

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

WRIT PETITION NO.7459 OF 2023

Shri Prasad Madhukar Joshi
Age: 48 years, Occu. Advocate,
R/o: Samarth Nagar,
Behind District Court, Osmanabad,
District Osmanabad

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through the Secretary
Co-operation, Marketing & Textile
Department Mantralaya Mumbai
2. State Co-operative Election Authority,
MS Pune through its secretary
3. The District Co-operative Election Officer,
and Regional Joint Director, Osmanabad
4. The Returning Officer,
Dharasur Mardini Nagari Sahakari
Patsanstha Maryadit, Osmanabad
5. Dharasur Mardini Nagari Sahakari
Patsanstha Maryadit, Osmanabad
A registered Society through its Chairman
Yogesh Sambhaji Jadhav
Age : 43 years Occ: Business
R/o Samarth Nagar Osmanabad
Tq. and Dist. Osmanabad

... **RESPONDENTS**

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Advocate for Petitioner : Mr. PP. Chavan
AGP for respondent No.1/State : Mr. S.G. Sangale
Advocate for respondent Nos.2 to 4 : Mr. S.K. Kadam

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

DATE : 05.07.2023

ORDER (MANGESH S. PATIL, J.) :

We have heard the learned advocate for the petitioner, learned AGP and learned advocate Mr. S.K. Tambe who appears for the respondent Nos.2 to 4 namely State Cooperative Election Authority and the District Cooperative Election Officer, finally.

2. The petitioner who is a member of the respondent No.5 – Credit Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1960 (herein after the Act) is challenging the decision of the Government dated 28.06.2023 purportedly taken in exercise of the powers under Section 73 CC and Section 157 of the Act, thereby postponing the elections of 6510 Cooperative Societies across the State for the reasons of likelihood of natural calamities and disruption of public commutation due to the impending rainy season. The elections have been postponed at the same stage till 30.09.2023.

3. We have heard both the sides extensively. It is necessary to mention at this stage that already in a group of matters decided by us by a common order in the matter of **Balaji Kerba More Vs. The State of Maharashtra and others**; (Writ Petition No.7252/2023 and the connected matters) on 30.06.2023 we have quashed and set aside the self same order to the extent of the Cooperative Societies which were before us in those petitions.

4. The whole emphasis of the petitioner is that we should adopt the same view for the self-same reasons and direct the respondent to go

ahead with the election program as has already been published. Indeed, in an appropriate case, similarly placed individuals can legitimately expect this Court to be consistent. However, these are peculiar circumstances. As can be noticed from the order passed by us in the matter of **Balaji Kerba More** (supra) the petitions were filed immediately a day or two after the impugned order was passed by the State Government. The actual voting in respect of those societies had take place on 2 July 2023 and we had decided the matters on 30 June 2023 since only the stage of casting vote and its counting and obviously declaration of result had remained.

5. In the matter in hand, admittedly, today is the date for publication of nominations. The nominations can be withdrawn up to 19.07.2023. The final list of valid candidates is to be published on 20.07.2023 and the voting is to take place on 29.07.2023. It is, therefore, quite apparent that unlike the matters in the case of societies which were before us namely **Balaji Kerba More** (supra), the election program in the matter of the present society has not reached the stage which had prevailed over us when we decided those matters.

6. We do have expressed cursorily in paragraph No.10 of the order dated 30.06.2023 in the matter of **Balaji Kerba More** (supra), a serious doubt as to legality of the power being exercised by the State Government under Section 73 CC and Section 157 of the Act. However, when no *mala fides* can be attributed, when the elections are merely postponed up to the end of monsoon season that is up to 30 September 2023, it cannot be said

that a serious prejudice is likely to be caused to the petitioner which he has even failed to demonstrate or to any other member of the society, in our considered view. There are no sufficient and cogent reasons for this Court to cause interference in the impugned order directing postponement of the election of the Cooperative Society.

7. The learned advocate for the petitioner strenuously submits that since it is a matter of elections, the law is settled that no interference should be caused in the process of the election. He also refers to the decision in the matter of **N.P. Ponnuswami Vs. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist.; AIR 1952 Supreme Court 64.**

8. With respect, in the matter in hand, in purported exercise of a statutory power vesting in the Government under Section 73 CC and Section 157 of the Act the impugned order has been passed. These provisions enable it to postpone the elections in the advent of the contingencies mentioned therein.

9. We find no merit in the petition, it is dismissed.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)