

(2024) 01 BOM CK 0070

In the Bombay High Court

Case No : Writ Petition No. 6, 8, 23, 31, 371, 372, 380 Of 2024, Civil Appeal No. 454, 455 Of 2024

Sanjay @ Raosaheb Yadavrao Waghchaure And Others

APPELLANT

Vs

State Co-operative Election Authority And Others

RESPONDENT

Date of Decision : 16-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Maharashtra Co-Operative Societies (Election To Committee) Rules, 2014 — Rule 6, 11

Maharashtra Co-Operative Societies (Election To Committee) Rules, 1914 — Rule 9, 10, 11, 11(i), 78

Maharashtra Co-Operative Societies Act, 1960 — Section 11, 23, 25, 25A, 26, 27, 27(10), 35, 38, 40, 77A, 91

Citation : (2024) 01 BOM CK 0070

Hon'ble Judges : S. G. Mehare, J

Bench : Single Bench

Advocate : M.S. Deshmukh, Dhananjay S. Patil, Rahul Cheble, S.S.

Gangakhedkar, V.H. Dighe, S.K. Kadam, K.J. Suryawanshi, N.B. Khandare, D.J. Choudhari, P.K. Nikam

Final Decision : Disposed Of

Judgement

S.G. Mehare, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. By these writ petitions, an order dated 14.12.2023 of District Co-operative Election Officer cum Regional Assistant Director (Sugar), (DCEO for short), Chattrapati Sambhaji Nagar (Aurangabad)/respondent No.2 passed on 14.12.2023 has been impugned.

3. The petitioner, namely Sanjay Yadavrao Waghchaure, had raised the following objections to the provisional voters list published on 24.11.2023 for the elections of Managing Committee of Sant Eknath Sugar Factory Ltd, Taluka Paithan,

District Chattrapati Sambhajinagar:

- (i) The voter list is an outcome of fraudulent activities.
- (ii) So long as around the original 18,645 members were inappropriately dealt with by modifying the membership list.
- (iii) The provisional voter list violated Section 25-A of the Maharashtra Co-operative Societies Act, 1960 (the M.C.S. Act for short). No proceedings contemplated under that Section were undertaken to remove the members. Still, many members were removed from the list at the whims and fancies of the present Managing Committee.
- (iv) A large number of members who were not the residents of the area of operation of the Society were incorporated as members of the said Society.
- (v) A large number of members who were holding no lands required as per the law were incorporated.
- (vi) No audit was conducted to arrive at the conclusive figures of the members as is expected under law.
- (vii) Around 5000 members who did not satisfy the basic qualifications to be members have been shown as members of the Society. Many members have not satisfied the sugarcane supply criteria for five continuous years. Hence, they were not qualified as per clause No.17(A)(3)(IV).
- (viii) The applications for transferring the shares made by the legal heirs of the original members were not decided, and the provisional voters list was prepared hastily.
- (ix) Respondent No.2 has not properly appreciated the concept of Bye-laws No.6 and 8 of the Society's Bye-laws.
- (x) The voters who were disqualified under Section 27(10) of the M.C.S. Act have been approved as valid voters in the provisional voters list. Unless the member is legally disqualified for the reasons of defaulter, such members cannot be ineligible to be a member or voter as maintained as per Schedule-I of the M.C.S. Act. In the present case, there is no reference to the submission of I-Register; even maintenance of the same is strictly not in compliance with the M.C.S. Act and by-laws, which provide additional qualification or disqualification. The provisional voter list was inconsistent with Section 38 r/w Schedule-I of the M.C.S. Act.
- (xi) Respondent No.2 has not appreciated the certificates issued by the Talathi, incurring disqualification of the members included in the voters list correctly.

4. The other objections in other petitions were ;

- (i) The agriculturists who were not residents of the area of the operation of the Society were added to the voters list.

(ii) The agriculturists with no land were illegally admitted as members and added to the voter list.

(iii) A minor not qualified to be a member was admitted as a member of Society.

(iv) The members were not defaulters for not paying the difference of raised share value.

5. Heard the respective learned counsels at length.

6. The following points arise for consideration :

i) Did the petitioners/objectors have a locus to raise objections to deleting and adding the names of the members from the provisional voters list?

ii) What is the scope of enquiry on the objection under Rule 11 of the M.C.S. Election Committee Rules, 2014?

iii) Whether the issuance of notice to the persons against whom the objections were noticed was essential in the facts and circumstances of the case?

iv) Whether the provisional list is defective for changing the cut-off date?

v) Does By-law no.8 extend three years to clear the difference of raised share value as provided under By-law no.6?

vi) Whether the judgment of the Division Bench of this Court passed in Writ Petition No.15083 of 2023 filed by the petitioner Sanjay @ Raosaheb Yadavrao Waghchaure Vs. the State of Maharashtra and others with other connected writ petitions decided on 08.01.2024 has bearing on these petitions?

As to Point No.(i) :

7. Learned counsel for the petitioner, Mr. Mahesh S. Deshmukh, for the petitioners in Writ Petition Nos. 6 of 2024 and 8 of 2024 vehemently argued that the Managing Director In charge had no power to submit the voter list. It was not in the prescribed form E-III (I). Respondent No.2 had to publish the list, but he did not. The petitioner is admittedly a member of the Society. Hence, under Rule 11(i) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 1914 (the Rules 1914 for short), he has a locus to object to the provisional voters list. It was a composite objection and should have been entertained as a large number of voters have been deleted/removed. He referred to Sections 11, 25, 25-A, 35, 38 and 40 of the M.C.S. Act and vehemently argued that in no way the persons who had been expelled/removed from the provisional voters list were not disqualified from being voters. He also argued that the Society did not follow the procedure for removal/expulsion of the members.

8. On the point of the locus standi of the objectors, relying on the case of Babasaheb Bapusaheb Patil and Ors Vs. The State of Maharashtra, 2016 (1) ALL MR 777 of this Court, the learned counsel for respondent No.3, argued that no member of the Society other than the defaulter could raise objections about

delisting him from the provisional voters list. The learned counsel, Mr. Nikam, has vehemently argued for respondents Nos 3 in Writ Petition Nos.8 of 2024, 372 of 2024 and 380 of 2024 that the members against whom the objections were raised were not the parties to the objections. In Writ Petition No.6 of 2024, referring to pages nos.45 and 46 of Writ Petition No.6 of 2024, he pointed out that the objections do not bear the signatures of the objectors. He added that all the objections were stereotypes. In Writ Petition No.6 of 2024, the objector, Swabhimani Shetkari Sanghatna, was not a member of the Society. Hence, their objections were not tenable.

9. Advocate Mr. Dighe for respondent No.1 argued that the petitioner, namely Sanjay Yadavrao Waghchaure, had no locus to raise the objection for the members who did not individually raise the objections. He cannot raise the objection in a representative capacity. He was not an aggrieved person. He was not the member disqualified to be a voter. Therefore, the objection for the members who were not listed in the provisional voters list could not be considered. Rule 11 of the Election Rules, 2014, debars from raising objections for the other members. The Rule is specific that the members should have raised their objections individually. The objections were vague.

10. Learned counsel Mr. Deshmukh for the petitioners in Writ Petition No.6 and 8 of 2024 replied that the case of Babasaheb Bapusaheb Patil (supra) did not deal with Rule 11 of the Election Rules. The findings were without the spirit of the said Rule. Hence, it is not binding in view of the facts of this case.

11. The petitioner Sanjay Waghchaure has raised the objection before respondent No.2 under his signature for a few persons, and the rest of the list of the persons was signed by Shri Mauli P. Mule, President, Swabhimani Shetkari Sanghatna. Objections in the names of Shivaji Shagwat Landage, Sadhna Shivaji Landage, and Shilabai Bhagwat Landage do not bear their signatures, and the objection on page no.63 neither discloses the name of the objector nor his signature.

12. The petitioners in Writ Petition No.371 of 2024 raised the objections in person that they were the Sugarcane Producer members of the Sugar Factory. However, their names have been deleted from the provisional voters list. Hence, their names be added. Their objections have been illegally rejected because they did not produce evidence of their membership.

13. The petitioners in Writ Petition Nos. 372 of 2024 and 380 of 2024 raised the objection that the persons named in their objections have been illegally added to the voters list because they do not reside in the area of the operation of the Society and have no land. One of the reasons for rejecting their objection was that they did not produce evidence of their membership. The rejection means that they were not the member of the Society.

14. Both parties interpreted Rule 11 of the Rules 2014. Hence, for ready reference, the Rule is reproduced;

"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 names or addresses or other particulars in the list may be brought to the notice of the District Co-operative Election Officer Taluka or war Co-operative Election Officer in writing by any member of the Society concerned who is 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)"

15. The above Rule provides for objection to the provisional and final voters list by any member of the Society concerned. However, he shall be a voter. Where a society is a voter, the authorized representative may raise objections.

16. There is no quarrel that the District Co-operative Election Officer has to decide the claim and objections to the provisional list of the voters and the final list of the voters for the Society having Society or societies and individuals as members as provided under Rule 11 of Rules, 2014. It is evident from the impugned order that a fair opportunity of hearing was granted to the objectors. The claims and objections were considered and decided within the ambit and scope of Rule 11 of Rules 2014. The petitioners have no case that the defaulter in person had raised objections.

17. Learned counsel for the petitioners argued that Rule 11 of Rules 2014, unambiguously provide that any member of the Society may raise the objection. The member who is in default is not necessarily an objector. He indirectly argued that the members interested in contesting the Election are concerned with the legality and validity of the voter list. He is the watchdog on the voter list. He prevents the members/voters not entitled to vote from being voters. Rule 11 was not considered in the case of Babasaheb Bapusaheb Patil (supra). Hence, it is not applicable to the case at hand.

18. This Court, in the case of Babasaheb Bapusaheb Patil (supra), on the fact that the objections of the petitioners to their exclusion in the voters list of the societies were considered by the returning officer discussing the Election Rules, 2014, in paragraph No.6, observed thus :

"However, in the present petition, general prayers are made against all others whose names were deleted by following due procedure of law by the concerned Society initially and confirmed by the authority later on. The members whose names were deleted did not raise objections at the relevant stage of proceedings after provisional list published by the Society. The issue even, if any, whether they are the defaulters or not needs to be objected and/or raised by the concerned member only. The Society and authority are under obligation to consider the objections raised by the individual member as the rules as referred

above contemplate "the hearing and the decision to be given for and against the member concerned". This itself means, if there is no objection raised by the defaulter and/ or member who is delisted from the provisional list or other list at appropriate time, no third person and/or the member on their behalf specifically when they are declared defaulters, insist to include their names, when they themselves never took appropriate steps within the statutory period. There is nothing on record to show that all other members have been any power of authority and/or provide them an authority in writing to raise objection on their behalf."

19. With the above observations, it has been held that the locus of such third person/members in this background to file such objection and to insist on others' inclusion without removing the tag 'defaulter' by those defaulter members, in my view, is not permissible. This Court, in the above case, has considered the relevant rules in force with effect from 11.09.2014 called the Maharashtra Co-operative Societies (Election to Committee) Rules 2013 and considered Rules ranging from 6 to 11, which deal with the preparation of voters list in Part III of the said Rules. Therefore, it could not be accepted that Rule 11 was not considered in Babasaheb Bapusaheb Patil (supra).

20. In this case, the objectors were not the members in person, or the members who were delisted from the list did not individually come forward. As discussed above, a few applications were filed without signatures, and they were not yet admitted as members of the Society. One of the signatories to the objector, namely the President of Swabhimani Shetkari Sanghatna, was not prima facie satisfied that he was a member of the Society. Learned counsel for the respondents has correctly pointed out that since the said union is not a member of the Society, its President has no locus to raise the objection.

21. In view of the above facts and law, point no.1 is answered that the person other than the defaulters/members not listed in the provisional voters list has no locus to raise the objections before the DCEO/respondent No.2.

As to Point Nos.(ii) and (v) together :

22. These issues have been hotly contested by arguing that the objections that were proved were not considered on the ground that such objections were beyond the jurisdiction of respondent No.2. The objections, in brief, were that many voters who are not defaulters had been deleted from the provisional voters' list. Many voters who are not residents of the area of the operation of Society have been added to the voter list, and the agriculturists who have no land have also been added to the voter list. Such voters should be deleted from the voter list. The minor who was not qualified to be a member of the Society has also been listed as a voter. The evidence placed on record was not considered. Bye-law No.8 of the Society extends a year to pay the difference amount of the raised share value, and it was yet to be over on the day of preparing the voters list. Respondent No. 2 did not consider this legal aspect to

hold that the members who have been deleted were not disqualified.

23. Learned counsel for petitioners Mr. Deshmukh pressed into service Section 26 of the M.C.S. Act and argued that the said Section would not apply to the case at hand as none of the members were disqualified or defaulters. He argued that Bye-law Nos. 6 and 8 should be read together. Referring to Bye-law no.8, he vehemently argued that after the last notice calling upon the shareholders to deposit a difference amount of raised share value, the Society was to wait for one year from 08.08.2023. Therefore, not paying the difference amount of the raised share value would not disentitle the members to qualify to vote at the Election. Since one year after the last notice dated 08.08.2023 was not over, they cannot be branded as defaulters as provided under Section 26 of the M.C.S. Act. Referring to the impugned order, he submitted that respondent No.2, on the one hand, denied deciding the objections, holding that the enquiry about objection is a summary proceeding and he has no jurisdiction to decide the objection as regards the members who had no lands and not the residents within the area of the operation of the Society. On the other hand, he relied upon Section 38 of the M.C.S. Act and illegally held that the register maintained by the Society is prima facie evidence of the membership. He also argued that respondent No.2 has deliberately not exercised the powers to consider the legal and proper objections. Relying on the case of Ankushbhau s/o Juglal Beghale and others Vs. State of Maharashtra through its Secretary, Ministry of Co-operation, Marketing and Textile, Mantralaya Mumbai and others of Nagpur Bench passed in Writ Petition No.1686 of 2022 dated 13.04.2022, he argued that the entry in the register of members has a presumptive value. There was no evidence in rebuttal by the Society. Therefore, members shown in the I-Register should have been listed in the voters list. Respondent No. 2 did not pay heed to the statutory presumption and passed erroneous orders.

24. Learned counsel Mr. S.S. Gangakhedkar for the petitioners in Writ Petition Nos.23 of 2024, 31 of 2024 and 371 of 2024 has vehemently argued that the petitioners moved objection individually in writing for adding their names. The term of the earlier body was over on 31.07.2021. Though the share value was raised in 2013, they cast votes in the Election of 2016. Therefore, their names should not have been deleted from the provisional voters list. He referred to the impugned order, page no.132, and argued that, as per the Auditor's report, 7,116 members were disqualified. Many applications from the legal heirs of deceased members were deliberately kept pending. The powers under Sections 25 and 25-A were of the Registrar only. He also argued that it was brought to the notice of respondent No.2 that the audit report was defective. As per By-law no.8, the notice should be for three years. The report did not mention the notice dated 06.11.2023; hence, the members could not be disqualified. Not recording the entries of the legal heirs is contrary to the law. The agriculturists outside the sugar factory's operational area are not entitled to become members. Around 5000 members of similar type were added to the list. In a nutshell, he would submit that the provisional voter list was defective mainly on the grounds that

the agriculturists who are not the residents of the operational area of the sugar factory and have no land have been illegally listed in the provisional voter list. For petitioners in Writ Petition No.371 of 2024, he argued that the petitioners replied to the notice dated 08.08.2023 calling upon them to pay the difference of the increased share value on 27.09.2023. The objection was raised that general meetings were not called in the last three years. The balance sheet and audit report were not supplied to the members. No intimation about the liabilities was deliberately given for the last three years. These material aspects were deliberately not considered, and the objections were outrightly rejected. Referring to By-law no.8, he again submits that to date, no action has been taken to forfeit the defaulters' share for not paying the difference amount of raised share value. On the contrary, from time to time, they have extended the period to pay the difference of the raised share amount by issuing notices. The petitioner did not violate a statutory provision to be disqualified from voting. Considering this fact, the names of the eligible members should not have been deleted from the voter list, and members who were not qualified could be added to the voter list.

25. Learned counsel Mr. Dhanjay S. Patil for petitioners in Writ Petition No.372 of 2024 has argued that the objections were raised that Village Vijaypur was not in the area of the operation of the factory and the agriculturist of Village Anantpur had no agricultural land. One of the members was the minor. Her age proof was also placed before respondent No.2. However, that document was not considered. Similarly, the agriculturists from Village Dhakephal did not have agricultural lands. Hence, they were not entitled to become the members of the Society. This fact was also brought to the notice of respondent no.2. He referred to Bye-law no.17-A and argued that a person below 18 years could not become a member, but the minor was admitted as a member of the Society. However, this material defect and illegality have not been considered.

26. The learned counsel for petitioners in Writ Petition No.380 of 2024 argued that the objection was raised for the illegal inclusion of the Societies. These societies were not co-operative societies and had the sugarcane business. Those societies had the object of social and vocational services. These facts were brought to the notice of respondent no.2, but such a serious objection has been illegally rejected. The objection was rejected on technical grounds that the Vakalatnama does not bear the signature. Another illegal reason was that no proof of depositing the difference amount was produced. The objector did not produce evidence that he is a member of the Society. However, his name was included in the provisional voters list.

27. Per contra, learned counsel Mr. V.H. Dighe for respondents nos.1 and 2 argued that the share amount was raised in 2013 by a resolution. Individual notices calling upon the members to pay the difference amount of the raised share value were served upon them. The members who failed to pay the difference amount were dis-entitled to be voters on the provisional voter list. It is

not the case that the members qualified to be voters were deleted. Only the members who were not qualified to be voters have been deleted. Respondent No.2 has discussed the facts and his jurisdiction in detail. A fair opportunity was granted to the persons who appeared before him. They were heard in detail. For respondent Nos.1 and 2 in Writ Petition No.382 of 2024, he replied that page no.64 i.e the age proof of the so-called voter, was produced for the first time before this Court. Hence, such an objection cannot be considered in this writ petition.

28. Learned counsel Mr. S.K. Kadam for respondent nos.1 and 2 in Writ Petition No.23 of 2024 and 31 of 2024 has vehemently argued that the person may be a member, but he may not be a voter. The member and voter are two different concepts. The M.C.S. Act provides for the procedure for preparing the voters list and the qualifications of the members to be voters. Since a large number of members did not pay the difference amount of the share value even after notice, they became disqualified to be voters, and hence, their names were not included in the provisional voters list. He has vehemently argued that the statutory period to pay the difference of raised share value was not over in 2016. Hence, they were allowed to cast votes in the Election of 2016. He referred to Section 26 of the M.C.S. Act, particularly the first proviso and argued that the member shall not exercise the rights unless he has made such payments to the Society in respect of membership or acquired such interest in the Society and he has to pay the difference of increased minimum contribution after the reasonable notice. From time to time, the notices, as required under the second Proviso to Section 26 of the M.C.S. Act, were issued to the members to pay the difference. However, they failed to pay the difference in raised share value; therefore, they are not entitled to be listed on the voters' list. He also referred to Section 23 and argued that under its powers, the Committee had framed the Bye-laws nos.6 and 8 by following the due procedure of law. Its validity was never challenged. He submits that the order impugned before the Court was legally valid and correct.

29. Advocate Mr. Nikam referred to Bye-law no.17-A sub-clause (2) and argued that in case the concerned person is from the joint family, he has a right based upon the minimum acre of the sugarcane, in such a situation, the names of such persons should be in 7/12 extract is not essential. Therefore, barely having no name in the 7/12 extract is not the test to determine whether the person listed in the provisional voter list has or has no agricultural land within the operational area of the sugar factory. The question whether the person has land or not or resides outside the area of the operation of the factory is dealt with under Section 11 of the M.C.S. Act. Respondent No. 2 had a limited scope to decide such objections under Rule 11. He has no jurisdiction to touch the business of the Committee accepting, removing or denying the membership. Referring to Bye-law no.8, he argued that it is about the confiscation of the shares if the member fails to pay the difference amount of the raised share value within three years. However, for such confiscation, the Committee must grant the member one year. The plain reading of this Rule does not show that it extends the period

of three years to deposit the difference amount. Three years were over on 29.07.2016. The first notice was issued on 12.04.2021, the reminder notices were issued on 08.08.2023, and the Newspaper publication notice was published on 17.08.2023, calling upon the members to pay the difference amount of the raised share value. All members in arrears to pay the difference amount were served individually. Even then, the members who were not listed in the provisional voter list did not pay the difference amount of the increased share value in time. The counsel for the petitioners has misinterpreted Bye-law no.8 and misconceived that extended further one year to pay the difference of raised share value.

30. He further argued in Writ Petition No.23 of 2024 that all the societies had paid the amount after the cut-off date. Hence, they were not eligible to become the voter. In Writ Petition No.31 of 2024, he further argued that 78 objectors are still defaulters. Only petitioner no.1 had paid the amount due; hence, he was correctly added to the voters list. The petitioners in Writ Petition No.32 and 34 were not members of the sugar factory. Hence, they had no right to claim that he was the voter of the proposed Election. The petitioner no.1 in Writ Petition NO.371 of 2024 was a defaulter, and petitioner no.2 was the member. To bolster his arguments, he relied on the case of Dhondiba Parshuram Kakade Vs. Shri Someshwar Sahakari Sakhar Karkhana Ltd, 1979 Mh.L.J. 311 on the point of the scope of enquiry by the election officers. In the said case, the Additional Collector, deciding the claims, directed the inclusion of 36 names out of 115 claimants in the provisional voters list. Under this premise, the Bombay High Court, referring to Section 11 of the M.C.S. Act, held that any question pertaining to a person being an agriculturist or not or a person residing in the area of the operation of the Society or not shall be decided by the Registrar. In para 43, it has been observed that it must also be remembered that the scope of enquiry by the Collector under Rule 6 is not only limited in nature but is also extremely summary. He relied on the case of Zamsingh s/o Bhuraji Yerne Vs. District Co-operative Election Officer and others, a decision of Nagpur Bench in Writ Petition No.1146 of 2023 dated 09.03.2023 and argued that the question whether the petitioner was defaulter of the Society considering that the allegations of fraud was made in this regard was beyond the pale and purview of the enquiry as contemplated under Rule 11 of the Rules of 2014. He further relied on the case of Jalinder Tukaram Kharat Vs. The State of Maharashtra, 2022 (3) Mh.L.J. 547, argued that the nature of objections could only be considered under Section 11 of the M.C.S. Act, and the said legal position has been reiterated in the said case. He further relied on the case of Pundalik Vs. District Deputy Registrar, Co-operative Societies, Chandrapur and Ors, (1991) 2 SCC 423 and argued that once the member incurred disqualification on the ground of default will cease to be a member of the Committee. He also relied on the case of Shivaji Appasaheb Shejul and ors Vs. The District Deputy Registrar Co-operative Societies and Ors, 2017 (1) Mh.L.J. 832, and argued that this Court held that firstly, notice to each member ought to have been given and further reasonable period ought to have

been given by the Society to the member to make the payment. Pasting of notice in the Society is not sufficient in view of the requirement of the second proviso to Section 26 of the M.C.S. Act. The second proviso controls the first proviso. He further argued that in this case, individual notices were served upon the members, and in addition, the paper publication was also made.

31. On the point of the cut-off date, he relied on the case of *Manchak Vs. The State of Maharashtra and Ors*, 2011 (3) Mh.L.J. 833. In this case, the dispute was about the payment of the crop loan. The crop loans were paid after the cut-off date for filing the nominations. Under this premise, this Court held that if there was no repayment and postponement of recovery, a notice to the borrowers and guarantors should be served, calling upon them to make repayment within a specific time. Both respondents were aware of their defaults and attempted to clear outstanding loans only after the last date. In the facts of the case that the loan was tried to be repaid after the cut-off date, the Court held that there was no breach of principles of natural justice. Finally, the Court rejected the nomination of the respondents for the reason that they had attempted to clear the outstanding loan only after the last date of nomination.

32. Section 26 of the M.C.S. Act disqualifies a member from exercising rights who is in default of payment to the Society, and if he fails to pay the increased share value, provided, the Society should give a notice of demand and reasonable period to comply with.

33. Section 11 of the M.C.S. Act speaks of the powers of the Registrar to decide certain questions. Whether a person is an agriculturist or not, or whether any person resides in the area of operation of the Society or not, are decided by the Registrar under this Section.

34. Bye-law no.6 provided the outer limit to pay the difference money of the raised share value and the mode of payment. The member was either to pay the difference amount by cash or by intimating the Society to deduct the difference amount from the bills for sugarcane.

35. Bye-law no.8, which the petitioners have interpreted as extending a further one year to clear/pay the difference amount, provides that if the member does not pay the difference amount within a period as per the bye-laws, the Society will forfeit the amount of such share and the deposit amount of such shares. However, before forfeiting such an amount, such a member should be given a year. The Society should give a show cause notice by a registered post of fifteen days to the member asking why such an amount should not be forfeited.

36. Section 25 of the M.C.S. Act provides for the cessation of membership. A person shall cease to be a member of a society on his resignation on its acceptance, or by transferring his whole shares or interest to another member, or on his death, or removal or expulsion from the Society, or on the dissolution of the Society, company.

37. Under Section 25-A of the M.C.S. Act, the Society has to remove the name of the member who has ceased to be a member from the membership register or who stands disqualified by or under the provisions of the Act.

38. The Society in 2013, by following a due procedure, raised the face value of shares from Rs.100 to 10,000 and determined three years to pay the difference amount by framing Bye-law No. 6. It is not disputed that the said period of three years was over on 29.07.2016.

A last notice was issued on 08.08.2023. It is admitted that many members did not pay the difference amount of raised share value, though notices were served on them from time to time.

39. The petitioners have a contention that unless the name of the member has been removed from the register of members, membership continues, and for any reason other than the cessation, removal, expulsion, resignation, transfer of shares or death. The persons who have not been added to the voters list were the members on the register of members. The said register is the source for preparing the voter list. Hence, deleting their names from the voter list is illegal. Respondent No.2 had jurisdiction to decide such objections.

40. Rule 6 of the Rules 2014 provides for the preparation of the provisional voter list. Under that Rule, the active members shall be included in the provisional voters list as laid down in Sections 26 and 27 of the M.C.S. Act.

41. Section 25 of the M.C.S. Act does not say that any member in default to pay the member fee or the difference amount of rise in the share value shall cease to be a member of the Society. Similarly, Section 25-A also does not say the member should be removed from the membership register for the above reasons. Reading Rule 6 with Sections 26 and 27, it is explicit that the members who are defaulters as provided therein shall not be added to the provisional voters list. The learned counsel Mr. Kadam, has correctly argued that to be a member and a voter are two distinct concepts. A voter must be a member, but a member may not be a voter. Therefore, it could not be accepted that Section 26 of the M.C.S. Act does not apply to the present case.

42. In the case of Dhondiba (*supra*) relied upon by the respondents on the scope of enquiry under Rule 11, it has been held that the inquiry on objection to the voters by the Election Officer is limited and extremely summary. Section 11 of the M.C.S. Act explicitly empowers the Registrar to decide whether a person is an agriculturist or not or a person is a resident of the area of the operation of the Society. Reading this Section and the scope of enquiry under Rule 11, it is explicit that the objections regarding the members that they are not the residents of the areas of operation of the Society and few are not the agriculturists were not within the ambit of Rule 11 and jurisdiction of Respondent No. 2.

43. Bye-laws Nos.6 and 8 are distinct. Bye-law No. 6 has provided the outer limit

of three years to pay the difference amount of the raised share value. Bye-law No.8 seems to be a penal action to forfeit the shares that were with the Society if the member fails to pay the difference amount of raised share value within a year by giving fifteen days' notice. Both these Bye-law are independent. These By-laws cannot be read together to interpret that Bye-law No. 8 extends a further period of a year to clear the difference in the amount of the raised share value.

44. There was a substance in the arguments of learned counsel Mr. Kadam that since three years to pay the difference amount were not completed in 2016, the members in arrears of the difference amount of raised share value were not removed from the voter list. Hence, they were allowed to vote in the Election of 2016. The petitioners cannot take the benefit of such a past.

45. It has been established that before deleting the names of members in default to pay the difference amount, the notices were served upon them individually on 12.04.2021 and 08.08.2023, and the Newspaper notice was published on 17.08.2023. Learned counsel for respondent no.3 has correctly pointed out that 78 petitioners in Writ Petition No.31 of 2024 were the defaulters. The petitioner no.1 in Writ Petition No. 371 of 2024 was also the defaulter. All the societies in Writ Petition No. 23 of 2024 paid the amount after the cut-off date. Hence, they were not added to the provisional voter list. The findings of Respondent No.2 in this regard are legal and correct. In view of the facts of the petition, the answer to Point No.(ii) is that Respondent No.2 has a summary power to make an enquiry on the objections, and the objection which falls under Section 11 of the M.C.S. Act is not within his jurisdiction. The answer to point No.(v) is that Bye-law No. 8 does not extend a year period in addition to the period of three years as prescribed in Bye-law No.6 to pay the difference in the raised share value in share.

As to Point No.(ii) :

46. The vehement arguments have been advanced that respondent no.2 failed to issue the notice to the members against whom the objections were raised. The learned counsels for the respondents have submitted that it was primarily the objector's duty to give their details and request respondent No.2 to issue them notices. Secondly, none of the members who were deleted from the voter list appeared in person, raising objections against deleting their names from the voters list. The list submitted with the objection barely shows the names of the persons. However, no details of their address were given. Therefore, there was no question of issuing the notices at his behest. That apart, the burden was on the petitioners to prove the objections. This Court, while answering point No.(ii) held that the objections raised were not within the ambit and scope of Rule 11, and only the Registrar has the power to deal with such objections. In this set of facts, this Court is of the view that non-issuing the notice to the persons whose names were deleted and added to the provisional voter list was not essential, and this point is answered accordingly.

As to Point No.(iv) :

47. Learned counsel Mr. Gangakhedkar argued that the Regional Deputy Director (Sugar) had declared 01.02.2023 as a cut-off date by his order dated 20.03.2023. However, without the notice and knowledge of the voters, the State Co-operative Election Authority ('SCEA' for short) has changed the cut-off date from 01.02.2023 to 1.10.2023. It was the misuse of the powers. Since the members were not made aware of the change in the cut-off date, they did not get an opportunity to make the deficit good. It was an illegality on the part of the respondents. It has also been argued that Society meetings were not called for three years. The balance sheet and audit report were not supplied to the members of the Society.

48. Learned counsel Mr. Kadam argued that the earlier Committee did not submit the provisional voter list. Hence, the Registrar appointed the authorized officer as empowered under Section 77-A of the M.C.S. Act. The cut-off date was not changed to deprive any voter. The cut-off date was changed as the Government had postponed the elections. Rule 6 of the Rules 2014, second proviso 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 situations or any other reasons, the provisional list of the voters shall be prepared on the basis of the date fixed by SCEA. Since the Government had postponed the elections, the cut-off date was changed, and it is not illegal.

49. There appears substance in the arguments of learned counsel for respondent Mr. Kadam that the State Co-operative Election Authority, under the exercise of Rule 6 of Rules, 2014, had correctly extended the cut-off date as the Government has extended the Election of the Society. It is not in dispute that the members in default were served individually with the notices calling upon them to pay the difference amount of the increased share value, but they failed and became defaulters. The State Co-operative Election Authority appears to have correctly exercised its powers under Rules 6 and 9 of Rules 2014. The objection about not supplying the audit report and balance sheet to the voters before sending the provisional list of voters to respondent no.2 has no relevance. Hence, the answer to this point is that the provisional list was not defective in changing the cut-off date.

As to Point No.(vi) :

50. Learned counsels for the petitioners have argued that the judgment of the Division Bench of this Court in Writ Petition No. 15083 of 2023 has not dealt well with the issues involved in this writ petition. Hence, it would not come in the way of the petitioners. The learned counsel for the petitioners referred to said judgment, particularly para 44. In the said para, the Hon'ble Division Bench has discussed the failure of thousands of members not paying the increased value of the share for more than three years. The said para also discussed about the issue of notices to all those members. It has also been observed that payment of

the increased value of shares was a mandatory requirement. Whether individual persons received such notices is a matter of dispute and would require the recording of oral and documentary evidence. The same is the case with those persons who are the legal heirs of deceased shareholders. These two aspects have not been raised before us by these two petitioners, as they were already raised before the returning officer.

51. Advocate Mr. Dighe argued that similar issues were raised in Writ Petition No.15083 of 2023. The judgment of the Hon'ble Division Bench in that writ petition directly affects the issues involved in this case. Therefore, this Court need not re-examine the same issues again. The other lawyers for respondents also argued on the same line.

52. Since the respondents have strongly relied on the judgment of Writ Petition No.15083 of 2023 and argued that the said judgment has a bearing on these petitions, the learned counsel, Mr. Deshmukh, argued that the issues raised in these petitions were not involved in those petitions. He would submit that Rule 11 of the Rules 2014 was not before the Hon'ble Division Bench. It was based on Rules 9 and 10 of the M.C.S. (Election and Dispute) Rules. The issues to be dealt with before this Court are different from those dealt with in the said writ petition. He also argued that the Hon'ble Division Bench did not dwell upon the aspects raised in this petition. Reading para 49 of the judgment of the Hon'ble Division Bench, he argued that the Hon'ble Division Bench has kept open the rights of the aggrieved persons to avail the remedy as permissible in law. Hence, this Court may independently test and examine the legality and validity of the impugned order. He also argued that the Hon'ble Division Bench in para 40 had crystallized the other things. The Hon'ble Division Bench has discussed the facts of not paying the difference amounts of the share value raised by the Society. However, no findings on its effects have been recorded. Therefore, the judgment would not come in the petitioner's way.

53. The learned counsel, Mr. Gangakhedkar, relied on the case of Tata Chemicals Limited Vs. Commissioner of Customs (Preventive), (2015) 11 SCC 628 and argued that if the law requires that something be done in a particular manner, it must be done in that manner, and if not done in that manner, it has no existence in the eye of law. On this ratio, he further argued that the objections raised could be considered independently in the present petitions. The earlier judgment was on another issue. Therefore, it would not bar this Court from considering the disputes raised in these petitions.

54. Considering the earlier judgment of the Hon'ble Division Bench in Writ Petition No.15083 of 2023, the Court is of the view that the points regarding the objection raised before respondent No.2 were not considered on merit. However, this Court has considered the objections and submissions of both the parties and recorded the finding thereon except the appointment of the Administrator as it was dealt with in the said petition. Thus, point No. (vi) is answered accordingly.

55. The learned counsel, Mr. Deshmukh, argued that there is no absolute bar to exercise the writ jurisdiction by the High Court in interfering with the election process of the co-operative societies. To bolster his arguments, he relied on the judgment of Dattatray Genaba Lole and others Vs. Divisional Joint Registrar, Co-operative Societies and others, 2021 S.C.C. Online Bom 4579, particularly para 83 and 84. He also relied on the case of Dhanraj Dattatray Patil and others Vs. State Co-operative Elections Authority, Nanded and others, 2023 (5) Mh.L.J. 419, Pundlik Vs. State of Maharashtra and others, (2005) 7 SCC 181, Judgment of this Bench of Ankita Gaurav Mungad and others Vs. The State of Maharashtra and others in Writ Petition No.511 of 2013, decided on 27.03.2023, a judgment of this Court (Nagpur Bench) in the case of Ankushbhau s/o Juglal Baghele and others Vs. The State of Maharashtra and others in Writ Petition No.1686 of 2022 decided on 13.04.2022, Ahmednagar Zilla S.D.V. and P. Sangh Ltd and another Vs. State of Maharashtra and others, A.I.R. 2004 SC 1329, and lastly, on the case of Union Territory of Ladakh and Ors Vs. Jammu and Kashmir National Conference and Anr, A.I.R. Online 2023 SC 739. Further, he relied on the case of V.S Krishnan and Ors Vs. West-Fort Hi-tech Hospital Ltd and Ors, (2008) 3 SCC 363.

56. The learned counsel for the petitioners, along with other case law, relying on the case of Dhanraj Dattatray Patil (supra), argued that a large number of members had been deprived of casting votes only for non-paying the difference amount of increased share value. There is patent illegality in the impugned orders. The Act of deleting such a large number of voters is apparently deliberate. Lastly, he referred to the judgment of Dattatray Genaba Lole (supra) and argued that the petition in nature before this Court is maintainable.

57. The learned counsels for the respondents have replied that in the above case, the ratio was that for invoking the writ jurisdiction, there should be patent illegality dealing with the objections by applying a non-existent rule of provisions to the election process or failing to adhere to a mandatory provision. In the case at hand, the existing rules were applied, and respondent No.2 adhered to the mandatory provisions. Hence, the ratio in the case of Dhanraj Dattatray Patil (supra) is distinguishable on facts. The Court has considered all the relevant provisions referred to by the respective counsels and finds that the objections raised before respondent no.2 were not within his jurisdiction. The defaulters did not personally raise the objection. One of the objectors was not a member of the Society. Respondent No.2 has considered all these relevant aspects and acted within the ambit of law, rules and By-laws of the Society. Therefore, the ratio in Dhanraj's case would not assist the petitioner.

58. Learned counsel Mr. Dighe argued that the disputed questions of facts have been involved in this case. Hence, the objections could not be adjudicated while exercising Writ Jurisdiction. The remedy is under Section 91 of the M.C.S. Act. He also submitted that the election program had been declared on 05.01.2024. Few of the nominations were received. Hence, this Court cannot exercise the

jurisdiction under Articles 226 and 227 of the Constitution of India. He heavily relied on the case of Dattatray Genaba Lole (supra) and argued that such questions should be dealt with under Section 91 of the M.C.S. Act r/w Rule 78 of the Rules 2014. The impugned order is well reasoned. The alternate remedy is an appeal/election dispute. He also relied on the judgment of this Court (Aurangabad Bench) of Ravindra Vithal Kadus and others Vs. The State of Maharashtra and others in Writ Petition No.3202 of 2021 decided on 01.03.2021, and Ramkrishna Sarjerao Jagtap and others Vs. The State of Maharashtra and others in Writ Petition No.4727 of 2022 decided on 27.04.2022 of the Hon'ble Division Bench of this Court, and Sardar Dallu Tadvi Vs. The State of Maharashtra and others in Writ Petition No.4679 of 2022 decided on 28.04.2022 of the Hon'ble Division Bench of this Court (in which I was a member). He reiterated the arguments that in the writ of petitioner Sanjay Raosaheb Waghchaure bearing no.6 of 2024, the Hon'ble Division Bench has already considered the similar questions that were raised before it, held that those were the questions of facts and could not be dealt with under the writ jurisdiction. The findings and the judgments of the Division Bench bind this Court. He vehemently argued that there is no substance in the petitions. Hence, the petitions are liable to be dismissed.

59. Advocate Mr. Nikam for respondent No. 3 relied on the case of Someshwar Sahakari Sakhar Limited and Ors Vs. Shrinivas Patil and Ors, 1992 (1) Mh.L.J. 883, and argued that the preparation of the voter list for the Election to the Managing Committee of a specified society is an intermediate stage in the process of Election. It would not be proper for the High Court to interfere in a petition under Article 226 of the Constitution of India. He relied on the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Udpadak Sanstha and Ors Vs. State of Maharashtra and Ors, (2001) 8 SCC 509 and argued that the Hon'ble Supreme Court held that once a statute provides for the preparation of a voter list, it shall be treated as part of the election process. It cannot be said that the preparation of electoral rolls is not an intermediate stage in the process of Election of a specified Society. It is well settled that the High Court shall not stay the election process even though there may be some illegality or breach of rules while preparing the electoral rolls. Once the Election results are declared, the parties aggrieved have the option to challenge the Election by means of an election petition before the Election Tribunal.

60. The above cases were relied upon to canvass the jurisdiction of the High Court under Article 226 of the Constitution of India about judicial review of the election process. Upon reading the said case law, the judicial pronouncement was that the High Court could interfere with the election process under certain circumstances. Referring to the judgment of Dattatray Genaba Lole (supra), the observations recorded in para 83 were read, and in the other judgments of the Hon'ble Supreme Court, it was held that there is no absolute bar in exercising a writ jurisdiction by this Court in interfering with the election process of Co-operative Societies. However, the same has to be exercised only in case of patent

illegalities coupled with other factors such as the Election stage and the effect of the interference on the ongoing elections. He argued that respondent No.2 had not committed patent illegality by not considering the illegalities in preparing the provisional voters list. The members who were defaulters and dis-entitled to be added to the voter list were correctly deleted. The election is at the advanced stage. Hence, the petitions have no force.

61. The law is well settled, as discussed in the case law (cited supra), that the High Court shall not stay the election process, though there may be illegalities or breaches of rules while preparing electoral rolls. The election petition is the remedy for the petitioners. There is no substance in the submissions of the learned counsel for the petitioners that if the objections are allowed, the election process would not be disturbed. There appears to be no patent illegality in preparing the voters list, the relevant rules and laws that were in existence have been applied, and the mandatory provisions have been correctly adhered to by respondent No.2. The election is at an advanced stage, and there would be an adverse effect on the election process if the Court interferes with it. These are not the fit cases to exercise the powers under Writ jurisdiction.

62. For the reasons discussed above, the Court does not find any substantial ground to warrant interference with the impugned orders of respondent No.2 rejecting the objections. Hence, all writ petitions stand dismissed.

63. Rule is discharged.

64. No order as to costs.

65. Civil Application No.455 of 2024 for intervention and Civil Application No.454 of 2024 stand disposed of.