

**(2021) 02 BOM CK 0009**

**In the Bombay High Court**

**Case No :** Writ Petition (STAMP) No.96919 Of 2020

Arun Yashwant Kulkarni

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

---

**Date of Decision :** 16-02-2021

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 19(1)(c), 226, 243ZJ, 243ZK, 243ZL  
Maharashtra Co-Operative Societies Act, 1960 — Section 73AAA , 73AAA(3), 73CC,  
73CB, 73(CB)(15), 77A, 157

**Citation :** (2021) 02 BOM CK 0009

**Hon'ble Judges :** R.D.Dhanuka, J;V. G. Bisht, J

**Bench :** Division Bench

**Advocate :** Satish B. Talekar, Madhavi Ayyapan, Talekar, A.A.Kumbhakoni,  
P.P.Kakade, Akshay Shinde, A.A.Alaspurkar, Deelip Patil Bankar

**Final Decision :** Dismissed

---

## **Judgement**

V. G. Bisht, J

1.Rule. Rule made returnable forthwith. By consent of parties, heard finally at the stage of admission.

2.By this writ petition under Article 226 of the Constitution of India, the petitioner has approached this Court with following prayers :

â?? PRAYERS

A. To hold and declare that proviso to Section 73AAA (3) and proviso to Section 73(CB)(15) of the Maharashtra Co-operative Societies Act, 1960 as

inserted by the Maharashtra Ordinance No.XII of 2020 (Exhibit â??Kâ??) is ultra-vires Articles 14, 19(1) (c), 243-ZJ and 243ZK of the Constitution of

India;

B. To direct the respondents to appoint administrators or Committee of

Administrators to manage the affairs of all such cooperative societies in Maharashtra terms of which have expired, by issuing a writ of mandamus or any other appropriate writ, order or direction, as the case may be;

C. To quash the impugned order dated 17.06.2020 issued by the Under-Secretary, Cooperation, Marketing and Textiles Department, Mantralaya,

Mumbai-32 (Exhibit â??Jâ??), by issuing a writ of certiorari or any other appropriate writ, order or direction, as the case may be.

G. To hold and declare that proviso to Section 73AAA(3) and proviso to Section 73CB(15) of the Maharashtra Cooperative Societies Act, 1960 as

inserted by the Maharashtra Ordinance No.XII of 2020 (Exhibit â??Nâ?) is ultra-vires Articles 14, 19(1) (c), 243-ZJ and 243-ZK of the Constitution

of India.â??

3.The petitioner claims to be a member of Balgawade Vividh Karyakari Sahakari (Vikas) Seva Society, Balgawade, Talukar Tasgaon, District Sangli.

The said Vividh Karyakari Sahakari (Vikas) Seva Society, Balgawade is affiliated to Sangli District Central Co-operative Bank, Sangli. It is the case

of petitioner that he has been actively involved in social service since 1972. According to him there are about 35,000 Cooperative Societies including

Cooperative Sugar Factories (SSKs), Cooperative Ginning Mills, District Central Cooperative Banks (DCCBs) and multipurpose Cooperative Credit

Societies at village level in the State of Maharashtra.

4.The elections of Managing Committees of the Co-operative Societies including SSKs, DCCBs, Primary Agricultural Cooperative Societies at village

level including 22 District Central Cooperative Banks were due by the end of January 2020. The State of Maharashtra in its Department of

Cooperation, Marketing and Textiles issued two orders on 27th January 2020 (Exh. C) and 31st January 2020 (Exh. D) postponing elections of

Managing Committees of all such Cooperative Societies which were due for elections in exercise of powers under Section 157 of the Maharashtra

Co-operative Societies Act, 1960 (hereinafter referred to as â??the said Actâ??).

5.According to the petitioner, the Government Orders dated 27th January 2020 and 31st January 2020 were challenged as the same were contrary to

the spirit of Articles 243-ZJ and 243-ZK and also on the ground of those orders being violative of fundamental rights guaranteed under Article 19(1)

(c) and at the same time ultra-vires Article 14 of the Constitution of India. This

Court (Aurangabad Bench) vide order dated 11th March 2020

quashed and set aside the said orders passed by the respondent no.1 holding them to be illegal, arbitrary and ultra-vires the constitutional provisions

embodied in Articles 243-ZJ and 243-ZK of the Constitution of India as well as Sections 73CC and 157 of the said Act.

6. Meanwhile, the Government introduced a Bill (Exh. F) on 2nd March 2020 in the State Legislature so as to amend Section 73CC to enable

postponement of the elections of the Managing Committees of Co-operative Societies in the State of Maharashtra including the District Central Co-

operative Banks, Primary Agricultural Credit Societies and Co-operative Sugar Factories. However, none of the grounds or exigencies mentioned in

the Statement of Objects and Reasons such as scarcity, drought, flood, fire or any other natural calamity were available on 2nd March 2020. As such,

there was no occasion to introduce a Bill to amend Section 73CC as none of the reasons mentioned in the Statement of Objects and Reasons

appended to the Bill were available. The Maharashtra Act No.XIV of 2020 (Exh. G) amending Section 73- CC of the Act came to be passed in both

the Houses of the State Legislature whereas the Act received assent of the Governor and at the same time was published in the Maharashtra

Government Gazette on 18th March 2020.

7. The petitioner further contends that meanwhile, the Public Health Department, Government of Maharashtra, issued two Notifications under the

Epidemic Diseases Act, 1897 on 13th March 2020 (Exh. H) and 14th March 2020 (Exh. I) prescribing certain guidelines so as to curb and prevent an

outbreak of coronavirus (Covid-19) and the spread thereof. The Government of India on its part also issued Notification under the Epidemic Diseases

Act, 1897 as well as the Disaster Management Act, 2005 declaring national disaster due to an outbreak of coronavirus on 24th March 2020.

8. Once national disaster was declared on 24th March 2020, the petitioner alleges, Government found it difficult to hold elections within three months

from 31st March 2020 due to an outbreak of coronavirus. Therefore, the Government issued one more Order (Exh. J) on 17th June 2020 for

postponing the elections of all Co-operative Societies in the State for a period of three months from 17th June 2020.

9. The State Legislature accordingly amended Section 73-AAA and Section 73CB

of the Act and the Honâ??ble Governor of Maharashtra

promulgated an Ordinance (Exh. K) which enabled not only the postponing of the elections of the Committees of all such societies but to continue the

existing Members of the Committees till new Committees were duly constituted, however on a condition that the election of Committees of such

Societies shall be conducted (a) within six months from the date of commencement of the said amendment Ordinance; or (b) where the period within which such elections should have been conducted was extended by the State Government by general or special order, then within six months from the date on which such extended period expires.

10. According to the petitioner, when there is specific provision to appoint an Administrator on the ground that the Authority or body as provided by the

Legislature of the State i.e. the State Co-operative Election Authority has failed to conduct elections, it was obligatory on the part of the State to

appoint an Administrator rather than continuing the existing members of the Committee till the new Committee was duly constituted. Therefore, the

decision to continue the existing Members of the Committee till new Committee is duly constituted by amending Section 73AAA vide Ordinance

No.XII of 2020 (Exh. K) is taken with oblique motives and is ultra-vires Articles 19(1)(c), 243-ZL, 243-ZK and 243-ZJ.

11. The legality and validity of the order dated 17th June 2020 issued by the Under-Secretary Co-operation, Marketing and Textiles Department,

Mantralaya (Exh. J) and Maharashtra Ordinance No.XII of 2020 dated 10th July 2020 (Exh. K) and Maharashtra Act No.XXVII of 2020 dated 12th

October 2020 promulgated by the Honâ??ble Governor of Maharashtra is impugned by the petitioner in this petition.

12. By way of affidavit-in-reply respondent no.1 raised following contentions :-

(a) Writ petition under Article 226 of the Constitution of India is maintainable either for the purpose of enforcing a statutory right or legal right qua the

petitioner, which according to the petitioner is breached. Therefore, there must be a judicially enforceable right available for enforcement on the basis

of which writ jurisdiction is invoked. The reliefs prayed for must be one to enforce a legal right.

(b). The petitioner has miserably failed to show as to how either the issuance of Order dated 17th June 2020 or the promulgation of Ordinance dated

10th July 2020 has affected either any statutory or legal right of the petitioner. The decision, which is taken in the larger interest of the public, in view

of the prevalent Pandemic situation in the entire country, is not available for challenge at the behest of the petitioner. In short, the petitioner has no

locus standi to file the present petition and therefore the present petition filed by the petitioner is not at all maintainable and thus deserves to be

dismissed on this ground alone.

(c).The burden is upon the petitioner while challenging the Ordinance promulgated to show that there has been clear transgression of Constitutional

principles. The grounds on which the Ordinance can be challenged are well settled in law and the petitioner fails to make out any of these grounds that

are permissible in law for challenging the validity of such an Ordinance or such a statutory amendment.

(d).The petitioner has not challenged the constitutional validity of the provisions of Section 73CC of the Act, which empowers the State Government

with the power, authority and jurisdiction of postponement of the elections in the contingencies mentioned therein.

(e). Due to the Pandemic it would be impossible to hold and conduct elections of various Co-operative Societies in the State and further to curb the

spread of the virus, the State Government had first issued reasoned order (Exh. AR2) on 18th March 2020 by invoking aforesaid power conferred in it

under Section 73CC of the Act thereby postponing the elections which were due, initially by three months. The petitioner has not bothered to even

disclose this order dated 18th March 2020 to the Court much less challenge the validity and/or correctness of the aforesaid first order dated 18th

March 2020. Having accepted the order dated 18th March 2020 the petitioner is now estopped from challenging the order dated 17th June 2020.

(f).Considering the present scenario, it is not possible to conduct elections of Co-operative Societies atleast for a period of three months from 17th

June 2020, a vacuum was bound to be created in the administration of these co-operative societies once their statutory term expires. In view of this, it

became absolutely necessary to make interim arrangement to look after the administration of such co-operative societies till the time elections are

held. His Excellency, the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate

action for amending the said Act and an Ordinance has been promulgated dated 10th July 2020.

(g).In view of the peculiar situation at hand, bringing out the aforesaid Ordinance and thereby carrying out the aforesaid amendment in the said Act, it

was absolutely necessary to take care of the void that was being created in the administration of various co-operative societies, whose term was to

expire, in the light of impossibility of holding of their elections before expiry of their term, as decided by the State Government.

(h).Considering all the above facts and circumstances, the present petition is devoid of any merits and the same deserves to be dismissed.

13.Mr.Talekar, learned counsel for the petitioner, at the outset, invited our attention to the pleadings pointing out that the petitioner is an active member

of Vividh Karyakari Sahakari (Vikas) Seva Society, Balgawade, Talukar Tasgaon, District Sangli. and therefore has right to contest election of Co-

operative Societies. The learned counsel heavily criticized the decision of respondent to continue the existing members of the committee even after

expiry of their tenure. As the decision is not only illegal, arbitrary and taken in colourable exercise of power but also politically motivated.

14.The learned counsel then submitted that the insertion of proviso in Section 73-AAA(3) and proviso in Section 73CB(15) of the Act, 1960, by

Maharashtra Ordinance No.XII of 2020 are ultra-vires Articles 19(1)(c), 243-ZJ and 243-ZK. This Ordinance is nothing but a legislative over ruling of

the judgment given in the case of Ishwar and Others vs. The State Of Maharashtra and Others 2020 SCC Online Bom 402

15,The learned counsel would submit that newly added provision to Section 73AAA is not only contrary to the provision of Section 77A of the Act of

1960 but renders the same meaningless. According to him Section 77A of the Act read with Article 243-ZL provides adequate mechanism to deal

with a situation where there is failure to hold election by appointing an administrator.

16.In support of his submissions, learned counsel placed reliance on (i) State Bank of India vs. S.N.Goyal (2008) 8 SCC 92 (ii) Director of

Settlements, A.P. and Others vs. M.R.Apparao and Another (2002) 4 SCC 638 (iii) Municipal Corporation of Delhi vs. Gurnam Kaur (1989) 1 SCC

101 and (iv) Union of India vs. State of Maharashtra and Others (2020) 4 SCC 76.

17. Per contra, Mr.Kumbhkoni, learned Advocate General appearing for respondent-State raised twofold preliminary objections viz. (i) absence of cause of action and (ii) no right or locus standi to challenge the promulgation of Ordinance dated 10th July 2020 or for that matter Maharashtra Act

No.XXVII of 2020 dated 12th October 2020.

18. Elaborating further, the learned Advocate General submitted that the present petition is not a public interest litigation but a writ petition and

therefore the petitioner must make out a case of violation of his personal rights because of non-compliance of State obligations. The petitioner has

miserably failed to demonstrate violation of his personal rights or any cause of action to file this writ petition. To buttress his submission, the learned

Advocate General placed reliance on the judgment in case of Kusum Ingots & Alloys Ltd. vs. Union of India and Another (2004) 6 SCC 254.

19. It is submitted that the legal right that can be enforced ought to be the right of the petitioner himself, who has complained of infraction of such

right. There are no material facts clarifying how the amended provisions have affected either any statutory or legal rights of the petitioner. This being

so, constitutional validity of a statute or any provision thereof cannot be decided in vacuum or abstract. In short, according to the learned Advocate

General, the petitioner has no locus standi to file the present petition and thus deserves to be dismissed on these grounds alone.

20. The learned Advocate General has also placed reliance on the judgments in case of State of Bihar vs. Rai Bahadur Hurdu Roy Motilal Jute Mills

and Another (1960) 2 SCR 331 and Ayyaubkhan Noorkhan Pathan vs. State of Maharashtra and Others (2013) 4 SCC 465.

21. We intuitively feel that the learned Advocate General is right in his reading of pleadings of the petitioner. His contention that absence of cause of

action and locus standi has debilitating effect on the petitioner's cause and the petition deserves to be rejected at the very threshold, could not be

scoffed out of significance. The learned Advocate General makes an eminent sense when he argues so. We qualify this with reasons.

22. What needs examination is the whole gamut of pleadings put forth by the petitioner. It would be instructive to know whether in the light of

pleadings, preliminary objections raised and aired by the learned Advocate General exist or not.

## CAUSE OF ACTION

23. In *Kusum Ingots & Alloys Ltd.* (supra) the Hon'ble Apex Court has held as under :

“Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action.

Cause of action is not defined in any statute. It has, however, been judicially interpreted *inter alia* to mean that every fact which would be necessary

for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if

not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every

action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.”

24. Compendiously the expression “cause of action” means every fact which it would be necessary for the petitioner to prove, if traversed, in

order to support his right to the judgment of the Court. What has to be seen is whether or not a meaningful reading of the petition discloses a cause of

action. For the limited purpose of determining the question whether the petition is to be wiped out or not for want of cause of action, the averments in

the petition are only to be looked into. It has to be culled out from a conjoint reading of all the paragraphs of the petition.

25. A careful and guarded reading of pleadings would show that the petitioner is aggrieved of the order passed by the State of Maharashtra

postponing the elections of the Co-operative Societies for a period of three months from 17th June 2020 and the Ordinance No.XII of 2020 continuing

the term of the Members of the Managing Committee of the Co-operative Societies whose tenure has already expired.

26. We are unable to discern and decipher as to how either the issuance of order dated 17th June 2020 or the promulgation of Ordinance dated 10th

July 2020 has affected either any statutory or legal right of the petitioner. There are no clear and specific pleadings. If at all passing of a legislation has

given a cause of action, as petitioner claims in the present petition, then it ought to have been demonstrated diligently that because of the

implementation of the same the petitioner has suffered civil or harmful consequences. Quintessentially petitioner has failed to evoke and evince those

civil or evil consequences.

27. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Passing of a legislation by itself in our

opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.

28. The petitioner must have and necessarily pleaded vis-a-vis prayers made therein which at a first glance with all certainty would have reflected

seemingly all pervasive cause of action leading to a decisive determination of issues in order to give any kind of relief. The reading of the present

petition as a whole does not give an impression that the grievances have been projected and couched in a significant way so as to discern a real and

genuine so also definite cause of action. It seems the petitioner has all left it to the Court to read in between the lines and take upon itself and embark

upon an enquiry whether indeed there was an infraction of legal rights of the petitioner or not. Certainly this exercise cannot be undertaken in vacuum.

29. We are emboldened and fortified in taking aforesaid view in the light of enunciation of Hon'ble Apex Court in State of Bihar (supra) in paragraph 7

which reads thus :

“In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be

clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to

their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to

decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and

should be reluctant to decide constitutional points merely as matters of academic importance.”

30. What this leads to, it should need no stressing that there should be a sanguine, real and genuine, so also definite cause of action, which we are

unable to locate and perceive in the present petition.

#### LOCUS STANDI OF PETITIONER

31. This brings us to adjudicate whether the petitioner has locus to maintain the writ petition.

32. There is no doubt regarding the legal proposition that the rights under Article

226 of the Constitution of India can be invoked only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking jurisdiction of the High Court under Article 226 of the Constitution of India.

33. In *Jasbhai Motibhai Desai vs. Roshan Kumar Haji Bashir Ahmed* (1976) 1 Supreme Court Cases 671 the Hon'ble Apex Court at paragraph 13

held as under :

“13. The expression “aggrieved person” denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner’s interest, and the nature of the prejudice or injury suffered by him. English courts have sometimes put a restricted and sometimes a wide construction on the expression “aggrieved person”...”

34. Similarly, in *Ayaaubkhan Noorkhan Pathan* (supra) the Hon'ble Apex Court at paragraph 9 held as under :

“9. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. Infact, the existence of such right, is the foundation of the

exercise of the said jurisdiction by the Court.

35. In nutshell and in view of the above, it is no idle whataboutery to point out that a person who raises a grievance must show how he has suffered

legal injury. A person who suffers from legal injury can only challenge the act or omission.

36. In the instant petition we do not require much prescience to realize that neither pleadings nor prayers specifically and categorically show infraction

of petitioner's legal right and its enforcement thereto. The petition is tellingly silent on this material aspect. There is abysmal failure on the part of

the petitioner to exhibit existence of legal grievance which needs to be appreciated and allayed by invoking the jurisdiction under Article 226 of the

Constitution of India.

37. Thus, from the above, it is evident that petitioner has no legal peg for a justiciable claim to hang on. Therefore, he is not a "person aggrieved"

and has no locus standi to challenge the constitutional validity of impugned Ordinances and Order.

38. The enduring conclusion from the record is, first, that the petitioner lacks cause of action and, second, that the petitioner has no locus standi. In

view of this conclusion, it is not necessary for us to consider the objections raised by the learned counsel for the petitioner against the validity of the

impugned Ordinances and Orders on the ground that they contravene Article 14, 19(1)(c), 243-ZJ and 243-ZK of the Constitution of India.

39. The result is that the writ petition fails and stands dismissed. Rule is accordingly discharged. No order as to costs.