

Anand

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

WRIT PETITION NO. 14000 OF 2023

Kiran Prabhakar Nirbhavane

.Petitioner

Vs.

The State of Maharashtra & ors.

.Respondents

Mr. Nitin Gaware – Patil i/b. Mr. Anandmaya Dhorde, Advocate,
for the Petitioner

Mr. S. D. Rayrikar, AGP, for Respondent Nos. 1 & 4 – State

Mr. Deelip Patil – Bankar, Chief Standing Counsel SCEA for
Respondent Nos. 2 & 3

CORAM : MADHAV J. JAMDAR, J.

DATE : 07.11.2023

P. C.

1. Heard Mr. Gaware – Patil, learned counsel appearing for the Petitioner, Mr. Rayrikar, learned AGP appearing for Respondent Nos. 1 & 4 – State and Mr. Patil – Bankar, Chief Standing Counsel SCEA appearing for Respondent Nos. 2 & 3.

2. By the present Petition, the Petitioner is challenging the legality and validity of the order dated 30.10.2023 passed by the Respondent No. 3 - District Election Officer & District Deputy Registrar, Nashik thereby rejecting the objection dated 19.10.2023 lodged by the Petitioner for inclusion of names of Respondent Nos. 6 to 30 – Societies in the provisional voters list

of Respondent No. 5 - Shetkari Sahakari Sangh Ltd., Niphad,
District - Nashik.

3. At the outset, Mr. Patil - Bankar, learned counsel appearing for Respondent Nos. 2 & 3 submitted that there is an alternate efficacious remedy of filing Election Dispute. He relied on the decisions of the Supreme Court in the case of *Shaji K. Joseph v. V. Vishwanath and others*, reported in (2016)4 Supreme Court Cases 429 and *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra & ors.*, reported in (2001) 8 Supreme Court Cases 509.

4. Apart from above submission, Mr. Patil - Bankar, learned counsel appearing for Respondent Nos. 2 & 3 submitted that earlier also in the year 2016, a similar objection, as raised by the present Petitioner, was raised and the same was also rejected by the District Election officer. He submitted that W. P. No. 12377 of 2016 challenging the same order was not entertained by a Division Bench of this Court in view of availability of an alternate efficacious remedy of disputing the election results. He further submitted that the Co-operative Case No. 41 of 2017 under

Section 91 of the Maharashtra Co-operative Societies Act, 1960 has been filed and the same Dispute/Election Petition has also been dismissed. He, therefore, submitted that no interference in the impugned order is warranted.

5. On the contrary, Mr. Gaware - Patil, learned counsel appearing for the Petitioner relying on the decision of the Supreme Court in the case of *Union Territory of Ladakh v. Jammu and Kashmir National Conference*, reported in *2023 SCC OnLine SC 1140* states that the Petition is maintainable. He submitted that though earlier the Co-operative Case No. 41 of 2017 has been dismissed, same has been dismissed on a technical ground. He further submitted that the District Election Officer & District Deputy Registrar, Nashik - Respondent No. 3 has not given any reason whatsoever and only an opinion of the Assistant Registrar of the Co-operative Society was accepted.

6. In the present case, the Petitioner is challenging inclusion of about 25 members of the Shetkari Sahakari Sangh Ltd., Niphad, District - Nashik - Respondent No. 5. In fact, the objection of the Petitioner was pertaining to inclusion of total 35 members and the said objection was accepted with respect to

inclusion of 10 members.

7. In the impugned order, it has been observed that the said members are the members of the Society and their names are recorded in the I Register. It is the contention of Mr. Gaware - Patil, learned counsel appearing for the Petitioner that in view of the amended bye laws, about 25 members are not eligible for membership. However, the Assistant Registrar has given a detailed opinion and found that with respect to ten societies, they cannot get membership of the Shetkari Sahakari Sangh Ltd., Niphad, District - Nashik - Respondent No. 5 and as far as 25 Societies are concerned, they are eligible members as per the bye laws as amended on 25.02.2014. The said opinion is accepted by the Respondent No. 3. Nothing has been pointed out by learned counsel appearing for the Petitioner as to why members are not entitled for membership of the Shetkari Sahakari Sangh Ltd., Niphad, District - Nashik - Respondent No. 5.

8. It is significant to note that a similar contention has been raised earlier with respect to these 25 members and the Co-operative Case No. 41 of 2017 has been filed and same dispute has been dismissed by the Judgment and Award dated

23.01.2020 passed by the learned Judge, Co-operative Court, Nashik, District - Nashik. Although, it is submitted that the Petitioner is not party to the said Co-operative Case No. 41 of 2017 in any case, in the said dispute, same objection is raised. Another contention is raised that the said dispute was dismissed only on technical ground. However, as set out earlier, nothing has been pointed out by learned counsel appearing for the Petitioner why said members are not entitled for membership of the Shetkari Sahakari Sangh Ltd., Niphad, District - Nashik - Respondent No. 5.

9. Therefore, this is not a case where any interference under Article 226 of the Constitution of India is warranted.

10. The Writ Petition is dismissed, however, with no order as to costs.

(MADHAV J. JAMDAR, J.)