

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2438 OF 2025

Anita Vijaykumar Sagre & Ors. ... Petitioners

V/s.

The Returning Officer & District
Collector, Shri Mahakali Sahakar
Karkhana Limited & Ors.

... Respondents

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Mr. Surel S. Shah, Senior Advocate i/by Mr. Shubham
N. Shinde and Mr. Ishaan Kapse for the petitioners.

Mr. S.D. Rayrikar, AGP for respondent No.1-State.

Mr. Vinit Jain with Mr. Ashok Varma for respondent
No.2.

Mr. Shivaji Masal for respondent Nos.4 and 53.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 18, 2025

P.C.:

1. The present writ petition raises a significant and unprecedented issue concerning the rejection of nomination papers filed by all candidates contesting the election to the managing committee of a society registered under the provisions of the Multi-State Cooperative Societies Act, 2002 (hereinafter referred to as "the said Act"). The Returning Officer has assigned as the reason for rejection the non-supply of sugarcane for a period of three seasons preceding the date of nomination, in view of the

closure of the sugar factory for the past five years. The Returning Officer has recorded a finding that *Bye-Law No. 39-B(1)* mandates that a producer member must supply sugarcane for at least three seasons prior to the date of scrutiny of nomination papers.

2. The consequence of accepting such a reasoning leads to an incongruous and anomalous situation wherein the election of the society registered under the said Act can never be conducted. This is especially pertinent in a scenario where the election conducted by the Administrator appointed under the said Act cannot be contested by any member due to the non-functioning of the society for the last five years. The principal objective of appointing an Administrator in a cooperative society is to ensure the holding of elections in a timely manner and to facilitate the reconstitution of the managing committee in accordance with law. If the reasoning of the Returning Officer is upheld, the very purpose of such an appointment would be rendered nugatory, resulting in a perpetual state of administration without elected representation, which is contrary to the foundational principles of cooperative governance.

3. It is well settled that cooperative societies, being governed by statutory provisions, are obligated to conduct elections before the expiration of their tenure. Failure to conduct such elections and reconstitute the managing committee before the completion of its term leads to the appointment of an Administrator. The Hon'ble Supreme Court in *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82, has reiterated that cooperative societies function in furtherance of democratic principles and that their administration must conform to the statutory mandate. If the

Returning Officer's interpretation is allowed to stand, it would result in a paradoxical situation where, despite the society being a registered entity, no member would ever be eligible to contest elections, thereby defeating the democratic essence embedded in the cooperative movement.

4. Furthermore, this Court must take into consideration the constitutional mandate introduced by the 97th Amendment to the Constitution of India, which emphasized the necessity of ensuring democratic functioning and self-governance in cooperative societies. Article 243-ZK of the Constitution mandates that elections to cooperative societies shall be conducted before the expiration of the term of the existing managing committee. While the 97th Amendment was partially struck down by the Hon'ble Supreme Court in *Union of India v. Rajendra N. Shah*, (2021) 10 SCC 1, the underlying objective of ensuring democratic governance and timely elections remains relevant. Both the Central and State Legislatures have introduced amendments to their respective statutes to bring them in conformity with constitutional provisions, thereby reinforcing the necessity of conducting elections in a timely manner.

5. The rejection of nomination papers in the present case appears to be an impediment to the fulfillment of this constitutional and statutory mandate. The rejection is based on an interpretation of the society's Bye-Laws that appears to be in contravention of the broader legal framework governing cooperative societies. The Hon'ble Supreme Court in *State of U.P. v. C.O.D. Chheoki Employees' Coop. Society Ltd.*, (1997) 3 SCC 681,

has held that while Bye-Laws regulate internal matters of a society, they cannot override statutory mandates, particularly those related to democratic governance and elections.

6. In light of the above discussion, the issue raised in the present writ petition requires detailed scrutiny, particularly regarding the justiciability of the reasoning assigned by the Returning Officer. The interpretation of *Bye-Law No. 39-B(1)*, if upheld, could have far-reaching implications not only for the *respondent society* but also for the larger cooperative movement, which thrives on the principles of democracy and participatory governance.

7. Given the unprecedented nature of the issue and the larger ramifications involved, it is imperative to ensure that the functioning of the society does not come to a standstill. Therefore, until the writ petition is finally decided, the managing committee currently in charge shall continue to function, subject to any other statutory provisions governing its tenure. This interim measure is essential to prevent an administrative vacuum that may further impede the electoral process and disrupt the governance of the society.

8. Accordingly, there shall be an ad-interim relief in terms of prayer clause (c), ensuring that the current managing committee remains in charge until further orders of this Court.

9. Issue notice to the respondents, returnable on 18th March 2025.

10. In addition to the service of notice through Court, petitioner is permitted to serve the respondents privately and file affidavit of service before the returnable date.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 20th February 2025 to correct Bye-Law number in paragraphs 1 and 6 & other correction in paragraph 6. The corrections are shown in italicize.