IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.429 OF 2024

1. Shrikant Balasao Patil
Age – 47, Occupation: Agri.,
R/o. Nave Chavre, Tal:-Hathkanagle,
District:- Kolhapur.

2. Rajaram Krishna Patil,
Age – 62, Occupation: Agri.,
R/o. Nave Chavre, Tal:-Hathkanagle,
District:- Kolhapur. ..Petitioners

Versus

1. State Co-operative Election Authority
Maharashtra State, Pune,
Old Central Building Ground Floor,
Pune – 411 032.

2. Assistant Registrar,
Co-operative Societies,
Hathkanagle, District: Kolhapur.

3. Administrator,
Chavre Co-op. Housing Society
Ltd. Chavare, Ichalkaranji,
Tal: Hathkanagle, District: Kolhapur.

4. The Returning Officer &
Auditor Co-operative Societies, Ichalkaranji,
Office: Mahatma Phule Market Building,
Ward no.16, House no.598, Gala no.8 & 9,
Shivajinagar, Ichalkaranji, Tal: Hathkanagle,
District: Kolhapur.

5. Chavre Co-op. Housing Society,
Ltd. Chavare, Ichalkaranji,
Tal: Hathkanagle, District: Kolhapur. ..Respondents

Mr. Ruturaj Pawar for the Petitioners.
Ms. Pooja Deelip Patil i/by Mr. Deelip Patil Bankar for Respondent No.1 (SCEA).
Ms. Kavita N. Solunke, AGP for Respondent No.2 (State).
Mr. Pramod Patil a/w Mr. Ajit Hon, Mr. Shyamsunder Solanke & Ms. Sakshi Thombare i/by PNP & Associates for Respondent Nos.3 & 5.

CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.

DATE : 19th JANUARY 2024

JUDGMENT: (per Jitendra Jain, J.)

1. By this Petition under Article 226 of the Constitution of India, the Petitioners have primarily challenged the appointment of Respondent No.4 – Shri. Subhash Deshmukh as Returning Officer for conducting election of Respondent No.5 – Society. The Petitioners although have prayed for other reliefs, but the same were not contested and therefore, we are only adjudicating the legality of appointment of Respondent No.4 as Returning Officer.

2. ***Briefly the facts are as under*** :-

(i) The Petitioners are members of Respondent No.5 – Co-operative Housing Society. On account of complaints made by some of the members of Respondent No.5 with regard to management and voters' list for election of the society, an Administrator-Respondent No.3 came to be appointed on 28th December 2017 by Respondent No.2 – Assistant Registrar, Co-operative Societies under Section 78-

A of the Maharashtra Co-operative Societies Act, 1960. On 15th May 2018 and 21st December 2019, Respondent No.2 passed further orders for appointment of new Administrator since earlier administrator retired.

(ii) On 1st December 2023, Respondent No.4 came to be appointed as Returning Officer to conduct election of Respondent No.5 – Society for the period of 2023–2028 .

(iii) On 6th December 2023, Respondent No.4 – Returning Officer under Rule 76 of the Maharashtra Co-operative Societies (Election to Committee) Rules notified programme for finalizing the voters' list. Pursuant thereto, the provisional voters' list was published.

(iv) On 15th December 2023, the Petitioners raised objections with Respondent No.4 with regard to the provisional voters' list. After hearing the Petitioners, Respondent No.4 rejected the objections vide order dated 26th December 2023. There is no further challenge to the said rejection order by the Petitioners under the Maharashtra Co-operative Societies Act.

(v) On 1st January 2024, Respondent No.4 published the election schedule by specifying various time period within which various stages of the election programme were to be completed. The election as per the said election programme is scheduled for 4th February 2024 and on the same day, the results will be announced.

3. It is on the above backdrop that the present Petition is filed challenging the appointment of Respondent No.4 as Returning Officer.

4. ***Submissions of the Petitioners*** **:-**

The Petitioners submitted that Respondent No.4 is on the panel of "Auditor" as well as on the panel of "Returning Officer" of Respondent Nos.1 and 2. The Petitioners submitted that as per the first proviso to Rule 76-B of the Maharashtra Co-operative Societies (Election to Committee) Rules, an auditor cannot be appointed as Returning Officer to conduct election. The Petitioners relied upon the definition of the auditor under Section 154B-1(4) for the said purpose. The Petitioners, however, admitted that although Respondent No.4 is on the panel of the auditors, he was never appointed as auditor of Respondent No.5 – Society. The Petitioners, therefore, submitted that on a conjoint reading of Section 154B-1 read with proviso to Rule 76-B Maharashtra Co-operative Societies (Election to Committee) Rules, 2014, Respondent No.4 is disqualified to be appointed as Returning Officer. The Petitioners further submitted that in the voters' lists prepared by Respondent No.4 there are more than 40 members against whom a noting is made that they are dead. It is the submission of the Petitioners that Respondent No.4 has not prepared voters' lists in accordance with the law and therefore, the challenge to the conduct of Respondent No.4 in preparing the voters' lists in the present Petition. The Petitioners have also raised various objections with respect to the mismanagement of Respondent No.5 – Society. The Petitioners, therefore, prayed for quashing of order appointing Respondent No.4 as Returning Officer and to quash the election process initiated by him. The Petitioners have relied upon following the decisions in support of their submissions:

(i) Shivaji Marotrao Suryawanshi vs. State of Maharashtra & Ors.[1],

(ii) Chandrakant Mahadev Patole & Ors. vs. State of Maharashtra & Ors.[2] and

(iii) Dinkarrao Bhauso Jadhav & Ors. vs. The State of Maharashtra & Ors.[3]

5. ***Submissions of the Respondents*** :-

The Respondent No.1 – Election Authority furnished the list of the panel of the "Returning Officer" and submitted that although the name of the Respondent No.4 appears in the said lists as well as on the panel of the "Auditors" list, he was never appointed as auditor of Respondent No.5 – Society and therefore, on a true and proper construction of Rule 76-B, Respondent No.4 cannot be treated as disqualified to be appointed as Returning Officer. The other Respondents supported the submissions of Respondent No.1 and further contended

1 [2000(2) Mh. L. J. 306].
2 2009 SCC OnLine Bom 2486 : (2010) 1 AIR Bom R 427.
3 Writ Petition No.872 of 2015 dated 17th April 2015.

that the election programme has advanced too far and this Court should not interfere in the election process. They further submitted that insofar as the voters' lists is concerned against whose name it is mentioned that the members have died, there should not be any grievance of the Petitioners as on today, but if at all any voting rights are exercised in respect of such dead members, the Petitioners can challenge the same at that point of time. The Respondents therefore, prayed for dismissal of the present Petition.

Analysis and conclusion **:-**

6. We have heard the learned counsel for the Petitioners and the learned counsel for the Respondents and with their assistance have perused the documents annexed to the Petition.

7. In our view, the first issue which requires consideration of this Court is as to the interpretation of the first proviso to Rule 76-B of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. The issue which arises is if a person is on the panel of the "Auditor" as well as on the panel of the "Returning Officer" and such a person has never been appointed as auditor of the society of which the election is to be held then whether such a person is disqualified to be a Returning Officer of such society under proviso to Rule 76-B merely because his name appears on list of panel of the "Auditor" also.

8. It is apt to re-produce relevant Rule 76-B of the Maharashtra Co-operative Societies (Election to Committee) Rules and Section 154B-1(4) of the Maharashtra Co-operative Societies Act, 1960.

> *"**154B-1**. Definitions:*
> *In this Chapter, **unless the context otherwise requires,***
> *(1) …..*
> *(2) …..*
> *(3) …..*
> *(4) "Auditor" means a person or an auditing firm who or which has been empanelled on the panel approved by the State Government under sub-section (1) of section 81;"*
>
> ***(emphasis supplied)***

> ***"76-B. Appointment of Returning Officer to conduct election:***
> *The Returning Officer shall be appointed by the Managing committee of such Societies from the panel of Returning Officers approved by SCEA and maintained by Divisional Joint Registrar or from among the members of the same society who are not desirous to contest the election before sixty days of the expiry of the tenure of the existing Committee and communicated the same to the Registrar:*
> ***Provided** that, **no** auditor, employee or any member **of** outgoing management committee **of such Society** shall be appointed as Returning Officer for conducting election to committee **of such society**:*
> ***Provided further** that, the Returning Officer so appointed shall undergo training related to election, from any District Housing Co-operative Federation or any training institute notified by the State Government, from time to time:*
> ***Provided further** that, if committee of such society fails to appoint Returning Officer, then the Registrar shall appoint the Returning Officer from the panel."*
>
> ***(emphasis supplied)***

9. Admittedly, the name of Respondent No.4 appears on the panel of "Auditor" required to be appointed under Section 81 of the Maharashtra Co-operative Societies Act, 1960 as well as on the panel of "Returning Officer" for the purpose of holding election. There is also no dispute between the Petitioners and Respondents that Respondent No.4 was never appointed as auditor of Respondent No.5 – Society.

10. The first proviso to Rule 76-B of the Maharashtra Co-operative Societies (Election to Committee) Rules provides that no auditor, employee or any member of outgoing management committee of such society shall be appointed as Returning Officer for conducting election to committee of such society. The phrase 'auditor' is not defined in the Election to Committee Rules. However, Section 154B-1(4) of the Maharashtra Co-operative Societies Act, 1960 defines "Auditor" for the purposes of Chapter XIII-B to mean a person or an auditing firm who or which has been empanelled on the panel approved by the State Government under sub-section (1) of section 81. In our view, the said definition of the term "Auditor" cannot be made applicable for the purpose of interpreting the first proviso to Rule 76-B. The definition under Section 154B-1 starts with the phrase "unless the context otherwise requires". This phrase is to be read along with the proviso to Rule 76-B which provides that no auditor, employee or any member of outgoing management committee of such Society shall be appointed as Returning Officer for conducting election. The common thread flowing between three categories of persons referred to in first proviso to Rule 76-B is that the person who is referred therein should have some interest in the affairs of the society. The interest of an employee would be his salary and employment. The interest of any member of outgoing management committee would be his involvement in the affairs of the committee, when the committee was in existence and stretching the said thread to auditor, it would mean auditor was appointed as auditor and has audited the books of accounts of the society of which election is to be conducted. The phrase 'Auditor' would take it is colour from the words following namely 'employee or member of outgoing management committee'. It is a legitimate rule of construction to construe words in an Act of Legislature with reference to words found in immediate connection with them. Associated words take their meaning from one another under the doctrine of *noscitur* a *sociis,* the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it. Therefore, in our view, if a person was never appointed as an auditor of the society of which election is required to be held then he cannot suffer the disqualification specified in first proviso to Rule 76-B. Merely because, a person is on the panel of the "Auditor" and also on the panel of "Returning Officer" that would not attract disqualification if such a person was never appointed as auditor of the society for which he is appointed as Returning Officer to hold election. Where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause. Repugnancy of a definition arises only when the definition does not agree with the subject or context. In our view, therefore, the definition of 'Auditor' under section 154B-1(4) would not be applicable for interpreting proviso to Rule 76-B. Therefore, in our view, the Petitioners' contention that although Respondent No.4 was never an auditor of Respondent No.5 society but since he is empanelled on the list of the "Auditor" as well as the "Returning Officer", he is disqualified under Rule 76-B of the Maharashtra Co-operative Societies (Election to Committee) Rules is to be rejected.

11. Rule 76-B prescribes that the Returning Officer shall be appointed from the panel of Returning Officers approved by State Co-operative Election Authority (for short "SCEA"). The first proviso to the said Rule can be broken up into following parts:

(i) No

(ii) auditor, employee or any member of outgoing management committee

(iii) of such society

(iv) shall be appointed as returning officer for conducting election to committee of such society.

12. In our view, the phrase "such society" means the society of which the Returning Officer is appointed to conduct election. The word 'of' means belonging to or pertaining to or connected with or associated with. The said word ‘of’ is also a word of identification and relation. It would suggest a necessity of some links, connections or associations. Therefore, the word ‘of’ preceding such society goes with all the three persons, who are named in the proviso, namely auditor, employee and any member of outgoing management committee. Therefore, the reading of the first proviso to Rule 76-B would mean, no auditor of such society or no employee of such society or no member of such society of outgoing management committee of such society shall be appointed as Returning Officer for conducting election to committee of such society. If the phrase “of such society” is read to mean that it applies only to members of management committee then when it comes to “employee”, a question would arise, whose employee? Therefore, the only way to give purposeful meaning to the first proviso to Rule 76-B would be to mean that “of such society” would go with all 3 entities specified therein. The word “such society” would be society of which election is to be conducted and therefore auditor has to be auditor of such society and when read with Section 81 would be an auditor appointed under Section 81 of such society. We are not adding/deleting any words in Rule 76-B but are only interpreting the word/phrase as enacted. Therefore, the auditor which is prescribed in first proviso to Rule 76-B would be an auditor, who is appointed under Section 81 of the Maharashtra Cooperative Societies Act, 1960 as auditor of such society of which the election is to be conducted. If a person was never appointed as an auditor of such a society, then he does not suffer a disqualification under first proviso to Rule 76-B for being appointed as Returning Officer. Although empanelled in the list of "Auditor" as well as list of "Returning Officer".

13. Rule 2(16) of the Maharashtra Cooperative Societies Election Committee Rules defines "Returning Officer" to mean "any person" appointed from the panel approved by SCEA in case of type "E" societies" and the Respondent No.5 is a type "E" society. We have not been shown any provision, rules or any other document by which a person, who is empanelled in the list of "Auditor" cannot be empanelled on the list of the "Returning Officer". This would indicate that a person can be empanelled as an Auditor as well as Returning Officer, but for being disqualified under first proviso to Rule 76-B, such a person should not have been appointed as an auditor of the society of which the election is to be conducted and it is only such a person who cannot be appointed as a Returning Officer.

14. Thirdly, the Petitioners themselves acceded to the appointment of Respondent No.4 as Returning Officer by raising objections to the voters' lists prepared by Respondent No.4. The Petitioners did not raise any objections to the appointment of Respondent No.4 as Returning

Officer while filing the objection to the voters' lists. Therefore having submitted to the appointment of Respondent No.4 by conduct, the Petitioners cannot now turn around and challenge the appointment of Respondent No.4 as Returning Officer. It is a settled position that a person cannot blow hot and cold at the same time. The principle of approbate and reprobate is applicable. Therefore on this count also, the Petitioners challenge to the appointment of Respondent No.4 as Returning Officer is required to be rejected.

15. Fourthly, insofar as the preparation of the voters' lists is concerned, merely because against name of certain members it is mentioned that they are dead, that would not mean that the voters' list is not prepared correctly. If at the time of voting any vote is exercised against the members who are dead then at that point of time the Petitioners will be free to challenge in appropriate proceedings, but as of today no fault can be found in the preparation of the voters' list by Respondent No.4. This objection was also raised by the Petitioners with Respondent No. 4 on 15th December 2023 and the same was rejected by Respondent No.4. The order of rejection has not been challenged by the Petitioners and therefore on this count also the Petitioners cannot challenge the preparation of the voters' list by Respondent No. 4 and also the appointment of Respondent No.4.

16. The election process is in pursuance to the reasons for appointment of the administrator and, therefore, it is for implementing the orders dated 28th December 2017, 15th May 2019 and 21st December 2009 and, therefore, prayer to the said grievance stands redressed.

17. It is also important to note that as per the election programme published on 1st January 2024, out of ten stages, today stage six is reached which provides for filing of the nomination of the candidates for the election. At this stage, in our view, the Court would be slow in interfering in the election schedule as the same has commenced and therefore, even on this count, the petition fails.

18. We now propose to deal with the decisions relied upon by the Petitioners. In our view, none of these decisions deal with the first proviso to Rule 76-B and therefore same cannot assist the Petitioners. Furthermore, the decisions are also distinguishable on facts and therefore same are of no assistance to the Petitioners in adjudication of the present Petition. The voters list prepared by Respondent No.4 in which against some members “dead” is mentioned because they have expired cannot be said that voters’ list is not prepared correctly. Therefore on this count the exercise of our jurisdiction to stall the election process cannot be invoked.

19. We make it clear that all the contentions of the Petitioners with respect to challenge to the election results are kept open in appropriate proceedings.

20. In view of the above reasoning, the Petition is dismissed with no order as to costs.

(JITENDRA JAIN, J.) **(A. S. CHANDURKAR, J.)**