

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8643 OF 2024

Amit Manik Kalbhor And Ors.	...Petitioners
Versus	
The District Election Officer Alias District Dy. Registrar Coop. Society Pune(Rural) And Ors.	...Respondents

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Mr.PS. Dani Senior Advocate i/b Mr.Abhijit B. Kadam for the
Petitioners.

Mr.Deelip Patil Bankar, Chief Standing Counsel for SCEA -
Respondent Nos.1 and 4.

Mr.Atul Damle, Senior Advocate i/b Mr.Chetan Nagare for the
Respondent No.2.

Mr.Y.D. Patil, A.G.P for Respondent Nos.3 and 5 – State.

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CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	24th JUNE 2024

P.C.:

1. Heard finally with the consent of the parties.

Mr.Dani, learned senior advocate appears for the petitioners.

Mr.Damle, learned senior advocate appears for respondent

no.2. Mr.Bankar, Chief Standing Counsel appears for

respondent nos.1 and 4 . Learned AGP appears for respondent

nos.3 and 5.

2. The petition questions the order dated 12.6.2024 passed by respondent no.1 rejecting the objection raised to the preliminary voters list published on 8.2.2024. Before considering the arguments, it is necessary to note that in preparation to the election to the committees of the co-operative societies, the process of preliminary voters list had commenced. The preliminary voters list was published on 8.2.2024 to which an objection was raised by petitioners on 20.2.2024, claiming that 396 members were not included therein, to which a reply was submitted by the society - respondent No.2 on 29.2.2024.

3. The first objection raised by Mr. Dani, learned senior counsel for the petitioners is that, this objection has to be decided within a period of 10 days under Rule 8(3) of Conduct of Elections (Amendment) Rules, 2014 & since the impugned order is dated 12.6.2024 the aforesaid mandate has been violated on account of which the order dated 12.6.2024 is infirm. It is also his contention that though the election has been postponed till 31.5.2024 by the order

28.2.2024, the impugned order dated 12.6.2024 therefore could not have been passed by him as the further extension came only on 20.6.2024 till 30.9.2024.

4. The second contention is that the objection to the provisional voters list, by the impugned order has been rejected not on the basis of the membership register, but on the basis of the audit report for the last 3 years, which was not permissible for which he places reliance upon section 38(2) Maharashtra Co-operative Societies Act (MCS Act) and Rule 32 of Co-operative Societies Rules (MCS Rules). It is therefore contended that there is statutory obligation upon respondent no.1 to base the provisional list not on any audit report but on the membership register. He therefore submits that the impugned order cannot be sustained and therefore is required to be quashed and set aside.

5. Mr.Damle, learned senior counsel for respondent no.2 submits that audit report is based on the original membership register and therefore, the reliance placed upon the audit report is justified. Mr.Bankar, learned counsel for respondent nos.1 and 4 supports the impugned order.

6. Insofar as the first contention is concerned, though Rule 8(3) of the MCS (Election to Committee) Rules, 2014, requires the objection of claims to the provisional list to be decided within ten days from the last date prescribed for receiving the claims and objections, the same is for the purpose of publishing the final voters list which is to be done at least ten days before declaration of the election programme. In the peculiar facts of the case as the election itself now stands postponed to September, 2024, the fact that the objections were decided on 12.6.2024, before the second order postponing it, can be considered to be a mere irregularity as the mandate of law is to publish a correct voters list by considering the objections raised, so that no member is deprived of his franchise.

7. Insofar as the second contention is concerned, section 38 of MCS Act enjoins upon every society to maintain a register of members and section 38(2) of MCS Act mandates that such register shall be evidence of the fact that such member was admitted to membership. Such register in terms of Rule 32 of MCS Rules has to be kept in form- I. It is

therefore apparent that the basis for the preparation of the preliminary voters list has to be the membership register and not any audit report. The society, is therefore enjoined to send to the election officer, the names of the members as occurring in the membership register and not otherwise. The fact that the objection which has been raised by the petitioners has not been tested on the basis of the membership register, but on the basis of the audit report, is apparent from the impugned order, on account of which on this ground itself, the impugned order cannot be sustained.

8. The impugned order is therefore quashed and set aside and the matter is remitted back to respondent no.1 to re-hear and determine the objection raised by the petitioners on the basis of the membership register maintained by the society. The respondent no.2/society shall produce the membership register before respondent no.1 in order to enable him to determine the objection in light of the same. Though the voters list has been finalized on 18.6.2024 however, on account of order dated 12.6.2024, being set aside, the consideration of the objection to the preliminary voter list,

would be necessary. This is also for the reason that the elections have been postponed to September, 2024 and no election programme has yet been declared, on account of which the exercise can be effectively conducted and completed, before the election is declared. The parties shall appear before respondent no.1 on 1.7.2024 and the entire exercise shall be carried out and completed by 30.7.2024. The petition is allowed in aforesaid terms. All contentions are kept open.

(AVINASH G. GHAROTE, J.)