted that under Rule 4 provisional list of voters shall be prepared by every society "in the year in which general election is due to be held". It is not due under law as contended for the Society. What is the meaning of the above quoted phrase is to be gathered from the statutory operation of the law. The term of the Managing Committee was to expire on December 3, 1991. Under the Act the election to the managing committee of the society shall be held under Section 73G before the expiry of the term in accordance with the provision in chapter 11A of the Act, the Rules and the bye-laws of the society. The year in which the general election due is, therefore, the year 1991. If the elections were not conducted before its expiry, by operation of Sub-section 2B of Section 73G, the members of the existing committee should cease to hold office on its expiry of extended term as the case may be and should be deemed to have vacated their offices. By operation of Sub-section (3) of [Section 73G](#), the general body of the members of the society should elect the members of the managing committee. Therefore, before the expiry of the term of the committee the general election to the Managing Committee is due. Black's Law Dictionary, sixth edition at. p.500, meaning of the words 'due date' has been stated thus: "In general, the particular day on or before which something must be done to comply with law of contractual obligation". When [Section 73G](#), provisions in Chapter XIA and the bye-laws read with Rule 4 envisage that the election to the

managing committee should be conducted before the expiry of the term, the Society has been enjoined under Rule 4(1) to prepare the provisional voters list of the members as on June 30th of the year "immediately preceding the year" in which such general election is due to be held and submit the same to the Dist. Collector. The Legislature, thereby intended that despite the existence of the members on the admission register of the society, only those members who were admitted and valid as members on or before 30th June of the year immediately preceding the year in which such general election is due alone are eligible to exercise the franchise and to be included in the provisional list. Thereafter on publication in the Notice Board under Rule 6(1) and considering the objections, suggestions or improvements if any made, the Collector is enjoined to finalise the list under Rule 7 and have it published as "final list of voters". The proviso would operate only in case the preparation of the provisional list of voters falls due after the expiry of the period of six months from the 30th June, then only, after consultation with the designated officer, the Collector, by an order, may change the date of 30th June and fix a subsequent date as revised date to submit the provisional list of voters. In this case the proviso has no application for the reason that the provisional list had already been approved and published by the Collector as per the law on December 17, 1991. It was not challenged. Therefore, the year in which the general election to the society is due is the date as per the operation of law i.e. 1991 but not due after the expiry of the period as postponed by the State Govt. Obviously, for that reason the Govt. also had issued instructions on September 28, 1992 that in case the provisional list was approved and the final

list was published prior to the postponement of the election, the election should be conducted in accordance with the final list published under Rule 7 of the Rules.

15] The reliance placed on the above judgment by the learned counsel for the petitioners is of no assistance as in the instant case the elections are postponed by the State and the voters list is prepared in terms of the cut-off date fixed by the State Election Authority as the elections were due. The judgment relied by the learned counsel for the petitioners has no applicability in the instant case as there is no directions issued or declaration of law in the judgment of *Ramchandra Ganpat Shinde [supra]* that in the event of postponement of an election for any reason, that there should be compulsorily fresh cut off date prescribed. Thus, the cut off date in the instant case is 01.04.2022, and the petitioners were *prima facie* in default on the cut-off date and are not qualified on the cut off date. There is no challenge to the cut off date in the instant petition.

16] Thus, the judgment in the case of **Himat Vs. Rajendra & Ors.** In Civil appeal No. 905 of 2021 [arising

from SLP © No.3099/2021] decided on March 15, 2021 [supra] is squarely applicable to the present case since the petitioners had paid the due amount after the cut off date. In the above judgment of **Himat**, the Hon'ble Supreme Court at para 3 has held as under :-

3. The view so taken by the High Court is completely erroneous and is based on factual error in not adverting to the notification dated 27.12.2019 issued by the District Cooperative Election Officer. According to that notification, the primary voters list was to be prepared on the basis of cut-off date as 07.05.2020. Further, as per Section 27 of the Maharashtra Cooperative Societies Act, 1960, the defaulter members on the cut-off date are not eligible to vote and, therefore, cannot participate in the election process.

17] The petitioners are *prima facie* in default as on the cut-off date, and the order passed by the Election Authority cannot be said to be patently illegal. Thus, this Court would not exercise its writ jurisdiction to interfere in the election process.

18] In view of the same, the petitioners are at liberty to challenge the order passed by the Election

Authority by filing appropriate proceedings before the appropriate authority.

19] The Writ Petitions are disposed of with above observations.

[ARUN R. PEDNEKER]
JUDGE

DDC