

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## APPELLATE SIDE

WRIT PETITION NO.4866 OF 2005.

Gadhinglaj Taluka Sahakari Sakhar

Karkhana Ltd. ... Petitioner.

V/s.

Collector of Kolhapur &amp; Anr. ... Respondents.

Mr. V.A. Thorat, learned Counsel for the Petitioner.

Mr. Shriniwas S. Patwardhan, for Petnr. on record.

Mr. N.V. Walawalkar with Mr. Amit Borkar, for Respondent  
Nos.2 and 3.

Mr. A.H. Palekar, Addl.Govt. Pleader.

**CORAM : S.A. BOBDE, J.**

July 29, 2005.

ORAL ORDER :-

1. This petition is by the Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. The Petitioner has challenged the order of the Collector, Kolhapur, deleting the names of 29 voters being member societies, from the voters' list for the elections to the Managing Committee or the Petitioner-Society. All the voters who are deleted are the Members, Co-operative Societies of the Petition.

2. A perusal of the impugned order shows that the 29

members - Society have been deleted, principally on the ground that there is a non-compliance of Section 27(3) of the Maharashtra Co-operative Societies Act, 1960 and in particular the proviso thereto. The proviso lays down that new member - Society shall be eligible to vote only after completion of the period of 3 years from the date of its investing in the shares of the federal society.

Sub-Section 3 reads as follows :-

" A society, which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society:

Provided 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."

3. The main contention raised by Mr. V.A. Thorat, learned Counsel for the Petitioner is that Section 27(3) was not attracted to the facts of the present case at all. According to him, in terms that provision applies only to a federal society and the petitioner is not a federal society. The learned Counsel relies on sub-Section 13 of Section 2 which defines federal society as follows :-

"(13) "federal society" means a society -

(a) not less than five member of which are themselves societies, and

(b) in which the voting rights are so regulated that the members which are societies have not less than four-fifths of the total number of votes in the

general meeting of such society;"

The submission on behalf of the Petitioner is that the member-societies of the Petitioner Society Factory have much less than four-fifth of the total numbers of the vote in the general meeting of the Petitioner. The Petitioner is therefore not a federal society.

4. This contention is opposed by Mr. Walawalkar appearing on behalf of the Respondent No.2 i.e. the person who objected and sought the deletion of the voters. It is the second Respondent's objection which has been upheld for deleting the names of the voters.

5. Having heard the learned Counsel for both the parties, I am of view that whatever be the merits of the contention raised by the Petitioner, this Court will not in such a case exercise its ordinary jurisdiction under Article 226 of the Constitution of India, in view of the Judgment of the Supreme Court in Shri Sant Sadguru Janardan Swami reported in (2201) 8 Supreme Court Cases 509. In that case, the Supreme Court took note of the consistent view of this Court on the interpretation of the Chapter XI-A of the Maharashtra Co-operative Societies Act 1961 and the Rules framed thereunder that the preparation of the electoral roll is an intermediate stage of the election process of specified Cooperative Societies. Having regard to the availability of a forum for having an election set aside,

their Lordships concluded as follows :-

"12. In view of our finding 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, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

6. Mr. Thorat, learned Counsel for the Petitioner however, submitted that the laws laid down by Their Lordships in Shri Sant Sadguru's case is not inflexible and that in a subsequent decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v/s. State of Maharashtra and others reported (2004) 1 Supreme Court Cases 133. Their Lordships have distinguished the earlier case. The learned Counsel therefore submitted that the present case is covered by the facts of the Ahmednagar Zilla case. It is, therefore, necessary to compare the circumstances in the Ahmednagar Zilla case with the present case. In the Ahmednagar Zilla Case the voters' names were deleted on the basis of an amendment in the bye laws which were struck down by the Appellate Authority. The High Court directed the inclusion of those names in the electoral roll. The contention before the Supreme Court was that the direction of the High

Court was illegal since the High Court had interfered at an intermediary stage in the process of election and had therefore committed an error of jurisdiction. This contention was rejected by the Supreme Court on the ground that the exercise of the jurisdiction by the High Court was justified since the names of the voters had been deleted on the basis of a non-existent bye-law.

7. Such is not the case here. Assuming that the contention on behalf of the Petitioners is correct, what has been done by the Collector while deleting the names is may be described as mis-application of Section 26(3) by erroneously assuming that the Petitioner society is a federal society and that the member societies have not completed 3 years from the date of investing in the shares of federal society. This, therefore, can not be treated at par with the deletion of names of voters on the basis of non-existent bye-laws as in the Ahmednagar Zilla Case. I, therefore, see no reason to interfere on this ground.

8. Prima-facie, it appears that the Petitioner have an alternate remedy under Section 144-T read with Rule 81 of Maharashtra Specified Cooperative Societies Election to Committees Rules, 1971. The learned Counsel of the Respondent on the basis of Section 144-T of the Act contends that the Petitioner society is a person aggrieved and is entitled to make a reference to the specified Officer entitled to try election petition as provided by

Section 144-T Sub-Section 2 which reads as follows :-

"144-T. Disputes relating to elections to be submitted to the Commissioner )or other specified officer.-- (1).....

(2) Such reference may be made by an aggrieved party by presenting an election petition to {the specified Officer}, within a period of two months from the date of declaration of the result of the election:

Provided that, [the specified officer] may admit any petition after the expiry of that period, if the petitioner satisfies [ the specified officer] that he had sufficient cause for not preferring the petition within the said period."

Rule 81 d(iii) & (iv) which reads as follows :-

"81. Grounds for declaring election to be void.- If the Commissioner is of opinion --

(a) .....  
(b) .....  
(c) .....

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected -  
(i) .....  
(ii) .....

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Act or any rule made thereunder,

the Commissioner shall declare the election of the returned candidate to be void."

Provides the grounds for challenging the results of the elections in a case such as the present one.

9. Mr. Thorat, learned Counsel for the Petitioner further submitted that this Court does not interfere at the intermediary stage of the election is self-imposed limitation and is not attracted at all in this case because

elections to cooperative societies are postponed till after 30th September 2005 in the State of Maharashtra. Therefore, intervention by this Court at this stage would not therefore amount to interference with the electoral process. This contention can not be accepted. The stage of the election is that the final list of the voters has been published under Rule 6 of the Maharashtra Specified Cooperative Societies Elections to Committees Rules, 1971. This is clearly an intermediary stage of the election. If merely due to some extraordinary circumstances or administrative difficulty, an election is postponed, it would not make any difference in principle. If this Court interferes because of this, it would make things quite uncertain since interference by this Court would then depend on the period for which elections have been postponed which would be different in different circumstances.

10. It was next contended on behalf of the Petitioner - Collector that the Collector's decision in deleting certain names of the voters' list is illegal since he has not applied with law laid down by this Court in several decisions. In my view, this is the matter that can be gone into by the forum trying the election dispute.

11. It was lastly contended by the learned Counsel for the

Petitioner that the deletion of names of voters is a matter of which cognizance must be taken by the Court even at the intermediary stage of the election since the right to contest the election depends on the person being a voter. The learned Counsel relied on Rule 18 of the Maharashtra Specified Cooperative Societies Election to Committees Rules, which reads as follows :-

"18. Nomination of candidates.-(1) Any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, rules and bye-laws and his name is entered in the list of voters: Provided that, in the case of joint or associate members, any the member whose name stands first in the share certificate shall be eligible to be nominated as a candidate for the election:

[Provided that, in the case of joint or associate members, only the member whose name stands first in the share certificate shall be eligible to be nominated as a candidate for the election]:

[Provided further that, in the case of a member contesting election for reserved seat as provided under the provisions of section 73-B, it is not necessary that his name should appear in the list of votes]. (2) Every nomination paper presented under rule 19 shall be completed in Form II : [Provided that, a failure to complete, or a defect in completing, the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the meaning of sub-rule (4) of Rule 23.

[(3) Any person whose name is entered in the list of voters may be a proposer or a seconder for nominating a candidate for election:

[Provided that, in the case of elections from the constituencies of societies, the proposer and the seconder shall be from the same constituency.]



[(3A)\*\*\*\*\*]

(4) A nomination paper shall be supplied by the Returning Officer to any voter on demand."

12. It is settled law that the entire process of an election is purely a creation of a statute and governed by the statute and rules framed thereunder. If a person is denied the right to vote because his name is not on the voters' list, it must be taken to be the intention of the the statute. It would indeed bring about uncertainty in the certainty of an election process if this Court interfered at the instance of persons who have been held to have no right to vote and have deleted from the voters' list, merely, on the ground that they have thereby been denied the right to contest the election. This contention on behalf of the Petitioner certainly merits consideration but is not sufficient in my view to depart from the settled position in law that an election can only be challenged in accordance with the statute under which it is held and that this Court will not ordinarily interfere with the election process. Undoubtedly, if the challenge succeeds voters whose names have been wrongly deleted would be entitled to contest in the election held again.

13. In the circumstances of this matter, I see no reason to interfere, the Writ Petition is, therefore, dismissed.

(S.A. Bobde, J.)