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WP ELECTION sugar factory

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

WRIT PETITION NO.15083 OF 2023

**SANJAY @ RAOSAHEB YADAVRAO WAGHCHAURE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CIVIL APPLICATION NO.14765 OF 2023
IN
WRIT PETITION NO.15083 OF 2023**

**RAJU TUKARAM BOBADE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**WITH
CIVIL APPLICATION NO.14766 OF 2023
IN
WRIT PETITION NO.15083 OF 2023**

**EKANATH BABAN NAWALE AND OTHERS
VERSUS
SANJAY ALIAS RAOSAHEB YADAVRAO WAGHCHAURE
AND OTHERS**

**AND
WRIT PETITION NO.15147 OF 2023**

**DNYANESHWAR VITTHALRAO AUTE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

**AND
WRIT PETITION NO.15148 OF 2023**

**AMOL BANDU RODI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

AND
WRIT PETITION NO.15243 OF 2023

JAGANNATH KASHINATH FASATE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Shri Mahesh S. Deshmukh, Shri Shailandra S. Gangakhedkar,
Shri Rahul R. Karpe and Ms.Neha Kamble, Advocates for the
Petitioners in the respective petitions.

Shri S.K. Tambe, AGP for the Respondents/ State Authorities.

Shri V.H. Dighe, Advocate for the Respondents/ Cooperative
Election Authorities.

Shri D.J. Chaudhari, Advocate i/by Shri P.K. Nikam, Advocate
for the Respondent/ Sugar Factory.

Shri V.D. Hon, Senior Advocate a/w Shri A.V. Hon, Shri K.J.
Suryawanshi and Shri N.B. Khandare, Advocates for the
Intervenors.

...

**CORAM: RAVINDRA V. GHUGE
&
Y.G. KHOBRAGADE, JJ.**

Reserved on :- 20th December, 2023.

Pronounced on :- 08th January, 2024.

ORDER (*Per Ravindra V. Ghuge, J.*) :-

1. These matters were heard extensively on
13.12.2023, 14.12.2023 and 19.12.2023, considering the extreme

urgency expressed by the learned Advocates for the Petitioners.

The Respondents had appeared on intimation or suo moto.

2. In Writ Petition No.15083/2023, the Petitioner, whose name is admittedly enlisted in the provisional voters list, has put forth prayer clauses B, C, D and E as under:-

- “B) By an order of this Hon'ble Court in the like nature of appropriate writ and/or order or direction in the like nature, kindly quash and set aside the provisional voters list published on 23.11.2023 and the program publishing for finalizing the voter list published on 23/24.11.2023 (Exhibit-F).*
- C) By an order of this Hon'ble Court in the like nature of writ and/or appropriate order or direction, kindly direct the respondent No.1 and 4 to undertake thorough audit of respondent No.5 Sugar Factory from 2019-2020 till date including the aspect of share capital and accounts of respondent No.5.*
- D) By an order of this Hon'ble Court in the like nature of writ and/or appropriate order or direction, kindly direct the respondent No.3 to re-notify the process of finalization of voters list in the light of audit report to be conducted by the respondent No.4 about the respondent No.5 society from the year 2019- 2020 till date after due verification of the accounts and status of members as per the by-laws (29.06.2013) and statutory provisions.*
- E) Pending hearing and final disposal of the writ petition, kindly grant stay to the further process in the light of notification/ notice dated 23/24.11.2023 published by the respondent No.3 about finalization of voter list.”*

3. In Writ Petition No.15147/2023, the Petitioners have put forth prayer clauses B, C, D and E as under:-

- “B) Hold and declare that, the entire program from the stage of preparation of provisional voters list published on 23.11.2023 and consequential provisional voters list published by the respondent No.3 for the general election of respondent No.5 sugar factory being bad, illegal and contrary to the provisions under law.*
- C) By issuing appropriate writ order or direction in the like nature, kindly hold enquiry with regards to manifest illegalities committed at the instance of respondent No.5 while holding the election of the respondent No.5 Sugar Factory by preparing and publishing illegal provisional voter lists in derogation with the mandatory compliances and consequently new Returning Officer may kindly be appointed by holding the general election of respondent No.5 Sugar Factory and to that effect issue necessary order or direction to the respondent authorities.*
- D) By issuing appropriate writ order or direction in the like nature, kindly direct the respondent authorities to publish program for preparation of provisional voter list afresh by following mandatory compliances envisage under the MCS Act, 1960 and MCS Rules, 1961 and necessary directions to that effect may kindly be issued to the respondent authorities.*
- E) Pending and final disposal of the instant writ petition and till the adjudication of the issue qua "provisional voters list" as raised in this instant writ petition, the further stages of election as well as election program should not be proclaimed by the authorities.”*

4. In Writ Petition No.15148/2023, the Petitioners have

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

- “B) By an order of this Hon'ble Court in the like nature of appropriate writ and/or order or direction in the like nature, kindly quash and set aside the provisional voters list published on 23.11.2023 and the program publishing for finalizing the voter list published on 23/24.11.2023 (Exhibit-E).*
- C) By an order of this Hon'ble Court in the like nature of writ and/or appropriate order or direction, kindly direct the respondent No.1 and 4 to undertake thorough audit of respondent No.5 Sugar Factory from 2019-2020 till date including the aspect of share capital and accounts of respondent No.5.*
- D) By an order of this Hon'ble Court in the like nature of writ and/or appropriate order or direction, kindly direct the respondent No.3 to re-notify the process of finalization of voters list in the light of audit report to be conducted by the respondent No.4 about the respondent No.5 society from the year 2019- 2020 till date after due verification of the accounts and status of members as per the by-laws (29.06.2013) and statutory provisions.*
- E) Pending hearing and final disposal of the writ petition, kindly grant stay to the further process in the light of notification/ notice dated 23/24.11.2023 published by the respondent No.3 about finalization of voter list.”*

5. In Writ Petition No.15243/2023, the Petitioner has

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

- “B. By issuing writ of mandamus the petitioner be allowed to filed his objection.*
- C. By issuing writ of mandamus the respondent No. 3 be directed to consider the objection of*

the petitioner.
D. *During the pendency of the writ petition, the date of filing the objection be extended considering the natural calamity faced by the petitioner and like agriculturist in the interest of justice.”*

In this Writ Petition No.15243/2023, admittedly, the Petitioner has not raised any objection to the publication of the provisional voters list or the cut off date. The Petitioner prays that his objections may be considered in this Petition.

6. The programme/time schedule pertaining to the finalization of the voters list in respect of the elections to the Board of Directors of the Respondent Cooperative Sugar Factory, was published on 23.11.2023 by the District Cooperative Election Officer, Regional Joint Director of Sugar (hereinafter referred to as the DCEO). The provisional voters list was to be published on 24.11.2023 at 11:00 AM. The objections were to be raised during office hours from 24.11.2023 to 04.12.2023 (16 days). Hearing on the objections was to take place till 13.12.2023 (14 days). The decision on the objections was to be delivered on 14.12.2023. We are informed that the hearing on the objections of around 4000 individual persons was conducted on day to day basis from 05.12.2023 until 13.12.2023 (14 days). The final

voters list was to be published on 18.12.2023.

7. As the hearing in the matter began on 13.12.2023, the learned Advocates informed us that normally, after the final voters list is published, the election programme has to be declared after the 10th day following the declaration of the provisional voters list and not later than 20 days from such date of declaration. The final voters list will be declared on 18.12.2024.

8. All the learned Advocates for the Petitioners, except in Writ Petition No.15243/2023, submitted that their grievance was restricted only to the manner in which the provisional voters list was prepared, was forwarded to the DCEO and the further order of declaring the provisional voters list in Form E-3(1). They have stated that variety of objections were raised touching the issue of non-inclusion of names of individual member voters and representatives of certain societies, which are subject matter before the DCEO, who has heard the individual objectors, personally. As such, they prayed that this Court should decide the issue considering Rules 9 and 10 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as the Election Rules, 2014) and the Rules framed

under the Maharashtra Cooperative Societies Rules, 1961 (hereinafter referred to as the 1961 Rules).

9. The learned Advocates for the Petitioners have stated that no objection is being raised as regards the cut off date 01.10.2023 for preparing the provisional voters list, which earlier was 01.02.2023.

10. The learned Advocates appearing on behalf of the Petitioners, have contended as under:-

(a) The cut off date for considering inclusion of names of the members in the provisional voters list was 01.10.2023.

(b) The total voters, taking into account even the persons who are dead, should have been 18645.

(c) It is undisputed that the committee of the Factory was not in existence since an Administrator was appointed upon the Factory.

(d) There is no challenge to the appointment of the Administrator.

(e) As per Rule 9(3) of the Election Rules, the provisional voters list was not prepared by the Authority, who was entrusted with the duty of preparing the list under Rule 9(3).

11. The learned Advocates for the Petitioners have contended that Rule 9(3) of the Election Rules has not been complied with. Reference is made to Section 2(7) of the 1960 Act, which defines a “Committee” as under:-

“(7) “committee” means the committee of management or board of directors or the governing body or other directing body of a cooperative society, by whatever name called, in which the management of the affairs of a society is entrusted;”

12. It is undisputed that the Administrator has been appointed and he has stepped into the shoes of the Committee. There is no challenge to the appointment of the Administrator and it is accepted that the Administrator will perform all such duties as are required to be performed under the 1960 Act by the Committee. So also, there is no challenge to the incharge/officiating Managing Director of the factory.

13. Rules 9 and 10 of the Election Rules read as under:-

“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 enrolment 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 enrolment of a 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.

10. *Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members.—*

(1) *The provisional list of voters in case of individual Active members shall contain the surname, name, father's or husband's name, age, gender (in alphabetical order) if any, with address recorded in the register of members in Form 'E-3' of every person entitled to be registered as voter with such other particulars as may be necessary to identify him.*

(2) *Where a society or firm is the member of Society, the District Co-operative Election Officer or the Taluka or Ward Co-operative Election Officer shall publish a date for calling the name of representative, one hundred and fifty days prior to the date of expiry of term of office of the Committee. And such society shall send the name of representative duly authorized to vote at the election on behalf of the society or firm, so as to reach it to the office of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer at least one hundred and twenty days prior to the date of expiry of term of office of the Committee. The representative authorized by the member society shall be an active member of the member society.*

(3) *While communicating the name of the representative to the society the affiliated society shall enclose a copy of the resolution of*

the annual general body meeting of the society or its committee, where the representative is so authorized. The society shall include in the list of voters the names of all such representatives as have been communicated to it before the date fixed for publication of the provisional list of voters by the District Co-operative Election officer or Taluka or Ward Co-operative Election Officer. the list shall contain the name of the affiliated societies, their registration numbers and addresses and the name of representative if any.

- (4) *A society which has communicated the name of its representative shall, by like resolution, be permitted to change the name of its representative only in case of death of the representative or resignation by the representative or if such representative is found to be disqualified on adjudication by the competent authority under any of the provisions of the Act, rules, by-laws or where there is newly elected committee of the member society not later than five days before the last date for making nominations.”*

14. It is canvassed that under the first and the third proviso below Rule 9(2), the provisional voters list of the society has to be prepared by the Committee, albeit, by the Administrator in the present situation, as per the cut-off date fixed by the State Cooperative Election Authority (hereinafter referred to as the “SCEA”). There is no dispute, inasmuch as, there is no challenge to the fact that the SCEA prescribed the cut off date as 01.10.2023. The contention is that four copies of the

authenticated provisional voters list has to be delivered by the Committee/ Administrator to the District Cooperative Election Officer (hereinafter referred to as the “DCEO”). Such provisional list of voters has to be displayed on the notice board of the society. The DCEO will then call for claims and objections from the members of the society.

15. It is canvassed by the Petitioners that the particulars of the members to be included in the provisional voters list for the society, have to be incorporated in form E-3 to indicate every person entitled to be registered as a voter and with other particulars as may be necessary to identify him. Form E-3 appears as under:-

*“FORM E-3
(See Rule 7 & 10)
Provisional List of Voters*

1. *Name and Address of the Society:* _____
2. *Registration No. and Date:* _____
3. *Total Members as on date of publication of Provisional Voter's List:* _____
4. *Total eligible voters as on date of publication of Provisional Voter's List:* _____

<i>Sr.No.</i>	<i>Name of the member (in alphabetical order) (surname, first name and middle name)</i>	<i>Membership No.</i>	<i>Age</i>	<i>Gender</i>	<i>Address</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>

*Note:- Society may prepare provisional voter's list considering the area of operation, branches and the convenience of the conduct of election.
Seal of the Society.*

Place:

Date:

*Name and Signature of the
Chief Executive Officer/ Secretary of
the Society.”*

It is not disputed that the Chief Executive Officer of the society is the Managing Director of the factory, in the instant case.

16. We noticed from sub-rule (4) of Rule 6 of the Election Rules that if the Committee/ Administrator fails to deliver the copies of the provisional voters list to the DCEO before the due date, the DCEO shall himself or through any person authorized by him in this behalf, prepare such provisional voters list and the expenditure incurred therefor shall be recovered from the Committee or other persons responsible therefor, as arrears of land revenue.

17. It is undisputed that after the DCEO receives Form E-3, he inspects the same and publishes the list within 10 days of it's receipt for inviting claims and objections from the members. It is canvassed that the DCEO has failed in discharging this function and, therefore, the entire election programme is rendered illegal and deserves to be quashed and set aside.

18. The learned Advocates for the Petitioners have referred to the report by two members, who occupy the position of the Auditor Class-I and the Auditor Class-II in the Respondent Sugar Factory. They tendered the audit report with regard to the membership of the society to the Special Auditor Class-I, Cooperative Societies (Sugar), Chhatrapati Sambhaji Nagar. According to their report, they have found as under:-

“७. श्री. संत एकनाथ सहकारी साखर कारखाना ली. पैठण ता. पैठण जि. छ. संभाजीनगर ची अर्हता दि १/१०/२०२३ वर तपासणी केलेल्या पात्र व अपात्र संस्था सभासद व व्यक्तीगत सभासद यांच्या स्वतंत्र याद्या तयार करण्यात आलेल्या असून त्यांची संख्या खालीलप्रमाणे आहे.

1. पात्र संस्था सभासद एकुण	106
2. अपात्र संस्था सभासद एकुण	52
3. पात्र वैयक्तिक सभासद एकुण	6543
4. अपात्र वैयक्तिक सभासद एकुण	4828
5. अपात्र मयत / नोंद नसलेले सभासद एकुण	7116
सभासद नोंदवही नमुना आय प्रमाणे एकुण सभासद	18645”

19. The learned Advocates further submit that the number of provisional valid voters is 6543 and there is no dispute that they have complied with the payment of increased share

value amount, which is known as share capital. The grievance is as regards 4828 members, who have been declared as ineligible on the ground that they have not paid the increased share capital. A suspicion is raised as regards the purported 7116 deceased members or ineligible members. It is, however, contended that the said report submitted to the Special Auditor Class-I has no probative value.

20. It is further contended that the Administrator has not tendered the provisional voters list to the in-charge Managing Director as is required by law and the in-charge Managing Director has not tendered the list to the DCEO. It is further contended that the Administrator Shri Ramrao Tukaram Shelke should have tendered the provisional voters list. According to the Petitioners, the Administrator should have delivered it to the DCEO. The in-charge Managing Director should not have submitted the list to the DCEO. It is conceded that this objection is not found in any of the Writ Petitions filed before this Court, except Writ Petition No.15147/2023 filed by ***Dnyaneshwar Vitthalrao Aute and another vs. The State of Maharashtra and others***. The grievance, therefore, is that only 6543 individual members out of 11371 have been presumed to be valid voters.

21. It is further canvassed that the provisional voters list in Form E-3 should have been published by the DCEO in Form E-3(1). This has not been done by the DCEO qua individual members. Form E-3(1) appears as under:-

*“FORM E-3(1)
(See Rule 7 & 10)
List of Voters*

1. *Name and Address of the Society:* _____
2. *Registration No. and Date:* _____
3. *Total Members as on date of publication of Provisional Voter's List:* _____
4. *Total eligible voters as on date of publication of Provisional Voter's List:* _____

<i>Sr.No.</i>	<i>Name of the member society</i>	<i>Name of the representative of member society (surname, first name and middle name)</i>	<i>Membership No.</i>	<i>Age</i>	<i>Gender</i>	<i>Address</i>
<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>

Seal of the Society.

Place:

Date:

Returning Officer.”

22. It is canvassed on behalf of the Petitioners that, notwithstanding Sections 25, 26 and 35, Section 27 vests in a member of the society, a right to vote whether, he has been disqualified or not. Section 27 reads as under:-

“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 co-operative housing society and a co-operative 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 shares of a society may appoint any one 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 funds 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 persons 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)."*

23. We find that a specific reference is made to sub-section (10) of Section 27 reproduced above, to contend that 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 73(CA) of the 1960 Act, will have no right to vote in the affairs of the society. The

Proviso below sub-section (10) of Section 27 is referred to, to contend that a member shall not be deemed to be 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 that actual settlement of his dues, either in whole or in part, takes place at a later stage.

24. It is further canvassed that the register of membership maintained under Section 38, is a prima facie evidence of the date on which any person was admitted to membership and of the date on which he ceased to be a member. It is, however, conceded that the issue, whether any member can vote is being considered by the returning officer and no issue of expulsion of a member is before this Court.

25. Section 38 of the 1960 Act reads as under:-

“38. Register of members

(1) Every society shall keep a register of its members, and enter therein the following particulars, that is to say,—

(a) the name, address and occupation of each member;

(b) in the case of a society having share capital, the share held by each member;

(c) the date on which each person was admitted a member;

(d) the date on which any person ceased to be a

- member; and*
- (e) *such other particulars as may be prescribed:*
Provided that, where a society has by or under this Act, permitted a member to transfer his share or interest on death to any person, the register shall also show against the member concerned the name of the person entitled to the share or interest of the member, and the date on which the nomination was recorded.
- (2) *The register shall be prima facie evidence of the date on which any person was admitted to membership, and of the date on which he ceased to be a member.”*

26. The Petitioners have relied upon ***Dharmin Bai Kashyap vs. Babli Sahu and others, AIR 2023 SC 3868***. In paragraph 15, the Honourable Supreme Court has held as under:-

- “15. *There is hardly any need to reiterate the trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions. Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed. The petitioner having failed to make any application in writing for re-counting of votes as required under Section 80 of the Nirvachan Niyam, 1995, and having failed to seek relief of declarations as required under Rule 6 of the Rules of 1995, the Election Petition filed by the petitioner before the Sub Divisional Officer (R) seeking relief of re-counting of votes alone was not maintainable.”*

27. They further rely on ***Laxmi Singh and others vs. Rekha Singh and others, (2020) 6 SCC 812***. The Honourable Supreme Court has held in paragraph 13 as under:-

“13. *It is to be noted, however, that all of the above cases cited by the Petitioners pertain to the RP Act and the Rules made thereunder. It is a trite position of law that when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions. In Banwari Dass vs. Sumer Chand (1974) 4 SCC 817 referring to the Delhi Municipal Corporation Act, 1957, it was observed that an election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which have to be strictly construed. Therefore, even in cases involving election provisions to prevent corrupt practices, the court and the tribunal must act judicially and not in an inquisitorial manner. The court cannot bridge the gap and supply an apparent omission by applying principles of common law and equity. Therefore, it is necessary for a proper determination of the issues at hand for an in-depth analysis of the Uttar Pradesh Kshettra Panchayat and Zila Panchayat Adhiniyam, 1961 and the 1966 Rules, specifically the interplay between Rules 4, 7 and 12 of the 1966 Rules, and the legal principles enunciated by this Court in the above pronouncements.*”

28. They also place reliance upon ***Tata Chemicals Limited vs. Commissioner of Customs (Preventive), Jamnagar, (2015) 11 SCC 628***. It is held by the Honourable Supreme Court

in paragraph 18 as under:-

“18. *The Tribunal’s judgment has proceeded on the basis that even though the samples were drawn contrary to law, the appellants would be estopped because their representative was present when the samples were drawn and they did not object immediately. This is a completely perverse finding both on fact and law. On fact, it has been more than amply proved that no representative of the appellant was, in fact, present at the time the Customs Inspector took the samples. Shri K.M. Jani who was allegedly present not only stated that he did not represent the Clearing Agent of the appellants in that he was not their employee but also stated that he was not present when the samples were taken. In fact, therefore, there was no representative of the appellants when the samples were taken. In law equally the Tribunal ought to have realized that there can be no estoppel against law. If the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner has no existence in the eye of law at all. The Customs Authorities are not absolved from following the law depending upon the acts of a particular assessee. Something that is illegal cannot convert itself into something legal by the act of a third person.*”

29. The learned Senior Advocate Shri Hon appearing on behalf of the Intervenors, who claim to be members of the Sugar Factory, draws our attention to Section 26 to contend that a member is entitled to exercise his right under the Act, Rules and

bye-laws only after he has made such payment to the society in respect of the membership or has acquired such interest in the society as may be prescribed. He further submits that, in the light of the second proviso to Section 26, in case of increase in minimum contribution of the member in the share capital to exercise rights of membership, the society shall give due notice of demand to the member and give a reasonable period to comply with it.

30. Section 26 reads as under:-

“26. No rights of membership to be exercised till due payments are made.

A member shall be entitled to exercise such rights as provided in the Act, rules and by-laws:

Provided that, no member shall exercise the rights, until he has made such payment to the society in respect of membership, or acquired such interest in the society, as may be prescribed and specified under the by-laws of the society, from time to time:

Provided further that, in case of increase in minimum contribution of member in share capital to exercise rights of membership, the society shall give a due notice of demand to the member and give reasonable period to comply with it.”

31. Shri Hon further submits that appropriate notices were issued to each of the members when the share capital was

increased. Those who deposited the increased share capital, were continued as members of the society. Those who did not pay the increased share capital, had rendered themselves as defaulters. Every year an audit is done. Two auditors conducted the audit even as regards the membership of the Sugar Factory. The audit report can be challenged under Section 154 of the 1960 Act, which is a statutory remedy available to an aggrieved person.

32. The learned Advocate Shri Chaudhari representing the Administrator submits that these petitions are wholly misconceived and frivolous. He submits, on the basis of the affidavit in reply and the record produced, that six Petitioners amongst these were legal heirs of the earlier shareholders/ members of the Sugar Factory, who had voting rights. After their demise, these six Petitioners applied for transfer of the share certificates. The revised share capital amounts were deposited by them. After due scrutiny, their names were included in the provisional voters list. A large number of members did not deposit the revised share capital for almost eleven years. Individual notices were issued on their addresses and so also, published in daily "Sakal", which is one of the oldest and largely circulated newspaper in the State of Maharashtra. Those who did

not deposit the increased share capital, were recorded as being defaulters and their names were not included in the provisional voters list.

33. Shri Chaudhari specifically refers to paragraphs 5, 6, 7 and 10 of the affidavit in reply filed by Mr. Ramrao Tukaram Shelke, Administrator, dated 14.12.2023, which read (verbatim) as under:-

“5) *I say that in pursuance to the applications made by the petitioners (except petitioner No.1 & 2) as per Section 30 r/w Rule 24 the shares have been transferred in the name of petitioners 3 to 8. I further say that, so far as petitioner No.1 is concern, the father of the petitioner namely Bandu Govindrao Rodi expired on 21.11.2003. After the eath of said deceased Bandu Govindrao Rodi, no information was received by the sugar factory, as such, the name of Bandu Govindrao Rodi was continued in the voter's list for the election 2016, for want of information of his death. On perusal of the record available in the office, it is found that the deceased Bandu Govindrao Rodi was defaulter for Rs.6030/- towards payment of share amount. The notice mentioning the default was issued to him on 12.4.2021 and 8.8.2023. Beside these two notices issued to Bandu Govindrao Rodi and Kotambe Bapu Kisan, a public notice was also published in the daily newspaper on 17.8.2023. The record does not find any application made by the petitioner No.1 & 2 for transfer of shares in their name as required under the provisions of sec. 30 r/w rule 24 of Rules 2016. In absence of any application, petitioners 1 & 2 are not entitled*

for transfer of shares which, were held by deceased father.

- 6) *Petitioners Nos.1 and 2 have placed the application dated 8.12.2023 addressed to the Joint Director of Sugar, Aurangabad, requesting for transfer of shares in their name and for that issue necessary instructions. It is pertinent to note that the voter's list has been declared as on 24.11.2023 being cut off date 1.10.2023 for valid voters strictly in accordance with the provisions of Rules, 2014. The application submitted with the Joint Director of Sugar by the Petitioners Nos.1 and 2 are dated 8.12.2023 are beyond the cut off date, as such, cannot be considered as valid applications and the Joint Director is not supposed to take the action.*

It is pertinent to note that the petitioners 1 & 2 under their own signature submitted a request application dated 3.12.2023 to the Regional Joint Director raising an objection to the provisional voter's list. The applications are made in the name of deceased father Bandu Govindrao Rodi and Bapurao Kisanrao Kotumbe, who died in the year 2003 and 19-09-2020 respectively. This action on the part of Petitioners Nos. 1 & 2 cannot be countenance on any ground, as such the petitioners' claim cannot be considered either in the present writ petition or even before the Joint Director (Sugar). The petitioners' claim is required to be rejected outright. Annexed hereto and marked as ANNEXURE R- 5-1 is the copy of application dated 3.12.2023.

- (7) *It is submitted that the notice to the deceased father of the Petitioners Nos.1 & 2 and notices to the Petitioners No.3 to 8 were issued in the light of the provisions of bye-law No.6 r/w Sec. 26 of the Maharashtra Cooperative Societies Act, 1960, asking the petitioners to deposit remaining arrears towards share amount. As per*

the provisions of approved bye-laws dated 29.6.2013, concern members who are in arrears of the share amount is required to pay the same within a period of three years from the date of above said order or the concern shareholders shall request the sugar factory for deducting the amount from the bill of sugarcane supplied by such members to the sugar factory. It seems that, neither share amount was deposited within a stipulated period of three years nor the instructions were given by making request application to the sugar factory for deduction of amount equal to the shares from the bills of sugarcane supplied by such members. In absence of the action on the part of the petitioners, the transfer of shares in the name of petitioners could not be effected. In absence of compliance of provisions of bye-law No.6 r/w Sec. 26 of the Act, the sugar factory constrained to issue notices to the Petitioners No.3 to 8 and to the deceased fathers of Petitioners No.1 & 2. Annexed hereto and marked as ANNEXURE 5-2 are the copies of relevant extracts of membership register in the prescribed Form-I. Annexed hereto and marked as ANNEXURE R-5-3 Colly are the copies of notices issued on 12.4.2021 along with the postal receipts and notices dated 8.8.2023 along with the postal receipts, and public notice published in 'Daily Sakal' dated 17.8.2023.”

- “10) *I say that, the petitioners have raised several question of facts which are disputed and such disputed question of facts need not be entertained in the present writ jurisdiction. The petitioners have made a incorrect statement of facts contained in Ground No.I that, no decision has been taken on the applications for transfer of shares, which tantamount a false statement of facts in light of the explanation given in aforementioned paras. I say that the*

applications submitted by the Petitioners No.3 to 8 have been dealt with and therefore shares have been transferred which is a part of record being Exh.R-5-2. In the light of the record placed along with this affidavit, the statements contained in Ground No.I is false statement of facts and petitioners are required to be dealt with sternly.”

34. He refers to page 163 of the petition paper book and submits that the said documents indicate that the applications of those applicants, who had paid the increased share capital, were allowed for including the names in the provisional voters list.

35. He then refers to the documents from page No.169 onwards which indicate specific notices issued to the defaulting members under Section 26 of the 1960 Act by which, the deficit amount towards the share capital was made known to each of these defaulting members. Taking into account the paper publication, which is at page 196, and a long list of members who were served via ‘inland Speed Post’, he supports the averment that those members who had not paid their deficit capital share amounts, were not valid voters. He quickly adds that this issue would not be subject matter of adjudication before this Court in the present proceedings as per the contentions of the Petitioners and the said issue has already been addressed to the

DCEO before whom more than 4500 applicants have lodged their objections.

36. He refers to Section 26 of the 1960 Act and the two proviso there below, which are reproduced above, to support his contention that no rights of membership could be exercised till the due payments are made. While referring to the two proviso, he contends that the statutory requirement is that the society/member has to be given due notice of demand and a reasonable period to comply with the demand. In this context, he draws our attention to the speed post receipts and the paper publication and further contends that such notices were issued in 2021 and 2023. More than two years time was granted to such members to pay their increased share capital. He refers to *Kondiba s/o Babarao Manorkar, Nanded vs. The State of Maharashtra and others, 2016 MCR 446 (Marathwada Cases Reported)* and submits that on the one hand, notices were issued to the members on their residence addresses and on the other hand, a paper publication was also made, though it was not necessary.

37. He refers to the submission of the Petitioners that “Section 27(10) r/w Section 73CA of the 1960 Act would enable a voter to vote even if he is a defaulter or has not paid the

increased value of the share capital,” and contends that the said submission is wholly misconceived and fallacious. There is no provision under the Act or the Rules that a member, who has not paid the revised share capital and whose rights as a member cannot be exercised under Section 26, and yet, he can vote in the elections.

38. Shri Chaudhari then relied upon Rule 24 of the 1961 Rules and contended that a specific duty has been cast on the legal heirs to inform the factory about the death of a shareholder. There are several cases wherein, the legal heirs never conveyed the demise of a shareholder to the factory. He has then relied upon the sur-rejoinder dated 20.12.2023 filed in Writ Petition No.15147/2023, more particularly paragraph Nos.1 to 9. The specific contentions set out in these paragraphs can be summarized as under:-

(a) The Petitioners have twisted the facts, misread the documents and misinterpreted the provisions of law to create a chaos in the matter.

(b) In view of section 2(20) of the 1960 Act, read with Rule 2(4) of the 2014 Election Rules and bye-law Nos.28 and 41(9), the Managing Director is the Head of the Society, who has

the right to submit the provisional voters list of the members to the competent authority.

(c) Respondent No.3 had called for the list of the societies (member societies) vide communication dated 09.10.2023. In pursuance to the said communication, the Administrator passed a resolution dated 09.10.2023 and accordingly, authorised the incharge MD to tender the list of 106 member societies, which was submitted on 10.10.2023.

(d) The list of individual members was sought and a resolution dated 20.11.2023 was passed empowering the in-charge Managing Director to submit the provisional voters list of individual members and the delegates of the member societies, to Respondent No.3.

(e) With a covering letter dated 22.11.2023, the provisional voters list of member societies as well as the provisional voters list of the individual members, were submitted.

(f) The above actions are in tune with the 2014 Election Rules. Even Form E-3 mandated the MD to submit the lists.

(g) Baseless allegations are made by the Petitioners contending that the Managing Director, in connivance with

Respondent No.3 (Regional Joint Director), with the help of the Audit Department, has tried to delete several members.

(h) The administrative order dated 19.10.2023 carrying out an inspection by the Audit Department for preparation of provisional voters list, is as per the mandate of Rules 9 and 10 of the Election Rules, 2014.

(i) The voters list was published by the DCEO in his office and was affixed on the notice board of the factory, at the office of the Additional Registrar, Cooperative Societies (ARCS), Paithan and on the website of the SCEA under Rule 6 of the 2014 Election Rules, which are identical and signed by the competent authority.

(j) The voters lists are certified by the competent authority.

(k) The list of individual members, who did not suffer any legal impediment, are 6543 individual members and the society members are 106, as per the membership register maintained in 'I' Form under Sections 26, 27 and 73-CA of the 1960 Act.

(l) The Petitioners are merely making allegations for the purposes of raising doubts as regards the voters lists and the

procedure, without any substantiation on facts or in law.

(m) Reckless allegations are being made with regard to the authenticity of the lists uploaded by the DCEO on the official website of SCEA.

(n) It is denied that no signature is found below the last provisional voter at Sr.No.6543 or the list of member society voters.

(o) On 10.10.2023, the list of societies was submitted because the names of delegates of the societies were not received. After such names of delegates were received till 09.11.2023, that the resolution dated 20.11.2023 was passed by the Administrator and accordingly, individual members provisional voters list as well as the member societies provisional voters list, was submitted to Respondent No.3 in accordance with the 2014 Election Rules.

(p) Respondent No.4/ Administrator had earlier issued the order dated 09.10.2023 to the in-charge Managing Director with reference to initiation of election process.

(q) Since the final voters list is published on 18.12.2023, nothing would survive in this petition and the Petitioners will have to challenge the final voters list by taking

recourse to a statutory remedy under Section 91 of the 1960 Act.

(r) The Petitioners are guilty of suppression of the fact that about 7116 members had expired, 52 member societies were disqualified and 4828 individual members were not entitled to vote as they had not paid the increased value of the shares over a period of more than three years.

39. The learned Advocate Shri Dighe representing the DCEO submits that he has filed an affidavit indicating that he had signed below form E-3(1). These petitions are filed by a handful Petitioners as if they have been filed on behalf of more than 11000 members. No statement has been made in the Writ Petitions that such petitions are filed under Order I Rule 8 of the Code of Civil Procedure. He refers to the document dated 22.11.2023 signed by the in-charge Managing Director forwarding the lists of the individual member voters and the member society voters, under due authorisation from the Administrator. He also points out the document dated 23.11.2023 by which, the DCEO has published the said lists at four places, referred to herein above. He also refers to the panchanama carried out to evidence the affixing of the said lists.

40. The learned Senior Advocate Shri Hon contends that all these Petitions are frivolous and are founded on baseless allegations. After the provisional voters lists have been published, these petitions have been filed. The DCEO has passed an order on 14.12.2023 dealing with all the objections of the aggrieved persons and the final voters list is published on 18.12.2023. He relies upon the judgment delivered by the Honourable Supreme Court in *The State of Karnataka and others vs. Gunjahalli Nagappa and others, (1976) 1 SCC 204*, and contends that all these Petitions cannot be entertained by this Court.

41. In the light of the pleadings on oath and the submissions of the litigating parties, we have referred to the reproduced Sections under the 1960 Act and the Rules under the 1961 Rules and the 2014 Election Rules. There is no dispute that an Administrator has been appointed in place of the committee. None of the Petitioners opposed the appointment of the Administrator and there is no challenge to that extent. It is equally undisputed that the Committee is now officiating through the Administrator and an in-charge Managing Director has been appointed. There is no objection on this count as well. It is also

undisputed that the Managing Director has forwarded the provisional voters list in form E-3, to the DCEO, under the authorisation of the Administrator. The record also reveals that the DCEO has published the list in Form E-3(1) by following the prescribed procedure.

42. In this backdrop, the Petitioners contend that the documents placed before this Court are bogus and fabricated. The Respondents contend that these are baseless and reckless allegations, which are set out only to create confusion and a cloud of suspicion.

43. As such, on the one hand, there are documents supported with affidavits in reply, indicating that the Rules have been followed and the lists have been tendered, which we find to be true and correct. The sequence of events also indicate the passing of the resolution by the Administrator and thereafter, the Managing Director tendering the lists to the DCEO. On the other hand, the Petitioners have merely levelled allegations with an attempt to dispute the said documents, by terming them to be bogus and fabricated. In this backdrop, disputed issues cannot be gone into by this Court and the Writ Petitions cannot be entertained.

44. The record also reveals that over a period of more than three years, thousands of members have not paid the increased value of the shares. The documents indicate that each of them were served with notices and the receipts are placed on record. Payment of the increased value of the shares is a mandatory requirement. Publication of the notices in a largely circulated/ reputed newspaper “Sakal”, is in addition to these notices. Whether such notices were received by the individual persons, is a matter of dispute and would require recording of oral and documentary evidence. Same is the case with those persons who are legal heirs of the deceased shareholders. These two aspects have not been raised before us by these Petitioners as they were already raised before the Returning Officer. We are informed by the Respondents that the Returning Officer has spent days together in causing hearing on each of such objections until 14.12.2023 and has finally delivered his orders on such objections. The final voters list has been published on 18.12.2023.

45. Considering the law applicable and the limited jurisdiction of this Court in entertaining such petitions at the stage at which they have been filed, it would be an anathema to

deal with seriously disputed contentions of the parties, which cannot be discerned without recording of oral evidence. Hence, these Writ Petitions ought not to be entertained.

46. In view of the above, **Writ Petition Nos.15083/2023, 15147/2023 and 15148/2017 are dismissed.**

47. In Writ Petition No.15243/2023 (Jagannath Kashinath Fasate vs. The State of Maharashtra and others), the Petitioner has never raised any objection before the Returning Officer. In the absence of raising objections, this Court cannot embark on the exercise of dealing with the objections which are within the domain of the Returning Officer. Hence, **this Writ Petition No. 15243/2023 is not entertained and is dismissed.**

48. All the pending **Civil Applications** would not survive and **stand disposed off.**

49. We make it clear that the dismissal of these Petitions shall not be an impediment to any aggrieved Petitioner for availing of a remedy as may be permissible in law for the redressal of his/her grievances. All contentions are kept open.

50. No order as to costs.