

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

REVIEW PETITION No. 55 OF 2021

IN

WRIT PETITION No.804 OF 2021

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Balasaheb Ananda Patil

..Petitioner

In the matter of

Shri Balbhima Sahakari Dudh

Vyavasayik Sanstha Maryadit

Bachani

..Petitioner

Vs.

The State of Maharashtra

and Ors.

..Respondents

Mr. S.S. Patwardhan i/by Mr. Chetan G. Patil, Advocate for the
Petitioner in Review Petitioner

Mr. N.V. Bandiwadekar i/by Mr. A.M. Adagule, Advocate for the
Petitioner in Writ Petition.

Mr. V.S. Gokhale, Advocate from 'B' Panel for Respondent Nos.1
and 2

Mr. Dilip Bodake, Advocate for Respondent Nos. 3 and 4

**CORAM:- R.D. DHANUKA &
M.M. SATHAYE, JJ.**

DATE :- 14TH FEBRUARY, 2023.

P. C.:

1. By this Review Petition, the Review Petitioner seeks review of the order dated 17th March, 2021 passed by this Court in Writ Petition No. 804 of 2021. The Review Petitioner was not a party to the said Writ Petition No. 804 of 2021. By the said order dated 17th March, 2021, this Court disposed of the Writ Petition filed by the Writ Petitioner i.e. Balbhima Sahakari Dudh Vyavasayik Sanstha Maryadit against the State of Maharashtra and ors., inter alia for quashing and setting aside the impugned order dated 24th February, 2021 issued by the State Government-Respondent No.1 directing the postponement of the election in respect of the co-operative societies in the State of Maharashtra beyond 31st March, 2021.

2. The Court considered and took cognizance of the fact that the election would be held as and when fixed by the State Government. This Court accordingly ordered that the steps already taken pursuant to said election programme till date would remain intact. This Court ordered that as and when the State Government announces the dates of the election, the election would be held according to the date as

may be declared by the State Government. This Court further ordered that State Government is not required to follow the steps already taken so far under the said election programme dated 21st February, 2021 and disposed of the said Writ Petition with clarification issued in the said order.

3. We are informed that out of various steps described under the said election programme annexed at Exhibit 'G' to the Review Petition, fourth stages i.e. upto the stage of finalization of final voters list have been completed by the Election Authority, on which basis scrutiny of the nomination forms is already concluded.

4. Insofar as Review Petition is concerned, it is the case of the Review Petitioner that the members of the Writ Petitioner could not have become the member of the Petitioner Society for various reasons; and are ineligible and disqualified to become the member of the said Petitioner Society. The Petitioner filed a complaint under Section 11 read with Section 25 of the Maharashtra Cooperative Societies Act, 1960. On the said complaint filed by the Review Petitioner, 42 members were disqualified. This Court directed the Divisional Deputy Registrar to hear the

proceedings filed by the aggrieved members on the complaint filed by the Review Petition. The order was passed accordingly by the Divisional Deputy Registrar. The Petitioner Society, thereafter, filed Revision Application No. 13/2021 before the State Government. We are informed that the said Revision Application filed by the Petitioner Society is allowed and the order passed in favour of the Review Petitioner has been set aside.

5. Mr. Patwardhan, learned counsel appearing for the Review Petitioner states that his client has already filed a Writ Petition, impugning the said order passed by the Revisional Authority and the same is pending before the Learned Single Judge. We are informed that the said matter is likely to be heard on 23rd February, 2023.

6. Mr. Bandiwadkar, learned counsel for the Original Petitioner and Mr. Bodake, learned counsel appearing for the Election Officer and State Cooperative Election Authority, opposed the Review Petition on the ground that the Review Petitioner has never raised any objection to the original voters' list of members. It is submitted that the election programme is already published. It is submitted that even if

the Review Petitioner succeeds in the said Writ Petition filed before the Learned Single Judge, the final Membership List is already declared by the Election Authority and on which basis nomination forms are already filed and therefore, said process cannot be set aside or modified, on the basis of the order even if any passed by the Learned Single Judge in favour of the Petitioner in the Writ Petition.

7. On the other hand, learned counsel for the Review Petitioner placed reliance on Section 27 of the Maharashtra Cooperative Societies Act and submitted that in view of the said provisions, election cannot be allowed to be held at this stage till writ petition filed by his client is decided. If the Petitioner succeeds in the writ petition filed by him, the list of final members declared by the Election Officer will have to be revised and such qualified members will have to participate in the election likely to be proceeded in view of the seven days' notice issued by the State Government.

8. It is not in dispute that the Election Authority had already issued the election programme on 12th February, 2021. The said election, however, was postponed in view of the order dated 24th February, 2021 passed by the State

Government. It is not in dispute that under the said election programme which was issued on 12 February, 2021, four stages out of the several stages set out in the election programme including declaration of the final voters' list, were already over. The elections, however, could not be held in the State of Maharashtra because of Covid Pandemic. This Court accordingly in the order dated 17th March, 2021, based on the State Government's Order dated 24th February, 2021 made it clear that the steps which have already been taken pursuant to the said election programme till date of the order, would remain intact. Even if any person is aggrieved by the election programme, the said election programme can be challenged by filing an election petition along with result of the election.

9. It is an admitted position that Review Petitioner did not raise any objection when the draft voters' list was prepared and objections were invited.

10. In our view, even if the election would not have been proceeded on the basis of the original election programme and the issue of membership would have

remained pending as sought to be canvassed by the Review Petitioner, remedy of the Petitioner would be to file an election petition. Be that as it may, in our view, even if the Petitioner succeeds in the writ petition filed by the Review Petitioner, impugning the order passed by the Revision Authority on the application/complaint filed by the Review Petitioner, on the premise that some of the members were disqualified to be the members of the Petitioner Society, the effect of such order in favour of the Review Petitioner, would not affect the election programme already issued by the State Government.

11. In our view, no case is made out by the Review Petitioner for recalling of the order passed by this Court. Review Petition is accordingly dismissed. No order as to costs.

(M.M. SATHAYE, J.)

(R.D.DHANUKA, J.)