



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1193 OF 2025

(Anil s/o Vasant Rao Rathod & Ors. Vs. Taluka Cooperative Election Officer and Assistant Registrar, Cooperative Societies & Ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. N.B. Kalwaghe, Counsel for the petitioners.
Mr. H.R. Dhumale, A.G.P. for respondent no.1/State.
Mr. A.A. Zade, Counsel for respondent no.2.
Mr. R.S. Kalangiware h/f Mr. K.P. Mahalle, Counsel for
respondent no.3.

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CORAM : ANIL L. PANSARE, J.
MARCH 19, 2025

On 4/3/2025, following order was passed :

"Heard.

2. *Counsel for the petitioners submits that the petitioners were made members of respondent No.2 – Society vide resolution dated 21.09.2021. The petitioners have deposited membership fee. Their names appeared in the provisional list of members published by respondent No.1. However, in the final list, their names were deleted, on the ground that respondent No.2 failed to submit evidence in support of membership of the petitioners.*

3. *Argument is that, despite respondent No.2 having submitted proof, respondent No.1 failed to consider the same. Further argument is that respondent No.1 should have given opportunity of hearing to the petitioner in terms of Rule 8(3) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014. In support, counsel for the petitioners has placed reliance upon judgment passed by Coordinate Bench of this Court in Writ Petition No.2889/2022.*

4. *The petitioners' counsel further submits that respondent Nos.3 to 40 were not members*

of the society. Their names did not appear in the provisions voters' list, however, respondent No.1 has shown them as valid members in the final voters' list. He has invited my attention to resolution dated 29.09.2021 passed by respondent No.2, wherein membership of these respondents was cancelled.

5. Issue notice before admission to the respondents, returnable on 11.03.2025. In addition to the usual mode of service, the petitioners shall serve the respondents by all permissible modes including service by speed post and in that event the petitioner shall file affidavit of service.

6. Issue notice on interim relief as well.

7. Ms K. Marpakwar, learned A.G.P waives service of notice for respondent No.1. She shall intimate respondent No.1 about filing of the present petition and issuance of notice on interim relief as well."

2] In context with above, it will be relevant to cite here the judgment of Division Bench of this Court in the case of *Dhondiba Parshuram Lakade and others Vs. Someshwar Sahakari Sakhar Karkhana Ltd. and others* [1979 Mh.L.J. 311], wherein this Court, while dealing with scope of enquiry under Rule 6(1) of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971 (for short "Rules of 1971"), which is *pari materia* Rule 8(1) of the Maharashtra Co-operative Societies (Election To Committee) Rules, 2014 (for short "Rules of 2014"), held as under :

"40. Thus, under Rule 6(1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voters' list to take steps within the ambit of Rule 6(1) to see that it is. There is nothing in Rule 6(1) which empowers the Collector to hold a detailed

inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. Under section 38(2) of the Societies Act, the Register of Members is prima facie evidence of membership. It is not open to the Collector to upset that Register by holding an inquiry under Rule 6(1), which contemplates a very summary inquiry, confined only to the aspects set out in that Rule and nothing else.”

3] The above finding is rendered in view of enquiry provided under Rule 6(1) of the Rules of 1971, which is *pari materia* Rule 8(1) of the Rules of 2014, which reads as under :

“8. Claims and objections to the provisional list of voters and the final list of voters for co-operative societies having individuals as members

(1) When the provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society during office hours within ten days from the date of publication of the provisional list of voters.

(2) to (4)”

As could be seen, when the provisional list of voters is published for inviting claims and objections, any omission or error, in respect of the names or address or other particulars in the list, is to be brought to the notice of the concerned Election Officer.

4] Thus, it is evident that the omission or error should be in relation to the names and address or other

particulars mentioned in the provisional list. In other words, the objection, as regards eligibility of members, is not open for enquiry under Rule 8 of the Rules of 2014.

5] In the present case, however, respondent no.1 has passed an order to delete the names of the petitioner and 36 others on the ground that respondent no.2 – Society failed to show cogent evidence in support of the petitioners' membership.

6] Here I may note that it is not the case of respondent no.1 that the petitioners' names were not found in the Register of Members maintained by the Society. In the circumstances, respondent no.1 could not have extended his jurisdiction to expect the Society to tender evidence of membership. Once the names of members appear in provisional list, the enquiry should be restricted in terms of what has been provided under Rule 8 of the Rules of 2014.

7] The scope of enquiry is further elaborated in *Dhondiba's* case in following terms :

“41. The combined effect of Rules 4, 5 and 6 is that the powers of the Collector under Rule 6, though not without responsibility, are more in their nature, mechanical. He has to act as a guard or watch-dog and ensure that the identity of every person whose name appears in the provisional voters' list tallies with the person in the Register of Members. The intention behind, and the scope of these three Rules is to ensure that every person whose name appears in the Register of Members, should also appear in the voters' list, so that no person in the Register of Members is left out from the provisional voters' list by reason of some omission or error in respect of the particulars enumerated in Rules 5 and 6.”

Thus, the Division Bench has held that the powers of Enquiry Officer are more of a mechanical nature. He has to act as a guard or watch-dog and ensure that identity of every person, whose name appears in provisional voters' list tallies with the person in the Register of Members. The Court further held that the intention behind the procedure is to ensure that every person, whose name appears in the Register of Members should also appear in the voters' list.

8] Thus, where the name of member appears in Register of Members and his name is not included in the provisional list, such/those members may file objection/claim for inclusion of their names. In such cases, the Election Officer should examine or go through the Register of Members, which is to be compulsorily maintained by the Society under Section 38 of the Maharashtra Co-operative Societies Act, 1960 (for short "Act of 1960"), read with Rule 32 of the Maharashtra Co-operative Societies Rules, 1961 (for short "Rules of 1961"), and verify whether the claim so made for inclusion is valid, and accordingly take decision in terms of sub-rule (3) of Rule 8 of the Rules of 2014.

9] In the present case and as noted above, the Election Officer has exceeded jurisdiction by calling upon the Society to produce evidence in support of the petitioners' membership. The order impugned, therefore, is apparently perverse.

10] Be that as it may, during the course of hearing, some glaring discrepancies were pointed out. It appears that the Society has not maintained Register of

Members, as required under Section 38 of the Act of 1960 read with Rule 32 of the Rules of 1961. The Election Officer appears to have sought Register of Members from respondent no.2 – Society to which the Secretary of Society responded by saying that such Register is not maintained. It further appears that the Administrator was appointed sometimes in the year 2017. Section 77A of the Act of 1960 provides that such Administrator/Board of Administrators can continue for not more than twelve months. In these twelve months, the Board of Administrators is under obligation to take steps to have regular elections held, which has been not done in the present case.

11] During the course of argument, my attention was invited to the communication dated 10/1/2022 addressed to the Chief Administrator by respondent no.1 – Sub-Registrar, stating therein that names of some members, whose list is annexed with the communication and whose removal is recommended by the Society, is approved by respondent no.1.

12] The learned Counsel for respondent no.3 submits that this communication was never communicated to the persons, whose names were removed, which includes respondent no.3. He further submits that despite this communication having been made on 10/1/2022, the names of the persons listed, appeared as members in the audit report for the year 2022-23.

13] At this stage, the learned Counsel for respondent no.2 – Society submits that their names were inadvertently mentioned in the audit report.

14] The respondent no.1 has, on the basis of audit report, included in the final voters' list the names of these persons without taking decision in writing, as required under Rule 8(3) of the Rules of 2014.

15] The learned A.G.P submits that this communication is not on record maintained by respondent no.1, however, there is entry in the outward register referring to this communication.

16] At this stage, the learned Counsel for respondent no.3 submits that the communication dated 10/1/2022 refers to resolution dated 29/9/2021 passed by the Board of Administrators. He submits that since the Board of Administrators was appointed in the year 2017, it could have continued till the year 2018 in terms of Section 77A of the Act of 1960, meaning thereby, that the Board of Administrators could not have passed any resolution in September – 2021 and, therefore, respondent no.1, who was aware of such status of the Society, could not have acted upon the resolution recommending removal of names of respondent no.3 and other members.

17] Put all together, there are multiple issues involved in the case. It appears that the Society is not functioning in accordance with the provisions of the Act of 1960.

18] In the circumstances, respondent no.1, to my mind, should take fresh decision firstly as regards

objection for removal of names of the petitioners and other such persons, as also as regards entitlement of respondent no.3 and others to be the members of the Society. These issues would travel beyond the scope of enquiry under Rule 8 of the Rules of 2014 and, therefore, respondent no.1 may consider postponement of election by seeking prior approval of the State Cooperative Election Authority in terms of Rules 18 and 19 of the Rules of 2014. However, if he deems it necessary to continue with the election process, he shall take decision afresh as regards objections put forth in the present case by both the sides, but strictly in consonance with the scope of enquiry under Rule 8 of the Rules of 2014 and the judgment referred to above.

19] With the above observations, the writ petition is partly allowed. Order dated 18/2/2025 passed by respondent no.1, is quashed and set aside. Respondent no.1 shall consider postponement of election and/or shall consider afresh the objections raised by both the sides as regards their entitlement to be listed in final voters' list. In the event, respondent no.1 takes a decision that the election will have to be held, as scheduled, decision on objection raised by both the sides as regards provisional list shall be taken by 5:00 pm tomorrow, i.e., 20/3/2025, and the order be communicated to both the sides.

20] The parties shall appear before respondent no.1 at 10:00 am tomorrow, i.e., 20/3/2025, and shall cooperate him for taking appropriate decision.

21] The petition is disposed of in above terms with no order as to costs.

22] All parties to act on an authenticated/
uploaded copy of this order.

(ANIL L. PANSARE, J.)

Sumit