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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4072 OF 2025

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Murlidhar Rangrao Gaikwad,
Age 69 years, Occupation Agriculture
residing at Vathar Kiroli,
Taluka Koregaon, District Satara

... **Petitioner**

V/s.

State Co-operative Election Authority,
Maharashtra, through it's
Chief Executive Officer, having its
office at Mantralaya Extension,
Madam Cama Road, Mumbai 400 032
& others

... **Respondents**

Mr. S.S. Patwardhan with Ms. Mrinal A. Shelar for the
petitioner.

Mr. Deelip Patil Bankar, Senior Advocate i/by Dilip
Bodke with Ms. Pooja Deelip Patil for respondent
Nos.1, 2, & 3.

Ms. Savita A. Prabhune, AGP for the State.

Mr. Girish S. Godbole, Senior Advocate with Mr.
Shailendra Kanetkar i/by Mr. Shivraj Patne for
respondent No.5.

CORAM : **AMIT BORKAR, J.**

RESERVED ON : **APRIL 1, 2025**

PRONOUNCED ON : **APRIL 2 , 2025**

JUDGMENT:

1. By way of the present Writ Petition preferred under Article 227 of the Constitution of India, the petitioner has assailed the legality, validity, and propriety of the order dated 17th March 2025 passed by respondent No.2 in Appeal No.12 of 2025, whereby the said authority, in exercise of its appellate jurisdiction conferred under Section 152A of the Maharashtra Cooperative Societies Act, 1960 (for short, “the MCS Act”), has been pleased to allow the appeal preferred by respondent No.5. The said appeal had been preferred by respondent No.5 assailing the rejection of his nomination for election to the Managing Committee of respondent No.3-Society, inter alia, on the ground that as on the date of scrutiny of nominations, i.e., 6th March 2025, respondent No.5 stood as a defaulter of a cooperative bank and was, therefore, disqualified to contest the said election.

2. The factual matrix giving rise to the filing of the present petition is succinctly set out hereunder:

Respondent No.1, in its capacity as the competent authority, published an election programme for conducting the election to the Managing Committee of respondent No.4-Society. As per the said programme, the last date for filing nomination papers was fixed as 5th March 2025; the scrutiny of nomination papers was scheduled for 6th March 2025, and the final list of validly nominated candidates was to be published on 7th March 2025.

3. In pursuance of the said election programme, both the petitioner and respondent No.5 submitted their respective nomination papers for contesting the election to the Managing Committee of respondent No.4. However, the petitioner raised an objection to the nomination of respondent No.5, contending that respondent No.5 was disqualified from contesting the election as he was a defaulter in respect of a loan obtained from Karad Urban Cooperative Bank. The said objection was lodged by the petitioner on 6th March 2025, i.e., the date of scrutiny. In response to the said objection, respondent No.5 submitted a written reply, inter alia contending that the objection was politically motivated; that reliance placed upon a newspaper report to establish default was untenable in law; and that the petitioner had failed to produce any certificate of default from the Karad Urban Cooperative Bank or any notice issued by the said Bank calling upon respondent No.5 to repay the outstanding dues. It was the specific case of respondent No.5 that he was not a defaulter and hence, not disqualified from contesting the election.

4. Upon considering the objection raised by the petitioner as well as the reply submitted by respondent No.5, and after affording an opportunity of hearing to both parties, respondent No.3, by a reasoned order dated 6th March 2025, upheld the objection raised by the petitioner and rejected the nomination of respondent No.5. The said decision was founded upon the proceedings initiated by Karad Urban Cooperative Bank under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short,

“the SARFAESI Act”).

5. Aggrieved by the rejection of his nomination, respondent No.5 preferred an appeal under Section 152A of the MCS Act on 10th March 2025. The petitioner entered appearance in the said appeal and filed a reply opposing the same. Respondent No.2, upon hearing both sides and considering the material on record, was pleased to allow the said appeal by order dated 17th March 2025. In doing so, respondent No.2 observed that reliance placed on the newspaper publication regarding initiation of proceedings under the SARFAESI Act could not be treated as admissible evidence. Further, respondent No.2 found that no documentary material had been placed on record to establish that any notice had been issued by Karad Urban Cooperative Bank to respondent No.5 for recovery of any outstanding dues. Consequently, the appellate authority set aside the order of rejection and allowed the nomination of respondent No.5. It is in this backdrop that the petitioner has approached this Court by filing the present writ petition.

6. This Court, by order dated 21 March 2025, was pleased to issue notice for final disposal of the petition to all the respondents, making it returnable on 25 March 2025. In addition to the petitioner's independent efforts to effect service on the respondents, this Court directed respondent No.3 – the Returning Officer – to ensure that service of notice was effected upon all the respondents. In compliance with the said direction, respondent No.3 has filed an affidavit on record, affirming that on the date fixed for withdrawal of nomination papers, he had served the

notice of the present writ petition upon the candidates who were present on that day at the election office. Additionally, it is stated in the said affidavit that a public notice regarding pendency of the present proceedings was also published in a widely circulated local newspaper, thereby ensuring wider dissemination of information about the proceedings.

7. On 25 March 2025, respondent No.5 appeared through his Advocate, and at the joint request of the parties, the matter was directed to be placed on 26 March 2025. On the said date, the learned Advocate for the petitioner tendered on record an affidavit of service, inter alia indicating that private service of the writ petition had been effected on all respondents through electronic means, including messaging applications such as WhatsApp. Furthermore, respondent No.3, the Returning Officer, also produced a copy of the newspaper publication evidencing issuance of a public notice informing all contesting candidates about the pendency of the present writ petition.

8. On 1st April 2025 the petitioner filed an affidavit stating that, in compliance with the directions of this Court, another public notice came to be published in two leading daily newspapers, having the widest circulation in the area wherein respondent No.4 is operating. The petitioner has further averred that, in addition to the publication of the public notice, the local advocate representing the petitioner caused transmission of individual notices to the concerned respondents through the electronic messaging platform, namely WhatsApp. In support of such service, the petitioner has placed on record printed

screenshots of the messages so transmitted, which are annexed and marked as Exhibit–‘D’ to the said affidavit. Furthermore, the petitioner has also annexed at Exhibit–‘E’ copies evidencing the physical delivery of notice to certain respondents, thereby indicating compliance with the requirement of effecting service by physical mode as well.

9. It was submitted that, given the fact that the total number of respondents exceeds 200, personal service through court process on each respondent within the limited time available was not practicable. Considering the nature of the issue involved, which pertains to the acceptance of a nomination paper and the consequential impact on the electoral process, and in view of the urgency arising from the schedule of voting fixed on 5 April 2025, it becomes imperative that the matter be adjudicated on merits prior to the conduct of voting.

10. This Court is satisfied that all reasonable and diligent steps have been taken to bring the pendency of the present petition to the notice of the concerned respondents. The record discloses that the petitioner has published notice of the writ petition on two occasions in a local newspaper, and the Returning Officer has separately caused publication of a notice once, in addition to direct service effected by the petitioner through electronic means, as evidenced by the affidavit filed on record.

11. In light of the above, and having regard to the urgency of the matter, the limited time available before the scheduled date of polling, and the efforts undertaken both by the petitioner and the

Returning Officer to ensure wide circulation of notice, this Court is satisfied that due service of notice of final disposal has been effected on most of the respondents.

12. Mr. Patwardhan, the learned advocate appearing for the petitioner, invited the attention of this Court to the provisions of Rule 8 of the Security Interest (Enforcement) Rules, 2002 and submitted that the proviso to sub-rule (6) of Rule 8 mandates publication of an auction notice in two local newspapers, where action is initiated under Section 13(4) of the SARFAESI Act against a defaulter. He submitted that such notice, issued by Karad Urban Cooperative Bank, was duly published in the local newspaper and the original copy of the said publication was placed before the Returning Officer at the time of scrutiny of nominations. Additionally, the learned advocate submitted that a certificate issued by the said Bank declaring respondent No.5 to be a defaulter was also produced before the Appellate Authority. However, the said Authority, for reasons best known to it, refused to consider or attach any evidentiary value to the said certificate. Reliance was placed on the judgment of this Court in *Jagdish Labu Badhe v. State Cooperative Election Authority & Ors.*, reported in (2001) 1 HCC (Bom) 90, wherein a Coordinate Bench had held that where a certificate issued by a society indicates eligibility or qualification under its bye-laws, such documentary material is relevant and can be relied upon for determining eligibility of a candidate.

13. The learned counsel further drew attention to the reasoning assigned by the Appellate Authority while allowing the appeal

preferred by respondent No.5. He submitted that the Appellate Authority proceeded on an erroneous premise that the petitioner had failed to produce cogent and admissible evidence to establish that respondent No.5 was a defaulter of the concerned Cooperative Bank, or that any notice was issued by the said Bank to respondent No.5 for recovery of dues. The Appellate Authority further observed that the certificate issued by the Bank dated 1st March 2025 did not spell out any particulars evidencing default on the part of respondent No.5. In support of such findings, the Appellate Authority placed reliance on the decisions of this Court in *Kerbaji Maroti Rao Shinde v. State of Maharashtra & Ors.*, 1988 Mh.L.J. 157 and *Keshavrao Narayanrao Patil v. District Deputy Registrar, Cooperative Societies, Akola & Ors.*, 1987 Mh.L.J. 709, wherein it was held that unless a person's disqualification is adjudicated upon by a competent authority, such person cannot be deemed ineligible.

14. Refuting the said line of reasoning, the learned advocate for the petitioner placed reliance on the authoritative pronouncement of the Full Bench of this Court in *Narayan Gujabrao Bhoyar v. Yeotmal Zilla Parishad Karmachari Sahakari Path Sanstha Maryadit, Yeotmal & Anr.*, reported in 2009 (6) Mh.L.J. 500. It was contended that the said Full Bench decision had overruled the earlier view taken in *Keshavrao Patil* (supra), and held that the provisions of Sections 73FF and 78 of the MCS Act operate independently in their respective spheres. The Full Bench categorically held that a declaration of default under Section 73FF(1) can be made by a society or the competent authority after

following the principles of natural justice, including issuance of a show-cause notice to the concerned member. Furthermore, the invocation of Section 78(1) for removal of a member is not a sine qua non for attracting disqualification under Section 73FF(2).

15. The learned counsel also referred to the findings recorded by the Returning Officer while rejecting the nomination of respondent No.5. It was submitted that the Returning Officer, upon perusal of the original newspaper notice produced before him, had rightly come to the conclusion that Karad Urban Cooperative Bank had initiated proceedings under the SARFAESI Act against respondent No.5. The Returning Officer was of the view that publication of such notice in a widely circulated local daily was sufficient compliance of the requirement for determining default. It was further submitted that respondent No.5 did not dispute the existence or legality of such publication or the proceedings initiated by the said Bank. Thus, the Returning Officer, after due application of mind and upon considering the relevant material, rejected the nomination of respondent No.5 on justifiable grounds.

16. The learned Advocate for the petitioner placed reliance on the authoritative pronouncement of the Hon'ble Supreme Court in *Jyoti Basu and Others v. Debi Ghosal and Others*, reported in (1982) 1 SCC 691, wherein the Apex Court has categorically held that the right to elect, the right to be elected, and the right to dispute an election are not fundamental rights nor common law rights, but are purely statutory rights. It was further observed by the Hon'ble Supreme Court that outside the provisions of the statute, there exists no inherent right to contest an election or to

challenge its outcome. Inviting attention to the provisions of Section 82 of the Representation of People Act, 1951, learned counsel submitted that where a petitioner seeks not only to have the election of the returned candidate declared void but also seeks a declaration that he himself be declared elected, it is mandatory to implead all the contesting candidates as parties to the election petition. The Hon'ble Supreme Court, while interpreting Sections 82 and 86(4), held that the concept of 'proper parties' is foreign to election disputes under the Representation of People Act, 1951, and only those persons enumerated in the said provisions may be joined as respondents. It was further held that the provisions of the Code of Civil Procedure, 1908, are not wholly applicable to such election disputes. Drawing a parallel with Section 36 of the Representation of People Act, 1951, learned counsel submitted that Rule 25 of the Maharashtra Cooperative Societies (Election to Committee) Rules, 2014 is *pari materia*, which mandates that objections to the validity of nomination papers must be raised at the time of scrutiny. It was, therefore, submitted that only an objector who raises an objection at the time of scrutiny, resulting in rejection of a candidate's nomination, can be treated as a necessary party in an appeal arising therefrom; no other person qualifies as a necessary party. In support of his contention that it is not mandatory to implead all contesting candidates in an appeal under Section 152A of the Maharashtra Cooperative Societies Act, 1960, the learned counsel placed reliance on the judgment of this Court in *Asarm Patilba Gorde v. State of Maharashtra & Ors.*, reported in 1997 (2) Mh.L.J. 860. In the said decision, a

Coordinate Bench of this Court specifically negated the contention that non-joinder of all contesting candidates renders such an appeal untenable.

17. Further reliance was placed on the decision of this Court in *Madhav Atmaram Sahakari v. Aselmo Furtado and Others*, reported in 2018 (2) Mh.L.J. 258, wherein the Coordinate Bench repelled the plea of non-joinder of necessary parties. It was observed in that case that no provision had been pointed out which mandates the impleadment of other candidates whose nomination papers were rejected by the Returning Officer. The Court held that in absence of any such statutory requirement, the objection based on non-joinder could not be sustained and, accordingly, rejected the same.

18. The learned counsel then invited this Court's attention to the provisions of Section 152 (A) of the Maharashtra Cooperative Societies Act, 1960, to contend that the said provision does not stipulate or prescribe the nature of parties who must be impleaded in an appeal filed under Section 152A. He, therefore, submitted that in the absence of any express statutory mandate, a requirement to implead other candidates cannot be read into the provision by implication, especially in matters concerning rejection of nomination papers. According to him, in such cases, the only necessary parties are the objector and the candidate whose nomination is rejected.

19. On the aspect of judicial interference at the interlocutory stage of the election process, learned counsel placed reliance on

the judgment of the Division Bench of this Court in *Pandurang Hindurao Patil v. State of Maharashtra and Others*, reported in 2023 (3) Mh.L.J. 95. In the said decision, the Division Bench, after considering the celebrated judgments of the Hon'ble Supreme Court in *N.P. Ponnuswami v. Returning Officer* [(1952) 3 SCR 218] and *N.B. Khare v. Election Commission* [1957 13 ELR 112], held that while ordinarily the election process must not be interfered with by the High Court under Article 226 of the Constitution of India, an exception can be carved out where the decision of the Returning Officer is manifestly erroneous, patently illegal, or suffers from jurisdictional error. In such circumstances, it would be wholly unjust to require the aggrieved person to wait until the culmination of the election process and thereafter initiate an election dispute under Section 91 of the MCS Act, which is a time-consuming and cumbersome remedy. It was observed that the High Court cannot abdicate its constitutional jurisdiction under Article 226 in appropriate cases where grave illegality or violation of fundamental principles of election law is demonstrated.

20. The learned counsel further placed reliance on another decision of the Division Bench of this Court in *Chandrakant Mahadev Patole & Anr. v. State of Maharashtra & Ors.*, reported in 2009 SCC OnLine Bom 2486 : (2010) 1 AIR Bom R 427, wherein similar principles as laid down in *Pandurang Hindurao Patil* (supra) were reiterated. He also relied on the Division Bench decisions in *Dattatray Genaba Lole & Ors. v. Divisional Joint Registrar & Ors.*, reported in 2022 (1) Bom.C.R. 471; *Vaibhav Manohar Bhokare v. State Cooperative Election Authority, Pune &*

Ors., reported in 2023 (3) Mh.L.J. 95; and *Mohd. Tallib v. Dr. A.S. Kuchewar*, reported in 2007 (4) Mh.L.J. 557. He submitted that these decisions uniformly recognize that in cases of patent illegality or jurisdictional error in the election process, this Court is not rendered powerless and may exercise its extraordinary writ jurisdiction to remedy the manifest injustice. He, therefore, urged that in the present case, since the order passed by the Appellate Authority is based on an erroneous appreciation of law and ignores relevant material placed on record, this Court ought to exercise its writ jurisdiction and quash the impugned order.

21. Per contra, Shri Godbole, the learned Senior Advocate appearing on behalf of respondent No.5, has strenuously opposed the maintainability of the present writ petition as framed and filed, inter alia, on the ground of non-joinder of necessary parties. Inviting the attention of this Court to an unreported judgment of a Division Bench in the case of *Tukaram Hari Khamkar v. Shree Bharat Urban Co-operative Bank Ltd. & Ors.* (Writ Petition No.2614 of 1982 and connected matters), the learned Senior Advocate submitted that the Division Bench has categorically held that in an appeal preferred under Section 152A of the Maharashtra Cooperative Societies Act, 1960, all candidates whose nomination papers have been accepted and whose rights may be affected by the outcome of the appeal are necessary parties.

22. He further placed reliance on the judgment of a Coordinate Bench of this Court in *Vijaysingh Krishnarao Parbat v. Returning Officer, Janata Sahakari Bank Ltd. & Ors.*, reported in 2003 (2) Mh.L.J. 485, wherein it was observed that all contesting

candidates must be made parties to an appeal or challenge in election matters, since the outcome of such litigation may directly affect their rights and interest. In support of this proposition, he also relied upon the unreported decisions of this Court in *Ugustion Mascarenhas v. State of Goa & Anr.* (Writ Petition No.2 of 2012, decided on 12 January 2023), and *Nashik District Labour Contract Co-operative Societies Federation Ltd. v. Bhimrao Kondaji Jejure & Ors.* (Writ Petition No.5218 of 2005, decided on 30 August 2010), to contend that unless all the contesting candidates are made parties to the election dispute or appeal, no effective and binding relief can be granted.

23. It was submitted that in the present case, certain candidates whose nominations were found valid have subsequently withdrawn from the election process, and if the impugned order is interfered with at this stage, it may adversely affect the rights of such candidates who acted upon the list of validly nominated candidates. Shri Godbole submitted that the election is being conducted from multiple constituencies and respondent No.5 is contesting from a specific constituency, namely, the “Individual Sugarcane Purchasers” panel. Any interference with the acceptance of his nomination would disturb the composition and equilibrium of candidates representing that constituency, thereby prejudicing the interests of other panel members who are not before the Court.

24. The learned Senior Advocate further submitted that the candidates who have withdrawn their nominations did so based on the final list of validly nominated candidates. At this belated stage, any reversal of the nomination acceptance would not only affect

the settled rights of such withdrawn candidates but may also render the entire election process vulnerable to challenge. He submitted that the only remaining stage of the electoral process is the casting of votes, and it would be inequitable and legally impermissible to derail the election at this advanced stage.

25. It was further contended that the law recognizes a material distinction between the *rejection* of a nomination paper and *acceptance* thereof. While rejection of nomination is viewed as a substantial denial of a candidate's right to contest and hence subject to immediate judicial scrutiny, acceptance of a nomination—even if irregular—is considered curable and can be challenged only by way of an election petition.

26. Referring to the SARFAESI Act, the learned Senior Advocate contended that reliance on a newspaper publication to declare a person a defaulter is legally unsustainable, particularly since there exists a possibility of rival candidates orchestrating such publications to disqualify competitors. He pointed out that the scheme of the SARFAESI Act permits a secured creditor to initiate proceedings under Section 13 thereof even in cases where default is disputed, and hence such initiation alone cannot conclusively establish that a person is a defaulter.

27. It was submitted that unless there exists cogent and conclusive proof of default, such as a certificate under Section 101 or an award under Section 91 of the MCS Act, a candidate cannot be disqualified merely on the basis of newspaper publication. In this regard, the learned Senior Advocate placed reliance on the

following decisions to assert that this Court has consistently held that interference in the election process must be exercised sparingly and only in cases of exceptional illegality:

28. i) *Nashik District Labour Contract Co-operative Societies Federation Ltd. v. Shri Bhimrao Kondaji Jejure & Ors.*, Writ Petition No.5218 of 2005, decided on 30th August 2010;
- ii) *Avinash Tukaram Patil v. Returning Officer, Kolhapur Zilla Sahakari Dudh Utpadak Sangh Maryadit Kolhapur (Gokul) & Ors.*, 2015 SCC OnLine Bom 5388;
- iii) *Karmaveer Tulshiram Autade & Ors. v. State Election Commission & Ors.*, AIR 2021 Bom 90;
- iv) *Sarjerao Dinkarrao Mane v. Returning Officer, Shri Chatrapati Rajaram Sahakari Sakhar Karkhana & Ors.*, Writ Petition No.5228 of 2023, decided on 12th April 2023;
- v) *Shaji K. Joseph v. V. Viswanath & Ors.*, Civil Appeal No.1629 of 2016 (arising out of SLP (C) No.22902 of 2011), decided on 22nd February 2016.

29. On the basis of the above submissions, Shri Godbole contended that the present writ petition suffers from non-joinder of necessary parties, and that all contesting candidates—especially those whose interests are likely to be affected—have not been served. Therefore, no final relief can be granted in the present proceedings. He submitted that the prayer for interim stay of the impugned order amounts, in substance and effect, to grant of final relief, and would thereby constitute direct interference in the ongoing election process. On this ground as well, he prayed for

dismissal of the writ petition.

30. Shri Bankar, the learned Advocate appearing on behalf of respondent Nos.1 to 3, placed reliance on the judgment of the Division Bench of this Court in *Pandurang Laxman Kadam & Others v. State of Maharashtra & Ors.*, reported in (2016) 1 ABR 336, to buttress the submission that the statutory remedy provided under Section 91 of the Maharashtra Cooperative Societies Act, 1960 is comprehensive and efficacious for redressal of grievances arising out of the election process. Referring to the said decision, the learned Advocate submitted that the Division Bench has categorically held that an election dispute under Section 91 encompasses all facets of the election process, including but not limited to the wrongful *acceptance* or *rejection* of nomination papers.

31. It was further submitted that the Division Bench, while interpreting the scheme of Chapter XI of the MCS Act, observed that once the election process has commenced and reaches an advanced stage, such as after publication of final list of validly nominated candidates, it would not be appropriate for the writ court to exercise its extraordinary jurisdiction under Article 226 or supervisory jurisdiction under Article 227 of the Constitution of India so as to interrupt or stall the democratic process of election. Any irregularity or illegality in the acceptance or rejection of nomination papers, according to the said decision, is amenable to challenge by way of an election petition under Section 91, wherein all relevant issues can be adjudicated upon by leading both oral and documentary evidence.

32. Shri Bankar, therefore, urged that the petitioner, if aggrieved by the order passed by the appellate authority under Section 152A of the MCS Act or by the acceptance of nomination of any candidate, is not without a remedy and can avail of the statutory recourse under Section 91 of the Act after the conclusion of the election. He submitted that entertaining the present writ petition at this stage would amount to permitting pre-election interference in contravention of the well-settled legal position laid down by this Court and the Hon'ble Supreme Court in a catena of decisions. Accordingly, it was submitted that the writ petition is not maintainable and deserves to be dismissed on this ground alone.

33. The rival submissions of the learned counsel appearing for the respective parties now fall for determination. The central question which arises for consideration in the present proceedings is whether the impugned order dated 17 March 2025 passed by the Appellate Authority under Section 152A of the MCS Act suffers from illegality or perversity so as to warrant interference in the limited supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

34. With the assistance of the learned advocates for the parties, this Court has perused the documents placed on record, particularly those annexed to the writ petition and produced during the course of hearing. It is an admitted position on record that the list of validly nominated candidates for the election to the Managing Committee of respondent No.4-Society was published on 24 March 2025 and the election is scheduled to take place on 5 April 2025.

35. It is, therefore, imperative to first consider whether respondent No.5 was a "defaulter" within the meaning of Section 73CA of the MCS Act as on the date of scrutiny of nominations. Section 73CA(1) of the MCS Act lays down that a person shall be ineligible to be elected, nominated or appointed as a member of the committee of a society if he is a "defaulter" of any society. The explanation appended to the said sub-section clarifies that the term "defaulter" includes defaults committed in respect of any society, including a term lending cooperative society. It further states that a person who has failed to repay the installment of a loan as per the terms and conditions agreed upon would fall within the ambit of a "defaulter".

36. It is not in dispute that Karad Urban Cooperative Bank is a cooperative society registered under the MCS Act. The record indicates that the petitioner, while raising objection to the nomination of respondent No.5, had produced before the Returning Officer an original newspaper publication issued under Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, read with Section 13(4) of the SARFAESI Act. The said notice unequivocally named respondent No.5 as a defaulter and declared that the secured creditor had taken possession of the mortgaged property on 14 July 2023. The publication further disclosed that the upset price of the mortgaged property was fixed at ₹2,02,50,000/- and the auction was scheduled to be conducted on 17 March 2024. The most significant aspect of the notice is the statement of arrears as on 26 February 2025. It records that the dues under one loan account stood at ₹10,91,904/- plus interest,

and the total arrears amounted to ₹6,52,52,922.68/-.

37. On the date of scrutiny, i.e., 6 March 2025, the petitioner filed a specific objection before the Returning Officer asserting that respondent No.5 had defaulted in repayment of multiple loans availed from Karad Urban Cooperative Bank, and that recovery proceedings under the SARFAESI Act had been initiated due to persistent default, thereby rendering respondent No.5 disqualified under Section 73CA.

38. In response, the reply filed by respondent No.5 is noticeably vague and evasive. Other than making a bare denial that he is not a defaulter and is not disqualified under Section 73CA, respondent No.5 failed to furnish any material particulars as to whether he had availed the loan in question, whether the loan was repaid in full, or if the notice published in the newspaper was unauthorized or fabricated. The absence of specific rebuttal lends credence to the objection raised by the petitioner.

39. Thus, the documents on record, including the SARFAESI notice issued under Rule 8(6), prima facie establish that respondent No.5 was in default of significant sums owed to a cooperative society. Consequently, his disqualification under Section 73CA(1) of the MCS Act was squarely attracted.

40. It is further necessary to examine the legal correctness of the reliance placed by the Appellate Authority on the decisions in *Kerabaji Maroti Rao Shinde (supra)* and *Keshavrao Narayanrao Patil (supra)*. A perusal of the impugned order indicates that the Appellate Authority, while allowing the appeal filed by respondent

No.5, has drawn support from the ratio laid down in the aforementioned judgments to hold that unless the disqualification of a candidate is determined by a competent authority through a formal adjudication, such person cannot be held to be ineligible for contesting elections.

41. However, this reasoning of the Appellate Authority does not withstand judicial scrutiny in light of the authoritative pronouncement of the Full Bench of this Court in *Narayan Gujabrao Bhoyar (supra)*. In the said decision, the Full Bench was specifically called upon to consider the interplay between Section 73FF and Section 78 of the Maharashtra Cooperative Societies Act, 1960, and whether invocation of Section 78 is a precondition for attracting the disqualification under Section 73FF(2). Upon an exhaustive consideration of the statutory framework and the previous precedents, including *Keshavrao Patil (supra)*, the Full Bench categorically held that the provisions of Sections 73FF and 78 operate in distinct and independent spheres, and that the declaration of default under Section 73FF(1) is not contingent upon prior removal under Section 78(1). The Court observed that disqualification under Section 73FF(2) for ceasing to be a member of the committee follows upon the failure to repay dues to a society despite issuance of a show-cause notice, and such cessation does not depend upon adjudication or removal proceedings under Section 78. The Full Bench, after overruling *Keshavrao Patil* and judgments following it, including *Kerabaji Shinde*, held that reading an additional requirement of formal adjudication into Section 73FF would undermine the legislative intent of providing

automatic cessation in cases of financial default. The judgment clarified that the disqualification under Section 73FF is self-operative upon compliance with the principles of natural justice, namely, the issuance of a show-cause notice. Therefore, the reliance placed by the Appellate Authority on *Kerabaji* and *Keshavrao*—both of which have been specifically overruled by the Full Bench in *Narayan Gujabrao Bhoyar*—is clearly misconceived and legally untenable. Once a binding Full Bench judgment declares the law on a subject, it is incumbent upon all subordinate forums and authorities to follow the law so laid down. The principle of judicial discipline demands that where a coordinate or larger Bench has settled the position, the same ought to be given effect to without deviation. Thus, the Appellate Authority, by overlooking the ratio of the Full Bench in *Narayan Gujabrao Bhoyar* and by relying upon decisions which stand impliedly and expressly overruled, has committed a serious error apparent on the face of the record, warranting interference in exercise of supervisory jurisdiction.

42. Therefore, prima facie, this Court is of the considered view that respondent No.5 appears to fall within the category of “defaulter” as defined under Section 73CA of the Maharashtra Cooperative Societies Act, 1960, on the date of scrutiny of nomination papers. The material placed on record, including the statutory notice issued under the SARFAESI Act and the absence of a cogent rebuttal from respondent No.5, collectively support such a conclusion at this stage.

43. Additionally, the petitioner produced before the Appellate Authority a certificate issued by Karad Urban Cooperative Bank dated 12 March 2025, which explicitly states that respondent No.5 had availed a term loan of ₹3.50 crores on 13 February 2015 with a repayment term up to 31 March 2019. The certificate records that the outstanding dues against this loan alone, as on 12 March 2025, exceeded ₹6.06 crores. It is further revealed that respondent No.5 had obtained five different loans from the said bank, and although a payment of ₹50 lakhs was made on 7 March 2025, the total dues remained substantial and stood at ₹7.29 crores as of 12 March 2025. However it is necessary to adjudicate whether it is legally permissible for a person to place new documents on record in an appeal under Section 152A of the Act to prove a candidate's eligibility or ineligibility.

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.

51. I am therefore of the opinion that it is not legally permissible for a person to place new documents on record in an appeal under Section 152A of the Maharashtra Cooperative Societies Act, 1960, to prove a candidate's eligibility or ineligibility. If such documents were not produced before the Returning Officer at the time of scrutiny, they cannot be considered now in the appeal. If a person wishes to rely on such material, the only correct remedy is to file an election petition under Section 91 before the Cooperative Court. This interpretation preserves the legislative scheme, respects the election timeline, and maintains the fairness and efficiency of the electoral process.

52. The next issue which arises for consideration is as to whether, in an appeal preferred under Section 152-A of the Maharashtra Co-operative Societies Act, 1960, challenging the rejection of a nomination paper, all validly nominated candidates are necessary parties to such appeal. In this context, it is pertinent to refer to the decision of the Division Bench of this Court in *Kishor Rajaram Sawant vs Returning Officer in LPA No.142 of 1996*, decided on 26th July 1996, wherein reliance was placed on an earlier Division Bench judgment in *Tukaram Hari Khamkar v. Shree Bharat Urban Co-operative Bank Ltd. & Ors.* (Writ Petition No.2614 of 1982 and connected matters). In the said judgments, the Division Bench has categorically held that in an appeal preferred under Section 152A of the MCS Act, challenging the rejection of a nomination paper, all validly nominated candidates are necessary parties to such proceedings.

53. The reasoning adopted by the Division Bench is rooted in the statutory scheme of Section 152A. Sub-section (1) thereof declares that the list of validly nominated candidates shall be final and binding, subject only to the outcome of an appeal under sub-section (2). The Division Bench observed that if the statutory finality attached to the list of nominated candidates is to be rendered subject to appellate scrutiny, and the result of such appeal can alter or disturb the said list, then all those whose names are included in the final list acquire a legal interest in the outcome of such proceedings. It was further held that rejection of the nomination of a particular candidate results in a corresponding right accruing to the remaining candidates of not having to contest against the rejected candidate. Thus, those who remain in the fray as a result of such rejection would be vitally interested in the adjudication of the validity or otherwise of the rejection order.

54. In this backdrop, it has been recognized that finalization of the list of candidates is not merely a ministerial act but has implications on the legal standing and strategic positions of the other contestants. Any subsequent alteration in the list would directly impinge upon their rights and legitimate expectations. Therefore, the appellate forum—while exercising jurisdiction under Section 152A—is required to afford an opportunity of hearing to all those likely to be affected, including validly nominated candidates, before reversing or modifying the decision of the Returning Officer.

55. In my considered view, however, the reasoning adopted by the Division Bench of this Court in the case of *Tukaram Hari*

Khamkar (*supra*), warrants a reconsideration on certain significant grounds which touch upon the fundamental principles of election law and the interpretation of statutory remedies under the MCS Act.

56. It is well-settled in law that the right to be elected to a public office, as well as the right to question an election, are not fundamental rights nor common law rights, but are purely statutory rights governed strictly by the provisions of the statute creating them. The legal position in this regard stands authoritatively settled by the Hon'ble Supreme Court in *Jyoti Basu* (*Supra*), wherein it has been held that outside the four corners of the statute, there exists no inherent right either to contest an election or to challenge its outcome. The scheme of the statute providing for election disputes, including appeals and petitions, must be construed and applied strictly in accordance with its terms. Doctrines and concepts familiar to common law, equity, or general procedural jurisprudence remain strangers to election law unless expressly incorporated by the statute.

57. In *Jyoti Basu (supra)*, the Hon'ble Supreme Court examined in detail the provisions of Section 82 and Section 86(4) of the Representation of People Act, 1951, and categorically held that the contest in an election petition is statutorily designed to be confined to the candidates who contested the election, and none else. Section 82 mandates that a petitioner shall join as a respondent any candidate against whom allegations of corrupt practice are made. The Court observed that the concept of "proper parties" is alien to election jurisprudence under the said Act and that only

those individuals who are expressly mentioned in the statute may be joined as respondents. It was further held that although the Civil Procedure Code may be applicable to the extent provided, its provisions are subordinate and subject to the scheme of the Representation of People Act, and cannot be invoked to enlarge the category of parties or to override specific statutory mandates.

58. The Hon'ble Supreme Court thus held in unequivocal terms that no party other than those permitted under Section 82 or 86(4) of the Representation of People Act, 1951 may be joined in election petitions. The purpose behind such restriction is to preserve the limited and structured nature of election litigation and to ensure its expeditious disposal, free from the complexities of general civil procedure. This principle, by necessary extension, applies to statutory election disputes under other legislations such as the MCS Act, which also confer and regulate election rights through specific statutory provisions.

59. On a plain reading of Section 152A of the MCS Act, it is evident that sub-section (2) merely declares that the list of validly nominated candidates published under sub-section (1) shall be subject to the decision of the appellate authority under sub-section (1). In my considered view, the purpose behind making the published list subject to the outcome of the appeal is to ensure that the appellate authority's decision—particularly in cases where it holds that a nomination was wrongly rejected—can be effectively implemented. Such implementation may require the Returning Officer to update or modify the list in light of the appellate order. The provision is intended to protect the efficacy of appellate

remedy under Section 152A, and not to create any independent or accrued right in favour of other validly nominated candidates to participate in the appeal proceedings.

60. It must also be noted that Section 152A does not prescribe any condition requiring the impleadment of all validly nominated candidates as parties to an appeal. In the absence of such a mandate, and applying the reasoning of the Hon'ble Supreme Court in *Jyoti Basu (supra)*, it is impermissible to expand the scope of parties to the appeal on the ground of equity, policy, or potential impact on third parties. Election law must be construed strictly, and unless the statute mandates the presence of particular persons, courts cannot read into it procedural obligations that are not expressly provided.

61. Moreover, Section 152A(1) mandates that the Appellate Authority shall decide the appeal within ten days. In a case such as the present one, where the number of validly nominated candidates is 207, a requirement to serve and hear each candidate would render the statutory timeframe wholly unworkable, defeating the very purpose of a time-bound appellate mechanism. Such an interpretation would effectively frustrate the statutory remedy and make the appellate process nugatory.

62. In view of the above discussion, the judgment of the Division Bench in *Tukaram Hari Khamkar (supra)*, and the subsequent decision in *Kishor Rajaram Sawant (Supra)*, which appear to have read into Section 152A an implied requirement of impleadment of all validly nominated candidates, need reconsideration. The issue

strikes at the core of maintainability, scope, and workability of election appeals under the MCS Act. While procedural safeguards must be respected, they cannot be expanded so as to defeat the purpose of the statute or impede access to remedies.

63. Mr. Godbole, the learned Senior Advocate appearing for the respondents, placed reliance on various authoritative pronouncements of the Hon'ble Supreme Court and of this Court, which have consistently held that once the election process has been set in motion, the writ jurisdiction of this Court under Article 226 of the Constitution of India ought not to be invoked, except in rare and exceptional circumstances. In view of the aforesaid submission, it becomes necessary to examine the legal position governing the scope of judicial interference under Article 226 of the Constitution of India in matters concerning elections under the MCS Act, particularly when the process of election has been set in motion.

64. A useful reference in this regard can be made to the instructive observations of the Division Bench of this Court in the case of *Pandurang Hindurao Patil (Supra)*, wherein the Court delineated the contours of judicial intervention in election matters. The Division Bench held that when a petitioner invokes the writ jurisdiction of the High Court under Article 226 challenging the electoral process, including acceptance or rejection of nomination papers, two distinct considerations arise. The first is whether the writ petition is maintainable and the second is whether, in the facts of the case, the Court ought to exercise its discretion. The Division Bench observed that the general principle remains that judicial

interference in election matters is not warranted once the election process has commenced. However, to this rule, the Court carved out certain exceptions. It held that in cases where the order of the Returning Officer is patently erroneous or passed without jurisdiction, it would be improper to compel the petitioner to await the conclusion of the entire electoral process and thereafter invoke the remedy of election petition under Section 91 of the MCS Act, which is a time-consuming and protracted remedy. In support of its view, the Division Bench relied upon the judgments of the Hon'ble Supreme Court in *N.P. Ponnuswami* (supra) and *Dr. Narayan Bhaskar Khare* (supra), wherein the principle has been reiterated that the bar on judicial intervention is not absolute and that in cases involving jurisdictional error or violation of fundamental legal norms, the High Court may exercise its constitutional powers.

65. The Division Bench further observed that while it is true that the election process should not ordinarily be stalled at the instance of an individual grievance, in cases where the grievance is brought before the Court well in advance of the polling date, and where the issue raised is capable of being decided expeditiously without derailing the electoral schedule, judicial interference may not only be warranted but also desirable. The Court specifically noted that if the Returning Officer rejects a nomination paper on a ground which is wholly inadequate or demonstrably erroneous, it would subserve the larger public interest and prevent unnecessary expenditure, hardship and inconvenience to rectify the illegality at the earliest stage. The Division Bench cautioned, however, that such interference must be sparing and must not become a routine

course of action. Each case must turn on its own facts and must be examined through the lens of whether interference is necessary to uphold the sanctity of the electoral process or to prevent manifest injustice. The principle that elections should proceed unimpeded must be balanced against the imperative that the process is conducted fairly, lawfully, and without arbitrary exclusion of eligible candidates. Thus, the settled position of law is that while the High Court must ordinarily refrain from interfering once the election process has commenced, such restraint is not an inflexible rule, and in appropriate cases where there is clear and demonstrable illegality apparent on the face of the record, particularly where there is a jurisdictional error or violation of statutory provisions, this Court is not powerless to act. In such cases, judicial intervention prior to the conduct of polling may be permissible, provided it does not result in undue disruption of the election programme.

66. The aforesaid view taken by the Division Bench of this Court in *Pandurang Hindurao Patil* (supra) has been followed and affirmed by another Division Bench of this Court in the case of *Chandrakant Mahadev Patole* (supra). In the said decision, the Division Bench reiterated the principle that in the event the Court is satisfied that the order passed by the Returning Officer or the step taken in the course of the election process suffers from a patent error or is vitiated by lack of jurisdiction, it would not be just, fair or reasonable to compel the petitioner to await the conclusion of the entire election process and thereafter initiate proceedings by way of an election petition under Section 91 of the

Act. In arriving at the said conclusion, the Division Bench in *Chandrakant Mahadev Patole* (supra) placed strong reliance upon the judgment of the Hon'ble Supreme Court in the case of *Ahmednagar Zilla S.D.V & P. Sangh Ltd. v. State of Maharashtra*, (2004) 1 SCC 133, wherein the Apex Court dealt with a challenge to the preparation of an electoral roll that was based on bye-laws which were held to be illegal. The contention raised therein, that the preparation of the voters' list being an intermediate stage of the electoral process, the same could not be challenged under Article 226 of the Constitution, was specifically rejected by the Hon'ble Supreme Court. The Court categorically held that when the electoral roll is prepared on the basis of non-existent, invalid, or illegal bye-laws, it vitiates the entire process, and such illegality, going to the root of the matter, justifies interference under Article 226. The Hon'ble Supreme Court further observed that to permit such an illegality to continue, on the pretext that it forms part of the election process, would be to render the constitutional power of judicial review under Article 226 illusory and nugatory. The said judgment was subsequently quoted with approval in the case of *Pundlik v. State of Maharashtra*, (2005) 7 SCC 181, where similar issues arose in the context of preparation of voters' lists based on inapplicable rules. It is pertinent to note that in both *Ahmednagar Zilla* (supra) and *Pundlik* (supra), the Hon'ble Supreme Court considered and distinguished the earlier decision rendered in *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra*, (2001) 8 SCC 509. It was clarified that *Sadguru Janardan Swami* (supra) did not

lay down an absolute bar to judicial interference at the pre-election stage, and that it would be open to the Court to interfere where the illegality is glaring and ex facie apparent, and where grave injustice would be occasioned if such action were to be left uncorrected.

67. At this stage, it is also necessary to consider the binding pronouncement of the Hon'ble Supreme Court in *Election Commission of India v. Ashok Kumar & Ors.*, (2000) 8 SCC 216. In the said case, while considering the maintainability of writ petitions under Article 226 of the Constitution after the commencement of election proceedings governed by the Representation of the People Act, 1951, the Apex Court delineated the scope of judicial review in such matters. It was held that though courts should ordinarily refrain from interfering once the election process has commenced, the jurisdiction of the High Court under Article 226 is not completely ousted and may still be exercised in exceptional cases, provided a dual test is satisfied:

- (i) That the relief sought from the Court does not have the effect of retarding, interrupting, protracting or stalling the counting of votes or the declaration of election results, especially if that is the only remaining stage; and
- (ii) That a clear case of mala fides or arbitrary exercise of power by the Election Commission is made out warranting judicial scrutiny.

68. The Hon'ble Supreme Court emphasized that though the power vested in the Election Commission is to be exercised as a

quasi-judicial or constitutional trust, instances may arise where such power is exercised arbitrarily, capriciously, or in breach of statutory provisions. In such cases, judicial review cannot be ruled out. The Court further observed that judicial intervention may be warranted if it is sought not with a view to stall or delay the electoral process, but rather to smoothen or streamline it — for instance, to remove obstacles, or to preserve vital evidence that may otherwise be destroyed or lost by the time the election results are declared. However, the Supreme Court also issued a note of caution that such intervention must not become a means to delay or disrupt the conduct of elections, which is a function of constitutional importance. Courts must exercise circumspection and ensure that judicial interference is not misused to serve partisan ends or to frustrate the electoral schedule. It was held that while the sanctity and continuity of the electoral process must be preserved, the Court's jurisdiction under Article 226 remains available to correct glaring illegalities or to prevent injustice, provided that the relief sought does not cause disruption to the ongoing electoral process.

69. In the light of the settled legal position as discussed hereinabove, the issue that arises for consideration in the present case is whether this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India, ought to interfere with the action of the Appellate Authority in accepting the nomination paper of respondent no. 5 , particularly when the election process under the Maharashtra Co-operative Societies Act, 1960 is already underway and has reached an advanced stage. It must be

reiterated that the power of judicial review under Article 226, even in the domain of elections, is not entirely excluded. However, it is governed by the strict parameters laid down by the Hon'ble Supreme Court and by this Court in a catena of decisions. As held in *Pandurang Hindurao Patil* (supra) and *Chandrakant Mahadev Patole* (supra), where the impugned action of the Returning Officer, either in accepting or rejecting a nomination paper, is shown to be vitiated by a patent legal infirmity, or is ex facie without jurisdiction, or if the action is arbitrary or actuated by mala fides, the High Court may step in to ensure that the purity and legality of the electoral process are not compromised. It is a settled principle that the process of election must conform not only to the letter of the law but also to its spirit. Acceptance of a nomination paper is not a mere ministerial act; it is a quasi-judicial function to be exercised in accordance with the applicable statutory provisions, rules, and bye-laws. An error at this stage—particularly one that results in permitting a person who is statutorily disqualified or otherwise ineligible—has the potential to vitiate the entire process and defeat the mandate of a free and fair election. As such, while the general rule, as propounded in *N.P. Ponnuswami* (supra), is that disputes relating to elections must be addressed post-election by way of an election petition, that rule is not without exception. In this regard, it is pertinent to refer to the judgment of the Supreme Court in *K. Venkatachalam v. A. Swamickan*, (1999) 4 SCC 526, wherein the Apex Court carved out a category of cases where, despite the bar under Article 329(b), the High Court's jurisdiction under Article 226 was held to be

available, particularly where the person whose election is challenged is demonstrably not qualified to be elected, and yet his name is included in the electoral roll or his nomination is improperly accepted. The Court held that such inclusion constitutes a fraud on the Constitution, and in such cases, the High Court can intervene without waiting for the election petition mechanism to be triggered.

70. In the present case, if the Appellate Authority has accepted the nomination paper of respondent no. 5 despite the existence of an apparent disqualification under the MCS Act or the relevant Rules or Bye-laws—say, for instance, arrears of dues to the society, or violation of specific eligibility conditions—the petitioner cannot be relegated to a post-election remedy under Section 91 of the MCS Act, particularly when the said acceptance is shown to be without application of mind or contrary to statutory provisions. In *Pundlik* (supra), the Hon'ble Supreme Court emphasized that where the process is vitiated due to fundamental illegality—such as reliance on invalid bye-laws or non-existent eligibility criteria—the error cannot be allowed to survive merely on the ground that the electoral process is ongoing. Similarly, in *Ashok Kumar* (supra), the Court observed that judicial intervention is justified where the Court is called upon not to stall the election process, but rather to rectify a grave illegality before it culminates into an irreversible wrong. Thus, if the petitioner has approached this Court promptly and the issue raised pertains to an error apparent on the face of the record in the acceptance of a nomination paper which, if not corrected, would render the entire election process vulnerable to

challenge and result in avoidable expense, hardship, and multiplicity of proceedings, the Court would be justified in entertaining the writ petition and granting appropriate relief. However, such intervention must be exercised with circumspection and only when the facts clearly demonstrate that the error is not one which can be resolved through disputed questions of fact or extensive evidence but is apparent from the record, and the relief sought can be granted without disturbing the larger electoral timeline or causing prejudice to the democratic process.

71. The Hon'ble Supreme Court in the case of *Deoraj v. State of Maharashtra & Ors.*, (2004) 4 SCC 697, authoritatively expounded the scope and ambit of the power of the High Court to grant interim relief in cases where denial of such relief would virtually result in rendering the final relief infructuous. The Court observed that although an order granting interim relief may not be a fully reasoned one, the classic tripartite test of a strong prima facie case, balance of convenience, and irreparable injury generally operates in the background. It was further held that there may arise extraordinary situations where withholding interim relief would amount to defeating the ends of justice and effectively result in a denial of the very relief sought in the writ petition. In such circumstances, the Court is not precluded from granting interim relief which may have the effect of granting final relief itself, provided the case falls within the rare and exceptional category.

72. In paragraph 12 of the judgment, the Supreme Court observed:

“Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. Conversely, there may be cases where withholding of interim relief would render the petition itself infructuous. In such cases, the availability of a very strong prima facie case — of a standard much higher than a mere prima facie case — coupled with considerations of balance of convenience and irreparable injury so compelling as to tilt the balance entirely in favour of the applicant, may justify the grant of such interim relief.”

73. The Court further emphasized that in such rare instances, the withholding of interim relief would prick the conscience of the Court and do violence to the sense of justice. Judicial conscience cannot permit injustice to be perpetuated pending the hearing of the main petition, particularly where the Court, at the end of proceedings, may find itself powerless to undo the damage already caused. Therefore, in such compelling cases, the constitutional remedy under Article 226 is wide enough to provide interim protection necessary to preserve the substratum of the lis.

74. In the light of the above pronouncement of the Hon’ble Supreme Court in *Deoraj* (supra), and the principles laid down in *Pandurang Hindurao Patil* (supra), *Chandrakant Mahadev Patole* (supra), *Ahmednagar Zilla* (supra), *Ashok Kumar* (supra), and *Pundlik* (supra), the legal position that emerges is that in election matters governed by the Maharashtra Co-operative Societies Act, 1960, where the Court is satisfied that the impugned action of the Returning Officer — whether in acceptance or rejection of a nomination paper — is ex facie illegal, patently erroneous, or vitiated by a jurisdictional infirmity, the High Court would be justified in invoking its extraordinary writ jurisdiction under

Article 226 of the Constitution. Such interference is permissible even at an intermediate stage of the election process, so long as it does not require postponement or disruption of any stage of the election. The object of judicial intervention in such cases is not to interfere with the democratic process, but to uphold its sanctity by preventing grave illegality that may otherwise vitiate the entire election and render post-election remedies illusory. This principle is in consonance with the well-established legal proposition that the right to contest an election must be exercised in accordance with law, and any action by the Returning Officer that violates statutory requirements — such as failure to consider material disqualification or non-compliance with mandatory provisions of the Rules or Bye-laws — is amenable to judicial scrutiny at the pre-election stage.

75. In the facts of the present case, this Court is satisfied that the petitioner has demonstrated a case of such exceptional nature as would warrant interference at this stage. The material on record indicates that during the scrutiny of nomination papers, a specific objection was raised by the petitioner pointing out that respondent no. 5 had defaulted on a substantial financial liability amounting to over Rs. 6 crores, as evidenced by a public notice issued by the secured creditor, published in a widely circulated newspaper. The original publication was duly produced before the Returning Officer during the scrutiny proceedings. Despite this, the Appellate Authority, relying on overruled judgment and ignoring original newspaper containing notice under rule 8(6) of rules, proceeded to accept the nomination paper. In such circumstances, the

omission on the part of the Appellate Authority to give due consideration to a prima facie case of disqualification, which was supported by unimpeachable documentary evidence, constitutes a patent error apparent on the face of the record. The action is not only arbitrary but is also contrary to the mandate of law which obligates the Appellate authority to confirm order of rejection of a nomination where a candidate is disqualified under the statutory scheme. In view of the compelling facts and strong prima facie material placed on record, the withholding of interim relief at this stage would indeed prick the conscience of this Court and amount to permitting the perpetuation of an illegality. If the election is allowed to proceed with the inclusion of an ineligible candidate, the entire process would be liable to be set aside at a later stage, resulting in wastage of public time and resources, and causing irreparable injury to the petitioner. Accordingly, the case falls squarely within the category of rare and exceptional circumstances envisaged by the Hon'ble Supreme Court in *Deoraj* (supra), warranting grant of interim relief notwithstanding the advanced stage of the election process.

76. In view of the foregoing discussion and upon a careful consideration of the factual matrix and the applicable legal principles, this Court is of the considered opinion that the acceptance of the nomination paper of respondent no. 5 by the Appellate Authority suffers from a patent error and is contrary to the statutory scheme governing the elections under the Maharashtra Co-operative Societies Act, 1960. The challenge raised by the petitioner is not merely an individual grievance, but

touches upon the core issue of legality and propriety of the electoral process. The objection raised by the petitioner regarding disqualification was substantiated by credible and unimpeachable documentary evidence, which has been disregarded by the Appellate Authority without any application of mind. In such circumstances, relegating the petitioner to the remedy of an election petition under Section 91 of the Act would result in grave injustice and render the entire exercise nugatory. The facts of the present case warrant judicial interference at this stage, not to stall the electoral process, but to ensure its purity and fairness.

77. Since the Division Bench of this Court has already taken view to implead all validly nominated candidates as a party and in absence of conclusive proof of service on them, it is not possible to dispose of the petition finally despite coming to the prima facie conclusion that respondent No.5 is defaulter. In my opinion, proper course is to serve all necessary parties through process of the Court. Consequently, this Court finds it just, proper and legally sustainable to exercise its writ jurisdiction under Article 226 of the Constitution of India to grant appropriate relief in the interest of justice.

78. I, therefore, pass following order:

(i) **Rule.**

(ii) During pendency of petition, there shall be interim relief in terms of prayer clause (c).

79. In the present case, upon careful examination, the following question of law of substantial importance arises for consideration

of this Court:

“Whether in an appeal preferred under Section 152A of the Maharashtra Cooperative Societies Act, 1960, challenging rejection of a nomination paper, it is mandatory to implead all validly nominated candidates as necessary parties to the appeal?”

80. To consider this question in its proper perspective, it would be appropriate to invoke the provisions of Rule 8 of Chapter I of the Bombay High Court Appellate Side Rules, 1960 and direct that the papers of this case be placed before the Hon’ble the Chief Justice, so as to consider whether the present writ petition can be more advantageously heard and decided by a Bench of two or more learned Judges.

81. At this stage, learned Advocate for respondent No.5 prays for stay of this judgment. In view of the reasons assigned in the judgment, request for stay is rejected.

(AMIT BORKAR, J.)