



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

WRIT PETITION NO. 3335 OF 2025

(Ashok s/o Laxminarayan Gupta Vs. State of Maharashtra & Ors.)

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

Court's or Judge's orders.

Mr. R.L. Khapre, Senior Counsel with Mr. V.A. Lohia, Counsel
for the petitioner.

Mr. N.S. Autkar, A.G.P for respondent no.1/State.

Mr. S.S. Ghate, Counsel for respondent no.2.

Mr. A.M. Ghare, Counsel for respondent no.7.

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CORAM : ANIL L. PANSARE, J.
JUNE 27, 2025

Heard Mr. R.L. Khapre, learned Senior Counsel for the petitioner, Mr. S.S. Ghate, learned Counsel for respondent no.2, Mr. A.M. Ghare, learned Counsel for respondent no.7, and Mr. N.S. Autkar, learned A.G.P. for the State. None appears for respondent nos. 3 to 6, though served.

2] The petitioner is aggrieved by order dated 24/6/2025 passed by respondent no.3 – District Co-operative Election Officer and Divisional Joint Registrar Co-operative Societies, Nagpur, in an appeal preferred by respondent no.7, thereby accepting the nomination paper filed by him. The returning officer had, upon objection raised by the petitioner to the nomination of respondent no.7, by upholding the objection, rejected his nomination.

3] Having heard both sides and having gone through the material placed before me, the controversy revolves around the bye-laws of respondent no.5 –

Society, the election of the managing body of which is under process.

4] Respondent no.6 is the Member – Society, whose name appears in the final voters’ list. Respondent no.7 is representative of respondent no.6 – Society. He filed nomination to which the petitioner objected. According to bye-law 8 sub-clause 11(a)(1) of respondent no.5 – Society, for the person to be eligible to be elected on the Board of Directors, the Member – Society has to be an active member in terms of sub-clause 5(b) and the representative should be an active member of the Member – Society and that the person should be a Member of the Member – Society for at least two years.

5] Mr. R.L. Khapre, learned Senior Counsel for the petitioner, referred to sub-clause 5(b) of bye-law 8 of respondent no.5 – Society to contend that respondent no.7 was not an active member of respondent no.6 – Society, and further that he was not a Member of the said Society for two years.

6] As against, Mr. A.M. Ghare, learned Counsel for respondent no.7, referred to the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short “Act of 1960”), particularly, Sections 26 and 27, to contend that the concept of active member is no more in existence. Both provisions were mandatory in the year 2013, whereby the definition of ‘active member’ under Section 2 as also the relevant sub-sections under Sections 26 and 27 in this regard, were deleted. He submits that the provisions of the Act of 1960 would prevail over the

bye-laws of the Society and, therefore, the ground alleging respondent no.7 to be not an active member, is not available. In support, he has relied upon the judgment of a Co-ordinate Bench of this Court in the case of *Pruthviraj Sahebrao Jachak Vs. State of Maharashtra, through Department of Cooperation and Others [2025 SCC OnLine Bom 663]*. He accordingly supported the judgment passed by respondent no.3 – First Appellate Authority.

7] As against, Mr. R.L. Khapre, learned Senior Counsel for the petitioner submits that the judgment in the case of *Pruthviraj Sahebrao Jachak (supra)* was in context with voting rights of a Member - Society and not in context with the eligibility to contest the election. According to Mr. Khapre, the provisions of the Act of 1960, including Sections 26 and 27, as it stand today, recognizes the concept of bye-laws. He further submits, by relying upon Rules 10 and 20 of the Maharashtra Co-operative Societies (Election To Committee) Rules, 2014 (for short “Rules of 2014”), that the Member/representative of Society desirous of contesting election should not be ineligible under the provisions of the Act, Rule or Bye-laws. In the present case, respondent no.7 was not an active member, and secondly, was not Member for two years of respondent no.6 – Society and, therefore, was not eligible to contest elections. In support, he has relied upon the following judgments :

I] *Pruthviraj Sahebrao Jachak Vs. State of Maharashtra, through Department of Cooperation and Others [2025 SCC OnLine Bom 663],*

II] *Zoroastrian Cooperative Housing Society Ltd. And Another Vs. District Registrar, Cooperative Societies (Urban) And Others [(2005) 5 SCC 632].*

III] *Madhubhai Amathalal Gandhi Vs. Union of India [AIR 1961 SC 21].*

IV] *Supreme Court Bar Association and Ors. Vs. B.D. Kaushik [2011 AIR SCW 5804].*

V] *Govind Vishwanath Wagh Vs. State of Maharashtra, through it's Secretary, Cooperative and Textile Minister and Others [2022 SCC OnLine Bom 69].*

8] I need not go into the aspect of requirement of active member inasmuch as there is no dispute that respondent no.7 was not a Member of respondent no.6 – Society for two years at the time of filing nomination. Rule 20 of the Rules of 2014 provides that any Member, whose name appears in the final voters' list may be nominated as the candidate for the election to fill a seat, if he is qualified to be chosen under the provisions of the Act, Rules and Bye-laws of the concerned Society.

9] In the present case, the bye-laws of respondent no.5 – Society provide, amongst others, a condition that a contesting candidate should be a Member of the Member – Society for at least two years.

10] At this stage, Mr. A.M. Ghare submits that the provisions in bye-laws are composite, as regards

active member as also the requirement of two years membership. He submits that the bye-laws cannot be partly relied upon. According to him, sub-clause 5(b) of bye-law 8 provides for various conditions to define active member and, therefore, it will have to be read in entirety.

11] I do not find substance in the said submissions. Clause 11(a)(1) of bye-law 8 stipulates three requirements; one is that the Member – Society should be an active member, second is that the representative of the Member – Society should be an active member of the said Society, and third is that the representative should be a Member of its Society at least for two years. Out of these three conditions, one may argue that the first two conditions are something that would require detail consideration in terms of the provisions of law and the judgments cited by both the sides. However, the third condition is separable and independent and is not affected by the provisions or the judgments cited by both the sides.

12] That being so, and since respondent no.7 is admittedly not Member of respondent no.6 – Society for two years, he is not qualified to be chosen under the provisions of the bye-laws of respondent no.5 – Society. Respondent no.3 failed to consider this vital aspect and erroneously held that this requirement is not necessary in terms of Section 27(3) of the Act of 1960. Sub-section (3) of Section 27 provides for right to vote on behalf of the Member – Society and doesn't really deal with the eligibility/qualification to contest election. The order, to

that effect, is apparently perverse and is, thus, unsustainable.

13] The petition is accordingly allowed. Order dated 24/6/2025 passed by respondent no.3 – District Co-operative Election Officer and Divisional Joint Registrar Co-operative Societies, Nagpur, is quashed and set aside. Order dated 3/6/2025 passed by respondent no.4 – returning officer, is restored.

14] The petition is disposed of in above terms. No costs.

15] All parties to act upon authenticated/ uploaded copy of the order.

(ANIL L. PANSARE, J.)

Sumit