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**(2021) 07 BOM CK 0036**

**Bombay High Court**

**Case No:** Writ Petition (Stamp) No. 8218 Of 2021

Shriram Sahakari Dudh  
Utpadak Sanstha And  
Others

APPELLANT

Vs

State Of Maharashtra  
And Others

RESPONDENT

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**Date of Decision:** July 16, 2021

**Acts Referred:**

- Constitution Of India, 1950 - Article 226, 243ZJ, 243ZJ(2)
- Maharashtra Cooperative Societies (Election To Committee) Rule, 2014 - Rule 6(1), 6(2), 9, 9(1), 9(2), 9(3), 10, 10(2), 10(3), 10(4), 11, 11(1), 11(2), 11(3), 11(4), 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 78
- Maharashtra Co-Operative Societies Act, 1960 - Section 27, 27(3), 73 (1A)(a), 73AAA, 73AAA(3), 73CB, 73CB(15), 73CC, 78A, 91, 91(1), 157
- 54 55 56 57 58 59 60 61 62 63 64

**Hon'ble Judges:** R. D. Dhanuka, J; Abhay Ahuja, J

**Bench:** Division Bench

**Advocate:** Anil Y. Sakhare, Rohan S. Mirpur, Yuwraj D. Patil, Deelip Patil Bankar, Pooja Deelip Patil, Shekhar Jagtap, Sairuchita Chowdhary, Ninad Naik, J Shekhar

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**Judgement**

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R. D. Dhanuka, J”,,

1. Rule. Learned counsel for the respondents waive service. By consent of parties petition is heard finally.,,

2. By this writ petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of mandamus for quashing and setting”,,

aside the order dated 10th February, 2021 passed by the Maharashtra State Co-operative Election Authority and the letter dated 18th February, 2021",,

issued by the said Authority (for short "the said Election Authority"). The petitioners have also prayed for an order and direction against the,,

respondent nos. 1 to 3 to extend the cut-off date for the election of the respondent no.4 federal society for the term of 2021-2026 from 21st June, 2020",,

and to treat the petitioners as eligible and active members and to include their names in the list of primary societies for the purpose of preparation of,,

voters list.,,

Some of the relevant facts for the purpose of deciding this writ petition are as under :-,,

3. The petitioners are the Primary Co-operative Milk Societies and are the members of the respondent no.4 federal society. The said Election,,

Authority is responsible for conducting the election of the respondent no.4 federal society. The petitioners were registered as primary milk societies,,

and became members of the respondent no.4 federal society on 29th June, 2017.",,

4. On 22nd June, 2015, the election of the respondent no.4 federal society was conducted for the term 2015-2020. The term of the Managing",,

Committee was due to expire on 21st June, 2020. On 24th December, 2019, the respondent no.4 federal society forwarded a list of primary societies",,

in the Mulshi Taluka, District Pune that were eligible with reference to the cut-off date as per Rule 9 of the Maharashtra Co-operative Societies",,

(Election to Committee) Rule, 2014. Since, the term of the Managing Committee of the respondent no.4 federal society was due to expire on 21st",,

June, 2020, the said date was treated as a cut-off date while determining the eligibility of the primary society. The name of the petitioners were not",,

included in the said list forwarded by the respondent no.4 federal society.,,

5. On 6th January, 2020, the respondent no.3 issued a public notice qua election of the respondent no.4 for the term from 2020-2025. The primary",,

societies were required to submit resolutions with the names of their authorized representatives who would be included in the voters list for the,,

election of the respondent no.4 federal society during the period 13th January, 2020 to 12th February, 2020. The cut-off date fixed for determining the",,

eligibility was specified in the said notice as 21st June, 2020. It is the case of the petitioners that in view of the proviso to Section 27 of the",,

Maharashtra Co-operative Societies Act, 1960 (for short "the said MCS Act"), the petitioners' societies would complete three years of",,

membership on or about 28th June, 2020, which was eight days after the said cut-off date.",,

6. It is the case of the petitioners that on 31st January, 2020, the State Government issued a Government Resolution halting the election process and",,

deferred the election by a period of three months. During the period between March 2020 to February 2021, the State Government postponed the said",,

election from time to time due to outbreak of covid-19 pandemic. On 2nd February, 2021, the State Government directed that the elections to Co-",,

operative Societies be resumed. On 9th February, 2021, the petitioners submitted a representation to the Election Authority contending that the",,

petitioners were meeting all the criteria to be treated as eligible for voting for the election of the respondent no.4 federal society. However, since the",,

cut-off date was fixed as 21st June, 2020 the petitioners were short by about eight days. It was contended by the petitioners that since the elections",,

were being deferred by a period of more than one year, the cut-off date be extended and the petitioners be treated as eligible.",,

7. On 10th February, 2021, the State Government issued an order directing the Election Authority to resume the election process from 15th February",,

2021 in accordance with the revised election programme. In the said order it was provided that the cut-off date would be fixed by a separate order.,,

On 18th February, 2021, the said Election Authority rejected the representation made by the petitioners on the ground that since the order dated 10th",,

February, 2021 contemplated that the election would be resumed from the stage at which it was halted, the cut-off date could not be extended.",,

8. On 12th February, 2021, the said Election Authority issued a public notice. It is the case of the petitioners that the tenure of the election which was",,,

earlier 2020-2025 was extended/modified from 2020-2025 to 2021-2026 and called for the resolution from the primary societies appointing,,

representatives for the purpose of preparation of the provisional voters list to be submitted till 26th February, 2021. On 29th February, 2021, the State",,,

of Maharashtra issued a Government Resolution deferring the election of the Co-operative Societies till 31st March, 2021. By another Government",,,

Resolution dated 6th April, 2021, the State Government deferred the said election till 31st August, 2021.",,,

9. Mr. Sakhare, learned Senior Counsel for the petitioners invited our attention to various annexures to the writ petition filed by his clients, annexures",,,

to the affidavit-in-reply filed by the respondent no.2, various provisions of the MCS Act and the Maharashtra Co-operative Societies (Election to",,,

Committee) Rule, 2014 (for short "the said Election Rules"â€). He relied upon Section 27(3) of the MCS Act, proviso to Section 73 AAA (3) of",,,

the MCS Act, third proviso to Section 73CB(15) of the MCS Act, Rules 9(2) and 10(2) of the said Election Rules and would submit that the",,,

petitioners"â€ societies had completed the period of three years as contemplated under Section 27(3) of the MCS Act on or about 29th June, 2020",,,

and are thus eligible to vote for election for the respondent no.4 federal society since then.,,,

10. It is submitted that since the term of the Managing Committee was expiring on 21st June, 2020, the said Election Authority had fixed the said date",,,

as the cut-off date for election qua the tenure 2020-2025. The term of the existing committee has been extended till 31st August, 2021 by the State",,,

Government by issuing various orders, in view of covid-19. The tenure of the election has been also extended/modified from 2020-2025 to 2021-2026.",,,

He submits that though the term of the earlier committee has been extended and modified from 2020-2025 to 2021-2026, the cut-off date fixed by the",,,

Election Authority in the year 2019 for the tenure 2020-2025 has been illegally continued for the election qua the tenure 2021-2026 without application,,

of mind by the said Election Authority.,,

11. It is submitted by the learned senior counsel that in view of Rule 9(2) of the said Election Rules, the Election Authority is required to fix a fresh",,,

cut-off date, since the election could not be conducted prior to the expiry of the term of the committee as has been postponed by more than a year.",,,

The Election Authority however has rejected the representation made by the petitioners without recording the reasons and has passed the said order,,

arbitrarily. He vehemently contended that the provisional voters list for the said election of the respondent no.4 federal society has not been prepared,,

till date. Admittedly, the names of the representative are yet to be submitted. Since, the Election Authority has not corrected the cut-off date inline",,,

with the election for the tenure 2021-2026, the petitioners though eligible to vote in the said election of the respondent no.4 federal society for the",,,

tenure 2021-2026 would suffer gross injustice by not being permitted to cast vote.,,

12. Learned senior counsel placed reliance on Rules 9(2) and 10(2) of the said Election Rules and would submit that twelve days were left before the,,

cut-off date. The petitioners' societies completed three years of membership on or about 28th June, 2020, which was eight days after the said cut-",,,

off date fixed by the said Election Authority. Since, admittedly the provisional voters list in accordance with the schedule provided in the public notice",,,

dated 21st June, 2020 is not yet prepared, the Election Authority is empowered to extend the said cut-off date. He submits that the Election Authority",,,

is an independent authority and is not subordinate to the State Government. The Election Authority is thus empowered to modify the cut-off date and,,

did not require any instructions or directives from the State Government.,,

13. Learned senior counsel for the petitioners placed reliance on the judgment of Aurangabad Bench of this Court delivered on 9th February, 2021 in",,,

Writ Petition No. 810 of 2021 in case Bhausahab Kachru Natkar v/s. The State of Maharashtra and Ors. and other connected matter and in particular,,

paragraph nos. 25 to 28. He submits that the petitioners being members of the respondent no.4 federal society have right to participate in the election,,

process of respondent no.4. The right to participate in the election process cannot be taken away by the Election Authority. He submits that since the,,

said election has been postponed for a period of about eighteen months, the petitioners who are eligible to vote in the said election cannot be deprived",,,

to vote on the basis of the earlier cut-off date, which date has become redundant in view of the postponement of the election for about eighteen",,,

months. He submits that the entire election process had been halted by the State Government and thus admittedly no steps were taken by the Election,,

Authority during this period.,,,

14. It is submitted by the learned senior counsel that the Election Authority was required to exercise its discretion and to direct the provisional voters,,

list to be prepared after fixing the appropriate date for participation of large numbers of legitimate and valid members, which exercise has not been",,,

carried out by the Election Authority illegally. In this case, the eligible society have yet to submit the resolutions appointing their representatives.",,,

According to the petitioners about 49 societies including the petitioners have become the members of the respondent no.4 federal society during the,,

period between 30th June, 2017 to March, 2018 who would be deprived of exercising their rights to vote, if the cut-off date as fixed by the Election",,,

Authority is not extended. The petitioners have produced a list of such societies along with written arguments.,,,

15. It is submitted by the learned senior counsel that the discretion of the Election Authority to fix a cut-off date has to be exercised as per judicial,,

norms and legal principles. The impugned order passed by the Election Authority is not in compliance with the judicial norms and the legal principles. It,,

is submitted that since in this case the provisional voters list contemplated under Rule 9 of the said Election Rules has not been prepared, all further",,,

steps required to be taken for the purpose of holding the election also have not been taken. He relied upon Rule 18 of the said Election Rules, which",,,

provides for "declaration of election programme" Rule 19 provides for "manner of publication of election programme". Since all these,

steps prescribed have not been completed, this Court has ample power to direct the Election Authority to fix the cut-off date as 31st December, 2020",

or 31st May, 2021.",

16. Learned senior counsel for the petitioners invited our attention to some of the contentions raised by the respondent no.2 in the affidavits-in-reply,

filed by the Election Authority and would submit that the writ petition filed by the petitioners has been opposed mainly on the ground that if the cut-off,

date is extended as sought by the petitioners there would be administrative as well as financial burden on the Election Authority. It is wrongly,

contended by the Election Authority that the election process has already commenced. He submits that the alleged alternate remedy suggested by the,

respondent no.2 of filing an Election Petition under Section 91 of the MCS Act is not an alternate or efficacious remedy available to the petitioners to,

impugn the order passed by the said Election Authority refusing to extend the cut-off date. He submits that the said order passed by the Election,

Authority cannot be challenged in an Election Petition under Section 91 of the MCS Act. The Appellate Authority cannot consider the objections,

raised by the petitioners under Rules 9 and 10 of the said Election Rules nor such objections can be considered by the Co-operative Court under,

Section 91 of the MCS Act.,

17. Mr. Shekhar Jagtap, learned counsel for the respondent no.4 federal society submits that the petitioners have not demonstrated as to why the",

petitioners seek extension of the cut-off date to a particular date. He invited our attention to provisions inserted in Chapter IX B in the Constitution of,

India relating to elections of the Co-operative Societies. He submits that under Article 243 ZJ (2) of the Constitution of India, the term of the managing",

committee of a Co-operative Societies is five years. The said period of five years prescribed in the said Chapter introduced in the Constitution of India,,

w.e.f 15th February, 2012 was required to be inserted in the MCS Act read with MCS Rules. He submits that there was a corresponding amendment",,,

based on the said provision.,,

18. It is submitted that since the said period of five years had expired and the election for the managing committee of co-operative societies was,,

postponed from time to time in view of covid-19, existing managing committee whose terms had earlier expired in the month of June 2020 or was",,,

likely to expire was extended as and by way of ad- hoc arrangement till elections are held. He submits that since no office of the managing committee,,

could be kept vacant due to pandemic situation, the State Government had carried out amendment to the MCS Act by inserting Section 73AAA",,,

inserted by MAH.16 of 2013 w.e.f. 14th February, 2013. He submits that in view of the proviso to Section 73AAA (3) inserted by MAH.50 of 2018",,,

w.e.f. 13th June, 2018 providing that if the election to the committee could have been held for any reason not attributable to the members of the",,,

Committee of such society, then the existing members of the committee shall be deemed to have continued till new committee is duly constituted. The",,,

tenure of the then managing committee which had come to an end in the month of June 2020 would be continued till fresh elections of the respondent,,

no.4 federal society are held.,,

19. Learned counsel invited our attention to the public notice issued by the Election Authority on 21st June, 2020 and would submit that the eligibility",,,

criteria and the cut-off date was already decided on the date of issuance of the said public notice. The constitutional validity of the said amendment to,,

Section 73AAA has been challenged in various petitions in this Court. This Court has not granted any stay to the said provision till date. The ad-hoc,,

caretaker committee thus continues till the elections of the respondent no.4 society are held in view of the proviso to Section 73AAA(3) of the MCS,,

Act.,,

20. It is submitted by the learned counsel that if the submissions of the learned senior counsel for the petitioners are accepted and if the cut-off date is,,

extended as canvassed by the learned senior counsel for the petitioners, that would open the floodgate of litigation. It may affect the respondent no.4",,

federal society as well as several other federal societies. The postponement of the election of the respondent no.4 and similar situated federal societies,,

and other co-operative societies has been made temporarily due to pandemic. To obviate the appointment of an administrator of the federal societies,,

due to expiry of the tenure of the managing committee on expiry of five years, the legislature has extended the tenure of the managing committee as",,

and by way of ad-hoc arrangement till elections are held.,,

21. It is submitted by the learned counsel that the election process has already started in view of the notification/public notice dated 21st June, 2020.",,

Ineligible members of the federal societies on the cut-off date would not become eligible to cast the votes because of pandemic situation. This Court,,

cannot grant any such reliefs as sought by the petitioners in this writ petition. The order passed by the Election Authority is valid and cannot be,,

interfered with. The Election Authority has exercised its discretion as per judicial norms and legal principles.,,

22. Mr. Deelip Patil Bankar, learned counsel for the respondent no.2 i.e. Election Authority invited our attention to various annexures to the affidavits",,

filed by the Election Authority, various provision of the MCS Act, the said Election Rules, Article 243ZJ (2) of the Constitution of India and various",,

judgments in support of his submission. It is submitted by the learned counsel that this writ petition filed under Article 226 of the Constitution of India is,,

not maintainable. An alternate remedy as prescribed under Rule 78 of the said Election Rules read with Section 91 of the MCS Act to file election,,

dispute is available to the petitioners. He submits that the election process has already commenced on 21st June, 2020 when the said public notice",,

annexed at page 53 of the writ petition issued by the Election Authority. No election thus can be called in question in this writ petition. The only,,

remedy to the petitioners would be to file an Election Petition before the Co-operative Court has laid down in Section 91. He submits that under,,

Section 91(1) of the MCS Act in dispute relating to election of the committee or its officers has to be filed before the Co-operative Court.,,

23. Learned counsel for the Election Authority placed reliance on the judgment of Supreme Court in case of Shri Sant Sadguru Janardan Swami,,

(Moingiri Maharaj) Sahakri Dugdha Utpadak Sanstha and Anr. v/s. State of Maharashtra and Ors., (2001) 8 SCC 509 and in particular paragraphs 2,",,

4, 7, 9, 12 and 13 in support of the submission that preparation of electoral roll is an intermediate stage in the process of the election of the managing",,

committee of a specified society. Such process of preparation of electoral roll would set in motion the election process. This Court cannot grant any,,

stay of the election process even if according to the petitioners, there may have been some alleged illegality or breach of rules while preparing the",,

electoral roll or any breach on the part of the election authority in not extending the cut-off date. He submits that all the issues raised by the petitioners,,

in this writ petition would fall under Section 91(1) of the MCS Act and thus this writ petition deserves to be dismissed on the ground of maintainability,,

itself.,,

24. Learned counsel for the Election Authority also placed reliance on the judgment delivered by the Division Bench of this Court in case of,,

Pandurang Laxman Kadam and Ors. v/s. State of Maharashtra and Ors., 2016(6) Bom.C.R. 75 and in particular paragraphs 4, 6 and 8 to 11 in",,

support of the submission that all the grounds including validity of the electoral roll, validity of nominations, irregularities and illegalities in the electoral",,

process as a whole can be raised in the election dispute under Section 91 of the MCS Act.,,

25. Learned counsel for the Election Authority also invited our attention to an order dated 11th January, 2021 passed by the Division Bench of this",,

Court in case of Kharade Seva Sahakari Society Ltd. v/s. Thane District Central Co-op. Bank Ltd. and Ors. in Writ Petition No. 2690 of 2020 in,,

support of the submission that this Court in the said order had directed the Election Authority to resume the process of conducting elections in,,

accordance with the programme which was already issued on 23rd December, 2019 from the stage it was left and shall complete the entire process",,,

on or before 31st March, 2021. He submits that this Court thus cannot interfere with the election process which has already commenced while",,,

exercising extra ordinary jurisdiction under Article 226 of the Constitution of India.,,

26. Without prejudice to his submission that the writ petition filed under Article 226 of the Constitution of India by the petitioners is not maintainable in,,

view of the alternate remedy available under section 91 of the MCS Act, learned counsel for the Election Authority made following submission",,,

summarized hereinafter.,,

27. It is normal tendency of some of the societies to increase the membership of the society by including not only the eligible members but also non-,,,

eligible members and more particularly prior to the period of holding election for the post of managing committee. It is submitted that in this case, the",,,

term of the managing committee of the respondent no.4 expired on 21st June, 2020 under rule 10(2) of the said election rules read with Chapter IX B",,,

of the Constitution of India. The process of preparation of the voters list of respondent no.4 had already commenced much before expiry of the term,,

of the managing committee. The public notice was issued on 6th January, 2020. Learned counsel invited our attention to Article 243(Z)(J)(2) of the",,,

Constitution of India and would submit that the term of the managing committee of the respondent no.4 society was five years.,,

28. It is submitted that in view of the amendment to section 73(AAA), existing committee is deemed to have continued till new managing committee is",,,

duly constituted. He submits that the previous election was held on 21st June, 2015. The five years period expired on 20th June, 2020. It is submitted",,,

that merely because the managing committee is permitted to function beyond the expiry of the term in view of pandemic, that by itself does not extend",,,

the said term. The existing managing committee would be a care taker committee beyond the expiry of the term till the elections are held and more,,

particularly till the new managing committee is in place.,,

29. Learned counsel for the Election Authority relied upon provisos to section 27(3) of the MCS Act and submits that any new member society of a,,

federal society shall be eligible to vote in the affairs of that federal society only after the completion of the period of three years from the date of its,,

investing any part of its fund in the shares of such federal society. The society which has invested any part of its funds in the shares of any federal,,

society may appoint one of its active member to vote on its behalf in the affairs of its federal society and accordingly such member has a right to vote,,

on behalf of the society. The cut-off date for eligibility to vote is completion of three years of the member of the society for investing part of its fund in,,

the shares of the federal society and two years for individual member from the date of his/her involvement as a member of such society. Such period,,

has to be counted under section 27(3) of the MCS Act.,,

30. Learned counsel for the Election Authority invited our attention to first proviso to Rule (9)(2) of the Election Rules and submits that in case of the,,

society where the election could not be held before the expiry of the term of the committee due to unforeseen conditions or any other reason,",,

provisional list of the voter shall be prepared on the basis of the date fixed by the Election Authority. It is the case of the petitioners itself that the,,

petitioners became members of the respondent no.4 society after eight days of the cut-off date.,,

31. It is submitted that the stage one of the schedule prescribed in the said public notice by which the process of preparation of the voters list was,,

commenced, has been completed. The stage two however was in progress. The election of the co-operative societies were postponed by the",,,

Government due to the work Agricultural Debt Relief Scheme/COVID-19 Pandemic etc. to be resumed from the stage at which it was halted. The,,

elections are lastly postponed till 31st August, 2021 as of date. He submits that the enrollment of the new members or the process to become active or",,,

inactive is a continuous ongoing process for which the cut-off date of eligibility to vote cannot be changed, de-hors the provisions of the MCS Act, the",,,

said election rules and Chapter IX(B) inserted in the Constitution of India relating to the co-operative societies.,,

32. It is vehemently submitted by the learned counsel for the Election Authority that there are about 3800 societies in which the process for,,

preparation of the voters list/election is commenced, however the elections have been postponed by the Government of Maharashtra. If the argument",,,

of the petitioners are accepted to change the cut-off date, that would amount to interference in the election processes in conflict with the settled",,,

position of law. The wheels will have to be rolled back thereby causing severe administrative burden on the election machinery. There would be,,

discrimination between the societies who are allowed to hold elections and the societies in respect of whom the elections are postponed if the cut-off,,

date is now directed to be extended. This Court has no power to extend such cut-off date. The discretion exercised is within the parameter of law and,,

not without application of mind as canvassed by the petitioners.,,

33. Learned counsel for the Election Authority relied upon Rule 11 of the Election Rules and would submit that the petitioners would have remedy to,,

raise claims/objections to the provisional list of voters and the final list of voters in respect of respondent no.4 federal society when the said stage,,

would arise. It is submitted that the election of various societies came to be postponed in respect of which the election process had already,,

commenced which are required to be commenced before expiry of the term of the managing committee. The election of some of the societies has,,

been postponed though no such election process had started. The election processes are at different stages in respect of large number of societies.,,

34. Learned counsel for the Election Authority invited our attention to the averments made by the Election Authority in paragraph (15) of the affidavit,,

in reply dated 23rd April, 2021 stating that if the contentions of the petitioners are accepted, the wheels have to be rolled back thereby putting severe",,,

administrative burden, waste of expenditure, in respect of approximately 3800 such societies. Those societies who have already participated in various",,,

stages of the election processes are not before this Court and thus any change of cut-off date as sought by the petitioners would affect those,,

societies. This Court thus cannot grant any relief in favour of the petitioners on that ground also. Some of the members societies are in election fray,,

and are not before this Court. No orders can be passed by this Court which would affect those members who are in election fray. Voting right is,,

statutory right and not a fundamental right. The enrollment of a new member to become active member and/or inactive member is a continuous,,

feature in a co-operative society. If the relief as sought by the petitioners are granted, the Election Authority will have to recommence the process in",,,

respect of about 3800 societies where the election process has already began.,,

35. Learned counsel for the Election Authority relied upon on unreported judgment of Aurangabad Bench of this Court in case of Bhausahab Kachru,,

Natkar (supra) and more particularly paragraphs 2, 3, 5, 11, 15, 17 to 21, 25, 27 and 28 and would submit that the said judgment would assist the case",,,

of the Election Authority and not the petitioners. The petitioners have not produced any factual data as to how many candidates have become eligible,,

after fixing the cut-off date by the Election Authority. He submits that such issue of eligibility cannot be decided by this Court in this writ petition. If,,

the arguments of the petitioners are accepted, the entire election processes will have to be amended. Even according to the petitioners, if the cut-off",,,

date is now revised, the date of the election postponed by the State Government as 31st August, 2021 would have to be further postponed.",,,

The object of holding timely election is sacrosanct. There would be far reaching consequences if the cut-off date which even otherwise cannot be,,

modified is modified by this Court as canvassed by the petitioners.,,

36. Mr.Sakhare, learned senior counsel for the petitioners in rejoinder submits that on 31st August, 2021 the election process is suspended. This Court",,,

has ample power to correct the mistake or illegalities committed by the Election Authority till the election is ultimately held by interfering with the,,

election process. The election would be delayed only by 2-3 weeks if cut-off date is suitably extended. Learned senior counsel for the petitioners,,

made an attempt to distinguish the judgment of Supreme Court in case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha,,

Utpadak Sanstha and another (supra) on the ground that the facts before the Supreme Court in the said matter was different. The processes of,,

nomination had already started in that matter. In this case the election process has been suspended since January 2020 till 31st August, 2021.",,,

37. Learned senior counsel for the petitioners also made an attempt to distinguish the judgment of Division Bench of this Court in case of Pandurang,,

Laxman Kadam (supra) on the ground that the facts before this Court in the said judgment were different. The issue involved before this Court is,,

different. The petitioners in that matter had prayed for an order and direction against the election officer to include 124 names in the list of voters in,,

the election which was scheduled for constitution of the committee of the society who were excluded. In this case, the petitioners are not seeking its",,,

inclusion as the members of the respondent no.4 society. He submits that discretion given by the Election Authority to fix a cut-off date has to be,,

exercised judicially and not arbitrarily. The Election Authority has not given any date about the commencement of the election process in respect of,,

those 3800 societies in the affidavit in reply.,,,

38. Insofar as the judgment delivered by the Aurangabad Bench of this Court in case of Bhausaheb Kachru Natkar (supra) is concerned, it is",,,

submitted by the learned senior counsel that the provisional voters list in that matter was already published. He submits that in the said judgment, the",,,

Division Bench of this Court has directed that the Election Authority in cases where the elections are postponed beyond the term of the committee,,

shall exercise its discretion and direct preparation of the provisional voters list fixing the appropriate date enabling participating of the large numbers of,,

legitimate and valid members. He made an attempt to distinguish the order passed by this Court in case of Kharade Seva Sahakari Society Ltd.,,,

(supra) on the ground that in that matter, the Division Bench of this Court had directed the Election Authority to complete the process from the stage it",,,

was left. The said order will not apply to the facts of this case. He submits that an existence of valid electoral roll is the basic ingredient for holding,,

valid election. Under section 91 of the MCS Act, the issue as to whether the Election Authority has fixed the cut-off date in accordance with law or",,,

not would not fall within the jurisdiction of the Co-operative societies of section 91 of the MCS Act but is within the power of the Election Authority.,,

The petitioners will have no such locus to raise any objection under Rule 11(2) since the petitioners' claims are not forwarded by the respondent,,

no.4 federal society in the list of voters.,,

39. Mr.Patil, learned counsel for the Election Authority lastly submitted that the format of the election programme appended to the election rules",,,

requires to mention the years of the term and thus mentioning or non-mentioning of the period 2021-2026 has no effect and thus the said part of the,,

words can be ignored.,,

**REASONS AND CONCLUSION :-,,**

40. We shall first deal with the preliminary objection raised by the respondents in respect of the maintainability of this writ petition filed under Article,,

226 of the Constitution of India on the ground that the petitioners have an alternate remedy as prescribed under Rule 78 of the said Election Rules,,

2014 read with Section 91 of the MCS Act by way of filing election dispute before the Co-operative Court. It is the case of the respondents that the,,

petitioners can raise the claim/objection for inclusion or deletion of names in the voters list. The respondent no.2 has already commenced the process,,

of election before the expiry of the term of the managing committee itself and the same is halted due to the orders passed by the Government of,,

Maharashtra because of covid-19 situation.,,

41. On the other hand, it is strenuously urged by Mr. Sakhare, learned senior counsel for the petitioners that in this case the election process has been",,,

suspended since January 2020 till 31st August 2021. The respondent no.2 has already taken decision on the representation made by the petitioners,,

requesting for shifting the cut-off date. Such decision referred by the respondent no.2 cannot be the subject matter of an election dispute under,,

Section 91 of the MCS Act. It is urged that under Section 91 of the MCS Act whether an Election Authority has fixed the cut-off date in accordance,,

with law or not would not fall within the jurisdiction of the Co-operative Court under Section 91 of the MCS Act. It is also urged by the petitioners that,,

the petitioners will have no locus to raise any objection under Rule 11(2) of the said Election Rules since the claims of the petitioners are not,,

forwarded by the respondent no.4 federal society to be included in the list of voters to the respondent no.2.,,

42. Under Rule 78 of the said Election Rules, it is provided that no election shall be called in question, except by an election petition presented to the",,,

Co-operative Court as laid down in Section 91. Under Rule 9 of the Election Rules, a provisional list of voters has to be prepared by every society in",,,

the year in which the election for such society are due to be held. In case of any society being an active member has completed minimum three years,,

from the date of enrollment to the date of expiry of the period of existing managing committee, shall be included in the provisional list as laid down in",,,

Section 27. The explanation added below Rule 9 in the Election Rules provides that for the purpose of the said Rule 9(1), the date of expiry of term of",,,

existing managing committee means the date on which the existing managing committee completes the period of five years from the date of election.,,,

Sub Rule (2) of Rule 9 provides that the period of three years provided in sub-section (3) of Section 27 of the MCS Act is to be counted from the date,,

of enrollment of member to the date when election of the managing committee of the society becomes due. The proviso to sub-rule (2) of Rule 9 of,,

the Election Rules provides that in case of societies where the elections could not be held before the expiry of the term of the committee due to,,

unforeseen conditions or any other reason, provisional list of the voter shall be prepared on the basis of the date fixed by SCEA respondent no.2",,,

herein.,,

43. Rules 9(1), 9(2), 10(2) and (3) of the said Election Rules, 2014 read thus :-",,,

9. Provisional list of voters for the societies having society or society and individuals as members.,,

(1) A provisional list of voters shall be prepared by every society in the year in which the elections of such society are due to be held. The active,,

members who have completed minimum two years as members from the date of their enrolment and in case of society being a active member who,,

has completed minimum three years from the date of enrolment on or before the date of expiry of period of existing managing committee; shall be,,

included in the provisional list as laid down in section of 27. If different constituencies are provided in the bye-laws, the names of voters shall be",,,

arranged constituency wise as laid down in the bye-laws.,,

(2) The period of three years provided in sub-section (3) of section 27 of the Act is to be counted from the date of enrolment of member to the date,,

when election of the managing committee of the society becomes due:,,

Provided that, in case of societies where the elections could not be held before the expiry of the term of the committee due to unforeseen conditions or",,,

any other reason, provisional list of the voter shall be prepared on the basis of the date fixed by the SCEA:",,,

Provided further that, provisional list of voters of the society having its first elections due after term of expiry of the provisional committee under",,,

section 73 (1A) (a) shall comprise of all the members as on the date of election when due:,,

Provided also that, the provisional list of the voters of the society on which an authorized officer is appointed under section 77A or an administrator is",,,

appointed under section 78A shall be prepared on the basis of the date fixed by the SCEA.,,

10 Particulars to be included in the provisional list of voters for the societies having society or society and individuals as members.,,

(2) Where a society or firm is the member of Society, the District Co-operative Election Officer or the Taluka or Ward Co-operative Election",,,

Officer shall publish a date for calling the name of representative, one hundred and fifty days prior to the date of expiry of term of office of",,,

the Committee. And such society shall send the name of representative duly authorized to vote at the election on behalf of the society or firm,",,

so as to reach it to the office of the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer at least one,,

hundred and twenty days prior to the date of expiry of term of office of the Committee. The representative authorized by the member society,,

shall be an active member of the member society.,,

(3) While communicating the name of the representative to the society the affiliated society shall enclose a copy of the resolution of the,,

annual general body meeting of the society or its committee as provided under its by-laws, where the representative is so authorized. The",,,

society shall include in the list of voters the names of all such representatives as have been communicated to it before the date fixed for,,

publication of the provisional list of voters by the District Co-operative Election officer or Taluka or Ward Co-operative Election Officer. In,,

addition to the names of representatives, the list shall contain the name of the affiliated societies, their registration numbers and addresses",,,

with names of the constituency, if any, to which they belong.",,

44. Rule 10(2) of the said Election Rules provides that where a society or firm is the member of society, the District Co-operative Election Officer or",,,

the Taluka or Ward Co-operative Election Officer shall publish a date for calling the name of the representative, one hundred and fifty days prior to",,,

the date of expiry of term of office of the Committee. Such society shall send the name of representative duly authorized to vote at the election on,,

behalf of the society or firm, so as to reach it to the office of the District Co-operative Election Officer or Taluka or Ward Co-operative Election",,,

Officer at least one hundred and twenty days prior to the date of expiry of term of office of the committee. The representative authorized by the,,

member society shall be an active member of the member society.,,

45. Sub-Rule (3) of the Rule 10 of the Election Rules provides that the society shall include in the list of voters the names of all such representatives,,

as have been communicated to it before the date fixed for publication of the provisional list of voters by the District Co-operative Election Officer or,,

Taluka or Ward Co-operative Election Officer. The affiliated society has to include a copy of the AGM of the society or its committee where the,,

representative is so authorized. The list contains the name of the affiliated societies, registration numbers and addresses with names of the",,,

representative, if any.",,,

46. Rule 11 of the said Election Rules, 2014 reads thus :-",,,

11 Claims and objections to the provisional list of voters and the final list of voters for the societies having society or societies and,,

individuals as members (1) When any 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 District Co-operative Election Officer or,,

Taluka or Ward Co-operative Election Officer in writing by any member of the society concerned who is a voter or any representative,,

authorized to vote on behalf of such society during office hours within ten days from the date of publication of the provisional list of voters,,

(2) Any member of the society concerned making a claim or raising objection shall do so by a separate petition, which shall be presented to",,,

the District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer during office hours, before the last date",,,

published for inviting claims and objections. Such claims or objections shall be preferred in writing and state the grounds on which the,,

claim is based or the objection is raised, as the case may be.",,

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative Election Officer shall, after making such enquiries as",,

deemed necessary in this regard, consider each claim or objection, and give his decision thereon in writing to the persons concerned within",,

ten days from the last date prescribed for receiving the claims and objections and final voters list should be published within the period of,,

fifteen days from the last date prescribed for receiving the claims and objections. The list as finalized by the District Co-operative Election,,

Officer or Taluka or Ward Co-operative Election Officer after deciding all claims and objection shall be final list of voters.,,

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the,,

notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the,,

finalization of claims and objections .The District Co- operative Election Officer may also cause it to be published on the official website of,,

the SCEA, if any.",,

(i),Date of declaration of election programme., "Date to be announced at the time of declaration of programme and the date

of publication of election programme shall be between 10 days to 20 days

after the date of display of final list of voters both days exclusive

(ii),Last date for making nominations.,5 working days from the date of declaration of election programme.

(iii),The date of publication of list of nominations received.,As and when received till the last date fixed for making nominations.

(iv),Date of scrutiny of nominations.,Next day of the last date for making nominations.

(v),"Date of publication of list of valid nominations after

scrutiny",Next day after the date of completion of scrutiny

(vi), Date by which candidature may be withdrawn., "Within 15 days from the date of publication of list of valid nominations after

scrutiny

(vii), "Date of publication of final list of contesting

candidates and allotment of election symbols", "The day next succeeding the last day fixed for withdrawal of candidatures.

(viii), "Date and time during which and the place/ places at

which the poll shall be taken, if necessary", "Not earlier than 7 days but not later than 15 days from the date of

publication of final list of contesting candidate (time and place to be fixed by the Returning Officer)

(ix), "Date, time and place for counting of votes", "Not later than 3rd day from the date of which the poll shall be taken (Time

and place to be fixed by the Returning Officer).

(x), Date of declaration of results of voting., Immediately after the counting of votes.

(4) The Election Programme shall also be published at least in one local daily newspaper for a society or class of societies by the Returning,,

Officer or SCEA, as the case may be:",,,

Provided that, in case of societies of Ã¢â¬ÅÃ¢â¬Å and Ã¢â¬ÅÃ¢â¬Å types election program may be published on the notice board of the society",,,

and local body situated in the area of operation, as the case may be.",,,

(5) Except with the previous approval of the SCEA, the dates fixed under this rule shall not be changed within seven days of the date fixed",,,

for the poll.,,,

50. Under Rule 18 of the said Election Rules, the Returning Officer with prior approval of SCEA has to draw and declare a programme of various",,,

stages of election from the stage of Ã¢â¬Åthe date of declaration of election programme, which has to be between ten days to twenty days after the date",,,

of the display of the final list of voters both days inclusive till the stage of declaration of date of results of voting. Under Rule 19 of the said,,

Election Rules, the manner of publication of election programme is prescribed. The Election Officer is required to send a copy of an order made under",,,

Rule 18 in FORM E-4 to the society with instruction to display the copy of the programme on the notice board or website of the society in,,

addition to the said election programme may be displayed on his notice board or website on behalf of SCEA. Rule 20 to 64 of the Election Rules,,

provides that the subsequent procedure for conducting election.,,

51. In this case, it was the case of the petitioners that the petitioners society completed three years as contemplated under Section 27(3) of the MCS",,,

Act on or about 29th June, 2020 and are thus eligible to vote in the election of the respondent no.4 society since 29th June, 2020. The petitioners had",,,

submitted representation on 9th February, 2021 to the respondent no.2 contending that in view of the election being deferred by a period of about one",,,

year, the cut-off date be extended and the petitioners be treated as eligible to vote in the said election of the respondent no.4. The Election Authority",,,

however rejected the said representation vide order dated 18th February, 2021 on the ground that the decision dated 10th February, 2021 taken by the",,,

State Government by way of an order/direction to the Election Authority to resume the election process on 15th February, 2021 in accordance with",,,

the revised election programme and that the cut-off date would be fixed by a separate order, the cut-off date could not be extended.",,,

52. It is not in dispute that during the period between 9th February, 2021 when the petitioners had made a representation and 18th February, 2021",,,

when the said representation was rejected by the respondent no.2, on 10th February, 2021, the Election Authority had passed an order to resume the",,,

election process from 15th February, 2021 from the stage at which it was halted. It is also not in dispute that after passing of the impugned order on",,,

18th February, 2021, by an order dated 6th April, 2021 passed by the State Government by exercising powers under Section 157 read with Section 73",,,

CC, the election is postponed till 31st August, 2021 from the stage at which the election was halted.",,

53. It is not disputed by the respondent no.2 that the provisional list of voters has not been finalized till date in view of the order passed by the State,,

Government on 6th April, 2021 thereby halting the election process at least till 31st August, 2021. Even according to the respondent no.2, the second",,

step contemplated in the public notice dated 21st June, 2020 has not been completed. In our view, the election ã, programme as contemplated under",,

Rule 19 of the Election Rules has thus not been issued. Such election programme can be issued only under the said provision only after the finalization,,

of the voters list. In this case even the provisional list of voters is not yet prepared. The respondent no.4 society has not even sent the list of voters,,

as contemplated in Rule 9(4) of the said Election Rules.,,

54. Learned counsel for the respondent no.2 is thus not right in his submission that election programme has been issued. Even according to the,,

respondent no.2, the entire election process has been halted in this case at the stage of preparation of provisional list of voters. It is not the case of the",,

respondents that any election programme as prescribed under Rule 18 has been issued by the Election Officer with prior approval of SCEA has been,,

issued. There is thus no merit in the submission of the learned counsel for the respondent no.2 that this Court cannot interfere with the process of,,

preparation of provisional voters list at this stage.,,

55. In our view, since the respondent no.2 has already decided the representation of the petitioners praying for shifting of the cut-off date, such",,

decision taken by the respondent no.2 cannot be a subject matter of election dispute under Section 91 of the MCS Act. In our view, this Writ Petition",,

filed under Article 226 of the Constitution of India impugning the said decision dated 18th February, 2021 is maintainable.",,

56. A Division Bench of Aurangabad Bench of this Court in case of Bhausahab Kachru Natkar (supra) has construed various provisions of the MCS,,

Act and the said election rules. It is held by the Division Bench that right to elect though it is fundamental to democracy is neither a fundamental right,,

nor a common law rights. It is purely a statutory right. So is the right to be elected. They are statutory creations and therefore, subject to statutory",,,

limitation. Dehors the statute, there is no right to elect, no right to be elected and no right to dispute an election. The entire election process",,,

commencing from issuance of provisional voters list and right upto final resolution of dispute, if any, concerning the election is regulated by the",,,

Maharashtra Cooperative Societies Act, 1960 and the said Election Rules 2014.",,,

57. This Court in the said judgment held that the provisions of the Constitution of India and more particularly Article 243ZJ of the Constitution provides,,

for the term of the members of the committee of cooperative society. Sub article 2 of Article 243ZJ unambiguously prescribes the term of office of,,

elected members of the board and its office bearers to be five years from the date of election. The provisions of the Constitution of India are,,

sacrosanct. Statutes and Rules framed by the legislature have to be subservient to the constitutional mandate and its provisions. The term of the office,,

bearers is coterminous with the term of the committee. The said provision further provides that on the expiry of the term of the committee, the",,,

members shall be deemed to have vacated their office as member of the committee. The State Legislature in its wisdom amended and introduced,,

proviso to sub-section 3 of Section 73AAA on 10.07.2020, thereby taking care of the contingency where the elections could not be held for",,,

unforeseen circumstances and for which the members of the committee are not at fault. In that case, the members of the managing committee shall",,,

continue to hold the office till the new committee comes into existence.,,,

58. It is further held that under proviso to sub-section 3 of Section 73AAA of the Act 1960, the State Legislature to redress a situation when the",,,

election of the cooperative society could not be held due to some unforeseen circumstances or for any reason not attributable to the members of the,,

committee, they are allowed to continue till new committee is constituted. It is held that the said proviso is introduced to ameliorate a situation when",,

the election of the committee could not be held within time and the same is not attributable to the members of the committee. In such cases instead of,,

appointing Administrator and vesting management of the society in the hands of the stranger on completion of the term of the committee, the members",,

of the committee are allowed to continue. This Court held that the explanation to sub rule 1 of Rule 6 and sub Rule 1 to Rule 9 of Rules 2014 clarifies,,

the term "date of expiry of term of existing managing committee" means the date on which the existing managing committee completes the term,,

of five years from the date of election. All these provisions lead credence to the proposition that the term of the managing committee is five years,,

from the date of the election.,,

59. This Court construed the proviso to sub-section 3 of Section 27 of the MCS Act and held that a new member of society or federal society shall be,,

eligible to vote in the affairs of that federal society only after the completion of period of three years from the date of its investing any part of its funds,,

in the share of such federal society. Such period of two years for an individual active member and three years for an active society members is,,

computed from their date of enrollment/investing any part of its fund to the date of expiry of period of existing managing committee and/or the date,,

when the election of the managing committee of the society becomes due.,,

60. This Court held that the provisional list of the voters of cooperative society having individuals as members (such as village level societies) is to be,,

prepared as provided under sub rule 1 of rule 6 and provisional list of voters of society or society and individuals as members (such as federal society),,

is to be prepared as contemplated in sub-rule 1 of rule 9 of Rules 2014. Both the rules provide that a member who has completed two years as,,

member from the date of his enrollment upto the date of expiry of the term of the existing committee in case of federal society in case of society being,,

a active member who has completed minimum three years from the date of enrollment to the date of expiry of the period of existing managing,,  
committee.,,

61. This Court held that sub rule 2 of rule 6 and sub rule 2 of rule 9 of Rules 2014 and Section 27(3) and 3A of Act 1960 provides the cut off date for,,

a member to find place in the voters list. The proviso to sub-rule 2 of rules 6 and 9 of the Rules 2014 also takes care of the contingency where the,,

election could not be held before the expiry of the term of the committee due to unforeseen condition or for any other reason. This Court was of the,,

view that the entire gamut of discussion surrounding the "term of the committee" or extension to the term of the committee would pale into,,

insignificance in as much as the State Cooperative Election Authority (SCEA) is authorized to fix the cut off date. The superintendence, direction and",,,

control of the preparation of the electoral roles for, and the conduct of, all elections to the society shall rest in the authority called as "State",,,

Cooperative Election Authority" as per Section 73CB of the Act 1960.,,

62. In paragraph 27 of the said judgment, this Court construed the proviso to sub rule 2 of Rules 6 and 9 of Rules 2014 and held that the said proviso",,,

bestows discretion upon the SCEA to fix any other date than the one prescribed under sub rule 2 of rules 6 and 9 of Rules 2014 in case the elections,,

are postponed. The discretion that vest with the SCEA to fix any other date for the voter to be eligible for being a voter on account of postponement,,

of election is not ordinary or unregulated discretion but a judicious discretion to be exercised as per the judicial norm and legal principle.,,

63. In paragraph 28 of the said judgment, the Division Bench of this Court held that the fundamental to the success of democratic election process is",,,

participation of large numbers of legitimate voters. It may happen that an individual member may not complete two years or a society member three,,

years from the date of its enrollment or investing any part of its fund as the case may be till the expiry of the term of the committee but upon,,

postponement of the election by six month or year may complete the qualifying period for being eligible to be voter. The SCEA in cases where the,,

elections are postponed beyond the term of the committee shall exercise its discretion and direct preparation of the provisional voters list fixing the,,

appropriate date enabling participation of the large numbers of legitimate and valid members.,,

64. In this case, the respondent no.2 has fixed the cut off date considering the term of the committee as five years from the date of election. It is the",,,

case of the petitioners that the date of the election is already postponed from time to time and is now extended till 31st August, 2021. The Election",,,

Authority however has not extended the cut off date considering the extension of the period of the managing committee. The petitioners have,,

produced the list of 49 members who became eligible according to the petitioners after the said cut off date fixed by the Election Authority considering,,

the term of the committee five years from the date of election. In our view, the principles laid down by the Aurangabad Bench of this Court in case of",,,

Bhausahab Kachru Natkar (supra) applies to the facts of this case. The discretionary powers granted to the Election Authority to fix the appropriate,,

cut off date and to direct the preparation of the voters list fixing the appropriate date has to be exercised judiciously and not arbitrarily enabling the,,

participation of the large number of legitimate and valid members.,,

65. In the facts of that case before the Aurangabad Bench of this Court in case of Bhausahab Kachru Natkar (supra), the petitioners therein had not",,,

placed on record the statistics and the data if the cut off date was postponed to demonstrate the number of members eligible and not finding the name,,

in the provisional voters list. This Court accordingly held that in absence of details it would not be appropriate to direct re-preparation of a voters list.,,

However, in the facts of this case admittedly the provisional list of voters has not been finalized. The election of the respondent no.4 federation society",,,

which was due prior to 21st June, 2020 has been already postponed so far till 31st August, 2021. The stage of inviting claims and objections to the",,,

provisional list of voters has also not reached so far. In our view the Election Authority under proviso to sub-rule 2 of Rules 6 and 9 has discretionary,,

power to fix any other date as cut-off date considering the postponement of the election for substantial period for the voters to be eligible for being a,,

voters on account of such postponement.,,

66. Upon consideration of the principles laid down by the Aurangabad Bench of this Court in case of Bhausahab Kachru Natkar (supra), we have to",,,

now examine whether in the facts of this case, the the Election Authority has exercised discretion while fixing up the cut off date judiciously or has",,,

fixed up the cut off date arbitrarily. It is not in dispute that when the petitioners had made a representation to the Election Authority on 9th February,",,

2021 to extend the cut off date and to treat the petitioners as eligible to vote in the said election of the respondent no.4, the petitioners had completed",,,

three years as members of the respondent no.4 society. The State Government initially postponed the election process till 31st March,2021 after the",,,

representation of the petitioners made on 9th February, 2021 came to be rejected by the letter dated 18th February, 2021 by the Election Authority on",,,

the ground that the election process was to be continued at the point at which it had been stopped and the cut off date thus could not be extended. The,,

Election Authority considered the order dated 10th February, 2021 issued by the Election Authority deciding to continue the election from the stage at",,,

which it was halted. It is not in dispute that the decision to postpone the election for the further period till 31st August, 2021 was taken by the State",,,

Government on 6th April, 2021 i.e. after rejection of the representation made by the petitioners vide order dated 18th February, 2021.",,

67. In our view, the said order dated 18th February, 2021 refusing to extend the cut off date on the ground that the election process was to be",,,

continued from the point at which it had been halted has become redundant, in view of the developments having taken place subsequent to the said",,,

impugned decision dated 18th February, 2021 rejecting the representation made by the petitioners. Considering the pandemic situation, it cannot be",,,

firmly said that the election of the respondent no.4 society would be held even by 31st August, 2021. Several steps as prescribed under Rules 10, 11",,,

and prescribed in Rule 18 to 21 which are halted, will have to be followed before the polling date. In our view, the discretion thus exercised by the",,,

Election Authority rejecting to extend the cut off date without recording sufficient reasons has not been exercised judiciously and without considering,,

the ground reality prevailing on the date of impugned order and is an act or omission which calls for this Court's interference. Be that as it may",,,

the Election Authority will have to take into consideration the subsequent events ensued after passing of the impugned order rejecting the,,

representation made by the petitioners.,,

68. In our view, since the discretionary powers exercised by the Election Authority to fix the cut off date and more particularly without considering the",,,

extra ordinary circumstances created due to Covid-19 pandemic and without considering the contingency described in Section 3 of Section 73 AAA,,

on 10th July, 2020 are not exercised judiciously, Writ Court has enough powers under Article 226 of the Constitution of India to intervene in such a",,,

situation.,,

69. Insofar as the order dated 11th January, 2021 passed by this Court in case of Kharade Seva Sahakari Society Ltd. (supra) relied upon by the",,,

learned counsel for the respondent no.2 is concerned, this Court in the said order had considered the judgment of Aurangabad Bench of this Court",,,

delivered on 11th March, 2020 in Writ Petition No.2924 of 2020 filed by Ishwar Madhav Patange & Ors. vs. State of Maharashtra. This Court",,,

accordingly directed the Election Authority to resume the process of conducting election in accordance with the programme which was issued on 23rd,,

December, 2019 from the stage it was left and to complete the entire process on or before 31st March, 2021. In this case, the said order issued by the",,,

State Government directing to resume election would be of no assistance to the Election Authority. Therefore, the order passed by this Court would",,,

not assist the case of the Election Authority being distinguishable on facts.,,

70. We shall now deal with the judgment delivered by this Court in case of Pandurang Laxman Kadam & Ors. (supra) relied upon by the learned,,

counsel for the Election Authority. In the said judgment, this Court dealt with the prayer for an order and direction against the election officer to",,,

include names of 124 persons in the list of voters for the elections which were scheduled for the constitution of a committee to manage and administer,,

the affairs of one of the society. The voters list had been already notified. This Court in the said judgment accordingly held that all the grounds,,

including validity of the electoral roll, validity of nominations, corrupt practices, irregularities and illegalities in electoral process as a whole can be",,,

raised in the dispute under section 91 of the MCS Act. Since, in this case even the stage of raising claims and objections to the provisional voters list",,,

has not reached, the question of the petitioners raising any objection to the said provisional voters did not arise. The decision that would be taken by",,,

the Election Authority to extend the cut of date if any would have bearing on the preparation of the provisional voters list in which the petitioners seek,,

inclusion as voters. The judgment of this Court in case of Pandurang Laxman Kadam & Ors. (supra) is thus clearly distinguishable on the facts of this,,

case and would not assist the case of the respondents.,,

71. Insofar as judgment of Supreme Court in case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and,,

another (supra) relied upon by the learned counsel for the Election Authority is concerned, Supreme Court in the said judgment held that the",,,

preparation of electoral roll is part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called",,,

in question after the declaration of the result of the election by means of an election petition before the tribunal. In the facts of that case, the objection",,,

against the provisional voters list were invited, were required to be decided and the electoral roll was finalized. Only thereafter and before the date of",,,

finalization and publishing the electoral roll, the State Government had passed an order staying the elections in the cooperative societies in the State on",,,

account of rainy season. The Authority had already published the final electoral roll of the members of the society. The Collector had drawn the,,  
election schedule for holding election of the society. At that stage, the petitioners had filed petition under Article 226 of the Constitution of India before",,,  
the High Court.,,

72. In that context, the Hon'ble Supreme Court held that preparation of the electoral roll being an intermediate stage in the process of election of",,,

the managing committee of a specified society and the election process having been set in motion, the High Court should not have stayed the",,,

continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. In that case,",,

it was not in dispute that the election in question had already been held and the result thereof has been stayed by the order of the Hon'ble",,,

Supreme Court. In our view, the facts before the Hon'ble Supreme Court in the said judgment were totally different and are clearly distinguishable",,,

in the facts of this case. The said judgment thus would not assist the case of the Election Authority.,,

73. As observed above, the Election Authority has very cryptically dealt with the Representation dated 9th February, 2021 made by the petitioner and",,,

rejected same by a non-speaking order only on the basis that of order dated 10th February, 2021 that election process was to be continued from the",,,

point at which it had been halted. Also as mentioned earlier, there have been subsequent developments from the date of the aforesaid rejection",,,

including the decision of the State Government to postpone elections till 31st August, 2021.",,

74. Though all the counsel for the parties have addressed this Court on several other issues, since this Court is of the view that the Election Authority",,,

has not exercised its discretion judiciously and has acted arbitrarily and without even recording sufficient reasons, this Court is inclined to set aside the",,,

impugned order dated 18th February, 2021 passed by the Election Authority on that ground this Court is not dealing with the other issues raised by the",,,

parties.,,

75. In view of the above discussion, this Court is of the view that the Communication dated 18th February, 2021 deserves to be set aside and",,,

remanded back for deciding petitioner's representation on the basis of discussion herein and after considering the subsequent events and the,,

unforeseen circumstances and attendant delays overwhelming normal functioning.,,

76. We accordingly pass the following order :-,,

(a) The order dated 18th February, 2021 issued by the Maharashtra State Co-operative Election Authority, Pune rejecting the representation made by",,,

the petitioners is quashed and set aside.,,

(b) The respondent no.2 shall consider the said representation dated 9th February, 2021 made by the petitioners in the light of the above observations",,,

and in accordance with law without being influenced by the observations made and the conclusion drawn in the order dated 18th February, 2021. The",,,

Election Authority shall consider the subsequent events after the passing of the said order dated 18th February, 2021 and after following the principles",,,

of natural justice. The said representation shall be decided within three weeks from the date of communication of this order.,,

(c) In view of the aforesaid order, we do not propose to consider the validity of the order dated 10th February, 2021 or the prayers sought in the",,,

prayer clause (c) and (d) of the petition.,,

(d) We also make it clear that we are not expressing any opinion on the validity of the Government order dated 6th April, 2021, as though the same is",,,

referred to during the hearing, there is no challenge to the same in the petition.",,,

(e) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.,,