

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION No. 7252 OF 2023

Balaji s/o Kerba More
Age 44 years, Occ. Agril.
R/o. Murud, Tq. & Dist. Latur ... **Petitioner.**

VERSUS

- 1) The State of Maharashtra
- 2) The State Co-operative Election Authority
Maharashtra State, Pune Through its
Secretary.
- 3) The Returning Officer,
Doodhganga Doodh Vyavsai Sahakari
Sanstha Ltd. Murud Tq. & Dist. Latur.
- 4) Doodhganga Doodh Vyavsai Sahakari
Sanstha Ltd. Murud Tq. & Dist. Latur.
Through its Manager ... **Respondents**

...
Advocate for the Petitioner : Mr. Avinash N. Irpatgire
A.G.P. for the Respondent No. 1 : Mr. S.G. Sangale
Advocate for the Respondent Nos. 2 & 3 : Mr. S.K. Kadam.
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WRIT PETITION NO. 7253 OF 2023

- 1) Arun Nivrutti Jadhav
- 2) Jagannath Shriram Ghuge
- 3) Smt. Sadhana Punjaji Girhe ... **Petitioners**

VERSUS

- 1) The State of Maharashtra
- 2) State Co-Operative Election Authority
MS Pune Through its Secretary
- 3) The Returning Officer,
Jalna and Badnapur Taluka Jilha Parishad
Shikshak Sahakari Patsanstha Ltd. Jalna.
- 4) Jalna and Badnapur Taluka Jilha Parishad
Shikshak Sahakari Patsanstha Ltd. Jalna
Through its Manager. ... **Respondents.**

...

Advocate for the Petitioners : Mr. Suryawanshi Kamlakar J.
A.G.P for the Respondent No.1/State : Mr.S.G. Sangale
Advocate for Respondent Nos 2 and 3 : Mr. S.K. Kadam.

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WRIT PETITION NO. 7254 OF 2023

Amol Babasaheb Erande ... **Petitioner**

VERSUS

- 1) The State of Maharashtra
- 2) State Co-Operative Election Authority
MS Pune Through its Secretary
- 3) The Returning Officer,
Paithan Taluka Shikshak Sevkanchi Sahkari
Patsanstha Ltd. Paithan Dist. Aurangabad.
- 4) Paithan Taluka Shikshak Sevkanchi Sahkari
Patsanstha Ltd. Paithan Dist. Aurangabad
Through its Manager ... **Respondents.**

...

Advocate for the Petitioners : Mr. Suryawanshi Kamlakar J.
A.G.P for the Respondent No.1/State : Mr.S.G. Sangale
Advocate for Respondent Nos 2 and 3 : Mr. S.K. Kadam.

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WRIT PETITION NO. 7255 OF 2023

Tokai Sahakari Sakhar Karkhna Ltd.
Kurunda Tq. Vasmat Dist. Hingoli
Through its Managing Director,
Shri. Keshav Marotrao Malegaonkar ... **Petitioner**

VERSUS

- 1) The State of Maharashtra
- 2) State Co-Operative Election Authority
MS Pune Through its Secretary
- 3) The District Co-Operative Election Officer
and Regional Joint Director (Sugar)
Nanded.
- 4) The Returning Officer,
Tokai Sahakari Sakhar Karkhna Ltd.
Kurunda Tq. Vasmat Dist. Hingoli. ... **Respondents.**

...

Advocate for the Petitioner : Mr. V.D. Hon, Senior Advocate i/b Mr. Ashwin
Vinayak Hon.

A.G.P. for the Respondent No. 1 : Mr. S.G. Sangale.

Advocate for the Respondent Nos. 2 to 4 : Mr. S.K. Kadam.

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WRIT PETITION NO. 7256 OF 2023

- 1) Vithal Tukaramji Bhosale
 - 2) Jagdevrao Bapurao Salunke
 - 3) Manoj Shivajirao Kannerwar
 - 4) Devanand Shankarrao Narwade
 - 5) Shivaji Yadavrao Ingole
 - 6) Shivaji Baburao Sawandkar
 - 7) Jadhav Gajanan Nagorao
 - 8) Patange Sahebrao Nathurao
 - 9) Balaji Laxman Narwade
 - 10) Bajirao Baburao Sawandkar
 - 11) Anand Ramaji Barse
- ... **Petitioners**

VERSUS

- 1) The State of Maharashtra
 - 2) State Co-operative Election Authority,
MS Pune Through its Secretary
 - 3) The District Co-operative election Officer
and Regional Joint Director (Sugar), Nanded
 - 4) The Returning Officer,
Tokai Sahakari Sakhar Karkhana Ltd.
Kurunda Tq. Vasmat Dist. Hingoli.
 - 5) The Managing Director,
Tokai Sahakari Sakhar Karkhana Ltd.
Kurunda Tq. Vasmat Dist. Hingoli.
- ... **Respondents.**

...

Advocate for the Petitioners : Mr. V.D. Sapkal, Senior Advocate, i/b Mr.
Suryawanshi Kamlakar J.

A.G.P. for the Respondent No. 1/State : Mr. S.G. Sangale

Advocate for the Respondents No. 2 to 4 : Mr. S.K. Kadam.

Advocate for Respondent No. 5 : Mr. M.V. Salunke

CORAM : **MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : **30.06.2023**

PER COURT :

All these petitions raise an issue as to if by resorting to the provisions of Section 73 CC of the Maharashtra Cooperative Societies Act, 1960 and in exercise of the powers under Section 157 of that Act, the State Government can abruptly stall the election process midway particularly when only the voting is to take place on 02.07.2023 and the result is to be declared on 04.07.2023.

2. We have heard the learned Senior Advocates Mr. Hon and Sapkal as also the learned advocates Mr. Irpatgire and Suryawanshi for the petitioners. We have also heard learned A.G.P. and the learned advocate Mr. Kadam who appears for the State Cooperative Election Authority and the Returning Officers, finally.

3. Learned Senior Advocates would endeavour to demonstrate as to how arbitrary the decision has been. They would endeavour to point out that in spite of a specific limit of two extensions extending over a period of one year in aggregate and in spite of the fact that the State Government by resorting to the self-same provisions has already extended the elections of the Cooperative Societies not only once but more than four to five occasions beyond a period of one year, has resorted to the same provisions and has acted arbitrarily. They would point out that inconsistent with the mandate of the first proviso to Section 157 a lopsided decision has been taken without extending any opportunity to the concerned societies of being heard. They would also submit that care has been taken to carve out some exceptions while passing the impugned order dated 28.06.2023, wherever the societies whose elections have already been concluded except election of the office bearers and the societies where there are directions of the Supreme Court or High Court for holding of the elections.

4. They would submit that the law does not contemplate rather consistent view of the Supreme Court is against stalling any election process once it has started, at the behest of anybody including the State. They would submit that the only stage that has remained to be concluded in the ongoing process is the voting which is to take place on 02.07.2023 and its counting to be held on 04.07.2023. They would submit that the impugned order, qua the societies involved in these petitions does not mention as to why these societies cannot go ahead with the programme. At least there are no specific reasons indicated in the order as to why the voting in respect of these societies cannot take place on 02.07.2023 and the counting cannot be had on 04.07.2023. The order is blanket order covering all the societies across the State for the spacious reason of possible rains. They would submit that considering the demography of the State, the ground of inconvenience to the voters to cast vote for the reason of the rains may not be uniformly applicable across all the regions of the State. They would submit that elections can be allowed to go ahead as scheduled.

5. It is further pointed out by the learned Senior Advocate Mr. Hon that in fact the Cooperative sugar factory was already before this Court in Writ Petition No. 3293/2023, soliciting directions for holding the elections. Since a statement was made that the election programme was declared that the writ petition was disposed of keeping open the liberty to the petitioner as was permissible in law. The learned senior advocate Mr. Hon would, therefore, submit that but for the statement that was made before this Court the petitioners therein could have continued with the petition and would have been able to solicit a direction for holding of the elections and in that case could have been saved from the impugned order inasmuch as it makes an exception to the societies where there are directions of the High Court to conduct the elections.

6. The learned A.G.P submits that the decision has been taken in the larger interest of public. There are no *mala fides*. Even the views of the

Sate Cooperative Election Authority were solicited as can be seen from the reference No. 2 from the impugned order.

7. The learned advocate Mr. Kadam who appears for the State Election Authority and the Returning Officers, on instructions, submits that so far as the petition in respect of Doodhganga Doodh Vyavsai Sahakari Sanstha Ltd. Murud Tq. & Dist. Latur is concerned, he has received written instructions which he places on record and submits that all the necessary paraphernalia has been made available including the police protection. There are five constituencies for reserved candidates out of which four stand elected unopposed, remaining six directors are to be elected out of 10 from the open category. There are only 425 voters and the polling is to be taken place in the office of the society.

8. Mr. Kadam also on similar instructions submits that as far as the societies of teachers from Jalna and Badnapur and Paithan from Writ Petition Nos. 7253/23 and 7254/24 are concerned, similar is the state of affairs where all the arrangements for conducting the voting as scheduled have been made and if the Court directs, the election programme can go ahead.

9. As far as Tokai Sahakari Sakhar Karkhana Limited is concerned, Mr. Kadam submits that but for the impugned order the election process could have gone ahead. It is only because of the impugned order that the returning officer has now postponed the further process. Considering the enormity of the programme in respect of that cooperative sugar factory if at all the Court is inclined to direct State Cooperative Election Authority to go ahead with the process, it may be given a liberty to reschedule the programme, which need not extend up to 30.09.2023 as has been indicated in the order under challenge.

10. We have considered the rival submissions and have perused the record. There is every room to reach a conclusion that the impugned order

to the extent of the societies in the matters before us is not sustainable in law. The self-same provisions of Section 73 CC and Section 157 of the Cooperative Societies Act have been resorted to, to pass similar orders postponing elections on number of occasions beyond statutory limit of one year in aggregate. The order under challenge is sans any reason except the apprehension being expressed regarding inconvenience likely to be caused to the voters due to the impending rains. There is absolutely no whisper as to what objective scrutiny the State Government had undertaken before passing the impugned order. Even no opportunity of being heard as is mandated by the first proviso to Section 157 has been extended to the societies in question.

11. Even going by the reference contained in the order, the decision seems to have been taken on a letter addressed to the Government by an individual that too as late as on 22.06.2023. It thereafter refers to the communication received from the State Cooperative Election Authority. Mr. Kadam for that Authority, on instructions, submits that only statistic was solicited and was communicated to the State Government as indicated in paragraph No.2 of the order. No opinion was solicited and none was furnished. This impugned order has been passed on 28.06.2023. Meaning thereby that the decision of this drastic nature has been taken barely within six days of receiving a communication from that individual.

12. We are surprised as to how, barely at the instance of an individual who writes a letter to the Government, without undertaking any further steps to ascertain viability or otherwise of going ahead with the elections of Cooperative societies across the State, a blanket order could have been passed stalling everything irrespective of the nature of the society, its location, the category or class of voters and even the report of meteorological department. We have no hesitation in holding that this is nothing but an arbitrary and capricious exercise of the statutory powers.

13. True it is that there is no material before us to attribute *mala fides* on the part of the State Government inasmuch as the impugned order is a blanket order covering all the societies across the State. Still, once having seen that the manner in which the decision has been taken unmindful of everything that is pertinent to be borne in mind while issuing such orders, the order to the extent of petitioners' Cooperative societies deserves to be quashed and set aside.

14. We accordingly allow the writ petitions, quash and set aside the impugned order to the extent of societies in the matters before us and direct the respondent State Election Authority and the Returning Officers to go ahead with the election programme as has been published.

15. Parties to act upon authenticated copy of this Order.

16. Learned advocate Mr. Kadam is requested to inform the State Election Authority and Returning Officers immediately.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-