

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**[1] WRIT PETITION NO.5228 OF 2023**

Sarjerao Dinkarrao Mane .....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others .... Respondents

.....

**WITH**

**[2] WRIT PETITION NO.5231 OF 2023**

Ashok Umrao Patil .....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others .... Respondents

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**WITH**

**[3] WRIT PETITION NO.5260 OF 2023**

Bajirao Pundlik Patil .....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others .... Respondents

.....

**WITH**

**[4] WRIT PETITION NO.5261 OF 2023**

Mahadeo Bhau (Ambu) Patil .....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

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**WITH**

**[5] WRIT PETITION NO.5257 OF 2023**

Balasaheb Raghunath Patil  
Versus

.....Petitioner

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

....

**WITH**

**[6] WRIT PETITION NO.5255 OF 2023**

Uttam Gunda Sawant  
Versus

.....Petitioner

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

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**WITH**

**[7] WRIT PETITION NO.5259 OF 2023**

Chandrakant Jaising Chougale  
Versus

.....Petitioner

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

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**WITH**

**[8] WRIT PETITION NO.5256 OF 2023**

Shivaji Shamrao Patil

.....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

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**WITH**

**[9] WRIT PETITION NO.5258 OF 2023**

Baburao Dadu Benade

.....Petitioner

Versus

Returning Officer, Shri Chatrapati  
Rajaram Sahakari Sakhar Karkhana  
and others

.... Respondents

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Mr. R.M. Kadam, Senior Advocate a/w. S.S. Patwardhan,  
Kedar Lad i/b. Mrinal Shelar for the Petitioner in  
WP/5228/2023.

Mr. A.Y. Sakhare, Senior Advocate a/w. S.S. Patwardhan,  
Kedar Lad i/b. Ajay Rajenimbalkar for the Petitioner in WP/  
5256/2023.

Mr. S.S. Patwardhan, Advocate i/b. Mrinal Shelar, Kedar Lad  
for the Petitioners in WP Nos.5231/2023, 5260/2023,  
5257/2023 and 5255/2023.

Mr. S.S. Patwardhan, Advocate a/w. Kedar Lad i/b. Ajay  
Rajenimbalkar for the Petitioner in WP/5259/2023.

Mr. S.S.Patwardhan, Advocate a/w. Kedar Lad i/b. Akshay  
Hardas for the Petitioner in WP Nos.5261/2023 &  
5258/2023.

Mr. Deelip Patil Bankar, Chief Standing Counsel (SCEA) for  
Respondent No.1 in all Writ Petitions.

Mr. G.S. Godbole, Senior Advocate a/w. Drupad S. Patil,  
Dheeraj Patil, for the Respondent No.2.

Mr. Y.S. Jahagirdar, Senior Advocate a/w. S.S. Kanetkar, Yash  
Dewal, for the Respondent No.3 in WP Nos.5228/2023,

5255/2023, 5261/2023 and 5231/2023.

Mr. V.A. Thorat, Senior Advocate (Special Counsel) a/w. P.P. Kakade, Government Pleader, Smt.V.S. Nimbalkar, AGP for Respondent No.154.

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**CORAM : SARANG V. KOTWAL, J.**

**DATE : 12<sup>th</sup> APRIL, 2023**

**P.C. :**

1. In all these group of Petitions, this common order is passed because learned Counsel appearing for both the parties agreed that the issue involved in all these Petitions is the same. Therefore, I am taking Writ Petition No.5228/2023 as a lead Petition to decide the issue and have accordingly noted the submissions of the parties in all these Petitions together.

2. Heard Shri R.M. Kadam, learned Senior Counsel for the Petitioner in WP/5228/2023, Shri A.Y. Sakhare, learned Senior Counsel for the Petitioner in WP/5256/2023, Shri S.S. Patwardhan, learned counsel for the Petitioners in WP Nos.5231/2023, 5260/2023, 5257/2023, 5255/2023, 5259/2023, 5261/2023 & 5258/2023, Shri Deelip Patil

Bankar, learned Chief Standing Counsel for Respondent No.1, Shri G.S. Godbole, learned Senior Counsel for the Respondent No.2, Shri Y.S. Jahagirdar, learned Senior Counsel for the Respondent No.3 in WP Nos.5228/2023, 5255/2023, 5261/2023 and 5231/2023 and Shri V.A. Thorat, learned Senior Counsel for the Respondent No.154.

3. The Petitioner in this Petition (WP No.5228/2023) had filed his nomination form for election to the Managing Committee of the Respondent No.2 Shri Chatrapati Rajaram Sahakari Sakhar Karkhana Ltd., Kolhapur. His nomination was objected by the Respondent No.3. The objections were upheld and the Petitioner was disqualified from contesting the elections. After that, the Petitioner challenged the order dated 28.3.2023 passed by the Returning Officer (Respondent No.1) in the Objection Case No.5/2023, before the Respondent No.154 i.e. the District Co-operative Returning Officer & Divisional Joint Director (Sugar), Kolhapur Division, Kolhapur in Appeal No.1/2023, which was dismissed vide order dated 9.4.2023.

The Respondent Nos.4 to 153 are the candidates who had filed their nomination forms for contesting the election to the Managing Committee of the Respondent No.2. By way of an interim prayer, the Petitioner has prayed for staying of the operation and implementation of both these impugned orders.

4. Learned Senior Counsel appearing for the Respondent No.154, the Respondent No.3 and the Respondent No.2 as well as learned counsel appearing for the Returning Officer (Respondent No.1) raised a preliminary objection that since the election process has progressed to an advanced stage, these Petitions are not maintainable and the only remedy available to the Petitioners is to file Election Petition under Section 91 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the said Act').

5. Considering this preliminary objection, I have heard the parties on this particular issue. Learned Senior Counsel appearing for the Petitioner submitted that while

deciding the preliminary objection itself the Petitions will get decided because his basic objection is to the very jurisdiction of the Respondent No.1 and also of Respondent No.154 in passing the impugned orders.

6. Learned Senior Counsel Shri Thorat, Shri Jahagirdar and Shri Godbole and learned Counsel Shri Deelip Patil Bankar made the following submissions :

i. They invited my attention to the election programme which is annexed at Exhibit-C to the Petition. The important dates are as follows :

- The period for filing the nomination-form was between 20.3.2023 to 27.3.2023. The list of nomination-forms was to be published as the forms were received between that period.
- The scrutiny of the nomination-forms was to be made on 28.3.2023 by the Respondent No.1. The list of valid nomination-forms was to be published on 29.3.2023.
- Importantly, the dates for withdrawal of the

nomination-forms were between 29.3.2023 to 12.4.2023 upto 3.00 p.m.

Today, the matters are being heard and the arguments continued well beyond 3.00 p.m. on 12<sup>th</sup> April, 2023

- The final list for candidates is to be published on 13.4.2023.
- The date for polling was fixed on 23.4.2023.
- The votes are to be counted on 25.4.2023.

ii. Learned Senior Counsel for the respective Respondents, therefore, submitted that the election programme has not only been published but it has substantially progressed to the stage of withdrawal of the nomination-forms. That period is also over as of today at this time. Therefore they strongly submitted that, at this stage, the Court cannot pass any order interfering with the election programme, as, such an order would be against the settled law enunciated in various judgments of the Hon'ble Supreme Court and of this Court.



iii. In support of these contentions, learned Senior Counsel relied on the following judgments :

1. **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others<sup>1</sup>.**
2. **N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and others Respondents – Union of India and State of Madhya Bharat Intervenors<sup>2</sup>**
3. **Shaji K. Joseph Vs. V. Viswanath and others<sup>3</sup>**

These judgments are of the Hon'ble Supreme Court.

. They relied on a Division Bench decision of this Court in the case of **Dattatray Vs. Divisional Joint Registrar and others<sup>4</sup>.**

iv. They submitted that in all these Judgments, it is clearly laid down that, in such cases, the High Court should not interfere in its jurisdiction under Article 226 or Article 227 of the Constitution of India; and the proper remedy for such candidates would be under Section 91 of the said Act. In support of their contentions they also relied on various

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1 (2001) 8 SCC 509  
2 (1952) 1 SCC 94  
3 (2016) 4 SCC 429  
4 2022(1) Bom.C.R. 471

provisions of the said Act as well as the Rules provided under the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as the 'said Election Rules').

v. They submitted that Section 152A of the said Act provides for an appeal against the rejection of nomination paper at the election and it was mentioned therein that the decision of the Registrar in the appeal shall be final and no further appeal or revision shall lie against the decision of the Registrar in such appeal.

vi. A reference was made to Rule 25 of the said Election Rules, which provided for scrutiny of nomination papers; wherein there was a reference to the examination of nomination papers by the Returning Officer. According to them, under Rule 78 of the said Election Rules, it was specifically laid down that no election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in Section 91 of the said Act. A reference was made to Rule 4 of the said Election Rules

which provides for Type 'A', 'B', 'C' & 'D' Societies. There is no dispute that the present Petitions pertain to Type 'A' Society mentioned in Category No.7 i.e. all Co-operative Sugar Factories. The said Rule 4 provides that the election of the members of the committees and officers of the committees of the societies of this category shall be subject to the provisions of sub-section (11) of Section 73CB of the said Act.

vii. A reference was made to different Parts provided under the said Election Rules. The election process started with Part-III i.e. preparation of Electoral Roll. After that, the next stage is the conduct of elections starting with Rule 18 of the said Election Rules for declaration of the election programme. In the said Rule provisions are made for different stages and the period is prescribed for conclusion of those stages viz. date of declaration of election programme, last date for making nominations, the date of publication of list of nominations received, date of scrutiny of nominations, date of publication of list of valid nominations after scrutiny,

date by which candidature may be withdrawn, date of publication of final list of contesting candidates and allotment of election symbols, date and time during which and the place/places at which the poll shall be taken, counting of votes and the final declaration of results of voting. All of them submitted that almost all these stages are over and at this stage it was not permissible to interfere in the election process.

. These, in sum and substance, were the arguments advanced raising the preliminary objection.

7. Learned Senior Counsel Shri Kadam and learned Senior Counsel Shri Sakhare opposed this preliminary objection by making following submissions :

- i. Both of them submitted that the judgment in the case of **N.P Ponnuswami** (supra) will not be attracted in this case because it specifically refers to the bar engrafted under Article 329(b) the Constitution of India.
- ii. Their main contention is that the Returning Officer had absolutely no jurisdiction to decide about

disqualification of the contesting candidates on the ground of violation of some contract or some bye-law. It was specifically within the province of the Registrar under Section 73CA of the said Act.

iii. They also referred to Rule 58 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as 'the MCS Rules'), which provides for disqualification of committee and its members. Therefore, according to them the conjoint reading of this Section and the Rule, it was only the Registrar who could decide the question of disqualification; and the Respondent No.1 had no jurisdiction to decide this issue.

iv. They invited my attention to the impugned orders. Said impugned orders are passed with reference to violation of Category Nos.(1) and (6) of bye-law No.28. Category No.(1) refers to the bye-law No.17A which mentions that said person should provide the proportionate sugarcane crop from his land which was situated within the jurisdiction of the society; and

category No.(6) provided that such person must follow the bye-laws and the contract with the sugar factory.

v. Learned Senior Counsel for the Petitioners submitted that it was beyond the jurisdiction of the Returning Officer to enter into the decision making process of the alleged violation of these bye-laws. They submitted that, as can be seen, the scrutiny of nomination papers was to be concluded within a single day and it was practically impossible to go into the details of the allegations as also the submissions of the objector and the candidate within such a short span.

vi. Shri Kadam further submitted that there is a difference between the language of Section 73CA(1) of the said Act and the Rule 25 of the said Election Rules and, therefore, only the Registrar was empowered to decide this issue.

vii. He further submitted that the decision in the case of **Shri Sant Sadguru's** (supra) was considered by the Hon'ble Supreme Court in another decision in

the case of **Pundlik vs. State of Maharashtra and others<sup>5</sup>** and the ratio of **Shri Sant Sadguru's** case was distinguished in that particular judgment.

viii. They also argued that if any act is directed to be done in a particular manner then it has to be done in that particular manner only. No other procedure is permissible and in this case since the disqualification is to be decided by the Registrar, the Returning Officer could not have decided that issue. In support of this contention, Shri Kadam relied on the judgment of the Hon'ble Supreme Court in the case of **Chandra Kishore Jha Vs. Mahavir Prasad and others<sup>6</sup>**, wherein it was mentioned that it is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner.

ix. Shri Kadam further relied on the judgment of the Hon'ble Supreme Court in the case of **Whirlpool**

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<sup>5</sup> (2005) 7 SCC 181

<sup>6</sup> (1999) 8 SCC 266

**Corporation Vs. Registrar of Trade Marks, Mumbai and others**<sup>7</sup> to submit that the powers under Article 226 of the Constitution of India are not limited specially when the authority, against whom the Writ Petition is filed, is shown to have had no jurisdiction or had usurped the jurisdiction without any legal foundation.

- x. They also referred to the Division Bench judgment of this Court in the case of **Dattatray Lole** (supra), which is relied on by the other side, to contend that the exceptions are carved out in that judgment itself to show under what circumstances such Petitions can be entertained by this Court.
- xi. Shri Sakhare, learned Senior Counsel, in addition, submitted that in this case the principles of natural justice are also violated because the Petitioner had asked for the documents given by the society to the Returning Officer. However, the Petitioners were not given those documents. He also attacked the impugned orders, and in particular the order passed

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<sup>7</sup> (1998) 8 SCC 1



by the Respondent No.154 on the ground that absolutely no reasons are given for rejecting the appeal except that the Petitioner has not supplied the sugarcane as per the contract with the society.

**Reasons :**

8. I have considered these submissions in the light of the provisions and the judgments cited before me. In this context certain provisions are necessary to be reproduced. They are as follows :

**Sections 91, 152A & 73CA of the said Act :**

**“91. Disputes**

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, election of the committee or its officers, conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated, or by a creditor of the society, to a Co-operative Court, if both the parties thereto are one or other of the following:—

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee, heir or legal representative of any

deceased officer, deceased agent or deceased servant of the society, or the Liquidator of the society or the Official Assignee of a deregistered society;

(b) a member, past member or a person claiming through a member, past member or a deceased member of a society, or a society which is a member of the society or person who claims to be a member of the society;

(c) a person other than a member of the society, with whom the society has any transactions in respect of which any restrictions or regulations have been imposed, made or prescribed under section 43, 44 or 45, and any person claiming through such person;

(d) a surety of a member, past member or deceased member, or surety of a person other than a member with whom the society has any transactions in respect of which restriction have been prescribed under section 45, whether such surety or person is or is not a member of the society;

(e) any other society, or the Liquidator of such a society or deregistered society or the Official Assignee of such a de-registered society:

Provided that, an industrial dispute as defined in clause (k) of section 2 of the Industrial Disputes Act, 1947, or rejection of nomination paper at the election to a committee of any society or refusal of admission to membership by a society to any person qualified therefor, or any proceeding

for the recovery of the amount as arrear of land revenue on a certificate granted by the Registrar under sub-section (1) or (2) of section 101 or sub-section (1) of section 137 or the recovery proceeding of the Registrar or any officer subordinate to him or an officer of society notified by the State Government, who is empowered by the Registrar under sub-section (1) of section 156, or any orders, decisions, awards and actions of the Registrar against which an appeal under section 152 or 152A and revision under section 154 of the Act have been provided, shall not be deemed to be a dispute for the purposes of this section.

(3) Save as otherwise provided under sub-section (2) of section 93, no Court shall have jurisdiction to entertain any suit or other proceedings in respect of any dispute referred to in sub-section (1).”

**“152A. Appeal against rejection of nomination paper at election.**

(1) Notwithstanding anything contained in this Act or rules or the bye-laws made thereunder, a person aggrieved by the rejection of nomination of a candidate at the election of a committee of any society may file an appeal to the Registrar within three days of the date of rejection of the nomination. The Registrar shall dispose of such appeal within ten days of the date of receipt of such appeal and the decision of the Registrar in appeal shall be final and no further appeal or

revision shall lie against the decision of the Registrar in such appeal. In the case of a society, an appeal shall lie to the officer as may be specified by the State Co-operative Election Authority, who shall dispose of such appeal within ten days from the date of receipt of such appeal and the decision of the such officer, shall be final.

(2) Notwithstanding anything contained in this Act or the rules or the bye-laws made thereunder, the list of validly nominated candidates shall be subject to the decision of any appeal filed under sub-section (1), and the period between the date of scrutiny of nomination papers and the last date of the withdrawal of candidatures shall not be less than fifteen days.”

Sub-Section 1(iv) of Section 73CA of the said Act is important, which reads thus :

**“73CA. Disqualification of committee and its members**

(A-1) xxxxx

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being a 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) xxxxx

(ii) xxxxx

(iii) xxxxx

(iv) has incurred any disqualification under this

Act or the rules made thereunder ; or

(v) xxxxx

(vi) xxxxx

(vii) xxxxx

(viii) xxxxx

(ix) xxxxx

(2) xxxxx

(3) xxxxx

(3A) xxxxx

(4) xxxxx”

Rule 58 of the MCS Rules :

**“58. Disqualification of committee and its members**

When on communication by the Chief Executive officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification as mentioned in section 73CA and the Bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society:

Provided that, the Registrar shall decide the matter within sixty days from the date of such communication or otherwise.”

Rules 25 & 78 of the Election Rules:**“25. Scrutiny of nomination papers.--**

- (1) On the date fixed, for the scrutiny of nomination papers under rule 18, the candidates, one proposer of each candidate duly authorized in writing by each candidate, may attend at the time and place appointed in this behalf, and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 20. No other person shall be allowed to attend the scrutiny of nomination.
- (2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary reject any nomination on any of the following grounds, that is to say:--
  - (a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, the Rules and the bye-laws;
  - (b) that the proposer or seconder is disqualified from subscribing a nomination paper;
  - (c) that there has been a failure to comply with any of the provisions of rule 21 or 23;
  - (d) that the signature of the candidate or the proposer or the seconder on the nomination paper is not genuine.
- (3) Nothing contained in clause (c) or (d) of sub-rule

(2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

- (4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.
- (5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 18, and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it, not later than the next day before the publication of list of valid nomination and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

- (6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing, a brief statement of his reasons for such rejection, and a copy of such statement shall be immediately supplied on demand to the candidate or to the

proposer concerned. The copy of such statement shall be sent invariably to the SCEA or District Co-operative Election Officer, as the case may be.”

**“78. Election disputes.--**

No election shall be called in question, except by an election petition presented to the Co-operative Court as laid down in section 91.”

9. The judgment in **Shri Sant Sadguru’s** case (supra) has noted the issues raised before the Hon’ble Supreme Court in paragraph No.4, as follows :

- “(1) whether the preparation of the electoral roll for electing members to the Managing Committee of a specified society under the provisions of the Act and the Rules framed thereunder is an intermediate stage in the process of election; and
- (2) if the answer to the first question is in the affirmative, whether the High Court should interfere with the preparation of an electoral roll in a petition under Article 226 of the Constitution or decline to interfere in the matter leaving the parties to get the matter adjudicated by the Tribunal by filing an election petition after declaration of result of the election.”



. This particular case arose out of the provisions of the said Act. Ultimately it was held that the preparation of the electoral roll being an intermediate stage in the process of the election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of Rules while preparing the electoral roll.

. In the present case, the election process has progressed much further and today even the period for withdrawal of the nomination-forms is over. Therefore, I am respectfully bound by the observations made in the judgment in the case of **Shri Sant Sadguru** (supra); and at this stage, it is not possible to entertain these Petitions.

10. The next judgment relied on by learned Senior Counsel Shri Thorat was in respect of **Ponnuswami** (supra), though learned Senior Counsel Shri Kadam has submitted that the judgment refers to Article 329(b) of the

Constitution, the principles laid down in that judgment are followed in many subsequent judgments in the cases of other elections as well. In this context, it is important to refer to the Division Bench judgment of this Court in the case of **Dattatray Lole** (supra), which has considered many judgments on the point, including **Shri Sant Sadguru** (supra) and **Pundlik** (supra).

11. Since both the sides have relied on this particular judgment in the case of **Dattatray Lole** (supra) to canvass their submissions, it is necessary to reproduce some of the important paragraphs from this judgment, which are as follows :

“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 nonexistent 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.
- 8.5. In our opinion, the submission of the Petitioners to the effect that they would be without an adequate remedy if this Petition were not to be entertained at this stage is misconceived. There is a statutory remedy available to the aggrieved Petitioners to challenge the election after the final results are declared and to raise a dispute within the statutory framework at that stage. The dispute that the

Petitioners would be entitled to raise would encompass a right to urge that the Objection Application was wrongly decided and that by being prevented from voting on the premise that Petitioner No. 3 is a 'defaulter', the entire process and therefore the result itself, is vitiated.

8.6. The alternative remedy that would, in our opinion, be available to the Petitioners is in filing an election petition under Section 91 of the Act. In fact, Rule 78 specifically recognizes that no election shall be called in question except by an election petition presented to the Co-operative Court as laid down in Section 91 of the Act. We are not at all suggesting that Rule 78 ousts this Courts' extraordinary jurisdiction under Article 226 of the Constitution of India. All that Rule 78 reinforces is that the generally available remedy to question or challenge an election is an election petition under Section 91 of the Act.

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8.14. Look at from any perspective, Section 91 read with Rule 78 would be an available remedy at a later stage of challenging the election itself, if the need should so arise. Moreover, we have already noticed the relevant provisions of the Act and Rules that would govern the substance of the dispute as and when raised under Section 91 of the Act. Those provisions expressly regulate matters pertaining to disqualification from voting because of the member

being a defaulter; the making of a provisional voter list; the raising of an objection by filing an Objection Application and the adjudication of the same; and the consequent preparation of a final voter list. All these matters and provisions will undoubtedly be invoked by parties to the dispute by way of an election petition under Section 91 of the Act. These will constitute the basis of challenge. We are obviously not expressing any view on the merits of same but are only noticing these provisions in support of our finding above that Section 91 of the Act is both an alternative and efficacious remedy for redressal of statutory grievances as raised by the Petitioners.

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8.20. By Rule 78 of the Rules, also noted above, all election petitions would lie before the Co-operative Court. The Co-operative Court is a forum with trappings of a Court. It has been constituted under Section 92 of the Act. Its powers of procedure and as regards the taking of evidence are set out in Section 94 of the Act. It includes summoning or enforcing the attendance of witnesses and the taking of evidence on oath. It also has the powers to make necessary interlocutory orders under Section 95. Thus, it has adequate powers to deal with issues that may be raised for determination in an election petition as is, in that sense, also an efficacious remedy.

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8.31. Whilst coming to the conclusion that we are not inclined to entertain the Writ Petition because of the alternative statutory remedy available to the Petitioners under Section 91 of the Act read with Rule 78, we are conscious of the fact that the rule of alternative remedy as a bar to maintaining a writ petition under Article 226 of the Constitution of India is not absolute. It has been described as a rule of self-limitation or discretion. In certain situations, even if there is an alternative remedy, the Courts may entertain a writ petition under Article 226 of the Constitution of India. Some of the well-defined situations in which the existence of an alternative remedy will not usually preclude a writ petition under Article 226 of the Constitution of India being entertained are if it primarily raises a challenge under Part III of the Constitution of India for violation of fundamental rights; it challenges an order which is entirely without jurisdiction; when such alternative remedy is demonstrably inefficacious; or the petition asserts a clear violation of the principles of natural justice. We note this only because according to us the case in the Writ Petition does not fall within any of these categories.”

12. Shri Kadam heavily relied on the observations made in paragraph Nos.8.4 and 8.31 of this judgment to strongly contend that the Respondent No.1 had no jurisdiction to decide the said question and, therefore, even as per the ratio of this particular judgment, this Court can entertain this Petition and pass appropriate orders as prayed for by the Petitioners.

13. Therefore, it is necessary to see whether the Respondent No.1, in the first place, had no jurisdiction whatsoever to pass the impugned order observing that the Petitioner was not qualified to contest the election. In this context, in my opinion, Rule 25 of the said Election Rules is extremely important which is already reproduced hereinabove. Sub-rule (2) of the said Rule 25 clearly authorizes the Returning Officer to examine the nomination papers, and more importantly, to decide all objections which may be made to any nomination and after summary inquiry, if any, he can reject the nomination on any of the following grounds : that the candidate was disqualified for being

chosen to fill the seat by or under the Act, the Rules and the bye-laws. Thus, whether the candidate has violated any bye-law and, therefore, has incurred disqualification can be decided by the Returning Officer. Whether he commits any error in arriving at his conclusion is a totally separate issue which can be gone into in the election petition but the very fact that he has the power to consider this particular ground of violation of any bye-law and to give a decision on that issue is clearly provided for under this Rule 25 of the said Election Rules.

14. As far as Section 73CA of the said Act is concerned, sub-section (1) thereof provides that no person shall be eligible for being elected if he has incurred any disqualification under this Act or the Rules made thereunder as mentioned under Section 73CA(1)(iv) of the said Act. This has to be read with Rule 58 of the MCS Rules which provides for disqualification of committee and its members. The said Rule refers to Section 73CA of the said Act and provides that when on communication by the Chief



Executive Officer of society or otherwise, the Registrar comes to know that any member of the committee incurs disqualification, as mentioned in Section 73CA and the bye-laws, the Registrar shall, after giving an opportunity of being heard, issue an order of cessation of membership of such member from the committee of the society provided that the Registrar shall decide the matter within 60 days from the date of such communication or otherwise. This clearly means that the stage envisaged under Rule 58 of the MCS Rules is when, a person is already a member of the committee and then, the Registrar comes to know that he incurs disqualification. In such a situation, the Registrar is empowered to use the power provided under Rule 58 of the MCS Rules. This is clearly distinguishable from Rule 25 of the said Election Rules which operates in different field, at a different stage and the authority is also different. If the reasons given in the impugned orders were erroneous or insufficient, they can be tested in the election petition. The Petitioners were heard by the Respondent No.1 and

Respondent No.154. The Petitioners could not show clear violation of principles of natural justice.

15. The argument was that a Division Bench of this Court in **Dattatray Lole** (supra) has held that if the order was patently and demonstratively illegal and if the order was entirely without jurisdiction then this Court should step in by invoking the powers under Article 226 of the Constitution. As the above discussion shows that the Respondent No.1 had the jurisdiction to decide the question of disqualification on the ground of violation of the bye-laws. Therefore, even as per the ratio of **Dattatray Lole's** case (supra), this Court should not step in at this stage.

16. In view of the above discussion, I am of the opinion that the Respondent No.1 was sufficiently empowered to consider the objection regarding violation of the bye-laws for the purpose of deciding the issue of disqualification at the stage of scrutiny of the nomination forms and was empowered to reject the nomination forms. He had not acted beyond his jurisdiction and, therefore, the

submissions made by the Petitioners in that behalf cannot be accepted.

17. With the result, I do not find it proper to interfere in the election process. The Petitions are dismissed. It is needless to add that the questions raised in the Petitions, except the jurisdictional issue of the Returning Officer, can be raised in the Election Petition at the appropriate stage.

**(SARANG V. KOTWAL, J.)**

Deshmane (PS)

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