



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

WRIT PETITION NO. 1203 OF 2024

Chandrakant Rajaram Pawar,
Age : 52 Years, Occ. Service,
R/o. Paranda Tq. Paranda
Dist. Dharashiv

... PETITIONER

VERSUS

1. State Co-operative Election Authority
Maharashtra State Pune
Through its Commissioner
2. District Co-operative Election Officer
and District Deputy Registrar Co-operative
Societies, Dharashiv
3. Paranda Taluka Khajagi Shala
Karmchari Patsanstha Ltd., Paranda
Dist. Dharashiv
4. Narayan Maruti Khaire,
Age : 54 Years, Occ. Servie
R/o. Bavji Vidyalaya, Paranda
Dist. Dharashiv

... RESPONDENTS

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Mr. K. J. Suryawanshi, Advocate instructed by Mr. Laxman H. Kawale,
Advocate for the Petitioner;

Mr. V. H. Dighe, Advocate for Respondent No.1 and 2;

Mr. Mr. Vijay V. Deshmukh, Advocate instructed by Mr. Amit T. Ghute,
Advocate for Respondent No.3;

Mr. V. D. Salunke, Senior Advocate holding for Mr.V. B. Deshmukh and
Mr. M. B . Kolpe, Advocate for Respondent No. 4

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CORAM : S. G. MEHARE, J.

DATE : 14.02.2024

ORAL ORDER :-

1. Heard the learned counsel for the petitioner and all respective counsels for the respondents.
2. The petitioner and respondent No.4 are the sitting Directors of respondent No.3 Society. The term of the office of the petitioner and respondent No.4 will end soon.
3. The District Co-operative Societies Election Officer/ respondent No.2 has published an election programme and invited objections to the provisional voter list from 01.01.2024 to 10.01.2024.
4. The Taluka Co-operative Election Officer-cum-Assistant Registrar Co-operative Sanstha Paranda had submitted a report about the objection on the provisional voter list. In the said report, he specifically intimated to respondent No.2 that around 40 members, including respondent No.4, were defaulters.
5. Respondent No.4 has raised the objection for not listing his name in the provisional voter list. Respondent No.2 passed the

impugned order on 19.01.2024, accepting the objection of Respondent No.4 that his name should be added to the final voter list with other 35 members.

6. The petitioner has impugned the said order mainly on the following grounds :-

- i) The objection to the provisional voter list was taken after the cut-off date i.e. 10.01.2024. He did not produce no due certificate before respondent No.2; therefore, respondent No.2 has considered the objection after the cut-off date, which is impermissible.
- ii) He was a defaulter on the cut-off date. He had not produced no due certificate. He was correctly not entered in the provisional voter list.
- iii) In view of Sections 27 and 76(A) of the Maharashtra Co-operative Societies Act, 1960 ("Act of 1960", for short), he is not eligible to be a voter.

7. The learned counsel for the petitioner relied on the following cases laws.

- (i) *Himat Versus Rajendra and Others, Civil Appeal No. 905 of 2021 (Arising from SLP (C) No.3099 of 2021, dated March 15, 2021;*
- (ii) *Nagorao S/o Kerba Tekale Versus The District Co-operative Election Officer of District Central Co-operative Bank, Nanded and others, Writ Petition No.2802 of 2021, dated 18.02.2021;*
- (iii) *Shridhar Ramchandra Kothawade Versus The Satana Merchants Co-operative Bank Ltd. and others, W.P. No. 2469 of 2015;*
- (iv) *Manchak Shahaji Pawar Versus State of Maharashtra and Others, (Case No. Writ Petition Nos. 251 & 257 of 2011, reviewed on: 03.02.2011) :: 2011(2) All M.R.561;*
- (v) *Ankushbhau S/o Juglal Baghele and others Versus State of Maharashtra and others, 2023(2) ALL MR 30;*
- (vi) *Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dughda Utpadak Sanstha Versus State of Maharashtra, 2001 DGLS (SC)1243.*

8. On the basis of ratios laid down in the above cases, he has vehemently argued that a defaulter may be a member but shall not be a voter. To become a voter, he must possess some qualifications. The society's by-laws and Rules, provide who should be entitled to cast a vote and to be on the voters' list. He also vehemently argued that no reasons have been assigned why

the objections were allowed. It is an order like a body without heart. Perhaps respondent No.2 may be under the influence of respondent No.4, being sitting Director of the Society. He also vehemently argued that he, being a voter/ member of the Society, has every right to impugn the illegal order of respondent No.2. Therefore, being a member of the Society, he approached this Court to quash the illegal order.

9. The learned counsel for respondents Nos. 1 and 2 submits that respondent No.2 had received the objection of respondent No.4 on January 4, 2024. It was filed within a prescribed period. He has produced a copy of the said objection. The reports were called from the Taluka Co-operative Societies Election Officer. As there were a lot of objections, those objections were heard on two dates i.e. on 16.01.2024 and 18.01.2024. However, he fairly conceded that respondent No.4 is a defaulter. He had not produced no due certificate before respondent No.2. Therefore, he is not eligible to be a voter for the coming election.

10. The learned counsel for respondent No.3 adopted the arguments of the petitioner.

11. The learned Counsel Mr. V .D. Salunke, for the contesting respondent No.4, has raised a primary objection to the tenability of the petition. He would submit that the petitioner was not a objector before respondent No.2. It was not a dispute between two private parties. Hence, such a dispute would not lie before a Single Bench. He also raised the objection that as per Chapter XVII, Rule 18 of the High Court Appellate Side Rules, only the matters arising out of the 'proceeding' lie before the Single Bench. Since the petitioner was not the objector before respondent No.2, the dispute would lie before the Division Bench. He further objected that the petition is liable to be dismissed for suppressing facts. The so-called objection dated 18.01.2024 is not the objection. It was his submission against the objection. The petitioner deliberately did not produce the objection raised before respondent No.2 to mislead the Court that the objection was raised after the cut-off date. 18.01.2024 was the date of hearing of the objections. He argued further that the petitioner had sought the quashing of the impugned order wherein, besides the petitioner, 35 other persons have been admitted to the final voter list. They are necessary parties. Hence, the petition is bad for the

non-joinder of the necessary party. Respondent No.4 could not be said to be a defaulter. A notice under Section 73CA(1)(i)(d) of the Act of 1960 was served upon respondent No.4 on 28.03.2022. He had impugned the said notice before the Co-operative Court. The Co-operative Court had issued a temporary injunction directing respondent No.1 i.e. respondent No.3 herein, that till the disposal of the dispute, respondent No.3 should not cause the disturbance to respondent No.4 to be a member of the Society and work as the Director of the Society. He has argued at length on this point and submitted that since the notice under Section 73CA(1)(i)(d) of the Act of 1960 has already been impugned before the Co-operative Court. Fortunately, it was a disqualification notice. However, the concerned authority realized his mistake and withdrew that notice; therefore, he is not a defaulter. Respondent No. 4 is a Member and Director of the Society. He cannot be disqualified. The election is at an advanced stage. Section 73CA(1)(i)(d) of the Act of 1960 is about the eligibility of the members of the committee and not the voters. He relied on the case of *Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dughda Utpadak Sanstha (supra)* and argued

that when the election is at an advanced stage, the Writ Court should be slow in interfering with its process. Lastly, he argued that the remedy to the petitioner is an election dispute under Section 91 of the Act of 1960. He prayed to dismiss the petition.

12. In reply, the learned counsel for the petitioner argued that his prayer is restricted to admitting respondent No.4 as a voter. He relied on the case of ***Manchak Shahaji Pawar (supra)*** and argued that where the petitioner challenges the nomination of a particular candidate, the interest of any contesting candidate is not affected. In these circumstances, all contesting candidates are not necessary parties. He emphasized the observations of the Court on the jurisdiction of the Single Bench and pointed out that this Court has discussed a similar issue and held that such matters would lie before the Single Bench. He further relied on the case of ***Ankushbhau s/o Juglal Baghele and Others (supra)*** and vehemently argued that law laid down in this case that the Writ Court cannot turn a blind eye and be a mute spectator on the jurisprudential logic that the election process has commenced and the Writ Court ought to be loathe to interfere is squarely applicable to the case at hand. He also argued that in this case,

it has been observed that it is always open for any member or person to show that the entry in the register of the member is incorrect since the presumption under Section 38 of the Act of 1960 is not a conclusive presumption of law.

13. He has also argued that it was a respondent No.2 to ascertain the eligibility of the entitlement of respondent No.4 to be a voter for the coming election. Respondent No.2 failed in his duties. He has assigned no reason why he disagrees with the report of the Taluka Co-operative Election Officer, who had categorically informed that respondent No.4 was a defaulter and proceeding under Section 101 of the Act of 1960 has been initiated against him. This shows the conduct of respondent No.2. The injunction was about his removal from the Membership and the Directorship during his elected tenure. The said injunction order has no concern with the provisional voter list and the coming election. He does not possess the qualification to become a voter for the coming election. He submitted that the arguments of learned counsel for respondent No.4 were misconceived and unfounded.

14. In reply, the learned Counsel Mr. V. D. Salunke, for respondent No.4, submits that the judgment of the case of ***Manchak Shahaji Pawar (supra)*** was on different facts. In that case, both the parties were the candidates. In this case petitioner was neither the objector nor the contestant. When he did not raise objection before respondent No.2, he has no locus to file the petition.

15. The first question is the jurisdiction of this Court. This Court in the case of ***Manchak Pawar***, (supra) had occasion to deal with a similar objection. The said objection was raised by the learned Counsel Mr. Salunke. He raising similar objections since 2011, that the orders of the Election Commissioner are not the proceedings; therefore, the Writ Petition against the decision of the Election Officer would not lie before a Single Judge Bench. In that case, he had referred to Chapter XVII Rule 18 of the High Court of Bombay Appellate Side Rules. This Court observed in paragraph No.10, which reads thus:-

“10. The first question to be looked into in the present matter is, about the jurisdiction of Single Judge of this Court. I had an occasion to consider

this controversy directly in the judgment reported in the case of Jagannath Pandharinath Rewaskar and others Vs. Minister of State for Cooperation and others (supra). Perusal of the said judgment, particularly paragraph 7 therein, shows that the question has been examined in relation to a Society which was neither specified nor notified. This Court has found that the Education Officer is appointed under the Act of 1960 and hence, he needs to be treated as public authority. The finding, therefore, recorded is in appropriate cases, writ can be prayed for against him by challenging the orders before Single Judge of the High Court. In view of the discussion undertaken therein detail, it is not necessary for me to again embark upon the same in the present matter.”

16. Considering the arguments of the learned Counsel Mr. Salunke, in that petition, the Court observed in paragraph No.11, which reads thus :

“11. The effort of Advocate, Shri. Salunke, is to point out judgment delivered in Writ Petition No.2622/2002 on 27th August 2002 and to urge that in the present matter, order challenged is not a quasi judicial order. In Writ Petition No.2622/2002, the

order challenged was under Section 88(3-C) of the Bombay Village Panchayats Act, 1958. It was urged there that Bombay Village Panchayats Act does not find place in any of the clauses contained in Rule 18 of Chapter XVII of the Bombay High Court Appellate Side Rules, 1960, and therefore, Single Judge cannot hear and decide the matter. The other side had contended that the ambit of Rule 18(3) of Chapter XVII cannot be cut down by any other clauses contained in Rule 18. In paragraph 5, this Court has found that if order is passed by quasi judicial authority in any proceeding under any law, challenge thereto can be heard by a Single Judge. The preliminary objection was, therefore, rejected. It is not in dispute that Chapter XVII, Rule 18, Entry No.12, of the High Court Appellate Side Rules, mentions Maharashtra Co-operative Societies Act, 1960. The said judgment, therefore, has no relevance in the present facts.”

17. The State has framed the Maharashtra Co-operative Societies (Election Rules) 2014 (“Rules of 2014”, for short). Chapter III of the Rules of 2014 is about the preparation of the electoral roll. Rule 6 provides for provisional list of voters for the co-operative societies having individuals as members. Rule 7

provides for particulars included in the provisional list of voters. Rule 8 provides for the objections to the provisional voters list. It has been further provided therein that the provisional voter list shall be published for inviting claims and objections, any omissions or errors in respect of the name and address or other particulars in the list may be brought to the notice of the concerned District Election Officer or Taluka or Ward Co-operative Election Officer in writing by any member of the Society during the office hours within ten days from the date of publication of provision list of voters. Under Rule 8, the Election Officer must make an enquiry as deem necessary by considering each claim or objection and give his decision in writing to the concerned persons.

18. On reading above rules, there is no doubt that it is a process to be done under the rules framed under the Act of 1960. All the co-operative Societies in the State are governed under the Act of 1960 and bound by the Act and Rules framed therein as well as Bylaws framed by the Societies. Considering the rules, one could

easily understand that deciding the objections to provisional voter list is a 'proceeding'.

19. The Rules are specific that any member may raise the objection to the voter's list. The objections may be for the inclusion of the members not entitled to be the voters and for deleting the members from the provisional voters list, who have been incorrectly added to the voter list.

20. Here, the name of respondent No.4 was not listed in the provisional voters' list. Hence, he approached respondent No.2. In such a case, there may not be a third party. It is a dispute between member, the Election Officer and the Society, which prepare and submit the provisional voters list to the Election Officer. It is clear from the above rules that the rights of the members to bring any defect, including the order of the Election Officer, to the notice of the competent authority has not been taken away. Only the members protect the interest of the Society. Every member has a right to say. They have right to object the irregularities, if any, they notice.

21. This Court, in the case of *Ankushbhau s/o Jugla Baghele and others (supra)* observed that it is always open for any member or person to show that the entry in the register of members is incorrect since the presumption is not a conclusive presumption of law under Section 38 of the Act of 1960. If the argument of the learned Counsel Mr. Salunke, that the petitioner was not the objector, is accepted, the question is who would bring the illegality to the notice of the Court. If such rights of the members are curtailed, there may be chaos. Influential and powerful persons will do anything they wish. It is absolutely not the object of the Act. Fortunately, the learned Counsel Mr. Salunke, did not deny, a petitioner had no concern with the Society. On the contrary, he conceded that he is also the sitting Director of the Society. Therefore, the arguments of learned Counsel Mr. Salunke, that the petitioner has no locus to bring the illegality to the notice of the Court of law by filing an appropriate petition are unfounded.

22. Admittedly, the petitioner was not before respondent No.2 when the objection of respondent No.4 was heard only after the impugned orders, he learnt that an illegal order has been passed

and respondent No.4 was incorrectly added to the final voters list. Respondent No.2 furnished a copy of the objection of respondent No.4 dated 04.01.2024. It was coming from the proper custody. Hence, it must be believed that the objection was filed within limitation. However, the objection of Respondent No.3 did not explain whether he is a defaulter or not. It was stated that the action under 420 of the Indian Penal Code should be taken against the Chairman and Secretary who supplied the false information. In his submission dated 18.01.2024, he mentioned about notice issued to him by the competent authority under Section 73CA(1)(i)(d) of the Act of 1960. Interestingly, he has submitted that he, being the earlier member no any Rules or Bylaws apply to him. He had impugned the said notice issued to him under Section 73CA(1)(i)(d) of the Act of 1960. He also submitted before respondent No.2 that in view of the decision of this Court in the case of *Baburao Thase Vs. Election Officers and others* that a defaulter member cannot be deprived of voting. He had also submitted that the guarantor is equally responsible for a default. Most of the members are the guarantors for other

members. If a strict scrutiny is done there may hardly be 50 to 60 members.

23. Before the Election Officer, the issue was, whether respondent No.4 possessed qualification to be a voter. The impugned order is interesting. Respondent No.1 mentioned the objections received and the dates of the hearing. Further, he mentioned the Advocate present for the respective parties and about the written submissions. He held that considering the submission of the Assistant Registrar Co-operative Society Paranda, the objector and other 36 objectors below are added to the final voter list.

24. The learned counsel for the petitioner has correctly argued that the impugned order is without reason and application of the mind. Respondent No.2 was the authority bound by the Rules of election mentioned above. However, unfortunately he did not exercise his powers in proper perspective.

25. The person may be a member of the Society, but he may not be a qualified member to contest the election or cast vote in the election. The members have to possess the required qualification.

Section 27 and Section 73 (CA) of the Act of 1960 indicate that the person who wishes to contest the election of the Society must not be a defaulter. In the case at hand there was a recovery certificate against respondent No.4 under Section 101 of the Act of 1960. It is a conclusive proof that respondent No.4 was a defaulter.

26. To date, respondent No.4 has no case that there are no dues against him nor he produced the certificate from the authority that he is not a defaulter of the Society. The Honourable Supreme Court has clearly laid down the law in the case of *Himat (supra)* that a defaulter member on the cut-off date is not eligible to vote and, therefore, cannot participate in the election process.

27. Respondent No.2 has committed an apparent illegality by adding respondent No.4 to a final voters list ignoring the material before it that he was a defaulter on the cut-off date. Respondent No.4 is not eligible to vote in the coming election. He was a defaulter; hence, he was correctly not included on the provisional voters list. Since he is not eligible to be added to the provisional voters list, there is no question to add him to the final voters list.

The sufficient material is produced before the Court to believe that on the cut-off date respondent No.4 was not eligible to be a voter; therefore, the impugned order deserves to be quashed and set aside. Hence, the following order.

ORDER

- (i) The Writ Petition is allowed.
- (ii) The impugned order of Respondent No.2 dated 19.01.2024 passed in outward जा.क्रं.निवडणुक/परंडा, ता. खा.शा.कर्म.पत/प्रा.मत, यादी आक्षेप/सन २०२४, is quashed and set-aside to the extent of respondent No.4 who is at Serial No.24 in the impugned order.
- (iii) No order as to costs.

(S. G. MEHARE)
JUDGE

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