

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

WRIT PETITION NO.4228 OF 2025

1. Ramchandra Jakappa Nandavadekar }
Age-62 years, Occ- Agriculture, }
2. Allabaksh Fakaru Sayyad }
Age-56 years, Occ- Agriculture }
3. Hanmant Vishnu Gurav, }
Age-50 years, Occ-Agriculture, }
4. Keshav Dulbaji Ilage, }
Age-70 years, Occ-Agriculture, }
5. Arjun Nana Naik, }
Age-65 years, Occ-Agriculture, }
6. Balu Vithoba Patil, }
Age-71 years, Occ-Agriculture, }
7. Vitthal Dhondiba Nevage, }
Age-59 years, Occ- Agriculture, }
8. Bharamu Rajaba Ilage, }
Age-73 years, Occ-Agriculture, }
9. Tukaram Sataba Patil, }
Age-75 years, Occ-Agriculture, }
10. Vithoba Satu Sawant, }
Age-79 years, Occ-Agriculture, }
11. Shrikant Balaku Nevage, }
Age-69 years, Occ-Agriculture, }
12. Parashram Ramchandra Ilage, }
Age-66 years, Occ-Agriculture, }
13. Balaku Ravaji Ilage, }
Age-73 years, Occ-Agriculture, }
14. Isak Saifo Mulla, }

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|-----|---|--------|
| | Age-64 years, Occ- Agriculture, | } |
| 15. | Maruti Gundu Mudale,
Age-67 years, Occ- Agriculture, | }
} |
| 16. | Prabhakar Dulabaji Ilage,
Age-63 years, Occ-Agriculture, | }
} |
| 17. | Namita Bharamu Patil,
Age-58 years, Occ-Agriculture, | }
} |
| 18. | Gundu Dhondiba Nandavadekar,
Age-78 years, Occ- Agriculture, | }
} |
| 19. | Tanaji Sakharam Ilage,
Age-67 years, Occ-Agriculture, | }
} |
| 20. | Arjun Janaba Ilage,
Age-70 years, Occ-Agriculture, | }
} |
| 21. | Rukamana Krishna Niturkar,
Age-49 years, Occ-Agriculture, | }
} |
| 22. | Laxman Ramchandra Dhanavade,
Age-52 years, Occ-Agriculture, | }
} |
| 23. | Bharamu Maruti Gavade,
Age-58 years, Occ-Agriculture, | }
} |
| 24. | Shivaji Laxman Ilage,
Age-64 years, Occ-Agriculture, | }
} |
| 25. | Bashir Umar Sayyad,
Age-61 years, Occ-Agriculture, | }
} |
| 26. | Gous Nanhu Sayyad,
Age-73 years, Occ-Agriculture, | }
} |
| 27. | Ramji Motiram Giri,
Age-68 years, Occ-Agriculture, | }
} |
| 28. | Sadashiv Appa Sutar,
Age-72 years, Occ-Agriculture, | }
} |
| 29. | Ramchandra Laxman Dhanavade, | } |

	Age-82 years, Occ-Agriculture,	}
30.	Anand Dhondiba Mudale, Age-60 years, Occ-Agriculture,	} }
31.	Mahadev Khobana Birje, Age-79 years, Occ-Agriculture,	} }
32.	Maruti Janaba Ilage, Age-69 years, Occ-Agriculture,	} }
33.	Vitthal Balaku Nevage, Age-75 years, Occ-Agriculture,	} }
34.	Satuppa Bhau Ilage, Age-67 years Occ-Agriculture	} }
35.	Gangubai Dasharath Ilage, Age-80 years, Occ- Agriculture,	} }
36.	Arun Vithoba Nevage, Age-59 years, Occ- Agriculture,	} }
37.	Santosh Bhau Ilage, Age-64 years, Occ-Agriculture,	} }
38.	Shamrao Janaba Ilage, Age-69 years, Occ-Agriculture,	} }
39.	Bajil Kaitan Shiker, Age-60 years, Occ-Agriculture,	} }
40.	Anant Dulbaji Ilage, Age-66 years, Occ-Agriculture	} }
41.	Husen Nanhu Sayyad, Age-71 years, Occ- Agriculture,	} }
42.	Akbar Husen Sayyad, Age-62 years, Occ-Agriculture,	} }
43.	Ramchandra Janaba Patil, Age-78 years, Occ-Agriculture,	} }
44.	Satuppa Satappa Madekar,	}

Age-63 years, Occ-Agriculture,	}
45. Shabbir Ajarekar,	}
Age-69 years, Occ-Agriculture,	}
46. Shanta Shripati Gavade,	}
Age-61 years, Occ-Agriculture,	}
47. Fayaj Rasul Fakir,	}
Age-56 years, Occ-Agriculture,	}
All above residing at Village-Gavase,	}
Tal. Chandgad, Dist. Kolhapur	}
	.Petitioners

Versus

1. The State of Maharashtra	}
Through its Principal Secretary	}
Department of Co-operation,	}
Mantralaya, Mumbai.	}
2. The Commissioner,	}
of Co-operative Department,	}
2 nd Floor, New Central Building,	}
Dr. Babasaheb Ambedkar Road,	}
Pune-411001.	}
3. The State Co-operative	}
Election Commissioner,	}
Having Office at Pune,	}
Old Central Building, 5, BJ Road,	}
Gr Floor, Pune 41001.	}
4. Taluka Co-operative Election	}
Officer and Asst. Registrar (Dairy)	}
E Ward, Tarabai Park, Kolhapur.	}
5. Shri. Hanuman Sahakari Dugdh	}
Vyavsayik, Sanstha, Ltd. Gavase,	}
Tal. Chandgad, Dist. Kolhapur	}
	.. Respondents

...

Mr. D. V. Sutar with Ms. Latika Kabad i/by Ms. Kavita D. Vijapure, Advocates for the Petitioners.

Mr. A. I. Patel, Additional Government Pleader with Mrs. Reena A. Salunkhe, Assistant Government Pleader for the Respondent Nos.1 and 2.

Mr. Dilip Bodake, Advocate for the Respondent Nos.3 and 4.

Mr. Saurav Katkar with Mr. Amar D. Parsekar, Advocates for the Respondent No.5.

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**CORAM : A.S. CHANDURKAR &
M. M. SATHAYE, JJ**

DATE : 9th APRIL 2025.

JUDGEMENT : (Per:A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition filed by 47 members of Shri Hanuman Sahakari Dugdh Utpadak Sanstha (for short, 'the Society') a co-operative society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Act of 1960'), is to the provisional voters list published on 14/02/2025 as well as the election programme for conducting elections to the Managing Committee of the Society published on 11/03/2025. The petitioners also pray that a fresh voters list be published by including their names and thereafter conduct the said elections.

3. The facts relevant for considering the challenge as raised in the writ petition are that the elective term of the Managing Committee of the Society came to an end some time in 2022. However, the fresh elections were postponed for one reason or the other. The provisional voters list came to be published on 14/02/2025 containing names of 132 members enrolled upto 31/03/2022. Since the names of about 59 members were excluded from the provisional voters list, the said members raised an objection before the Assistant Registrar on 18/02/2025. The Assistant Registrar on 25/02/2025 heard the objections and held that as the said 59 members were supplying milk to another co-operative society which was against bye-laws of the Society, they had ceased to be members of the Society. The petitioners being aggrieved by the aforesaid order rejecting their objections approached the Taluka Co-operative Election Officer by invoking the provisions of Rule 11(3) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (for short, "the Rules of 2014"). The Election Officer considered the objections as raised. He held that as the said 59 members were stated to be supplying milk to another co-operative society, they had ceased to be members of the Society. On this ground , the objection was turned down. Thereafter, the election programme for holding elections to

the Managing Committee came to be declared on 12/03/2025. It is in this backdrop that the petitioners have filed the present writ petition.

4. It is to be noted that the petitioners had earlier approached this Court by filing Writ Petition No.4029/2025 on 17/03/2025 for challenging the order dated 28/02/2025 passed by the Election Officer under Rule 11(3) of the Rules of 2014. A learned Single Judge heard the writ petition on 28/03/2025 and held in paragraphs 3 to 7 as under:-

“3. It is well-settled that the deletion of a member's name from the rolls of a cooperative Society must be in consonance with the provisions of Section 25 of the Act, which governs the cessation of membership. Any decision taken in derogation of these statutory provisions is liable to be struck down as arbitrary and ultra vires.

4. The Returning Officer, being a statutory functionary, is bound by the constraints of Rule 11 and cannot assume adjudicatory jurisdiction over disputes concerning membership. Thus, if the petitioners contend that their names were illegally removed from the voters' list without due process, the appropriate remedy is to approach this Court by way of a writ petition challenging the preliminary voters' list rather than invoking the limited powers of the Returning Officer under Rule 11.

5. In light of the above discussion, I am of the considered view that a writ petition against an order passed by the Returning Officer under Rule 11 of the Maharashtra Cooperative Societies Rules, 1961, does not merit interference under Article 226 of the Constitution of India. The power of

judicial review in such matters is limited to correcting jurisdictional errors and ensuring adherence to due process, which in the present case, does not appear to have been violated at the stage of the Returning Officer's determination.

6. Accordingly, the writ petition stands disposed of. No order as to costs.

7. However, the petitioners shall be at liberty to approach this Court by way of an independent writ petition seeking appropriate relief, if so advised, in accordance with law.”

5. Mr. D. V. Sutar, the learned counsel appearing for the petitioners in support of the challenge raised to the provisional voters list submitted that the names of 59 members of the Society came to be deleted from the provisional voters list on the premise that they had ceased to be members of the Society as they were supplying milk to another co-operative society. This alleged act was considered to be against bye-laws of the Society. Without following the procedure prescribed under the Act of 1960 as well as the Maharashtra Co-operative Societies Rules, 1961 (for short, “the Rules of 1961”) in this regard, the petitioners had been deprived of their membership. Referring to the provisions of Sections 25 and 25A of the Act of 1960 read with Rules 28 and 29 of the Rules of 1961, it was submitted that in breach of the aforesaid provisions, the petitioners had been deprived of their membership. According to him, the petitioners were neither removed from the Society nor had been expelled. On this ground,

the action of removal of their names from the Membership Register had been undertaken without granting them any opportunity and without following the procedure prescribed. As a result, the petitioners were deprived of participating in the elections of the Managing Committee in an arbitrary manner. The number of members deprived from participating in the elections was substantial thus vitiating the elections itself. To substantiate his contentions in this regard, the learned counsel placed reliance on the decisions in *Rajan Dinkarrao Pharate & Ors. Vs. State of Maharashtra & Ors.* 1997 (1) Mh.L.J. 543, *K. Venkatachalam Vs. A. Swamickan & Anr.* AIR 1999 SC 1723, *Election Commission of India through Secretary Vs. Ashok Kumar & Ors.* AIR 2000 SC 2979, *Ahmednagar Zilla S.D.V. and P. Sangh Ltd. & Anr. Vs. State of Maharashtra & Ors.* (2004) 1 SCC 133, *Pundlik Vs. State of Maharashtra & Ors.* (2005) 7 SCC 181, *Dattatray Genaba Lole and Ors. Vs. The Divisional Joint Registrar and Ors.* 2021:BHC-AS:17316-DB and *Sadashiv Shivaji Dhenge Vs. State of Maharashtra and Ors.* 2024:BHC-NAG:1573-DB. It was thus submitted that the petitioners be granted the reliefs as prayed for.

6. Per contra, Mr. Saurav Katkar, learned counsel appearing for the Society opposed the writ petition and submitted that the

petitioners were no longer members of the Society. In the Annual General Meeting of the Society held on 23/10/2021, Resolution No.8 was passed cancelling the membership of the petitioners as they were supplying milk to another co-operative society in breach of the bye-laws of the Society. For this reason, the names of the petitioners were rightly not entered in the provisional voters list. It was further submitted that the final voters list came to be published on 28/02/2025 wherein names of 132 members were shown. Since the election programme was published on 12/03/2025, there was no reason for this Court to interfere in the election process. The elections had progressed and had reached an advanced stage. Hence, no relief could be granted to the petitioners. They could raise such grievance after the conclusion of the elections. The learned counsel placed reliance on the decision of the Division Bench in *Shriram Siddheshwar Dubal Vs. The District Co-operative Election Officer & Ors.* 2022:BHC-AS:9695-DB.

Mr. Dilip Bodake, the learned counsel appearing on behalf of the respondent nos.3 and 4 relied on the affidavit in reply and submitted that since the election programme had commenced, no interference in the same was called for. He too submitted that the writ petition was liable to be dismissed.

7. We have heard the learned counsel for the parties and with their assistance we have perused the documents on records. We have thereafter given thoughtful consideration to the respective submissions. At the outset, it may be noted that insofar as the order dated 28/02/2025 passed by the Election Officer rejecting the objections raised to the provisional voters list is concerned, the same was the subject matter of challenge by the petitioners in Writ Petition No.4029 of 2025. The learned Single Judge declined to interfere with the said order in exercise of jurisdiction under Article 226 of the Constitution of India but permitted the petitioners to raise a challenge to the provisional voters list. It would therefore not be permissible for us to go into the correctness of the order dated 28/02/2025 passed by the Election Officer.

8. The petitioners were granted liberty to raise a challenge to the provisional voters list in accordance with law. It is on that premise that such challenge as raised by the petitioners to the provisional voters list deserves to be considered. However, while doing so, it is also to be borne in mind that the final voters list has now been published on 28/02/2025 after which the election

programme has also been declared. It is well settled by various decisions of the Supreme Court as well as this Court that on the commencement of the election programme, the Court would be slow in exercising its jurisdiction under Article 226 of the Constitution of India. Hence any interference in the election programme so as to stall the conduct of elections is normally avoided. The limited scope of interference in a case of such nature has been succinctly laid down by Hon'ble R. M. Lodha, J (as his Lordship then was) in *Rajan Dinkarrao Pharate & others (supra)*. In paragraph 25 of the said decision it has been observed as under:-

“As regards second objection raised by learned counsel for the State and Mr. Anturkar about maintainability of writ petition on the ground that since process of election is started, this Court should not invoke its extraordinary jurisdiction under Article 227 of Constitution of India, and, dispute relating to it must be left to be resolved by way of substantive election petition under Section 144-T of the Act of 1960, it may be observed that this is a rule of prudence and not a rule of jurisdiction. No doubt the High Court is always slow and sparingly invokes its jurisdiction under Article 226 of Constitution of India when there is challenge to preparation of voters list but where the exceptional and

extraordinary case is made-out that the entire exercise of election would be farce if the process of election is completed on the basis of grossly invalid voters list depriving majority of members of the society from exercising right to vote, in my view, case is made-out for invoking extraordinary jurisdiction under Article 226 of Constitution of India and the interference by this Court. The edifice of valid election is built on valid list of voters and where there is wholesale exclusion of members from final list of voters, shockingly to the extent of 97% on unjustifiable grounds, the High Court cannot imprudently refuse to exercise extraordinary jurisdiction and observe that since the election process has started the dispute should be resolved through election petition.”

Thus, if it is found that a large number of members of a co-operative society are illegally deprived of participating in the elections in a manner contrary to law or on account of any arbitrary act on the part of the society or the Election Officer, interference to that limited extent would be permissible. In the present case, more than 30% of the members of the Society have been deprived of participating in the elections by dismembering

them. Keeping this aspect in mind, the challenge raised by the petitioners can be considered.

9. According to the Society, the names of about 59 members came to be deleted from the provisional voters list on the premise that these members were supplying milk to another co-operative society contrary to the bye-laws of the Society. In the Annual General Meeting of the Society held on 23/10/2021, a resolution to that effect had been passed. The question therefore to be considered is whether the name of a member can be removed from the register of members on the basis of alleged breach of a bye-law merely by passing a resolution in that regard.

In our view, on the basis of an alleged breach of a bye-law of a co-operative society, the membership of the society cannot be lost simply by removing the name of a member from the register of members. Section 25 of the Act of 1960 prescribes for cessation of membership either on resignation of such member being accepted, or on transfer of his share or interest to another member or on the death of such member or on his removal or expulsion from the society. Under Section 25A of the Act of 1960, the name of a member who has ceased to be a member or who stands disqualified under the provisions of the Act of 1960 or the Rules

made thereunder has to be removed from the Membership Register.

Rules 28 and 29 of the Rules of 1961 provide for the procedure for expulsion of a member of the Society. Expulsion can take place after giving due notice to the member alongwith an opportunity to show cause. It is thus clear that Sections 25, 25A of the Act of 1960 as well as Rules 28 and 29 of the Rules of 1961 are in the nature of the code in itself. Unless the procedure as prescribed is followed, there would be no question of any member losing his membership automatically on the ground that there has been an alleged breach of the bye-laws.

10. In *Shree Vitthal Sahakari Sakhar Karkhana Ltd. vs. Wadikuroli Vividh Karyakari Seva Society and Others*, 2010 (5) Mh.L.J. 376, it has been held in paragraph 5 as under:-

5) Section 25 of the Maharashtra Co-operative Societies Act says that a person shall cease to be a member of the Society on resignation from the membership thereof being accepted, or on the transfer of 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. The respondents, prima facie, do not fall under any of the

aforesaid clauses, except “removal or expulsion” from the Society. Procedure for removal or expulsion from the Society is prescribed under Rules 28 and 20 of the Maharashtra Co-operative Societies Rules. Admittedly, Rules 28 and 29 were not followed. Mr. Jahagirdar, learned Sr. Advocate for the petitioner submitted that procedure prescribed by Rules 28 and 29 was not required to be followed because respondents 1 to 11 were not removed or expelled from the membership but there was a case of cessation of membership on account of the breach of the bye-laws. I am, prima faice of the view that any breach of a bye-law would not result into automatic cessation of membership but the procedure for removal or expulsion from membership would be required to be followed even in case of breach of bye-laws of a Society.....”

We are in respectful agreement with the aforesaid observations. In our view, there cannot be any automatic cessation of membership resulting in removal of the name of such member from the list of members on the ground that such member had allegedly acted in breach of the bye-laws. Cessation of membership has to be in accordance with the Act of 1960 and the Rules of 1961.

It is thus crystal clear that without following the prescribed statutory procedure, the petitioners have been treated as non-members of the Society. The action of the Society is contrary to settled law and thus arbitrary in nature resulting in violation of the provisions of Article 14 of the Constitution of India. As held by

the Supreme Court in *Ahmednagar Zilla SDV and P Sangh Limited and another (supra)*, in a given case if the voters list is found to have been illegally prepared, there would be a scope for interference.

11. Having found that the stand of the Society that the petitioners ceased to be members of the Society on the ground that they had breached its bye-laws is ex-facie illegal and not in accordance with law, the question of relief to which the petitioners would be entitled is required to be considered. It is not in dispute that the election programme has commenced after its publication. It would therefore not be justifiable to stall the election programme by causing interference under Article 226 of the Constitution of India. At the same time, we cannot lose sight of the fact that the petitioners, who constitute a sizeable number, have been illegally and arbitrarily deprived of their membership rights. Since on admitted facts, the membership of the petitioners has been terminated by not following the procedure prescribed by the Act of 1960 and the Rules framed thereunder, the only relief that can be granted to the petitioners is to permit them to participate in the elections to the limited extent of conferring them the right to vote. This is on the premise that they have been deprived of their

membership in an arbitrary manner contrary to law. Thus, without interdicting the election process, the injustice caused can be partially remedied.

12. Accordingly, the following order is passed:-

- i) It is held that the names of the petitioners have been deleted from the provisional voters list without terminating their membership as required by law. The petitioners would therefore be entitled to participate in the elections only to the extent of voting therein. As the elections are scheduled on 18/04/2025, the Taluka Election Officer and Assistant Registrar (Dairy) Kolhapur as well as the Society shall take necessary steps to enable the petitioners to cast their vote in the election to the Managing Committee.
- ii) Any party aggrieved by the outcome of the elections is free to challenge the same by taking resort to the statutory remedy available after declaration of results.
- iii) Rule is made absolute in aforesaid terms with no order as to costs.
- (iv) Parties to act on authenticated copy of this order.

[M. M. SATHAYE, J.]

[A.S. CHANDURKAR, J.]