



**(This order stands corrected in view of the order dated
01.02.2024)**

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

WRIT PETITION NO.13128 OF 2023

Siddheshwar Sahakari Sakhar Karkhana Ltd.,
Manik Nagar, Sillod, Tq.Sillod,
Dist.Aurangabad.

Through its Authorized Officer
Shri Madhav Manikarao Khare,
Age : 62 years, Occ : Service,
R/o Sillod, Tq.Sillod, Dist. Aurangabad.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through Secretary,
Cooperation, Marketing &
Textile Department, Mantralaya,
Mumbai.
2. The State Cooperative Election
Authority, MS Pune.
Through its Secretary.
3. District Cooperative Election Officer
and Regional Joint Director (Sugar),
Aurangabad, Dist. Aurangabad.

...RESPONDENTS

AND

WRIT PETITION NO.13141 OF 2023

1. Balaji Shankar Sonwane,
Age : 28 years, Occ : Agri,
R/o Sarani (Aa), Tq.Kaij,

Dist. Beed.

2. Balasaheb Pandharinath Borade,
Age : 60 years, Occ : Agri,
R/o Gotegaon, Tq.Kaij,
Dist. Beed.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through Secretary,
Cooperation, Marketing & Textile
Department, Mantralaya, Mumbai.
2. The State Cooperative Election Authority,
MS Pune. Through its Secretary.
3. District Cooperative Election Officer
and District Deputy Registrar,
Cooperative Society, Beed.
4. The Kaij Taluka Kharedi Vikri Sangh,
Kaij, Tq.Kaij, Dist. Beed.

...RESPONDENTS

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Shri V.D. Hon, Senior Advocate i/by Shri K.J. Suryawanshi,
Advocate for the Petitioner in WP/13128/2023.

Shri N.B. Khandare, Advocate i/by Shri A.G. Choudhari,
Advocate for the Petitioners in WP/13141/2023.

Shri S.K. Tambe, AGP for Respondent 1/State.

Shri S.K. Kadam, Advocate for Respondents 2 and 3/
Cooperative Election Authority.

Shri B.B. Bhise, Advocate for Respondent 4 in WP 13141/23.

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CORAM: RAVINDRA V. GHUGE

&

Y.G. KHOBRAGADE, JJ.

Reserved on :- 19th January, 2024

Pronounced on :- 30th January, 2024

JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. In the first Writ Petition No.13128/2023, the Petitioner Cooperative Sugar Factory has put forth prayer clauses B, C, D and E as under:-

- “B) To quash and set aside the orders dated 03.10.2023 issued by respondent no.2 State Co-operative Election Authority M S Pune may kindly be quashed and set aside*
- C) The respondent no.2 and 3 may kindly be directed to publish election program from the stage of nomination for the election of managing committee of petitioner Karkhana, immediately.*
- D) Pending hearing and final disposal of this writ petition the orders dated 03.10.2023 issued by respondent no. 2 state Co-operative Election Authority M S Pune may kindly be stayed.*
- E) Pending hearing and final disposal of this writ petition the respondent no.2 and 3 may kindly be directed to publish election program from the stage of nomination for the election of managing committee of petitioner Karkhana, immediately.”*

3. In the second Writ Petition No.13141/2023, the

Petitioners have put forth prayer clauses B, C, D, and E as under:-

- “B. To quash and set aside the order dated 03.10.2023 issued by respondent no.2 state Co-operative Election Authority M S Pune by issuing writ of certiorari.*
- C. The respondent no.2 and 3 may kindly be directed to publish election program from the stage where it is stopped and finalize the voters list and start the election process from the stage of nomination for the election of managing committee of respondent no. 4, society, forthwith by issuing appropriate writ.*
- D. Pending hearing and final disposal of this writ petition the orders dated 03.10.2023 issued by respondent no. 2 state Co- operative Election Authority M S Pune may kindly be stayed.*
- E. Pending hearing and final disposal of this writ petition the respondent no.2 and 3 may kindly be directed to publish the election program from the stage where it is stopped and start further process of election of nomination for the election of managing committee of respondent no.5, society immediately, by passing appropriate order.”*

4. These two matters were heard extensively. The submissions of the Petitioners in both these petitions can be summarized as under:-

(a) The elections to the Cooperative Sugar Factory were last conducted on 30.05.2017 and the five years tenure ended on 30.05.2022.

(b) Though the elections were due on or before 30.05.2022, the Election Authorities did not conduct the elections even after the expiry of the term.

(c) By communication dated 15.02.2023, the State Cooperative Election Authority, Maharashtra State, Pune (in short, “SCEA”), directed the Cooperative Societies to initiate the process for finalization of the voters list and prescribed the cut off date as 01.02.2023.

(d) All the parties to the proceedings accepted the said cut off date and initiated the steps for finalization of the voters list.

(e) On 07.06.2023, the State of Maharashtra introduced the ordinance called as the “Maharashtra Cooperative Societies (Amendment) Ordinance, 2023.

(f) In Section 2 of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the Act of 1960”), in clause (19), after sub-clause (a), sub-clause (a-1) is inserted, which defines “active member”. Section 26 of the Act of 1960 was substituted. So also, sub-section (1A) was introduced below Section 27(1). Section 73A also suffered a minor amendment.

(g) The election programme for the preparation of the

final voters list was commenced on 08.06.2023, objections were called till 19.06.2023, hearing took place on 22.06.2023 and the decision was pronounced on 30.06.2023.

(h) An order was issued by SCEA dated 28.06.2023 and the elections were postponed. However, by that time, the procedure for finalization of the voters list was already completed.

(i) A notification was published by the Honourable Governor of Maharashtra dated 21.08.2023 and the above stated Maharashtra Ordinance No.II/2023 dated 07.06.2023 was withdrawn with immediate effect.

(j) The notification dated 28.06.2023, by which the elections were postponed, specifically intimated all the concerned that since the Honourable Supreme Court and the Honourable High Court directed that the elections should be conducted in cooperative societies and as the elections are postponed, the elections would now be held any time after 30.09.2023 and it would be ensured that the elections process would move forward from the stage at which they were postponed by the said order.

(k) Reference is made to Section 27(3) and Section 73-

CB of the Act of 1960 and Rules 3, 6 and 9 of the Maharashtra State Cooperative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as “the Election Rules of 2014”).

(l) The purpose behind maintaining the cut off date for at least two years prior to the proposed date of election, is to ensure that a desirous candidate should not start enrolling his supporters as members in order to increase his vote bank. Yet, the Petitioners agreed to abide by the cut off date 01.02.2023 as directed by the SCEA and completed the entire procedure in furtherance thereof.

(m) Now, because the SCEA has prescribed the new cut off date as 01.10.2023, all such persons or societies who have enrolled new members in between 01.02.2023 and 01.10.2023, would succeed in getting voting rights for such newly added members, which will defeat the very object of the provisions of the Act of 1960 and the Rules framed thereunder.

(n) If the impugned order is made applicable, the Cooperative Societies will have to once again start new process for finalization of the voters list, which will cause grave hardship and manifest inconvenience, besides nullifying the object of Section 27 of the Act of 1960 and the Rules, which mandate that

the valid voter would be a person, who has been enrolled at least two years prior to the date of election.

(o) There is no dispute that the SCEA has jurisdiction to prescribe the cut off date strictly as per the Rules applicable. However, the SCEA cannot review its decision and prescribe a fresh cut off date.

(p) Between 01.02.2023 and 01.10.2023, there may not be any change in the number of members, unless some societies have shrewdly increased the members to gain advantage in elections.

(q) The election programme to the extent of finalization of the voters list was declared on 08.05.2023. After 10 days and within 20 days of the declaration of the final voters list, the elections are to be declared and just within two days, the Government postponed the elections with a clear indication that the elections would be conducted after 30.09.2023 from the stage at which they were postponed.

(r) No reasons are assigned to change the cut off date.

(s) In view of the above, clause 2 of the impugned order deserves to be quashed and set aside.

(t) Reliance is placed upon the following judgments by

the Petitioners in the first petition:-

- (1) ***Mohanrao Anandrao Munde and another vs. State of Maharashtra and others, 2006 (6) Mh.L.J. 813.***
- (2) ***Bhosale Dattaram Madhavrao and others vs. The State of Maharashtra and others, Writ Petition No.12106/2022 (Aurangabad Bench) decided on 13.12.2022.***
- (3) ***Kharade Seva Sahakari Society Ltd. vs. Thane District Central Cooperative Bank Ltd. And others, Writ Petition No.2690/2020 (Principal Seat) decided on 11.01.2021.***
- (4) ***Deorao Vithoba Kale vs. Divisional Joint Registrar, Cooperative Societies, Nagpur and others, 1982 Mh.L.J. 543.***
- (5) ***Jai Mahavir Cooperative Housing Society Ltd. vs. Panchal Keshavlal Narbheram and others, AIR 1987 SC 1513.***

(u) Shri Khandare, the learned Advocate appearing for the Petitioners in the second petition, has relied upon the following judgments :-

- (a) ***Ramchandra Ganpat Shinde and another vs. State of Maharashtra and others, (1993) 4 SCC 216.***
- (b) ***Kuntinath Appanna Nilappol and another vs. Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. and others, AIR 2000 Bombay 285.***

5. The learned Advocate Shri S.K. Kadam appearing on behalf of the Respondents/ Cooperative Election Authorities has vehemently defended the impugned order. His submissions can be summarized as under:-

(a) He refers to the order dated 06.09.2023 passed by the learned Single Judge at the Principal Seat in Writ Petition No.7380/2023 (***Manohar Aapanna Dharanguttikar and others vs. The District Deputy Registrar, Cooperative Societies, Kolhapur and others***).

(b) He then relies upon another order dated 07.09.2023 passed by the learned Single Judge at the Principal Seat in Writ Petition No.9547/2023 (***Prithviraj Sahebrao Jachak vs. State of Maharashtra and others***) wherein, it has been noted that Respondent No.4 in the said petition had withdrawn the voters list and nothing survived in the petition.

(c) Though the voters list was finalized on 30.06.2023, the elections were postponed by the notification dated 28.06.2023.

(d) Due to Covid-19 pandemic, several elections were postponed.

(e) New cut off date was prescribed under Section 73(CB) of the Act of 1960 read with Rule 3(v) and Rule 9 of the Rules of 2014.

(f) The communication dated 15.02.2023 issued by the Secretary, SCEA, binds all the parties.

(g) No harm or prejudice would be caused to these Petitioners.

(h) The SCEA intends to reach every member of the society so as to enable him to participate in the elections.

(i) New cut off date would assist the SCEA in noticing any unfair means adopted by any society in preparation of the final voters list.

(j) The SCEA has power of review.

(k) The Writ Petitions deserve to be dismissed.

6. Considering that the litigating parties have referred

to several provisions, we deem it appropriate to reproduce the same for ready reference, as under:-

“Section 27. Voting powers of members.

- (1) *Save as otherwise provided in sub-sections (2) to (7), both inclusive, no member of any society shall have more than one vote in its affairs; and every right to vote shall be exercised personally, and not by proxy:*

Provided that, in the case of an equality of votes the Chairman shall have a casting vote.

Explanation :- For the purposes of this sub-section, “votes to more than one candidate from the panel” shall be treated as one vote.

- (2) *Where a share of a society is held jointly by more than one person, the person, whose name stands first in the share certificate, if present, shall have the right to vote. But in his absence the person whose name stands second, and in the absence of both, the person whose name stands next, and likewise, in the absence of the preceding persons the person whose name is next on the share certificate, who is present and who is not a minor, shall have the right to vote.*

- (3) *A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:*

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society:

Provided further that, where the election is to a reserved seat under Section 73-B, no

person shall have more than one vote.

- (3A) *An individual member of a society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society.*

Provided that, nothing in this sub-section shall apply in respect of a cooperative housing society and a cooperative premises society.

- (4) *A company or any other body corporate, constituted under any law for the time being in force, which has invested any part of its funds in the share of a society, may appoint any of its directors or officers to vote on its behalf in the affairs of such society; and accordingly, such director or officer shall have the right to vote on behalf of the company or body corporate.*
- (5) *Where a firm has invested any part of its funds in the shares of a society, any one of its partners appointed by the firm shall be entitled to vote in the affairs of the society on behalf of the firm.*
- (6) *A local authority or public trust which has invested any part of its fund in the shares of a society, may appoint any of its members or trustees, to vote on its behalf in the affairs of that society; and accordingly such person shall have the right to vote on behalf of the local authority or the public trust, as the case may be.*
- (7) *In the case of a federal society, the voting rights of individual members thereof shall be such as may be regulated by the rules made under this Act and by the bye-laws of the society.*
- (8) *No nominal member shall have the right to vote and no such member shall be eligible to be a member of a committee or for appointment as a representative of the society on any other society.*
- (9) *No nominee of the Government or any financing bank on the committee of any society*

shall be entitled to vote at any election of officers of such committee such as, the President, Vice- President, Chairman, Vice-Chairman, Secretary, Treasurer or any other officer by whatsoever designation called, who holds the office by virtue of his election to that office.

- (10) *If a member has taken a loan from the society, such member shall, whenever he is a defaulter as provided in the Explanation to clause (I) of sub-section (1) of section 73CA have no right to vote in the affairs of the society:*

Provided that, a member shall not be deemed to be a defaulter if he has discharged his obligation to deliver his marketable produce to the marketing or processing society and the value of such produce is not less than the amount of his dues, even if the actual settlement of his dues, either in whole or in part, takes place at a later stage.

- (11) *The agricultural credit society may issue suitable orders for the purpose of carrying out the provisions of sub-section (10)."*

"Section 73CB State Cooperative Election Authority

- (1) *The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to a society shall vest in the authority called as 'the State Co-operative Election Authority', as may be constituted by the State Government in that behalf. Every general election of the members of the committee and election of the office-bearers of a society including any casual vacancy, to the extent applicable, shall be held as per the procedure prescribed.*
- (2) *The State Co-operative Election Authority shall consist of a State Co-operative Election Commissioner, who has held the post not below the rank of Secretary to the State Government.*

The State Co-operative Election Commissioner shall be appointed by the Governor. The State Co-operative Election Commissioner shall hold the office for a period of three years and he may be re-appointed for a further period of two years. The office of the State Co-operative Election Authority shall be at such place as may be notified by the State Government :

Provided that, a person appointed as the State Co-operative Election Commissioner shall retire from the office on completion of the age of sixty- five years.

- (3) The State Government shall appoint on deputation, any person holding a post not below the rank of Additional Registrar, as a Secretary to the State Co-operative Election Authority.*
- (4) Subject to the provisions of sub-section (2), other conditions of service, including the salary and allowances, of the State Co-operative Election Commissioner shall be such as may be prescribed. Subject to the provisions of sub-section (6), the State Co-operative Election Commissioner shall be removed from his office only by an order of the Governor on the ground of proved misbehaviour or incapacity after an inquiry ordered by the Governor and conducted by a retired Judge of the High Court, who has on inquiry, reported that the State Co-operative Election Commissioner ought to be removed on such ground.*
- (5) The Governor may suspend the State Co-operative Election Commissioner from his office, and if deemed necessary, also prohibit him from attending the office during inquiry, if an inquiry has been ordered under sub-section (4) until the Governor has passed the orders on receipt of the report of the retired High Court Judge.*
- (6) Notwithstanding anything contained in sub-*

section (5), the Governor may, by order, remove the State Co-operative Election Commissioner from his office, if he,—

(a) is adjudged an insolvent; or

(b) has been, convicted of an offence which, in the opinion of the Governor involves moral turpitude ; or

(c) has engaged during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Co-operative Election Commissioner.

(7) The State Government, after consultation with the State Co-operative Election Commissioner, shall provide the officers and employees for his office, to assist him in performing his functions under this Act.

(8) The State Government shall, when so requested by the State Co-operative Election Commissioner make available to the State Co-operative Election Authority such staff as may be necessary for discharge of the functions conferred on the State Co-operative Election Authority by sub-section (1).

(9) (a) If any person to whom sub-section (8) applies is, without reasonable cause, guilty of any act or omission in discharge of his official duty, he shall, on conviction, be punished with fine which may extend to five hundred rupees.
(b) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

Explanation.—For the purposes of this sub-section, the expression “persons to whom sub-section (8) applies” are the Returning Officers, Assistant Returning Officers,

Presiding Officers, Polling Officers and any other persons appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression “official duty” shall be construed accordingly, but shall not include duties imposed otherwise than by or under this Act.

- (10) *Notwithstanding anything contained in any law for the time being in force, the election of the committee of each society shall be conducted by the State Co-operative Election Authority before the expiry of the term of the existing committee so as to ensure that the newly elected members of the committee assume office immediately on the expiry of the office of the members of the outgoing committee.*
- (11) *The State Co-operative Election Authority shall hold the elections of the society or class of societies as per the procedure, guidelines and the manner, including using the latest technology and expertise, as may be prescribed :*

Provided that, the State Government may, considering the objects of the society, class of societies, area of operation and norms of business and for proper management and interest of members, may by general or special order, classify the societies in such manner as may be prescribed.

Provided further that, in case of housing society having less than or up to 250 members, the elections of the Committee shall be conducted by the said housing society in the manner as may be prescribed.

- (12) *The State Co-operative Election Authority shall conduct elections to the committee and also to office of President or Chairperson, Vice-President or Vice-Chairperson and such other office bearers as are required to be elected as per the by-laws of the society, within fifteen*

days from the constitution of the committee after a general election.

- (13) There shall be an Election Fund maintained at level of the State Co-operative Election Authority. Every society shall deposit in advance, the estimated amount of expenditure on its election, as may be prescribed and required by the State Co-operative Election Authority towards the Election Fund. The State Co-operative Election Authority shall incur the necessary expenses, for the conduct of the elections of the societies, including the election of the office bearers, from the said fund. The expenses of the holding of any election, including the payment of travelling allowances, daily allowances and remuneration, if any, to the persons appointed to exercise the powers and perform the duties in respect of the election, shall be incurred from the said fund and the expenditure shall be made in the manner prescribed. The Registrar, on requisition by the State Co-operative Election Authority, shall recover expenses of holding election from any such society or class of societies :

Provided that, if any society fails to pay the election expenses, the Registrar may issue the recovery certificate for recovery of the amount due and such amount shall be recovered as arrears of land revenue.

- (14) The committee of every co-operative society shall,—
- (a) inform the State Co-operative Election Authority about the expiry of its term of office at-least six months before the date of expiry of such term;
 - (b) inform any casual vacancy occurred in the committee or its office bearers, within fifteen days of the occurrence of such vacancy ;
 - (c) furnish such books, records and information as the State Co-operative Election Authority

may require as per the calendar specified by the State Co-operative Election Authority ;

(d) provide all necessary help, assistance and co-operation for the smooth preparation of electoral rolls for the conduct of elections.

- (15) *Where in respect of any society, the term of its committee has expired before the date of commencement of the Maharashtra Co-operative Society (Second Amendment) Act, 2018, the election to such committee shall be held by State Co-operative Election Authority within a period of six months from the date of such commencement:*

Provided that, in respect of such a society, the committee shall continue to hold the office till such a period of six months or declaration of results of election of such a society whichever is earlier:

Provided further that, in case of society doing business of banking, the requisition made or guidelines issued by the Reserve Bank of India or the National Bank shall prevail.

Provided also that, where the election of the Committee of any society which was due but has not been conducted before the date of commencement of the Maharashtra Co-operative Societies (Second Amendment) Act 2020, then election of Committee of such society shall be conducted,-

(a) within six months from the date of commencement of the said Amendment Act; or

(b) where the period within which such election should have been conducted is extended by the State Government by general or special order, then within six months from the date on which such extended period expires:”

7. Rules 3, 6 and 9 of the Maharashtra State Cooperative Societies (Election to Committee) Rules, 2014 read

thus:-

“Rule 3. Powers of State Co-operative Election Authority (SCEA).—

In order to conduct the elections of the co-operative societies, the SCEA shall have the following powers, namely :—

- (i) *to appoint any officer or employee of the State Government, or any Co-operative Society, or any Local Body on any post with such designation and duties for the purpose of conducting the elections; and it shall be obligatory on every officer or employee so appointed, to perform the duties assigned to him, failing which he shall be liable for prosecution for having committed contempt of the lawful authority of the public servant within the meaning of Chapter ‘X’ of the Indian Penal Code, 1860 :*

Provided that, the State Co-operative Election Authority may by general or special order direct any officer or employee of the State Government not below the rank of District Deputy Registrar to exercise its powers under this clause :

Provided further that, such officer or employee shall work under the general superintendence and control of the State Co-operative Election Authority;

- (ii) *to requisition any public or private premises, vehicles, services or any other material required for holding the election, from any office of the State Government, Local Body, Co-operative Societies as he may deem necessary. On service of such requisition, it shall be obligatory on the authority to whom such requisition is made, to forthwith hand over the possession of premises, vehicles or any other material, as the case may be, to the Requisitioning Authority or any person authorized by him in that behalf ;*

Provided that, the State Co-operative Election Authority may, by general or special order, direct any officer or employee of the State Government not below the rank of District Deputy Registrar to exercise its powers under this clause;

- (iii) to prescribe the code of conduct to be implemented in the area of operation of the society according to the nature of business or class of societies;*
- (iv) to appoint Observers and Zonal officers, who shall be appointed with a view to keep watch for smooth and fair conduct of elections as and when required.*
- (v) to issue such special or general orders or directions for fair and free elections, which shall not be inconsistent with the provisions of the Act and the Rules.*
- (vi) to issue general or special orders, from time to time, regarding the estimated amount of election expenditure for societies or class of societies to be deposited in the 'Election Fund' in advance by the society as required by sub-section (13) of section 73 CB of the Act. The State Co-operative Election Authority may consider to determine estimated amount of expenditure based on criteria's such as number of voters, number of candidates, number of polling stations, number of constituencies, area of operation, class of the societies, etc. for the conduct of the free and fair elections of the societies, including the election of the office bearers."*

"Rule 6. Provisional list of voters for co-operative societies having individuals as members :—

- (1) A provisional list of voters shall be prepared by every society in the year in which the election of such society is due to be held. The member who has completed minimum two years as*

member from the date of his enrolment up to the date of expiry of term of existing Committee and who is an active member shall be included in the provisional list as laid down in sections 26 and 27 of the Act. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise, if required, as laid down in the bye-laws.

Explanation:- For the purposes of this sub-rule, “the date of expiry of term of existing committee” means the date on which the existing managing committee completes the period of five years from the date of election.

- (2) *The period of two years as provided in sub-section (3A) of section 27 of the Act is to be counted from the date of enrollment of member to the date when election of the managing committee of the society becomes due:*

Provided that, the period of two years shall not be counted in respect of a co-operative housing society and a co-operative premises society as provided in the proviso to sub-section (3A) of section 27 of the Act:

Provided further that, in case of societies where the elections could not been held before the expiry of the term of the committee due to unforeseen situations or any other reason, a provisional list of the voter shall be prepared on the basis of the date fixed by the SCEA:

Provided also that, provisional list of voters of the society having its first elections due after term of expiry of the provisional committee under clause (a) of sub-section (1A) of section 73 shall comprise of all the members as on the date of election when due:

Provided also that, the provisional list of the voters of the society on which an authorized officer is appointed under section 77A or an administrator is appointed under section 78A,

shall be prepared on the basis of the date fixed by the SCEA.

- (3) Four copies of the authenticated provisional lists of voters in print as well as preferably in digital form shall be delivered by the committee of the society to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, or as directed by the SCEA, one hundred and twenty days before the date of expiry of the term of Committee. Copies of such lists shall be displayed on the notice board of the society. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer within ten days from its receipt shall invite claims and objections from the members of the society.*
- (4) If any committee fails to deliver copies of the provisional lists of voters to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer on or before the due date, the District Co-operative Election Officer or concerned Taluka Co-operative Election Officer shall himself or through any person authorized by him in this behalf, prepare such provisional list of voters and the expenditure incurred therefore shall be recovered from the committee or other persons responsible therefore, as arrears of land revenue.*
- (5) In the event of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer taking action under the last preceding sub-rule, he shall also cause copies of the provisional list of voters to be displayed on his notice board and notice board of the society within ten days from the date of receipt of such list from the society for inviting claims and objections from the members of the society:*

Provided that, such list may be published on the official website of SCEA and the Co-

operation Department.”

“Rule 9. Provisional list of voters for the societies having society or society and individuals as members.—

- (1) A provisional list of voters shall be prepared by every society in the year in which the elections of such society are due to be held. The active members who have completed minimum two years as members from the date of their enrolment up to the date of expiry of term of existing managing committee and in case of society being a active member who has completed minimum three years from the date of enrollment to the date of expiry of period of existing managing committee; shall be included in the provisional list as laid down in section of 27. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise as laid down in the bye-laws.

Explanation:- For the purposes of this sub-rule, “the date of expiry of term of existing committee” means the date on which the existing managing committee completes the period of five years from the date of election.

- (2) The period of three years provided in sub-section (3) of section 27 of the Act is to be counted from the date of enrollment of member to the date when election of the managing committee of the society becomes due:

Provided that, in case of societies where the elections could not be held before the expiry of the term of the committee due to unforeseen conditions or any other reason, provisional list of the voter shall be prepared on the basis of the date fixed by the SCEA:

Provided further that, provisional list of voters of the society having its first elections due after term of expiry of the provisional

committee under section 73 (1A) (a) shall comprise of all the members as on the date of election when due:

Provided also that, the provisional list of the voters of the society on which an authorized officer is appointed under section 77A or an administrator is appointed under section 78A shall be prepared on the basis of the date fixed by the SCEA.

- (3) Four copies of the authenticated provisional lists of voters shall be delivered in print as well as preferably in digital form by the committee of the society to the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer, or as directed by the SCEA one hundred and twenty days before the date of expiry of the term of Committee. Copies of such lists shall be displayed on the notice board of the society. The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, within ten days from its receipt, call for inviting claims and objections from the members of the society.*
- (4) If any committee fails to deliver copies of the provisional lists of voters to the election officer on or before the due date, the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall himself or through any person authorized by him in this behalf, prepare such provisional list of voters and the expenditure incurred therefor shall be recovered from the committee responsible therefore, as arrears of land revenue.*
- (5) In the event of the District Co-operative Election Officer or Taluka or Ward Cooperative Election Officer taking action under the last preceding sub-rule, he shall also cause copies of the provisional list of voters to be displayed*

on his notice board and on the notice board of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer and of the society within 10 days from the date of receipt of such list from the society for inviting claims and objections from the members of the society :

Provided that, such list may be published on the official website of SCEA and the Co-operation Department.”

8. In **Ramchandra Ganpat Shinde (supra)**, the Honourable Supreme Court has observed in paragraphs 4, 5, 6 and 7 as under:-

“4. Rule 4(1) of the Rules provides thus:
4(1) A provisional list of voters shall be prepared by every society for the year in which general election is due to be held. Persons who are members as on the 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. If different constituencies are provided in the bye-laws, the names of voters shall be arranged constituency wise as laid down in the bye-laws:

Provided that, if any case, the preparation of the provisional list of voters falls due after the expiry of a period of six months from the 30th June, the Collector may, in consultation with the Registrar in respect of the societies, of the categories mentioned in Clauses (i), (v), (vi) and (vii) of Sub-section (1) of Section 73G, and in consultation with the District Deputy Registrar in respect of the societies the other categories mentioned in Sub-section 1 of Section 73G, by order, change the date of the 30th June and subsequent dates

and fix revised dates for the purpose of these rules

5. Its reading adumbrates that the provisional list of voters of society shall be prepared by the society for "the year in which general election is due to be held". Persons who are members as on 30th June of the year immediately preceding the year in which such election is due, shall alone be included in the provisional list. Thereby, it is clear that the society shall prepare a provisional list of voters, comprising of all the members of that society for the year in which general election is due to be held. But the persons who are members of the society as on 30th June of the immediately preceding the year in which such election is due should alone be included in the provisional list and eligible to vote at the election. Under the proviso, if the preparation of the provisional list falls due after the expiry of the period of six months from 30th June, then the Collector is enjoined to consult the Registrar or the Dist. Deputy Registrar as the case may be based, on the class of society envisaged under Section 73G; he should pass an order changing the date of 30th June and prescribe a subsequent date; fix revised date for the purpose of preparing the provisional list and ensure the procedure for declaration of the final list.
6. It is the case of the appellants that after the final list was published by the Dist. Collector on December 17, 1991, A.K. Patil, the Chairman, got enrolled 2000 members and made them eligible to exercise franchise in his favour apprehending that he would be defeated in the general election, colluded with More and Mule, i.e. Director and a member of the society respectively, got filed collusive writ petitions, abused the process of the court, played fraud on the court and obtained collusive orders to make the provisional list of voters to be as on

June 30, 1992 and to conduct elections on that basis. The Dist. Collector filed counter-affidavit in this Court admitting that Rule 4 and the circular issued by the Govt. in this behalf envisage that the final list of voters in force before the postponement of the election by the State Govt. shall be valid but since the High Court issued the direction to treat June 30, 1992 to be the date for reckoning the provisional list of voters to be valid, he had no option but to abide by the direction and to conduct the election in terms thereof. As stated earlier that though respondents 5 to 7 were served, they did not file any counter denying the allegations of the appellants made against them.

7. We have already noted that under Rule 4 provisional list of voters shall be prepared by every society "in the year in which general election is due to be held". It is not due under law as contended for the Society. What is the meaning of the above quoted phrase is to be gathered from the statutory operation of the law. The term of the Managing Committee was to expire on December 3, 1991. Under the Act the election to the managing committee of the society shall be held under Section 73G before the expiry of the term in accordance with the provision in chapter 11A of the Act, the Rules and the bye-laws of the society. The year in which the general election due is, therefore, the year 1991. If the elections were not conducted before its expiry, by operation of Sub-section 2B of Section 73G, the members of the existing committee should cease to hold office on its expiry of extended term as the case may be and should be deemed to have vacated their offices. By operation of Sub-section (3) of Section 73G, the general body of the members of the society should elect the members of the managing committee. Therefore, before the expiry of the

term of the committee the general election to the Managing Committee is due. Black's Law Dictionary, sixth edition at. p.500, meaning of the words 'due date' has been stated thus: "In general, the particular day on or before which something must be done to comply with law of contractual obligation". When Section 73G, provisions in Chapter XIA and the bye-laws read with Rule 4 envisage that the election to the managing committee should be conducted before the expiry of the term, the Society has been enjoined under Rule 4(1) to prepare the provisional voters list of the members as on June 30th of the year "immediately preceding the year" in which such general election is due to be held and submit the same to the Dist. Collector. The Legislature, thereby intended that despite the existence of the members on the admission register of the society, only those members who were admitted and valid as members on or before 30th June of the year immediately preceding the year in which such general election is due alone are eligible to exercise the franchise and to be included in the provisional list. Thereafter on publication in the Notice Board under Rule 6(1) and considering the objections, suggestions or improvements if any made, the Collector is enjoined to finalise the list under Rule 7 and have it published as "final list of voters". The proviso would operate only in case the preparation of the provisional list of voters falls due after the expiry of the period of six months from the 30th June, then only, after consultation with the designated officer, the Collector, by an order, may change the date of 30th June and fix a subsequent date as revised date to submit the provisional list of voters. In this case the proviso has no application for the reason that the provisional list had already been approved and published by the Collector

as per the law on December 17, 1991. It was not challenged. Therefore, the year in which the general election to the society is due is the date as per the operation of law i.e. 1991 but not due after the expiry of the period as postponed by the State Govt. Obviously, for that reason the Govt. also had issued instructions on September 28, 1992 that in case the provisional list was approved and the final list was published prior to the postponement of the election, the election should be conducted in accordance with the final list published under Rule 7 of the Rules.”

[Emphasis supplied]

9. It is, therefore, apparent that the valid voters list is to be prepared in the year preceding the year in which the elections are due to be held. However, in the peculiar facts of this case wherein the elections were over-due and were not held for almost 2 years, that the litigating parties before us have accepted the decision of the SCEA in directing the cut-off date as 01.02.2023. The parties acted on the said cut-off date and after the program for finalization of the valid voters list was declared by the authority, the prescribed procedure was followed and the final voters lists were prepared. The postponement of the elections was under a declaration that the elections would be held after 30.09.2023 and the process of elections would be taken forward

from the stage at which they were postponed.

10. In **Kuntinath Appanna Nilapgol (supra)**, this Court has observed in paragraphs 25 to 28 as under:-

25. *An attempt was made on behalf of the Petitioners to make out a case that Rule 8, as quoted above, has its own field of operation and it is totally uncontrolled by Rule 4 sub-rule (1) and, as such the Collector has power under Rule 8 to fix any date, of course, in consultation with the District Deputy Registrar. If that be so, in our opinion, it will create a very anomalous position and, moreover, the important part of Sub-rule (1) of Rule 4 bearing reference to the order in which the general election is due, will be given a complete go-bye.*
26. *It is nobody's case that under Rule 8, the Collector can announce elections even though they are not due. For this purpose, we may refer to Section 73G of the said Act. Under sub-section (2), the term of the Committee is fixed for a period of five years to be counted from the date on which the first meeting is held. There is further reference to the extension being given by the State Government not exceeding a period of one year.*
27. *The elections will, therefore, become due only in the year in which the term of the Committee is to come to an end. If this is understood in the light of the aforesaid provisions of sub-section (2) of Section 73G of the said Act, in our opinion, it could mean that if, no extension is granted, in the 5th year, elections will be due. If extension is granted, at the most, in the 6th, year counted from the date on which the first meeting is held, the election would become due.*
28. *In the instant case, the election had become due in the year 1998, i.e. before 3rd December,*

1998, when the term ordinarily has come to an end. With reference to that date, everyone agrees to it but for the proviso of Sub-rule (1) of Rule 4 of the said Rules, for the purpose of provisional voters list, the date is 30th June, 1997. According to the proviso, if preparation itself falls due after the expiry of a period of six months from the 30th June, 1997, the Collector may in consultation with the Registrar or the District Deputy Registrar, as the case may be, change the date of the 30th June, 1997 to subsequent dates and fix revised dates for the purpose of these Rules.”

11. In **Mohanrao Anandrao Munde (supra)**, this Court has held in paragraph 14 as under:-

“14. For the reasons recorded above, we, therefore, allow the petition and quash and set aside the action of the respondents, contained in the order dated 2nd September, 2006 of staying the programme of election of the respondent No. 6 specified co-operative society and the consequential notification published by the Assistant Election Officer for Majalgaon Sahakari Sakhar Karkhana Ltd., Sundarnagar, Telgaon, Tq. Majalgaon, district Beed, dated 4th September, 2006. We also direct the respondent Nos. 1 to 5 to hold the elections, in accordance with the provisions of Maharashtra Specified Co-operative Societies (Election to the Committees) Rules, 1971 from the stage where the programme was stayed after publishing the revised programme. The revised programme shall be published within one week from today.”

[Emphasis supplied]

12. In an unreported order dated 13.12.2022 delivered at the Aurangabad Bench in **Bhosale Dattaram Madhavrao** (*supra*), this Court has held in paragraphs 10 and 11 as under:-

- “10. Even otherwise the elections have been postponed till 20.12.2022. It implies that the State Cooperative Election Authority would be able to proceed and conduct the elections of the Societies from the stage at which they have reached, immediately after 20.12.2022. Mr. Kadam who appears for the authority on instructions submits that it is bound by the programme and would commence the elections of the Societies from the stage they have reached on 29.11.2022 from 21.12.2022 onwards depending upon the stage and the duration for completing each stage.
11. Considering all the aforementioned facts and circumstances, we deem it appropriate to dispose of the writ petitions by directing the State Cooperative Election Authority to resume the election process from the stage it has reached in respect each of such Societies from 21.12.2022 onwards. The State Cooperative Election Authority shall publish the revised programme in respect of each of the Societies by 16.12.2022.”

[Emphasis supplied]

13. In an unreported order dated 11.01.2021 delivered at the Principal Seat in **Kharade Seva Sahakari Society Ltd.** (*supra*), this Court has held in paragraph 6 as under:-

- “6. In view of these circumstances, we direct the respondent nos.2 and 3 to resume the process of conducting elections in accordance with the

programme which was issued on 23rd December 2019 page 68 of the writ petition from the stage it was left and shall complete the entire process on or before 31st March 2021.”

[Emphasis supplied]

14. In **Deorao Vithoba Kale (supra)**, on point of the power to review an order, this Court has held in paragraph 2 as under:-

“2. Shri Paliwal, the learned Counsel for the petitioner, in the first place, contended that the impugned order is violative of the principle of natural justice inasmuch as, admittedly removal has taken place without issuing any show cause notice to the petitioner. It seems to us that grievance made in this connection is sound. On merits, it was contended that in view of the provisions of section 78(1)(b) of the Act, there is no bar to the appointment of the same person over again after the disqualification is removed. If that was the intention of the legislature in place of the word "person" the word "other person" would have been incorporated in the said section. Shri Desai, the learned Assistant Government Pleader, on the other hand, contended that by virtue of the fact that appointment has to be in his place it has to be presumed that the appointment of the same person was prohibited. We have given our thought to this question and in our judgment interpretation put on behalf of the State is fallacious. On the language of the provision, we see nothing illegal in reappointment of a person after the disqualification is wiped out. Moreover, we fail to appreciate under what provision of law the third respondent reviewed his own order. The only power of review in the

Act is to be found in section 150 but obviously it does not grant any jurisdiction to the third respondent for review. It was further contended that the order of nomination (Annexure-IV) was void ab initio and, therefore, the third respondent had every jurisdiction to correct his own mistake when he noticed it. We are unable to see how this appointment is void ab initio. It is a common point that either on the date of his fresh nomination on 14-2-1980 or subsequently, the petitioner had not incurred any disqualification.”

[Emphasis supplied]

15. In **Jai Mahavir Cooperative Housing Society**

(*supra*), it was concluded in paragraph 14 as under:-

“14. When the respondent submitted his dispute to the Registrar and the Registrar after examining the matter came to the conclusion that it was a dispute which could be entertained within the scope of S. 96 and therefore referred it to his nominee for decision. It could not be doubted that the Registrar exercised jurisdiction under S. 96 and came to the conclusion and therefore the High Court was right in coming to the conclusion that once the Registrar takes this decision he has no power to review his order. In this view of the matter we see no reason to entertain this appeal. The appeal is therefore dismissed. In the circumstances of the case parties are directed to bear their own costs.”

[Emphasis supplied]

16. Part III of the Rules of 2014, pertains to preparation of the electoral roll. Rule 6 reproduced above, would indicate

under clause 2 that the period of two years as provided in sub-section (3A) of Section 27 of the Act of 1960 is counted from the date of enrollment of a member to the date when the election of the Managing Committee of the society becomes due. Proviso thereunder indicates that the period of two years shall not be counted in respect of a cooperative housing society and cooperative premises society.

17. Section 27(3A) of the Act of 1960 prescribes that an individual member of the society shall not be eligible for voting in the affairs of that society for a period of two years from the date of his enrollment as a member of such society. As such, on a conjoint reading of Rule 6(2) with Section 27(3A), it is obvious that a member is not permitted to vote in an election for a period of two years from the date of his membership. It is apparent that the intent, object and logic behind such provisions is to ensure that unfair acts of a desirous candidate in sponsoring members by increasing the membership as soon as he gets the wind of fresh elections, can be curbed.

18. In the instant case, the programme for finalization of the voters list was already published and the cooperative societies/ sugar factories completed the process of finalization of

the voters list after painstakingly following the due procedure prescribed. When the elections were postponed, every society was made to believe that the election programme would commence from the stage at which the elections were postponed.

19. We find that the impugned order contains reference to 2 orders of this Court. However, both are short orders which do not lay down a law. So also, the reason cited does not justify the change in the cut-off date. We do not find any such reason in the impugned order, which would stand the test of re-fixing the cut off date.

20. It is, thus, well settled that though in certain circumstances, the SCEA may re-fix the cut-off date, this can be done only by following the due procedure laid down in law and for sound reasons which would justify such a step. Such action will have to be scrutinized depending on the facts and circumstances in each case and there cannot be a 'cut and dried' strait jacket formula to be applied mechanically in every case. In the instant cases, the impugned order does not reflect any such reasons or circumstances, which would justify re-fixing of the cut-off date. So also, the final voters list is ready as on 30.06.2023 by following the cut-off date 01.02.2023, which is

not too stale/old, to be discarded. In fact, the revised cut-off date 01.10.2023, would amount to 'cutting too close' to the proposed elections as this would result in granting voting rights to those persons who may have been enrolled as new members after 01.02.2023 and until 01.10.2023. Moreover, the State had announced that the elections would be held after 30.09.2023, from the stage at which they were postponed.

21. Considering the aforesaid analysis of the facts, circumstances, the provisions of law and the cited reports, **both these Writ Petitions are allowed. The impugned orders dated 03.10.2023, stand quashed and set aside to the extent of these Petitioners.** We direct the SCEA to proceed to declare the election program from the stage at which it was postponed.

22. Rule is made absolute in the above terms. No order as to costs.

kps (Y.G. KHOBRADE, J.) (RAVINDRA V. GHUGE, J.)