

(1999) 05 BOM CK 0021

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 552 of 1999

Shivaji Suryawanshi

APPELLANT

Vs

The State of Maharashtra and
others

RESPONDENT

Date of Decision: May 5, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 1, Order 1 Rule 3
- Constitution of India, 1950 - Article 226, 227

Citation: (2000) 2 ALLMR 646 : (1999) 3 ALLMR 628 : (2000) 2 BomCR 837 : (2000) 2 MhLj 306

Hon'ble Judges: V.K. Barde, J; J.A. Patil, J

Bench: Division Bench

Advocate: V.D. Salunke, for the Appellant; S.K. Kadam, A.G.P., A.B. Kale and V.D. Sapkal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.K. Barde, J.

Heard Shri V.D. Salunke, learned Counsel for the petitioner; Shri S.K. Kadam, learned A.G.P. for respondent Nos. 1, 2 and 3; Shri A.B. Kale, learned Counsel for respondent Nos. 8, 10, 11, 17 and 18; and Shri V.D. Sapkal, learned Counsel for respondent Nos. 9, 15, 20 and 22. Respondent Nos. 4 to 7, 12, 13, 14, 16, 19 and 21 are served, but have not filed appearance.

2. The case of the petitioner in brief is as follows:

The petitioner is the borrower member of the respondent No. 4-Vividh Karyakari Seva Sahakari Society Ltd., Sonkhed (hereinafter referred for short as "the society"). The said society is registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred for short as "the Act"). The society has

approved bye-laws and the jurisdiction of the society is limited to the area of Sonkhed village. The respondent No. 3 is appointed as the Returning Officer for the election of the managing committee of the said society. The term of the managing committee is of five years and the terms of the existing committee has already expired one year prior to the date of filing of the petition. Therefore, for electing the managing committee for the period from 1998-99 to 2000-2003, the respondent No. 3 is appointed as the Returning Officer.

3. The Returning Officer published the election programme on 7-1-1999. As per the said programme, the provisional voters list was published on 7-1-1999 and date for objection and finalisation of the voters list was fixed on 13-1-1999. The nomination papers to be filed by 21-1-1999 and voting to take place on 21-2-1999. The petitioner has annexed the copy of the programme.

4. The petitioner has contended that the Returning Officer-respondent No. 3 published two separate list of voters; one containing 168 borrower voters and another containing 363 non-borrower voters. The petitioner has contended that at the time of last election, there were only 8 to 10 non borrower member-voters but subsequently they have also become borrower members voters and, therefore, there was not a single non-borrower member voter of the society. However, some Shiv Sena workers brought pressure on the Secretary of the society and inserted names of the non-borrower members in the membership register. They have also obtained receipts indicating that amount of Rs. 11/- was paid by each of such new member.

5. It is contended that out of 363 non borrower voters, 122 persons are not even residents of village Sonkhed. They are not having any landed property or houses in the village Sonkhed. The certificates issued by the Talathi as well as Sarpanch in this respect are produced alongwith the writ petition. The petitioner has also produced on record certificates of Gram Sevak, village panchayat, Wai (Lasina) indicating that 90 of those 122 persons are residents of village Pimpala (Bhatya). Three persons are residents of village Hivra (Bk.) and they are members of Vividh Karyakari Sahakari Seva Society of village Hivra (Bk.). The certificates to that effect are also produced alongwith the petition. It is further contended that 45 persons from the said list are residents of village Rupla Tq. Purna and certificate of the Sarpanch of village Rupla is annexed. Similarly, 44 persons are residents of village Chudawa Tq. Purna and certificate to that effect of Village Development Officer is annexed. Six persons are residents of village Dhotra. Thus, all these persons included in the voters list cannot be the members of the society. It is further contended that they never applied to be members of the society and there is no resolution passed by the society indicating that they were admitted as members of the society. Even then their names are shown in the voters list.

6. The petitioner has contended that on 11-1-1999, objection to the voters list was submitted to the Returning Officer. Copy of the same is annexed with the petition.

The Returning Officer, therefore, decided to consider the objection. The Chairman of the society was accordingly informed.

7. The petitioner has further contended that on receiving this complaint, the Assistant Register, Co-operative Societies, by his letter dated 16-1-1999 appointed three Co-operative Officers from his office to make enquiry regarding the membership of the persons included in the non borrowers voters list. He issued specific directions to find out whether the membership fee and share capital was deposited and accounted for in the cash book, whether receipts were issued for the same and whether there were applications from such persons to make them members of the society. Three Co-operative Officers and the Returning Officer thereafter held enquiry by visiting the office of the society and by verifying the record and they found that there were no applications from those persons to make them as members of the society and there was no approval by the general body to admit them as members of the society. Only receipts were issued in favour of those persons showing that they had paid amount of Rs. 11/- each. So it was recommended that these names be deleted from the voters list. The enquiry report dated 18-1-1999 was submitted. Copy of the same is annexed with the petition.

8. The petitioner has further contended that the Minister of Co-operative Department had been to Nanded. He called the District Deputy Registrar, Co-operative Societies, Parbhani, at Nanded and directed him to see that the names of the non borrower members are not deleted from the list of voters of the society and, therefore, the respondent No. 2 issued ante-dated letter dated 16-1-1999 directing the Returning Officer-respondent No. 3 to proceed with the election as per the list already prepared. Copy of that letter is also annexed with the petition. It is, therefore, contended that the provisional voters list to which the objections were raised is declared as the final voters list and the elections are proceeding on the basis of that list.

9. The petitioner has contended that all these circumstances clearly indicate that the list of non borrower members is not legal and proper. Those persons cannot be the members of the society. There is no approval of the general body accepting them as members of the society. There is no compliance of Rule 19 of the Rules under the Act and Bye-law No. 8 of the Bye-laws of the society to make them members of the society and, therefore, they cannot be included in the voters list.

10. The petitioner has contended that valid voters list is the basis of valid elections. The authorities failed to take proper action inspite of objections raised by the petitioner to delete the names of the non borrower voters who were illegally included in the voters list. If the election is held on the basis of this voters list, the real members of the society will suffer great injustice. The managing committee will be elected by those persons who are not the members of the society but who cannot be the members of the society. It is therefore, prayed by the petitioner that directions be issued to the authorities to delete the names of the 363 non borrower

members who are included in voters list and then to hold the elections of the society.

11. As per order passed on 19-2-1999 by this Court, the respondent No. 2 was directed to hold enquiry as per law regarding the objections raised for inclusion of 363 persons in the non borrower voters list within the period of four weeks and then to submit the report. The respondent No. 2 was also directed to give hearing to all those persons regarding whose inclusion in the voters list there are objections. Accordingly, the respondent No. 2 has held enquiry and has submitted the report.

12. The report submitted by the respondent No. 2 clearly indicates that though the list is of 363 voters, some names are repeated in the list and the list is actually of 352 voters. Out of these, 194 persons are from village Sonkhed and 158 persons are not residents of village Sonkhed and they are not within the territorial jurisdiction of the society. It is further reported that these 352 persons have paid only Re. 1/- entrance fee and paid amount for purchasing one share of the society. However, they have not complied with any of the conditions as contemplated under Rule 19 of the Rules under the Act and the Bye-laws of the society for being the members of the society. They had not filed any applications for being the members of the society. No resolution was passed by the society or the general body of the society to make them members of the society. The report also indicates that the entries in the register of the society were not made properly, timely and were not duly authenticated.

13. The report further indicates that Shri S.R. Kadam, the Secretary of the society made a statement that political pressure was brought on him and he was apprehending danger to his life and, therefore, he took the entries in the register of members. Those are false entries. He also informed that the persons whose names were recorded in the register had not paid him the necessary amount but some other person had paid the amount and no written applications were received by him for membership. Pressure was brought upon him to include these persons in the non borrower voters list and, therefore, he prepared the non borrower voters list. The report indicates that out of 352 persons named in the list, 158 are not within the jurisdiction of the society and, therefore, they cannot be the members of the society. Their names will have to be deleted as per the provisions of section 25-A of the Act. It is also reported that the remaining 194 persons though have paid the entrance fee Re. 1/- and the share capital for one share, they had not made any application for being members of the society. They had not complied with necessary documents required to be attached alongwith applications and, therefore, they also cannot be included in the list of members and list of voters.

14. Before holding this enquiry, notices were served on the concerned members and notice was also published in newspaper. However, it appears that none of the 352 persons approached the respondent No. 2 to claim membership or to show that he was rightly included in the list of members and list of voters. At the time of

arguments, none of the respondents had challenged the report of the respondent No. 2 regarding the enquiry on any factual aspect. So it is seen that there is substance in the objections raised by the petitioner regarding the list of non borrower voters. The names of these persons are included first in the list of members as non borrower members and then in the list of voters as non borrower voters without any legal sanctity. Hence, it is clearly brought on record that the provisional voters list of non borrower members was altogether without any basis. Converting that provisional voters list as final voters list for the election of the society would amount to giving an opportunity to the persons to elect managing committee of the society when they are not members of the society and they cannot be the members of the society. The lawful members of the society will be deprived of their valuable right of electing their own managing committee. These are very peculiar facts in this case.

15. Shri A.B. Kale and Shri V.D. Sapkal, the learned Counsel for the respondents, have strongly contended that the election process has commenced by publication of the provisional voters list. Not only that but the further stages of filing of nomination papers, withdrawal of nomination papers, scrutiny of the nomination papers and the publication of the names of candidates for the election, are all complied with. Now the stage of voting, counting of voters and declaration of election results are to be complied with. In such circumstances, the High Court should not interfere in the process of election.

16. Shri V.D. Salunke, the learned Counsel for the petitioner has argued that no sooner the provisional voters list was published, objections were taken. The respondent No. 2 had directed an enquiry on the basis of the objections on 16-1-1999 and appointed three officers for making the enquiry. The Returning Officer by his order dated 11-1-1999 postponed the elections because he found substance in the objections to the voters list. The respondent No. 2 by his order dated 16-1-1999 also directed to hold enquiry with respect to objections. However, the respondent No. 2 then again passed an order purported to be that of 16-1-1999 and directed the Returning Officer that there was no need to consider the objections raised to the provisional voters list and the final voters list be published and election to proceed. No sooner the petitioner came to know about this, he filed this petition on 21-1-1999. So if this background is taken into consideration, it cannot be said that the petition is filed at a late stage or that the programme has reached to such a stage that it would not be advisable for the High Court to interfere. Because of some reasons, if the petition is not heard immediately on filing of the petition, and as there was no stay granted by the High Court in this petition, the further stages in the election have taken place. The petitioner be not deprived of his valuable rights. This is not a case of one single voter, but it should be looked into as right of all legal voters of the society who are likely to be deprived of electing the managing committee of their choice.

17. From the circumstance narrated above, it is noticed that the petition is filed as expeditiously as possible by the petitioner. Before filing the petition, he had taken the steps of moving the authorities with respect to the illegalities committed in preparing the voters list. The authorities were convinced about the objections raised and had directed the enquiry and also had postponed the elections but for the reasons which are not brought on record by the respondents, the enquiry was stopped and elections were directed to be held on the basis of the voters list to which there were serious objections.

18. The documents produced on record by the petitioner as well as the report of the respondent No. 2 clearly indicate that the mischief in the non borrower voters list is not minor. This is not a question of one or two voters, but the entire list of 352 voters appears to be bogus. These non borrower voters out number the borrower members by great margin and definitely that will affect the election results to such an extent that the real members of the society would be deprived of electing the managing committee of their choice. It, therefore, cannot be said that the writ petition is filed only with a view to stall the elections or that it is filed with delay or laches on the part of the petitioner.

19. Shri V.D. Sapkal, learned Counsel for the respondents, has placed reliance on various rulings of the High Court and Supreme Court to contend that once the election process has commenced, the High Court should not interfere by exercising the authority under Article 226 of the Constitution of India. The disputes can be solved in an election petition filed after the results are declared as per the provisions of section 91 of the Act. There is alternative remedy under the Act for the petitioner to redress the grievance which he has and, therefore, the remedy under Article 226 of the Constitution cannot be availed of. Shri Sapkal has referred to the observations made by the Apex Court in the matter between [Bar Council of Delhi and Others Vs. Surjeet Singh and Others](#), . The relevant observation are at page No. 1621 which read,

"If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available."

The learned Counsel pointed out that in the said matter, there was challenge to the proviso to Rule 3(3) of Delhi Bar Council Election Rules contending that it was ultra-vires. Such a challenge was outside the scope of Election Tribunal and, therefore, in the said matter, the writ petition was held to be maintainable. However, in the present case, there is no such challenge to any rule. The Co-operative Court while considering the election petition can take into

consideration challenge to the voters list and the petitioner will get an opportunity to challenge the election on the grounds on which this petition is filed.

20. Shri V.D. Sapkal, learned Counsel for respondents has also relied on a case between [Someshwar Sahakari Sakhar Limited and etc. Vs. Shrinivas Patil and others, etc.,](#) . In the said matter, the learned Single Judge relied upon the rulings of the Apex Court in the matters between [Gujarat University Vs. N.U. Rajguru and Others,](#) and [S.T. Muthusami Vs. K. Natarajan and Others,](#) and, therefore, it is observed by the learned Single Judge as :

"It would not be proper for this Court to interfere in a petition under Article 226 of the Constitution of India when the dispute relates to the intermediate stage in the process of election and it would, indeed, be better to leave the parties to raise the necessary dispute by way of a substantive election petition as provided for u/s 144-T of the Maharashtra Cooperative Societies Act, 1960."

Shri V.D. Sapkal, learned Counsel for the respondents, has pointed out that this ruling of the learned Single Judge was affirmed in Letters Patent Appeal No. 27/92 by the Division Bench on 16-3-1992.

21. The learned Counsel for the petitioner has relied upon the ruling of the Apex Court in the matter between [Chief Commissioner, Ajmer Vs. Radhey Shyam Dani,](#) and has specifically referred to the observations in paragraph No. 12 as :

"It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned."

He has also relied upon the ruling of the Division Bench of this Court in the matter between Pandurang Hindurao Patil v. State of Maharashtra, 1983 Mah.L.J. 1081, so also [Karbhari Maruti Agawan and Others Vs. State of Maharashtra and Others,](#) and the ruling of the learned Single Judge in the matter between [Wamanrao Satpute Vs. Collector, Nagpur and others,](#) .

22. It will be noticed that in all those matters to which reference is made by the learned Counsel for the petitioner, the High Court thought it fit to interfere because of the extraordinary circumstances appearing in those matters. It is not the case that under no circumstances the High Court should interfere once the elections process has started by passing any orders under Article 226 of the Constitution of

India. In the matter of Rajan Dinkarrao Pharate and others, v. State of Maharashtra & others, reported in 1997(1) Mah.L.J. 543 , there were certain circumstances which indicated that in large scale the voters list was tampered with and, therefore, the High Court decided to interfere to set right the voters list in the interest of the genuine voters. The matter was considered in Letters Patent appeal by the Division Bench of this Court which is again reported as [Sanjivraje Vijaysinha Naiknimbalkar and others Vs. Rajan Dinkarrao Pharate and others,](#) . So in extraordinary circumstances, the High Court can interfere even when the election process has commenced. The same view is expressed in the above quoted case of Wamanrao Satpute.

23. Here it has to be noted that there is challenge to the entire voters list of non borrower voters. It is also pointed out above that this voters list is not at all in conformity with provisions of law. Apparently, it is bogus list and if these voters are allowed to vote, then the election will be not from amongst the valid members of the society but by the outsiders. So these are very peculiar circumstances in this case. In this extraordinary situation, we do not think that merely because the election process has commenced, the High Court should not interfere. Some persons have played mischief. It is amply proved on record. In such circumstances, High Court cannot sit tight and say that as the election process has commenced, the High Court will not interfere. The powers of the High Court under Article 226 of the Constitution are extraordinary and those are to be exercised in extraordinary circumstances.

24. If the election is being challenged by a writ petition under Article 226 or 227 of the Constitution of India even if there are some mistakes in the process of election, the High Court would not interfere in the process of election because those can be cured by filing election petition after results are declared. In all the cases on which the learned Counsel for the respondents has relied upon, the circumstances were such that the remedy could be sought by an election petition. But in the present matter, it clearly appears that if timely action is not taken, the genuine members of the society will suffer great injustice.

25. The elected body would function till the election petitions u/s 91 of the Act are finally decided. That means the persons who cannot be the members of the society would rule the society for indefinite period. In an election petition even u/s 91 of the Act, the Co-operative Court would not be in a position to prohibit the elected body from functioning as managing committee by way of interim relief.

26. Further more, the list of voters is based on the list of members. The person whose name is there in the list of members automatically becomes the voter and his name is included in the list of voters. So unless and until the name of the person is deleted from the list of membership, he cannot be prohibited from becoming the voter. Section 25-A of the Act makes the provision for removal of members from the membership register. The committee of the society is authorised to remove the

member from the membership register or the Registrar also can take such action under the proviso to section 25-A. So the first step to be taken is to correct the membership register and that can be done only by following the procedure u/s 25-A of the Act.

27. In the present matter, objection was raised before the Returning Officer to the preliminary voters list and also before the respondent No. 2 to the membership of these persons. It may be that the powers of the Returning Officer are very much limited and he has to act on the basis of the entries in the membership register but the powers of the Assistant Registrar are wide enough to correct the membership register. When it was specifically brought to the notice of the Assistant Registrar that there was large scale mischief in preparing the membership register of non borrowers, it was the duty of the Assistant Registrar first to take action u/s 25- A of the Act and then to proceed further for preparation of voters list.

28. No doubt the election process has commenced by publication of the voters list but at the very initial stage, the objections were raised before the concerned authorities. They have failed to comply with their duty and, therefore the writ petition is filed for seeking necessary directions. In this extraordinary situation, the High Court has to interfere to stop the mischief. Here the so called voters list is not in fact the list of the voters or list of the members who can be the members of the society. In these extraordinary circumstances, the High Court has to interfere even with respect to preparation of voters list.

29. The learned Counsel for the respondents have argued that 352 voters are not before this Court and if any order is passed deleting their names from the voters list, it will amount to giving a decision behind their back. It is also argued by the learned Counsel Shri V.D. Sapkal that if the High Court directs that the names of these 352 voters be deleted from the voters list, then even if they have any case supporting their claim to be members of the society, no authority under the Act would be able to go against the decision given by the High Court. That decision given will be binding on those authorities and, thus, those persons will be deprived from continuing the members of the society. So any direction by the High Court to delete the names of these voters from the voters list will not be proper.

30. The learned Counsel for the petitioner has argued that all these persons were served with notices. They were given opportunity to appear before the respondent No. 2 to show how they could be members of the society but they have failed. So now they cannot raise any grievance that they are being deleted from the membership register or voters list without being heard. Direction, therefore, be issued to delete the names of these voters from the non borrower voters list and the election may proceed further.

31. The enquiry was directed at the hands of respondent No. 2 with a view to know the factual situation. A serious objection was raised to the voters list by the

petitioner and prima-facie it appeared that there was substance in that objection. But to get confirmed the position, the enquiry was directed. So the report submitted by the respondent No. 2 is only to bring before the Court the correct situation regarding the objections raised. This enquiry cannot be called as an action u/s 25-A of the Act. That action as per the rules and the provisions of the Act will have to be carried out. Therefore, we do not propose to issue the direction to delete the names of these 352 persons from the non borrowers voters list and proceed further with the election. However, we direct that the respondent No. 2 to take action as per section 25-A of the Act. The society then should comply with the direction and the membership register be corrected according to the directions issued by the respondent No. 2. If the society fails to comply with the direction, then the respondent No. 2 to take action as per the proviso to section 25-A of the Act. On the basis of such corrected membership register, the voters list be prepared and then the elections be held. While issuing the directions u/s 25-A of the Act, the respondent No. 2 to take into consideration the objections which are raised to the membership of these persons and he should take into consideration all the relevant rules and bye-laws of the society for enrolment of members of the society and also the report submitted in this matter. The action u/s 25-A of the Act be taken and completed within four weeks from today and the election of the managing committee of the society be completed within three months from today. Hence, the election programme declared by the Returning Officer respondent No. 3 on 7-1-1999 stands postponed. Rule made absolute accordingly.

32. Rule made absolute.