

Digitally signed by
RAMESHWAR
LAXMAN DILWALE

Date: 2025.05.02
18:54:07 +0530

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

WRIT PETITION NO. 5192 OF 2025

1. Shri Maruti Chandrappa More, }
Age-55 years, Occupation: Agri., }
2. Shri Vishnu Babaji Patil, }
Age-49 Adult, Occupation: Agri., }
3. Shri Sakharam Babaji Patil, }
Age-45 Adult, Occupation: Agri., }
4. Shri Ananda Maruti Kadam }
Age-65 Adult, Occupation: Agri., }
5. Shri Vishnu Maruti Kamble }
Age-63 Adult, Occupation: Agri., }
6. Shri Rajaram Koyappa Kamble }
Age-62 Adult, Occupation: Agri., }
7. Shri Mahadev Dadu Kamble }
Age-65 Adult, Occupation: Agri., }
8. Shri Govind Maruti Kamble }
Age-55 Adult, Occupation: Agri., }
9. Shri Ramchandra Maruti Kamble }
Age-58 Adult, Occupation: Agri., }
10. Shri Akaram Kerba Savant }
Age-59 Adult, Occupation: Agri., }
11. Archana Panduranga Choudhari, }
Age-62 Adult, Occupation: Agri., }
12. Shri Panduranga Kerba Shelke/Patil }
Age-53 Adult, Occupation: Agri., }
13. Ashanbi Yakub Mulani }
Age-58 Adult, Occupation: Agri., }

- | | | |
|-----|----------------------------------|------------------|
| 14. | Shri Sardar Daud Jamadar | } |
| | Age-56 Adult, Occupation: Agri., | } |
| 15. | Shri Raghunath Vishnu Patil | } |
| | Age-51 Adult, Occupation: Agri., | } |
| 16. | Shri Shantabai Krushna Gurav | } |
| | Age-55 Adult, Occupation: Agri., | } |
| 17. | Akkatai Bandu Chavan, | } |
| | Age-58 Adult, Occupation: Agri., | } |
| 18. | Shri Tayappa Bhiva Chavan | } |
| | Age-65 Adult, Occupation: Agri., | } |
| 19. | Shri Bhairu Ganpati Kamble | } |
| | Age-62 Adult, Occupation: Agri., | } |
| 20. | Shri Sadashiv Hari Choudhari | } |
| | Age-50 Adult, Occupation: Agri., | } |
| 21. | Shri Maruti Hari Choudhari | } |
| | Age-55 Adult, Occupation: Agri., | } |
| | petitioner nos.1 to 21 all are | } |
| | R/o. Dhundavde, Tal- Gaganbavda, | } |
| | District-Kolhapur. | } |
| | | Petitioners |

VERSUS

- | | | |
|----|--|---|
| 1. | State of Maharashtra, | } |
| | Through its Principal Secretary, | } |
| | Department of Co-operation, | } |
| | Mantralaya Mumbai | } |
| 2. | State Co-operative Election Authority, | } |
| | Maharashtra State, Pune, | } |
| | Old central building, | } |
| | Ground Floor, Pune-411 003. | } |
| 3. | District Co-operative Election Officer | } |
| | & The District Deputy Registrar, | } |
| | Co-operative Societies, Kolhapur & | } |

Kolhapur.	}
4. Shri Dyaneshwar Mauli V.K.S.	}
Vikas Seva Sahakari Sanstha,	}
Maryadit Dhundavde,	}
Tal-Gaganbavda, District-Kolhapur	}
	 Respondents.

Mr.Chetan Patil with Mr. Ruturaj Pawar, Advocates for the petitioners.

Mrs.Ashwini A. Purav, Assistant Government Pleader for respondent no.1.

Mr.Dilip Bodke, Advocate for respondent nos. 2 and 3.

Mr. Prashant Bhavake, Advocate for respondent no.4

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

DATED : 28th APRIL 2025

JUDGEMENT: (PER :A S CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The petitioners seek a direction to be issued to the respondent no.2-State Co-operative Election Authority and respondent no.3-District Co-operative Election Officer to prepare a fresh voters list with regard to elections of the Managing Committee of the respondent no.4-Co-operative Society by including their names as voters so as to enable them to participate in the said elections. The basis for seeking this prayer is that the petitioner nos.2 to 21 have been deprived of their membership rights in a

manner contrary to the provisions of Section 25 of the Maharashtra Co-operative Societies Act, 1960 (for short, 'the Act of 1960') read with Rules 28 and 29 of the Maharashtra Co-operative Societies Rules, 1961 (for short, 'the Rules of 1961').

2. Facts relevant for considering the prayers as made are that for the purposes of holding elections of the Managing Committee of the Co-operative Society, the provisional voters list consisting of 121 members came to be prepared on 05/03/2025. From the list of 121 members, a separate list of defaulters comprising of 45 members was prepared. As a result, names of 76 members were shown in the list of eligible members. As the names of petitioners were not shown in the provisional voters list, they raised an objection under Rule 8(1) of the Maharashtra Co-operative Societies (Election of Committees) Rules, 2014 before the District Election Officer. That objection however was rejected on 20/03/2025. The said order was challenged by the petitioners by filing Writ Petition No.4837 of 2025 (*Maruti Chandrappa More & Ors. Vs. The District Deputy Registrar, Cooperative Societies, Kolhapur & Anr.*). However, on 09/04/2025, the learned Single Judge declined to interfere in exercise of writ

jurisdiction. However, liberty was granted to the petitioners to raise a grievance as regards their exclusion from the voters list. It is in this backdrop that the petitioners have filed the present writ petition.

3. Mr. Chetan G. Patil, learned counsel appearing for the petitioners submitted that the petitioners have been deprived of the right to participate in the elections by excluding their names from the voters list in a manner contrary to law. On the basis of a resolution of the General Body held on 26/09/2022, it was stated that the petitioners were treated to be non-members of the Society. According to him, it was necessary for the Society to have followed the procedure prescribed under the Act of 1960 as well as the Rules of 1961 before the petitioners could be deprived of their membership. Though the final voters list had now been published, as a result of the illegal action on the part of the Society, the petitioner nos.2 to 21 were deprived of their statutory rights. The petitioners constituted about 20% of the total eligible voters and thus the outcome of the elections would be affected if they denied the right to participate in the same. Placing reliance on the decision in *Ramchandra Jakappa Nandavadekar & Others Vs. The State of Maharashtra & Others* 2025:BHC-AS:16719-DB it was submitted

that similar relief be granted to the petitioners to enable them to participate in the elections.

4. Mr. Dilip Bodke, learned counsel appearing for the respondent nos.2 and 3 opposed the aforesaid submissions. It was submitted that since the election process had commenced, this Court may not interfere in exercise of writ jurisdiction. The election would be conducted in accordance with the Rules of 2014 and those members whose names were included in the final voters list alone were eligible to vote. It was thus submitted that this Court may not interfere in exercise of writ jurisdiction.

Mr. Prashant Bhavake, learned counsel appearing for respondent no.4 also opposed the writ petition. According to him, as the petitioners had ceased to be members of the Society in view of the resolution passed in the Annual General Meeting of the Society held on 26/09/2022, the names of the petitioners were rightly not shown in the provisional voters list. Since the objection raised by the petitioners under Rule 8 of the Rules of 2014 had been rejected and the writ petition challenging that order was not entertained, they were not entitled to any relief whatsoever. The election programme had progressed and any interference at this

stage would not be permissible especially in the light of the law laid down by this Court in *Dattatray Genaba Lole & Ors. Vs. Divisional Joint Registrar & Ors.* 2022 (1) Bom.C.R. 471. The petitioners could raise a challenge to the results of the election after its conclusion if they were so aggrieved. He therefore submitted that the writ petition was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have also perused the documents on record. The only reason for the names of the petitioners not being included in the final voters list is that according to the Society they have ceased to be its members in view of the resolution dated 26/09/2022 passed in the Annual General Meeting of the Society. On a query made to the learned counsel for the Society as to whether the procedure prescribed by Section 25 of the Act of 1960 read with Rules 28 and 29 of the Rules of 1961 was followed for removing the petitioners as members of the Society, the answer was in the negative. A similar issue was considered by this Court in *Ramchandra Jakappa Nandavadekar & other (supra)*. It was held in paragraphs 8 to 10 as under:-

“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 facie 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.”

6. We therefore find that the petitioners have been deprived of their rights flowing from being members of the Society in a manner contrary to law. Further, the petitioners constitute about 20% of total members who were now found eligible to participate in the elections. Their absence would definitely affect the validity of the elections. We therefore find that without causing any interference with the elections programme as published, they could be granted a limited right to cast their votes in the elections now scheduled on

17/05/2025. To support this conclusion, we may refer to paragraph 11 of the decision in *Ramchandra Jakkappa Nandavadekar & others (supra)* wherein it was held as under:-

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.

7. Hence for aforesaid reasons, 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 of the Managing Committee of the Society only to the extent of voting therein. As the elections are scheduled on 17/05/2025, the District Co-operative Election Officer and District Deputy Registrar, 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 by including their names in the voters list.

(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 the costs.

(iv) Parties to act on an authenticated copy of this order.

(M. M. SATHAYE, J.)

(A. S. CHANDURKAR, J)