



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

**WRIT PETITION NO.13315 OF 2023**

Prabhat s/o Daulatrao Patil  
Age: 80 years, Occu.: Agri.,  
R/o. Digras, Tq. Udgir, Dist. Latur.

.. Petitioner

**Versus**

1. The State of Maharashtra  
Through Principal Secretary,  
Cooperation Department,  
Mantralaya, Mumbai-32.
2. State Cooperative Election Authority,  
Maharashtra State, Pune,  
Central Building, Pune,  
Through its Commissioner/Secretary
3. District Cooperative Election Officer,  
Latur @ District Deputy Registrar,  
Cooperative Societies, Latur.
4. Assistant Registrar,  
Cooperative Societies,  
Udgir, Tq. Udgir, Dist. Latur.
5. Udgir Taluka Shetkari Sahakari  
Kharedi Vikri Sangh, Maryadit,  
Udgir, Through its Secretary.
6. Deoni Taluka Shetkari Sahakari  
Kharedi Vikri Sangh, Maryadit,  
Deoni, Through its Secretary.
7. Jalkot Taluka Shetkari Sahakari  
Kharedi Vkiri Sangh, Maryadit,  
Jalkot, Through its Secretary.

8. Shirur Anantpal Taluka Shetkari  
Sahakari Kharedi Vkiri Sangh  
Maryadit, Shirur Anantpal,  
Through its Secretary.
9. Chakur Taluka Shetkari Sahakari  
Kharedi Vikri Sangh Maryadit,  
Chakur, Through its Secretary.
10. Latur Taluka Shetkari Sahakari  
Kharedi Vikri Sangh Maryadit,  
Latur, Through its Secretary.

(Respondent Nos.7 to 10 deleted  
as per Court order dated 07.11.2023)

.. Respondents

.....  
Mr. M. S. Deshmukh, Advocate for the Petitioner.  
Mr. P. S. Patil, AGP for Respondent Nos.1 and 4 – State.  
Mr. V. H. Dighe, Advocate for Respondent Nos.2 and 3.  
Mr. A. N. Irpatgire, Advocate for Respondent No.5.  
Mr. K. P. Rodge, Advocate for Respondent No.6.  
.....

**CORAM : SMT. VIBHA KANKANWADI AND  
S. G. CHAPALGAONKAR, JJ.**

**RESERVED ON : JANUARY 09, 2024.**

**PRONOUNCED ON : JANUARY 19, 2024.**

**JUDGMENT (Per Smt. Vibha Kankanwadi, J.) :-**

. Rule. Rule made returnable forthwith. Heard learned Counsel for the  
appearing parties finally by consent.

2. Present writ petition has been filed by the petitioner for following  
reliefs :-

“A) Issue Writ of Mandamus and or other appropriate Writ or order in the like nature thereby direct Respondent No.2 to 4 to direct the Respondent No.5-Udgir Sangh to submit list of valid members to prepare provisional voters list for the purposes of ensuing election of Respondent No.5-Udgir Sangh only containing names of members who are falling within the area of operation of Respondent No.5-Udgir Sangh by keeping in mind statutory order passed by Respondent No.4-Assistant Registrar Cooperative Society, Udgir dated 18.04.2012 (Anne.-F) as well as report submitted by Respondent No.4 dated 18.08.2023 (Anne.-K).

B) By an interim order the Respondent Nos.2 to 4 be directed to direct the Respondent No.5-Udgir Sangh to submit list of valid members to prepare provisional voters list for the purposes of ensuing election of Respondent No.5 Udgir Sangh only containing names of members who are falling within the area of operation of respondent No.5 Udgir Sangh by keeping in mind statutory order passed by respondent No.4 Assistant Registrar Cooperative Society, Udgir dated 18.04.2012 (Anne.-F) as well as Report submitted by Respondent No.4 dated 18.08.2023 (Anne.-K), pending hearing and final disposal of instant petition.”

3. The petitioner contends that he is resident of Digras, Taluka Udgir, District Latur and he is a valid member of respondent No.5 and, therefore, entitled to participate and vote in the election process of respondent No.5. Respondent No.5 was established and registered in the year 1974 having area of operation of entire Udgir Taluka, however, in the year 1999, two

Talukas, namely, Deoni and Jalkot came to be established carving out some area from erstwhile Udgir Taluka. Thereafter, two independent Cooperative Kharedi Vikri Sangh namely respondent Nos.6 and 7 came to be established in the year 2002 under the provisions of Maharashtra Cooperative Societies Act, 1960 having area of operation of those respective Talukas. Respondent No.3 was bound to ask respondent Nos.6 and 7 to prepare valid membership list by incorporating names of members in the membership register from the respective Talukas as per their by-laws and upon preparation of such list, the consequence should have been to remove the names of those persons from the register of membership from respondent No.5. Respondent No.5 failed to hold elections within specified time and, therefore by invoking powers under Section 73H of the Maharashtra Cooperative Societies Act, 1960, Administrator came to be appointed on 10.10.2011. Thereafter the elections of Managing Committee of respondent No.5 was held in the year 2016 for the term of 2016-2021. The Managing Committee which came to be elected still continued to hold the office till the filing of the petition. But prior to that when Government Administrator was appointed in 2011, a resolution was passed to send a proposal dated 31.10.2011 for request to transfer members of respondent No.5, who were residing within the area of operation of newly established respondent Nos.6 and 7. The said proposal was forwarded by respondent No.4 to respondent No.3 by letter dated 02.11.2011. Resolution No.2 was adopted by

respondent No.5 in the meeting held on 07.04.2012 thereby cancelling membership of those members, who were not falling within the area of operation of respondent No.5, in view of Section 25 of the Maharashtra Cooperative Societies Act, 1960. The share amounts of those members were kept in suspense account. In spite of repeated requests, the newly established respondent Nos.6, 7 and 9 were not incorporating the names of the members those falling within their jurisdiction, who were the members of erstwhile respondent No.5. Respondent No.4 thereafter addressed a letter dated 28.02.2012 to respondent No.3 to issue directions to respective Sangh's to effect the said enrollment of the members. Even after lapse of more than ten years of order dated 20.03.2012 issued by respondent No.3 to take action as per the letter of Administrator appointed on respondent No.5 dated 27.02.2012, respondent Nos.6, 7, 9 and 10 have failed to make compliance of the same. The petitioner has given a letter on 05.06.2023 to respondent No.2 pointing out all these facts and to carry out the orders and in view of his representation, the respondent No.2 asked respondent No.3 by order dated 13.06.2023 to take appropriate action in the light of the representation. Still, there is no progress, hence, the petitioner has filed the present petition.

4. Heard learned Advocate Mr. M. S. Deshmukh for the petitioner, learned AGP Mr. P. S. Patil for respondent Nos.1 and 4, learned Advocate

Mr. V. H. Dighe for respondent Nos.2 and 3, learned Advocate Mr. A. N. Irpatgire for respondent No.5, and learned Advocate Mr. K. P. Rodge for respondent No.6.

5. Learned Advocate for the petitioner has taken us through the documents produced on record to support the contention of the petitioner. The fact is not in dispute that after the two Talukas were established from the jurisdiction of erstwhile Taluka Udgir, respondent Nos.6 and 7 were formed and, therefore, the learned Advocate for the petitioner submits that the list of members ought to have been therefore prepared. The petitioner is agitating since long, but still the earlier elections were held without adhering to the resolution passed and order passed as aforesaid. When one Sangh i.e. respondent No.5 had passed the resolution regarding cancellation/transfer of members, then the consequent or reciprocal action ought to have been taken by respondent Nos.6 and 7. Respondent No.2 had also directed respondent Nos.6 and 7 to carry out those resolutions, but respondent Nos.6 and 7 appear to be stubborn on the point.

6. The learned Advocate for the petitioner has relied on the decisions of the Hon'ble Supreme Court as well as this Court, which are as follows :-

**I) Ahmednagar Zilla S. D. V. and P. Sangh Ltd. And another Vs. State of Maharashtra and others, [AIR 2004 SC 1329];**

II) **Pundlik Vs. State of Maharashtra and others,**  
(2005) 7 SCC 181;

III) **Ankita Gaurav Mungad and others Vs. The State of Maharashtra and others,** decided by this Court in Writ Petition No.511 of 2023 dated 27.03.2023.

IV) **Ankushbhau s/o Juglal Baghele and others Vs. State of Maharashtra and others,** decided by this Court Bench at Nagpur on 13.04.2022.

V) **Union Territory of Ladakh and Ors. Vs. Jammu and Kashmir National Conference and another,** AIR Online 2023 SC 739.

7. He further submitted that though in the affidavit-in-reply of respondent No.5 it is said that it is a premature action of the petitioner as elections are not proposed to be held, yet in **Ahmednagar Zilla S. D. V. and P. Sangh Ltd. (Supra)**, it has been observed where the voters list has been prepared on the basis of non-existent rules, it would be illegal and the Court could interfere under Article 226 of the Constitution of India. The preparation of voters list as per the rules is necessary, then only the elections can be held properly in a fair manner.

8. The affidavit-in-reply has been filed by one Sangmeshwar s/o Vishvambhar Badnale, District Deputy Registrar, Cooperative Societies and District Cooperative Election Officer, Latur. It is on behalf of respondent

Nos.2 and 3. He admitted the fact that the names of certain members have not been deleted from the membership register of respondent No.5, but in the last election of respondent No.5 which took place in the year 2016, those members in fact participated in the elections as their names were not deleted. The application/representation has been given by the petitioner to the office of respondent No.2 on 05.06.2023 and thereafter the communication has been made by respondent No.2 to respondent No.3. Respondent No.5 appears to have responded to the communication of respondent No.3, wherein the respondent No.5 had stated that there is no provision to cancel the membership under Section 25 of the Maharashtra Cooperative Societies Act. There was Administrator on respondent No.5 till 11.09.2014, but the Administrator had not taken any steps in respect of deletion of the names. The same objection was taken when the elections of 2016 were held that certain members are residing outside the jurisdiction of the society. Those objections were rejected by the Election Officer, Latur on 31.03.2016. No steps were taken by any person to set aside the said order. The term of respondent No.5 Udgir Sangh is already expired and due to the postponement of election by the Government, elections have not been held. Now, the stay imposed by the government in holding the elections has been lifted. The process would be undertaken including the stage of preparation of voters list. The provisional list would be then published in accordance with Rules 6 to 11 of Maharashtra Cooperative

Societies (Election to Committee) Rules, 2014.

9. Learned Advocate for respondent Nos.2 and 3 by submitting the submissions on the basis of the affidavit-in-reply submitted that the schedule has been published in respect of preparation of provisional voters list. The petitioner may raise any objection, if he want.

10. Affidavit-in-reply on behalf of respondent No.5 has been filed by one Maroti Kerba Biradar, who is the Manager of respondent No.5. It is stated that the writ petition virtually seeks the execution of communication dated 18.04.2012, which cannot be allowed in the year 2023. Petitioner had added respondent Nos.6, 7, 9 and 10, but chosen to delete the names of those respondents at his own risk. In the said circumstance, writ petition suffers from non-joinder of necessary parties. The provisional voters list would be prepared by exercising powers under the provisions of Maharashtra Cooperative Societies (Election to Committee) Rules, 2014, but in that process respondent Nos.2 to 4 have no authority to decide the entitlement of a particular person to hold the membership. The petition is premature as regards the act of preparation of the voters list. The petitioner is having remedy to object the said list, after its publication.

11. Learned Advocate for respondent No.5 while supporting the said affidavit-in-reply submitted that the petition is premature. He submitted

that a membership of a member of Cooperative Society will not cease automatically that too on the basis of action taken by Administrator. He relied on the decision in **S. M. Kamble and others Vs. Jt. Registrar, Co-operative Societies, CIDCO, Navi Mumbai and others**, [2007 (6) Mh.L.J. 819]. In the above said decision, it was held that a person ceases to be a member of the society on his resignation being accepted or on his transfer of the whole share or interest in the society to another member or on his death or on his removal or expulsion from the society. Further, in the said decision, the Administrator appointed on the co-operative society has declared that 27 members of the society were not eligible to be members and ceased to be members since they are not residing in the State of Maharashtra for required period of 15 years or more. The action of Administrator was held to be illegal by this Court.

12. Here, we echo the observations by this Court in **S. M. Kamble and others (Supra)** on the point that Section 25 of Maharashtra Cooperative Societies Act, 1960 provide for Cessation of membership in a particular way. Section 25 of the Maharashtra Cooperative Societies Act, 1960 reads thus :-

**“25. Cessation of membership –**

A person shall cease to be a member of a society on his resignation from the membership thereof being accepted, or on the transfer of the whole of his share or interest in the society to another

member, or on his death, or removal or expulsion 'from the society, or where a firm, company, any other corporate body, society or trust is a member on its dissolution or ceasing to exist.

13. Here, it has not been pointed out by the petitioner that any such act as stated in Section 25 of the Maharashtra Cooperative Societies Act has taken place in respect of the members of erstwhile respondent No.5 or present respondent No.5. In view of the creation of the two Taulkas, the Administrator could not have taken a decision to transfer the membership on his own. In fact, there is no provision for transfer at the behest of Administrator. Whatever action was taken by the Administrator was way back in the year 2011. Whether passing of unilateral resolution or unilateral action by respondent No.5 would have amounted the cessation of membership is a factual aspect, which cannot be gone into in the writ jurisdiction of this Court, but the fact remains is that those members appear to have participated in the election of 2016. There is no documentary proof produced by the petitioner to prove that he had raised the similar objection or taken objection to the voters list prepared at the time of election of 2016. Whatever representation he has made is on 05.06.2023.

14. The Election Officer has given it in writing and also that the programme of preparation of provisional voters list would be undertaken and then, certainly, there would be a liberty to the petitioner to take objection which will have to be decided by the concerned authority. We

have gone through the decisions relied upon by the petitioner, but those are not applicable to the facts of the present case. Under the said circumstance, we are of the considered view that no case is made out for exercise of constitutional powers of this Court under Article 226 of the Constitution of India.

15. The writ petition thus stands dismissed.

16. Rule stands discharged.

**[ S. G. CHAPALGAONKAR ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm