

**(2002) 01 BOM CK 0056**

**In the Bombay High Court**

**Case No :** Writ Petition No's. 23 and 167 of 2002

Ravindra Shrinivas Shinde

APPELLANT

Vs

Member, Maharashtra State Co-operative Appellate Court,  
Nagpur Bench, Vividh Karyakarni Sahakari Sanstha,  
Bhadrawati and Premdas Kanhobaji Aswale

RESPONDENT

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**Date of Decision :** 23-01-2002

**Acts Referred:**

Constitution of India, 1950 — Article 226

Maharashtra Specified Co-operative Societies (Elections to Committees) Rules, 1971 —  
Rule 16, 5(2), 6(1), 6(4), 6(5)

**Citation :** (2002) 01 BOM CK 0056

**Hon'ble Judges :** R.S. Mohite, J

**Bench :** Single Bench

**Advocate :** A.B. Choudhari and R.M. Ahirrao, for the Appellant; Bhushan Gawai,  
Government Pleader, M.G. Bhangde and A.S. Chandurkar, for the Respondent

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**Judgement**

1. Both these writ petitions arise out of common matrix of facts.
2. After hearing the parties in these writ petitions, it was agreed that both the petitions would be finally disposed of by common order. Accordingly, Rule is issued in both these Writ Petitions and rule is made returnable forthwith. It is made clear that for the sake of convenience, that throughout this judgment, the reference to the petitioners and respondents, which will be made hereinafter, are the petitioners and respondents as in Writ Petition No.23/2002.
3. All the parties were heard at length.
4. The facts, which are relevant, for the purpose of deciding these two writ petitions, are as under :-
  - a)The respondent no.2 cooperative society is a primary society in respect of which the Chandrapur District Central Cooperative Bank Limited is a federal society and is hereinafter referred to as the Federal society On 1.10.2001, a

notice of Annual General Meeting, signed by the Chairman and the Manager of Respondent no.2 society, was issued. The said notice fixed the Annual General Meeting of the society on 2.11.2001. There were seven items shown on the agenda and the question as to who should be the delegate of the respondent no.2 to the aforesaid federal society was not on the agenda.

b)On 3.10.2001, a notice of the meeting of the Managing Committee of respondent no.2 society was issued. There were five items on the agenda of this meeting and Item No.4 specifically referred to the question of sending a delegate on behalf of respondent no.2 society to the federal society.

c)On 12.10.2001, the Managing Committee of respondent no.2 resolved to send the respondent no.3 as delegate to the federal society and the claim of the petitioner to be sent as a delegate was defeated.

d)On 22.10.2001, the provisional list of voters of federal society came to be published and as on the date of the publication of provisional list, the name of the delegate of respondent no.2 society had not yet been communicated, no delegate of respondent no.2 society was included in the provisional voters list.

e)On 23.10.2001, respondent no.2 society intimated to the Collector, Chandrapur, about the passing of the Resolution by its Management Committee and enclosing a copy of the Resolution.

f)On 2.11.2001, in pursuance of the notice dated 1.10.2001, the Annual General Meeting of respondent no.2 society, came to be held. Out of 1638 members of the said society, 174 members were present.

At the said meeting, by taking recourse to the general item of the agenda, which can be loosely translated as " any other subject with the permission of the Chairman", one member by name Smt. Sushamatai raised a demand for consideration of the question as to who should be sent as delegate of respondent no.2 society to the federal society. This demand was seconded by one Bapu Soyam. The Secretary of the society informed the members present that this issue was not on the agenda and urged the Chairman not to give permission for discussing the issue. The Chairman overruled the objection of the Secretary by observing that the Annual General Meeting of the society was a meeting of the highest body, a majority of the members had demanded that the question be taken up and as the resolution of the management committee dated 10.2.2001 had not been confirmed, the said subject could be raised in the meeting, and the resolution of the management committee could be cancelled. Two other members of Respondent no.2 society and respondent no.3 also protested but their protest was also brushed aside by the Chairman. To cut along story short in the manner and by following a procedure mentioned hereinabove, the matter was put to vote and the petitioner having secured 137 votes as against 37 votes procured by one Ramchandra Vandhare, was declared to be delegate of respondent no.2 society to the federal society.

g)On 2.11.2001, the respondent no.2 society communicated to the Collector, Chandrapur, about its resolution passed in the Annual General Meeting, appointing the petitioner as the delegate of the respondent no.2 to the federal society

h)On 6.11.2001, the present respondent no.3 filed a dispute u/s 91 of the Maharashtra Co-operative Societies Act, in the Cooperative Court at Nagpur. He sought interim relief in the said dispute by way of stay of resolution dated 2.11.2001. This interim stay was refused by the Co-operative Court vide this order dated 27.11.2001.

i) On 11.11.2001, the Collector, Chandrapur, considered the communication received on the question as to who should be delegate of the society to the Apex society. He accepted the name of the petitioner as the delegate of respondent no.2 and rejected the name of respondent no.3 for the said post.

j)On 27.11.2001, the Collector, Chandrapur prepared the final list and in this list the name of the petitioner came to be shown.

k)On 29.11.2001, the present respondent no.3 filed an appeal before the Cooperative Appellate Court being appeal No.90 of 2001, challenging the order of the Co-operative Court dated 27.11.2001, refusing interim relief.

l)On 12.12.2001, the Cooperative Appellate Court, after hearing both sides was pleased to set aside the interim order passed by the Cooperative Court, Nagpur in Dispute No.1086/2001 and granted stay of resolution No.7 passed in the Annual General Meeting dated 2.11.2001. The operative portion of the order dated 12.12.2001 was as under :-

" 1) The appeal is allowed.

2) The Judgment and Order passed by the Judge, Co-operative Court, Nagpur in Dispute No.1086/2001 on 27.11.2001 is hereby set aside.

3) The Injunction Application of the disputant is allowed and the Resolution No.7 passed in the Annual General Meeting dtd.2.11.2001 passed by the Respondent No.1/Opponent No.1 Society is hereby stayed till the decision of the dispute. The Lower Court is directed to decide the dispute within two months from date of receipt of order of this Court.

4) Parties to bear their own costs.

5) Record and proceedings be sent to lower Court."

m)On 20.12.2001, respondent no.3 sent a notice to the Collector enclosing a copy of Judgment and Order dated 12.12.2001 passed by the Cooperative Appellate Court.

n)On 31.12.2001 the Collector, Chandrapur instead of deciding the matter in the light of the order passed by the Cooperative Appellate Court, merely passed an order that the order of the Cooperative Appellate Court was being taken note of

in the remarks column and ordering that further steps will be taken in the matter by the Returning Officer appointed to conduct the election of the Apex society.

o)On 1.1.2002, acting in pursuance of Rule 16 of the Maharashtra Specified Cooperative Societies Elections to Committees Rules,1971(hereinafter referred to as "Elections Rules", the Collector declared the election programme. Under the Election programme, the last date for making nomination was 7.1.2002. The date of publication of final list of contesting candidates is admittedly 25.1.2002.

p)On 8.1.2002, the Returning Officer appointed to conduct the Election of the Apex society accepted the nomination of the petitioner.

q)Writ Petition No.23 of 2002 was filed by the petitioner challenging the Judgment dated 12.12.2001 passed in Appeal No.90/2001 by the Maharashtra State Appellate Court, Nagpur Bench, Nagpur. Writ Petition No.167/2002 has been filed by the respondent no.3 and one another against the Collector, returning officer, Apex Society, respondent no.2 and the petitioner impugning the orders passed by the Collector, Chandrapur, dated 11.11.2001, 27.11.2001 and 31.12.2001. The petition also impugns the order of the Returning Officer dated 8.1.2002.

5. The first question which I intend to consider is whether there is any need to entertain in Writ Petition No.23/2002 and interfere with the order of the Cooperative Appellate Court Nagpur, dated 12.12.2001. It is not in dispute that u/s 72 of Maharashtra Cooperative Societies Act, 1960, the final authority of every society vests in the general body of the members in its General Meeting, summoned in such a manner as may be specified in the byelaws. The real question which arises is whether such final authority, which is vested with authority by statute can exercise its authority in the manner, which is not bonafide and by following a procedure, which could defeat the spirit of cooperation which forms the underlying basis of the Maharashtra Cooperative Societies Act, 1960.

6. To my mind, prima facie the procedure adopted for exercise of final authority by the Annual General Meeting does not appear to be bonafide. Although the question of sending the delegate from respondent no.2 society to the Apex society, was a question of importance, no notice was given to the members that this question would be raised at the last moment in the Annual General Meeting with the permission of the Chairman. It may be mentioned here that in fact this question had earlier been decided by resolution of Managing Committee dated 12.10.2001. In such a situation, the members of respondent no.2 society would have been under an impression that this question had already been decided. In the case of Myurdhwaj Co.op.Group Housing Society Ltd. Vs. Presiding Officer, Delhi Coop. Tribunal and others, reported in (1998) 6 Supreme Court Cases, Page 39, " the Supreme Court held that a general body of a society can always with the approval of the house in the meeting of its members take up any other matter not covered by the agenda and on that account no illegality could be held.

7. In the present case, there was no approval of the house for taking up the question of appointing a delegate to the Apex society. In fact the minutes indicate that the proposal for taking up this matter was made by only one member and seconded by another. Even the Secretary to the society protested against taking of this matter and in view of its not being on the agenda. A protest was also made by others including the present respondent no.3. The protest were overruled by the Chairman and in such a situation when only 174 members out of 1638 members of the respondent no.2 society were attending, a resolution appointing the petitioner as a representative delegate came to be passed. A prima facie view has been taken by Cooperative Appellate Court that the exercise of powers was not bonafide.

8. It may be stated that while interpreting the provisions of the Maharashtra Co-operative Societies Act, as well as the exercise of statutory powers conferred by the said Act, due regard must be had to a fact as to whether such action is bonafide or whether the same has been done in the manner which would defeat the cooperative spirit, which is the very rationale for the promulgation of the Maharashtra Cooperative Societies Act.

9. Having said this, since the question of bonafide nature of the action is yet to be decided in the pending dispute before the Cooperative Court, which question will be decided on the basis of evidence led, at this stage I would refrain myself from making any further comments, which would prejudge the question in the pending dispute. It is sufficient at this stage to say that the view taken by the Maharashtra Cooperative Appellate Court while passing the impugned judgment and order dated 12.12.2001 is a view which is possible and calls for no interference in the exercise of writ jurisdiction.

10. In the circumstances, Rule in Writ Petition No.23 of 2002 stands discharged and the said Writ Petition is dismissed.

11. We now come to the Writ Petition No.167 of 2002, which has been filed by respondent no.3 in Writ Petition No.23 of 2002.

12. The contention raised by the respondent no.3 in this petition is that the Collector, Chandrapur fell into error on two counts :-

a) that he did not take cognizance of a judicial order passed by the Cooperative Appellate Court, Nagpur dated 12.12.2001 and had he taken cognizance of the said order, he would have noticed that the resolution of respondent no.2 society dated 2.11.2001 had been stayed. The argument is that in view of the stay the effect and force of the Managing Committee meeting dated 12.10.2001 stood revived and thus the Collector was duty bound to delete the name of the petitioner and to add the name of respondent no.3.

b) that in any case the Collector was the authority to decide the question as to whose name was to be included on the voters list as delegate of respondent no.2 society and he could not abdicate this statutory responsibility by merely passing

an order that the same will be decided by the Returning Officer, who had no power to decide the same.

13. On behalf of the petitioner, the arguments made can be summarized as follows :-

a) that in view of the Judgment of the Supreme Court in the case of Shri Sant Sadguru Janardan Swami Vs. State of Maharashtra reported in 2001(6) Scale Page 585, since the preparation of the electoral roll for electing members to the Managing Committee of a specified society under the provisions of the Act and Rules is an interlocutory stage in the process of the election, the High Court should not interfere with the preparation of an electoral roll in a petition under Article 226 of the Constitution and should decline to interfere in the matter leaving the parties to get the matter adjudicated by the Tribunal by filing an election petition after the declaration of the result of the election.

b) that in any case the stay which was granted by the Co-operative Appellate Court on 12.12.2001 could have only prospective effect and could not have been taken into account by the Collector to alter his order dated 11.11.2001 or the final list dated 27.11.2001.

c) that the power of the Collector under Rule 5(2) of the Election Rules having already being exercised on 11.11.2001, the stage for exercise of such power had passed and he could not have again exercise the said power after the decision of the Cooperative Appellate Court was brought to his notice by respondent no.3 vide his letter dated 20.12.2001.

14. The first question which I now consider is whether the Collector has any power under the Election Rules to effect a change in the final voters list published by him under Rule 7. On perusal of Rule 5(2), it is seen that a society which has communicated the name of its delegate can by like resolution change the name of its delegate not later than 7 days before the date appointed by the Collector under Rule 16 of the said Rules for making nomination.

15. The final list is prepared by the Collector under Rule 6(4) after deciding all claims and objections raised under Rule 6(1). The Rule 6(5) gives power under specified circumstances to reopen and reconsider the final list by following the procedure laid down under Rule 6(6) and Rule 6(7). This indicates that the final list under Rule 6(4) is not necessarily the last word and the Collector has got the power to reconsider the list in the specified circumstance. In the present case we are not concerned with Rule 6. However, reading of Rule 5(2) indicates that it enables a society to change the name of its delegate not less than 7 days before the date appointed by the Collector under Rule 16 of the said Rules for making nomination.

16. Under Rule 16, the Collector can pass an order declaring an election programme after 30 days of the date of display of the final list of votes of the society under Rule 7. A homogeneous reading of Rule 5(2) read with Rule 16 can

only imply that if a society changes its delegate within 7 days before the date appointed by the Collector under Rule 16, the Collector has the power to give effect to this enabling provision contained in Rule 5(2). To say that the Collector would have such no power would render the enabling provision under Rule 5(2) as negatory. It follows as a corollary that the power should be exercised by the Collector at least before the day of filing of nomination fixed under the election programme declared under Rule 16. This limitation on power of the Collector as regards the time within which he must take decision also flows from Rule 5(2) since if the resolution effecting the change is passed later than 7 days before the date for nomination fixed by the Collector under Rule 16, then the same cannot be given effect under Rule 5(2).

17. The second question is whether the Collector ought to have exercised his power of effecting the change. In the present case the Judgment of the Cooperative Appellate Court was brought to the notice of the Collector on 20.12.2001. The Collector who had power to decide the same, in any case before the date inviting nomination which coincided with the declaration of election programme on 1.1.2002, chose to wait till 31.12.2001 and even then merely abdicated his responsibility and directed that further steps would be taken by the returning officer. The Collector did not specify as to what further steps would be taken by the returning officer and on 8.1.2002, the Returning Officer accepted the nomination of the petitioner. I find that the Returning Officer is not empowered to decide the question of whose name should appear in the final list of voters. Once this position is accepted, the order of the Collector dated 31.12.2001 will be required to be set aside.

18. The third question, which required consideration was the effect of the stay given by the Cooperative Appellate Court vide in its order dated 12.12.2001. The argument was that the stay could not undo the effect of the earlier decision of the Collector dated 11.11.2001 as it was only prospective. Reliance was placed on the Judgment of Paikamma and Another Vs. Maroti, wherein it was held as under :- " It is a fact of common knowledge that if the decree is executed before the stay order of the superior Court reaches the original Court, the stay order become inoperative.

19. This argument need not detain us further because even when the stay was communicated by the respondent no.3 to the Collector, on 20.12.2001, the Collector had time up to 31.12.2001 to decide on the question of whose name is to be finally included in the final list of voters. Thus when he took up the matter for decision on 31.12.2001, he was duty bound to take into account judicial order passed by the Cooperative Appellate Court, Nagpur and could not ignore a judicial order by merely saying that the same was taken note of in the remarks column and vaguely saying that further steps in this regard will be taken by the returning officer.

20. On the question of not interfering under Article 226 of Constitution of India, the arguments of the petitioner were based upon the two questions raised in

paragraph 4 of the Judgment of the Apex Court referred supra. However, the answer to these questions contained in paragraph 12 of the Judgment is that the High Court should not stay the continuation of the election process even though there may be some illegality or breach of rules while preparing the electrol roll.

21. In the present case, I find that final list of contestants under Rule 16(1) (7) is to be published on 25th January,2002. If the Collector is directed to reapply his mind, on the application of the respondent no.3 dated 20.12.2001, the election process need not be disturbed. Advocate for respondent no.3 has made a statement that his client does not wish to contest the election and he will be satisfied if his application dated 20.12.2001 is considered for the purpose of determining the question as to whether he is to be added on the voters list and as to whether the name of the petitioner is to be deleted.

22. In the aforesaid circumstances, I feel that since the final order can be passed without disturbing the election process, it would be desirable that the Collector decides the application of respondent no.3 dated 20.12.2001 on or before 25.1.2002 and in any case before publishing the final list of contesting candidates. He will take a final decision in the light of observations mentioned in this judgment.

23. A.G.P. agrees to communicate copy of the Judgment and order to the Collector, Chandrapur by noon tomorrow, to enable the Collector to take a decision.

24. In view of what is stated hereinabove, the order of the Collector dated 11.11.2001 and 31.12.2001 are set aside.

25. The final list formulated by the Collector on 27.11.2001 and the order of the returning officer dated 8.1.2002 nominating the petitioner will be governed by his own decision taken in pursuance of this Judgment.

26. Rule is made absolute, in the aforesaid terms.

27. Steno copy of this order to be furnished to parties on demand.

28. At this stage, Advocate for petitioner seeks a stay of this Judgment, for a period of three days.

29. The prayer is rejected.