

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7047 OF 2025**

Kumar Shivgonda Desai ... Petitioner
Versus
The State Cooperative Election
Authority & Ors. ... Respondents

**WITH
WRIT PETITION NO. 7051 OF 2025**

Manohar Shankar Vadar ... Petitioner
Versus
The State Cooperative Election
Authority & Ors. ... Respondents

**WITH
WRIT PETITION NO. 7059 OF 2025**

Basappa Lagama Kedar ... Petitioner
Versus
The State Cooperative Election
Authority & Ors. ... Respondents

**WITH
WRIT PETITION NO. 7057 OF 2025**

Netaji Maruti Shinde ... Petitioner
Versus
The State Cooperative Election
Authority & Ors. ... Respondents

Mr. Shrivallabh Panchpor a/w Mr. Onkar Wangikar and Mr. Hrishikesh Giri for the Petitioners in all Writ Petitions.

Mr. N. C. Walimbe, Addl. G. P. a/w Mr. J. P. Patil, AGP for Respondent-State in WP/7059/2025.

Mr. N. C. Walimbe, Addl. G. P. a/w Ms. D. S. Deshmukh, AGP for Respondent No.2-State in WP/7057/2025 and WP/7047/2025.

Mr. N. C. Walimbe, Addl. G. P. a/w Mr. A. C. Bhadang, AGP for Respondent No.2-State in WP/7051/2025.

Mr. Shrikrishna R. Ganbavale i/by Mr. Sangramsinh S. Yadav for Respondent No.6 in all Writ Petitions.

CORAM: MANISH PITALE, J.

DATE : 11th JUNE 2025

P.C. :

. These writ petitions have been filed challenging orders passed by the respondent-Assistant Registrar of Cooperative Societies at Kolhapur, whereby the appeals filed by the petitioners have been dismissed, thereby confirming orders passed by the respondent-Returning Officer for election to the Shri Shiv Parvati Cooperative Dairy Business Society Limited (hereinafter referred to as 'Society'), whereby nomination papers filed by the petitioners for contesting the election to the society were rejected.

2. The learned counsel for the petitioners in these petitions submitted that the Returning Officer committed a grave error in rejecting the nomination papers on technical and frivolous grounds and on defects that could not be categorized as substantial defects, which the respondent-Appellate Authority failed to appreciate while passing the impugned orders.

3. It was further submitted that the facts and circumstances of the present case justify the maintainability of these writ petitions on the touchstone of the settled position of law laid down by this Court and reiterated recently in a judgment and order dated 2nd April 2025 passed by this Court (Coram: Amit Borkar, J.) in Writ Petition No. 4072 of 2025 (*Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority*). It was submitted that sufficient grounds were made out before the respondent-Appellate Authority

to entertain and allow the appeals filed by the petitioners. But, by the impugned orders, the appeals have been erroneously dismissed.

4. The learned counsel for the petitioners made submissions concerning the facts of the individual cases to emphasize that in each case, the basis for rejection of the nomination paper was frivolous and therefore, this Court ought to exercise writ jurisdiction to interfere with the same and to direct acceptance of the nomination papers of the petitioners. It was submitted that Writ Petition Nos. 7047 of 2025, 7051 of 2025 and 7059 of 2025 raised grounds that could be said to be similar in nature, while Writ petition 7057 of 2025 raises grounds that are distinct, although in all the four writ petitions, it is the contention of the petitioners that technicalities have overridden substantive aspects of the matter leading to erroneous rejection of the nomination papers.

5. As regards Writ petition No. 7047 of 2025, the nomination paper was rejected on the ground that the name of the petitioner in the final voters list was found to be discrepant when compared to documents filed in support of the nomination papers, in as much as the name in the final voters list was Kumar Shivgonda Desai. It was submitted that in support of the nomination paper, the petitioner had placed on record a *Dakhla* (hereinafter referred to as a 'Certificate') issued by the concerned *Grampanchayat*, stating that Rajendrakumar Shivgonda Desai and Kumar

Shivgonda Desai are one and the same person and an affidavit of the petitioner sworn before the Executive Magistrate dated 26th April 2016 was also placed on record, stating the said fact. The learned counsel for the petitioner submitted that the aforesaid documents were sufficient to indicate that there was no scope for any confusion in the matter and that a mere technicality was treated as a substantive discrepancy or defect by the respondent-Returning Officer, while rejecting the nomination paper.

6. It was submitted that the respondent-Appellate Authority also failed to appreciate this aspect of the matter while dismissing the appeal by the impugned order dated 30th May 2025. It was submitted that the mandatory requirements of Rule 25 of the Maharashtra Cooperative Society (Committee Election) Rules 2014, were not satisfied, in as much as proper opportunity was not granted to the petitioner to submit explanation and on a mere technicality, the nomination papers were rejected, which was erroneously confirmed by the impugned order passed by the respondent-Appellate Authority. It was further submitted that considering the narrow scope of the controversy in the present case, the same could certainly have been resolved by the respondent-Appellate Authority by properly exercising jurisdiction under Section 152A of the Maharashtra Cooperative Societies Act, 1960 and this was clearly not a case for being agitated in a dispute under Section 91 thereof.

7. Similarly, it was pointed out that in Writ Petition Nos. 7051

and 7059 of 2025, minor difference in the names of the petitioners had become the basis for rejection of the nomination papers. In these cases also there was a minor difference between the name of the petitioners in the voters list and in the nomination form as compared to the name mentioned in the respective Aadhar Cards. Certificates issued by *Grampanchayat* were placed on record, certifying that although there was minor difference in the name, they pertained to one and the same person. The respondent-Appellate Authority in these cases also failed to appreciate the facts in the proper perspective and proceeded to dismiss the appeal, thereby confirming the orders passed by the respondent-Returning Officer.

8. As regards Writ Petition No. 7057 of 2025, it was submitted that in the said case, ground for rejection of the nomination paper was different and it pertained to satisfying one of the requirements of the by-laws of the Society. In the by-laws, the members were classified into various categories with one particular category being identified as “active members”. The by-law specified that an active member would be one who supplies milk to the Society for a minimum of 180 days and 250 liters in one financial year in any of the preceding 5 years. It was submitted that despite the fact that the petitioner in the said petition satisfied the said requirement, the respondent-Returning Officer erroneously rejected the nomination paper, which was confirmed by the respondent-Appellate Authority by dismissing the appeal. It was submitted that

the respondent-Appellate Authority failed to appreciate the true purport of the relevant by-law, while applying it to the facts of the case in the light of the documents issued by the society itself. It was submitted that the aforesaid controversy did not require leading of any evidence and therefore, the respondent-Appellate Authority ought to have allowed the appeal.

9. Although, the writ petitions have come up for consideration for the first time, considering the urgency in the matter and the fact that one of the nominated members was represented by a Counsel, who opposed the present writ petitions and the learned AGP also appeared in the matter, instead of considering issuance of notice, this Court took up all the four writ petitions for disposal. It is to be noted that the polling is to take place on 15th June 2025, as per the election program and hence, there is extreme urgency in the matter.

10. The learned AGP supported the impugned orders passed by the respondent-Appellate Authority, emphasizing upon the limited jurisdiction available to the Appellate Authority under Section 152A of the aforesaid Act, particularly in the light of the law reiterated in the aforesaid recent judgment in the case of *Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority* (supra).

11. The learned counsel appearing for the nominated member submitted that the issues sought to be raised on behalf of the

petitioners in these writ petitions concerned findings of facts and if the same were to be upset, it was necessary to lead evidence, thereby indicating that these cases fell in the category of disputes to be resolved under Section 91 of the aforesaid Act. In this regard, much emphasis was placed on paragraphs 44 to 50 of the aforementioned judgment in the case of ***Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority*** (supra). It was submitted that if there was necessity to lead evidence in support of the documents to show that the petitioners despite difference in their names in various documents claim to be one of the same person, the same could not be resolved in appellate proceedings before the respondent-Appellate Authority under Section 152A of the said Act. Even with regard to the petitioner in Writ Petition Nos. 7057 of 2025, it was submitted that the same may require leading of evidence and hence, no error could be attributed to the respondent-Appellate Authority in dismissing the appeal and confirming the rejection of nomination paper of the said petitioner. On this basis, it was submitted that the writ petitions ought to be held as not maintainable and they deserve to be dismissed.

12. Before considering the individual writ petitions, it would be appropriate to first consider the question regarding maintainability of the present writ petitions. The position of law in that regard has been clarified in successive judgments and reference to those judgments has been made in the aforesaid recent judgment in the

case of ***Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority*** (supra). The discussion on the said aspect of the matter is found in paragraph 64 onwards in the said judgment. But, the observations made in paragraphs 44 to 50 are also relevant in that regard. The discussion with regard to the maintainability of the writ petition in the said judgment appears to be in the context of Article 226 of the Constitution of India. But, since the writ of certiorari has been held to be akin to exercise of jurisdiction under Article 227 of the Constitution of India also, the observations made therein assume significance. In any case, the Court would be required to examine as to whether the controversy that arises out of rejection of a nomination paper can be decided in a summary manner as contemplated under Section 152A of the aforesaid Act or it would require leading of evidence in a full scale resolution of dispute under Section 91 thereof. The distinction between the two situations and in that context, the manner in which the respondent-Appellate Authority under Section 152A of the said Act is expected to exercise jurisdiction is found in paragraphs 44 to 50 of the said judgment in the case of ***Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority*** (supra), which read as follows :

“44. The Maharashtra Cooperative Societies Act, 1960, lays down a clear legal framework for dealing with objections to nomination papers during elections to cooperative societies. While Section 152A of the Act provides for a limited right of appeal against the decision of the Returning Officer who rejects a nomination paper, Section 91 gives a broader remedy

of filing an election petition before the Cooperative Court. Section 152A offers only a limited and summary remedy. The appellate authority under this provision does not re-examine the full facts or conduct a fresh inquiry. Its job is only to check whether the Returning Officer followed the correct legal process, acted reasonably, and did not violate any rules of natural justice. This type of limited scrutiny may be called limited appellate review, where the court or authority checks the process followed, not the merits of the decision.

45. *It is well settled that in some rare cases, a serious factual error that affects the fairness of the process may also be reviewed. However, this does not mean that new documents or evidence can be introduced during the appeal under Section 152A. Limited appellate review is meant to supervise whether legal powers were used correctly — it is not a full-scale appeal on facts. Therefore, allowing new evidence would go beyond the legal limits of this summary appeal.*

46. *The Act has made a clear distinction between two types of legal remedies:*

Section 152A is meant for a summary appeal — a quick and focused examination of the Returning Officer's decision, only on legal and procedural grounds.

Section 91, on the other hand, allows for a detailed election petition where full evidence can be led, witnesses can be examined, and questions like a candidate's eligibility or other issues affecting the election can be properly investigated.

47. *If new documents are allowed to be brought in during an appeal under Section 152A, it would upset the entire scheme of the Act. A simple and quick appeal would turn into a full trial, something which the legislature never intended. The law has given Section 91 as the correct forum for such detailed inquiries. Ignoring that would amount to bypassing the legal process.*

48. *In general legal practice, courts do not allow new documents or evidence to be filed at the appellate stage unless it is clearly shown that such evidence could not be discovered earlier, even with due care. This principle has been followed even in civil cases under Order XLI Rule 27 of the Civil*

Procedure Code. Even when courts do allow new evidence at the appellate stage, they do so in rare and exceptional situations. This is because the first forum — in this case, the Returning Officer — is considered the proper authority to look at the facts first.

49. There is no provision in Section 152A which allows the appellate authority to take on record new documents that were not before the Returning Officer. Allowing this would not only reduce the Returning Officer's role to a mere formality but would also delay the decision of appeal, which is supposed to be completed in ten days period. The courts have time and again emphasised the importance of timely elections. Permitting new evidence at this stage would also cause legal confusion, overlapping proceedings, and unnecessary delays. It would blur the line between the two legal remedies — a summary appeal and a full-fledged election petition — which the law has carefully separated.

50. Therefore, if a person genuinely believes that a candidate is factually ineligible, then the proper course is to file an election petition under Section 91. That forum is meant for such serious and detailed factual matters. This Court is of the view that allowing a person to bring new documents in an appeal under Section 152A would go against the legal framework of the Act, disturb procedural fairness, and lead to misuse of the appellate process.”

13. This Court is inclined to consider these writ petitions on the touchstone of the position of law indicated in the above quoted portion of the judgment. In that light, when the facts in the Writ Petition No. 7047, 7051 and 7059 of 2025 are taken into consideration, it comes to light that the dispute revolves around the discrepancies in the names all these petitioners, as found in the nomination paper based on the names mentioned in the final voters list and documents, particularly Aadhar Card, submitted along with the nomination papers. In Writ Petition No. 7047 of

2025, the name in the nomination paper, based on the name in the final voters list, is Kumar Shivgonda Desai, while the Aadhar Card shows the name Rajendrakumar Shivgonda Desai. In Writ Petition No. 7051 of 2025, the name in the nomination paper based on the name in the final voters list is Manohar Shankar Wadar, while the name in the caste certificate is Manohar Shankar Gadiwaddar. It is to be noted that the name of the petitioner in the Aadhar Card is also Manohar Shankar Gadiwaddar. In Writ Petition No.7059 of 2025, the name of the petitioner in the nomination paper based on the name in the final voters list and on the Aadhar Card is Basappa Lagama Kedari, while the name in the caste certificate is Basvant Lagama Kedari. It is relevant to note that the petitioners in Writ Petition Nos. 7051 and 7059 of 2025 are contesting election on the reserved seats and for that reason, they have submitted their caste certificates.

14. There cannot be any dispute about the fact that there is indeed difference in the names of the said petitioners in the nomination papers compared to the documents filed on their behalf along with the nomination papers. In order to demonstrate that the names pertain to one of the same person, the petitioners did place on record certificates issued by the respective *Grampanchayat* before the respondent-Returning Officer. It is in the face of such material that the respondent-Returning Officer rejected the nomination papers on the basis of such discrepancies. The said rejection of nomination papers was made subject matter

of the appeal by the said petitioners and the appeals were dismissed, leading to filing of the present writ petitions.

15. The central question to be answered would be as to whether the issue regarding identity of the individual, in such circumstances, could be resolved in a quick and summary manner under Section 152A of the said Act, as indicated in the said judgment of this Court in the case of *Murlidhar Rangrao Gaikwad v/s. State Co-operative Election Authority* (supra) or it would need deeper examination requiring leading of evidence.

16. This Court is of the opinion that when the petitioners in these writ petitions themselves rely upon documents, which show discrepancy in the name and which is sought to be made good by producing certificates by respective *Grampanchayats*, it does create a situation requiring deeper examination and leading of evidence. Once this conclusion is reached, it becomes clear that this would be a situation requiring the dispute to be resolved through a full blown examination of the material and not by way of summary procedure. It is also relevant to note that when the respondent-Returning Officer was faced with such material, he was justified in holding such a discrepancy warranted rejection of the nomination paper. The respondent-Returning Officer may not be performing a ministerial duty, but since the nature and scope of enquiry to be conducted by the respondent-Returning Officer during the election process is necessarily within a limited compass, this Court finds that in the facts of the aforesaid writ petitions, it

cannot be said that the respondent-Returning Officer committed any error in rejecting the nomination papers.

17. It was sought to be indicated on behalf of the petitioners that although no objection was raised from any quarter, much less the contesting candidates, with regard to the discrepancy in the names, the respondent-Returning Officer proceeded to hold against the petitioners. It is to be noted that Rule 25(2) of the said Rules provides that the respondent-Returning Officer can also act on his own motion and conduct a summary enquiry while scrutinizing the nomination papers. Therefore, the said contention also does not deserve any consideration. The grounds on which the nomination papers can be rejected are specified in Rule 25(2) of the aforesaid Rules and this Court finds that the discrepancy noted by the respondent-Returning Officer in the case of the petitioners in the said writ petitions does fall within the grounds specified therein. The petitioners have not been able to demonstrate how principles of natural justice could be said to have been violated by the respondent-Returning Officer, while rejecting the nomination papers. The respondent-Appellate Authority also acted within its jurisdiction while passing the impugned order. Therefore, the aforesaid three writ petitions deserve to be dismissed.

18. It is to be noted that the petitioners in Writ Petition Nos.7051 and 7059 of 2025 intended to contest the election on reserved posts, thereby relying upon their status of belonging to a

particular caste/community. When there is discrepancy in the name in the caste certificate as compared to the name in the nomination paper based on the name in the final voters list, their cases assume an even more serious consideration. Any person not belonging to a particular caste/community, could not have been permitted to contest the election and therefore, this is an additional reason demonstrating that the rejection of the nomination paper by the respondent-Returning Officer could not have been interfered with.

19. But, insofar as Writ Petition No. 7057 of 2025 is concerned, the ground for rejection of nomination paper is distinct from the case of the petitioners in the other three writ petitions. The ground in this writ petition concerned non-compliance with one of the by-laws of the society, which required an active member contesting the election, to have supplied milk to the society for minimum of 180 days and 250 liters in a financial year within the preceding 5 years. The respondent-Returning Officer proceeded on the basis that the petitioner failed to satisfy the said requirement. A perusal of the impugned order passed by the respondent-Appellate Authority also shows that same conclusion was reached. But, the order indicates that the respondent-Appellate Authority has proceeded on the basis as if the petitioner was required to demonstrate supply of milk to the society for a minimum of 180 days and 250 liters in the year immediately preceding the election. This is a clear misreading of the concerned by-law. The documents issued by the society with regard to the

supply of milk by the said petitioner, show that at least for the financial year 2023-24, the petitioner did satisfy the requirement of the by-law and it being a year within the preceding 5 years from the date of election, it could not be said that the petitioner failed to satisfy the concerned by-law.

20. Such a situation would not require any further examination and it clearly fits into the category of cases where a summary enquiry itself demonstrates that the respondent-Returning Officer committed an error. There is no necessity of leading any evidence in the matter, for the reason that the documents issued by the society and relied upon by the petitioner are self-explanatory and the conclusion reached by the respondent-Returning Officer, while rejecting the nomination papers and confirmed by the respondent-Appellate Authority, can be said to be erroneous on the face of the record. Therefore, the case of the petitioner in Writ Petition No. 7057 of 2025, stands on a different footing and in the facts and circumstances of the said case, this Court is satisfied that the petitioner deserves indulgence and that writ jurisdiction can be exercised to interfere with the impugned order.

21. This Court is of the opinion that the petitioner in the said petition has made out a positive case within the narrow scope of jurisdiction available to this Court in such cases.

22. In view of the above, Writ Petition Nos. 7047, 7051 and 7059 of 2025 are dismissed.

23. Writ Petition No. 7057 of 2025 is allowed.

24. Consequently, the impugned order dated 30th May 2025 passed by the respondent-Appellate Authority is quashed and set aside. As a consequence, the rejection of nomination paper by the respondent-Returning Officer on 22nd May 2025 is also set aside and it is directed that the nomination paper of the petitioner-Netaji Maruti Shinde shall be accepted.

25. Since, it was brought to the notice of this Court that the process of election has reached a stage where the polling is now slated for 15th June 2025, in the facts of the said case, further appropriate directions are warranted. Accordingly, the respondent Nos.1 to 4 are directed to take appropriate steps for the inclusion of the name of the petitioner-Netaji Maruti Shinde in the ballot papers for polling to take place on 15th June 2025.

26. The Writ Petitions stand disposed of in above terms.

27. Pending applications also stand disposed of.

MANISH PITALE, J.

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