# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIRCUIT BENCH AT KOLHAPUR
## CIVIL APPELLATE JURISDICTION

## WRIT PETITION NO. 5261 OF 2026

UDAY SHIVAJI JAGTAP
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Vikramsinha Balasaheb Sawant and Anr. … Petitioners

Vs.

State of Maharashtra, Thr. Dept. of Co-operation and Ors. … Respondents

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Mr. Surel Shah, Senior Counsel i/b Ishaan Kapse for the Petitioners
Mr. Ruturaj P. Pawar for Respondent No.2.
Mr. Parth Pitambare a/w Pankajsinh Deshmukh for Respondent No.3.
Mr. Pralhad Paranjape a/w Sangramsinh Yadav for Respondent No.5.
Mr. J.P. Patil, AGP for Respondent No.1 - State

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CORAM : SHAILESH P. BRAHME, J.

DATE : 13th OCTOBER, 2026.

FINAL ORDER :

. Heard both sides. The matter is taken up for final disposal with the consent of the parties considering exigency in the matter.

**2.** The order passed under Rule 25(2) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as "Rules of 2014" for the sake of brevity) by the respondent no.2 – Election Officer overruling the objection raised against the respondent no.4 is subjected to challenge in this petition.

**3.** The petition is emanating from the election process of the respondent no.3 – Federal Society namely the Sangli District Central Co-

operative Bank. The respondent no.4 is the primary Co-operative society, which nominated the respondent no.5. The nomination was objected by the petitioners and those are overruled by the impugned order.

**4.** Learned Senior Counsel Mr. Surel Shah appearing for the petitioners would submit that bye law no. 35(2) provides for the qualification, which is blatantly violated in the present matter. The Certificates produced on record on behalf of respondent no.4 are false and the Returning Officer failed to conduct the scrutiny as contemplated by law. Learned Senior Counsel has referred to the Audit Report and the order dated 19.01.2023 in respect of the declaration of the election of Nimbawade Gramin Bigarsheti Sahakari Pathsanstha which are stated to be overlooked. It is submitted that the qualification of the candidate has to be tested in view of Section 73CA of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "Act" for the sake of brevity). In the absence of any admissible evidence as contemplated by Sections 38, 40 and Rule 32 to 34, the claim of the respondent no.5 ought to have been discarded. It is further submitted that it would be within the realm of the inquiry of the Returning Officer to decide the eligibility.

**5.** *Per contra*, learned counsel Mr. Paranjape appearing for

respondent no.5 would counter the submissions by preliminary objections that the petitioners have alternate efficacious remedy to challenge the order or the election results. The matter involves disputed questions of facts which cannot be gone into either in the inquiry under Rule 25 or before this Court while exercising writ jurisdiction. Indulgence of High Court when the election process has commenced is impermissible. It is further submitted that Audit Report and the documents which are tried to be pressed into service were not produced along with written objection and they were not before the Returning Officer at the time of scrutiny. No source of those documents is disclosed which creates doubt over the documents. It is further contended that the objections raised by the petitioners were vague and it would amount to fishing or roving inquiry. It is submitted that the Certificates produced by respondent no.5 were in Proforma nos. 3 and 4 which could not have been doubted.

**6.** Learned counsel would vehemently submit that no order as such was passed disqualifying the respondent no.5. Considering the magnitude of objections at the time of scrutiny of nominations, the inquiry in-depth is practically not possible. It is further submitted that the primary co-operative society concerned or the Nimbawade Gramin Bigarsheti Sahakari Pathsanstha did not make any complaint or challenge the status of the respondent no.5. Lastly, it is submitted that it is

impermissible to conduct mini trial under the garb of inquiry under Rule.

**7.** Mr. Ruturaj Pawar, learned counsel for respondent no.2 would support the impugned order and reiterate the primary objections raised by the learned counsel appearing for respondent no.5. It is submitted that the Audit Reports which are sought to be produced were not pressed into service at the time of inquiry. The petitioners failed to produce reliable evidence at the time of scrutiny and, therefore, the conclusion drawn in the summary inquiry is well founded.

**8.** Learned AGP adopts the submission of respondent no.2.

**9.** I have considered the rival submissions of the parties. Two objections were submitted for the nomination of respondent no.5. Firstly, that he was not a member of the primary society for minimum two years and secondly, he was not member of the Managing Committee of any society at least for one year. Undisputedly, bye-law no.35(2) of the respondent – federal society provides the qualification. The objections raised are in consonance with the bye law. The objections are entertainable in view of Section 73CA(f)(iv) of the Act. The Returning Officer is obliged under Rule 25(2) to determine the eligibility of the candidate to fill the seat.

**10.** It is trite law that inquiry under Rule 25 is a summary in nature

and intricate questions of facts and law cannot be gone into. The inquiry is to decide the eligibility of the candidate to participate in the election process. I am of the considered view that no order of disqualification as is tried to be argued by learned counsel for respondent no.5 is necessary to come to *prima facie* conclusion that a particular candidate is ineligible to participate in the election process.

**11.** I find that the objections were very specific. A doubt was raised to the Certificate issued by respondent no.4 – society, which was in Proforma-3 and the Certificate issued by Nimbawade Gramin Bigarsheti Sahakari Pathsanstha was in Proforma-4. Those are castigated to be false and bogus. Under such circumstances, the Returning Officer should have been more skeptical. In the present case, except the Certificates on record, no material was placed on behalf of respondent no. 5 to corroborate the claim for eligibility of respondent no.5.

**12.** Both sides have rival submissions for the Audit Reports and the reference of the respondent no.5 therein. Those are seriously disputed by the respondents. I am not inclined to rely upon them. However, when serious objections were raised for the Certificates, the Returning Officer should have called upon respondent no.5 to place on record reliable material to satisfy his eligibility as per Bye law No. 35(2). The Returning

Officer has failed to perform the statutory functions. The Returning Officer is obliged to determine all the objections not only raised at the instance of the objector but on his own motion in a summary inquiry.

**13.** My attention is adverted to Sections 38(1)(C) and 40 of the Act and Rule 32, 33 and 34. As per Section 38 of the Act, every society is bound to maintain a register of its members and enter therein the material particulars prescribed thereunder. The register of members so maintained shall be in Form I as per Rule 32. The list of the members maintained by the society under Section 39 shall be in Form 'J'. The maintenance of list of members in Form 'I' and 'J' is mandatory for every society. The original register or the certified copies thereof and certified copies of the entries would be admissible in evidence as per Section 40. Such evidence has a presumptive value and the parties to the litigation could have relied upon such evidence to make out a case of qualification prescribed under the bye law.

**14.** The petitioners have cited a judgment of coordinate Bench in **Sahara India Commercial Corporation Ltd. Vs. B. Jeejeebhoy Vakharia and Associates** (2007) 6 Mh.L.J. 167 to buttress that the register maintained by the cooperative society have a presumptive value.

**15.** The legally admissible evidence has been prescribed by the

statutory provision. The Returning Officer who happens to be from Cooperation Department, is expected to know the statutory provision so that the documents having probative value would be taken into account. In the present matter, such exercise is lacking. No register or the certified copies thereof or Form No. I and J were produced before the Returning Officer, which the respondent no.5 was obliged to produce. In the absence of any reliable material on record, I find that the claim of the respondent no.5 is unsustainable.

**16.** The petitioners have also relied on the judgment of Coordinate Bench in **Govind Vishwanath Wagh Vs. State of Maharashtra & Ors.** (2022) SCC OnLine Bom 69. The relevant paragraph is as follows,

> "21. The Maharashtra State Cooperative Societies (Election to Committee) Rules, 2014, framed by the Cooperation Department in exercising of the powers conferred by sub-section (J-2) of Section 165 of the Maharashtra Cooperative Societies Act, 1960, which prescribed the rules to regulate the conduct of elections to the cooperative societies, contemplate that the elections shall be held in accordance with the Act, Rules and bye-laws and since the bye-laws prescribed the qualification for a candidate to be elected as a member of the Managing Committee of the Cooperative Society, the qualification is to be strictly construed and satisfied."

In the present case also, the qualification prescribed by the Bye law No. 35(2) has been violated. The Returning Officer should have been alert in such a situation.

**17.** Reliance is placed by learned counsel, Mr. Paranjape on the

judgment of **State of Bihar and Ors. Vs. Jain Plastics and Chemicals Ltd.** (2002) 1 SCC 216 to buttress that when there is existence of alternate remedy and there are disputed questions of facts, writ petition should not be entertained. The ratio laid down cannot be doubted, but it cannot be applied in the present case. Further reliance is placed on judgment of **Parag Vs. Election Commission of India and Ors.** (2021) SCC OnLine Bom 4560. My attention is adverted to para no.15 of the judgment. Those principles are also seminal. I have assigned reasons for causing indulgence in the election process and a precaution has been taken that the process shall not be hampered, but patent illegality is eliminated.

**18.** The learned counsel Mr. Ruturaj Patil appearing for respondent no.2 relies upon the judgment of **Ramesh s/o Vitthalrao Shinde Vs. The Maharashtra State Co-operative Election Authority & Ors.** (in Writ Petition No. 6694 of 2026, decided on 08.07.2026) rendered by coordinating bench. The facts are distinguishable. In the present case, the certificates produced by the respondent no.5 are doubted by the petitioners and the claim was not supported by reliable evidence. Thus, there is a violation of the bye law. Further reliance is placed on judgment of **Murlidhar Rangrao Gaikwad Vs. State Co-operative Election Authority and Ors.** (2025) SCC OnLine Bom 893 to buttress that, it is not permissible to consider new documents. The issue before

coordinating bench was as to whether in an Appeal under Section 152A, new documents can be entertained or not. That is not a issue germane in the present case. In the present case, legally admissible evidence was not placed on record. The judgment will not help the respondents.

**19.** I find that the impugned order is unsustainable. The Returning Officer has committed dereliction of the duties and resultantly ineligible candidate is participating in the election process which is not the purport of the Act and Rules. I have no alternative than to step in and cause indulgence in the impugned order.

**20.** It is profitable to refer to the ratio laid down by Supreme Court in the matter of **Union Territory of Ladakh & Ors. Vs. Jammu and Kashmir National Conference & Anr.** (2024) 18 SCC 643, which is as follows.

> "37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable Constitutional or Courts are intelligible basis, the required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG,

> during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order."

**21.** Another facet of the matter is that the process of election is at the stage of withdrawal of nomination on 21.10.2026. Thereafter, allotment of symbol is scheduled on 22.10.2026. The voting is fixed on 01.11.2026. The indulgence of this Court would not cause any impediment in the election process or its smooth completion. Under such circumstances, I do not find that there is any difficulty in quashing the impugned order.

(i) The Writ Petition is allowed.

(ii) The order dated 05.10.2026 passed by the respondent no.2 is quashed and set aside and the objection raised by the petitioners shall stand sustained thereby declaring the respondent no.5 as ineligible to participate in the election process.

(iii) Necessary corrections be made in list of voters and nominees.

(v) There shall be no order as to costs.

**22.** After pronouncement of the order, learned counsel for the respondent no.5 requests for suspending the present order for a period of 10 days so as to enable his client to approach the Apex Court. The

request is opposed by the petitioners. As the election process is underway and I have observed that respondent no.5 is not eligible to participate in the process, I am not inclined to accept the request. It is rejected.

(SHAILESH P. BRAHME, J. )