

(2015) 02 BOM CK 0011
In the Bombay High Court
Case No : Writ Petition No. 545 of 2015

Shriram

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Co-operative Societies Act, 1960 — Section 144X, 26(3), 38(2), 73G, 91

Citation : (2015) 6 ABR 250 : (2015) 3 ALLMR 53 : (2015) 3 BomCR 129 :
(2015) 4 MhLj 114

Hon'ble Judges : R.V. Ghuge, J.

Bench : Single Bench

Advocate : V.D. Salunke, for the Appellant; K.J. Ghute Patil, A.G.P., Advocates
for the Respondent

Final Decision : Disposed off

Judgement

R.V. Ghuge, J.—This Court had heard Shri V.D. Salunke, learned Advocate for the petitioner and Shri K.M. Suryawanshi, Learned A.G.P. on 15-01-2015. The following order was passed while issuing notices to the parties.

"1. Heard.

2. The petitioner is aggrieved by the order dated 7.1.2015 passed by the Election Officer Shri S.S.Mali, by which the Objection Application dated 5.1.2015, preferred by the petitioner in regard to the provisional voters" list, has been partly allowed.

3. The petitioner is a resident of village Tandulwadi, Taluka and District Latur and is the Member of the registered respondent No. 4 Vividh Karyakari Seva Sahakari Society Limited, Tandulwadi. He is a borrower Member and is a valid voter going by the voters" list finally published on 8.1.2015.

4. The petitioner, at the very outset, submits that the ensuing elections are being conducted under the newly framed "The Maharashtra Cooperative Societies

(Election to Committee) Rules, 2014" ("the Rules of 2014"). The petitioner is aggrieved by the manner in which the election programme has been declared in contravention of the said Rules. Similarly, the petitioner is also aggrieved by the part rejection of his objections, dated 5.1.2015, by the impugned order dated 7.1.2015, which has resulted in the inclusion of 64 such voters, who cannot be valid voters under the Rules. There are about 240 members of respondent No. 4 Society and such 64 members virtually amount to a chunk of 25 per cent of the voters.

5. Considering the submissions of Shri Salunke, learned Advocate for the petitioner, it is apposite to reproduce certain provisions of the Rules of 2014. Rule 2(16) defining the "Returning Officer" reads as under:-

"2. Definitions.-

(16) "Returning Officer" means any person appointed by the SCEA or by an officer authorized by SCEA in this behalf for the conduct of the election of Societies ;

Rule 17, pertaining to the authority under the Act, constituted under Section 73CB, reads as under:-

"17. General duty of Presiding Officer and Polling Officer. (1) It shall be the general duty of the Presiding Officer at a polling station to keep law and order and to see that the poll is taken fairly.

(2) It shall be the duty of the Polling Officers at a polling station to assist the Presiding Officer for such station in the performance of his functions.

(3) The Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer, and other persons appointed for any of the purposes of these rules shall work under the general guidance, superintendence and control the SCEA or the officer authorized by it in this behalf. "

6. Rule 8 inclusive of its sub-rules provides for deciding the claims and objections to the provisional list of voters and the final list of voters. Rule 8 reads as under:-

"8. Claims and objections to the provisional list of voters and the final list of voters for co-operative societies having individuals as members.-

(1) When the provisional list of voters is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Co-operative Election officer or Taluka or Ward Co-operative Election Officer in writing by any member of the society during office hours within ten days from the date of publication of the provisional list of voters.

(2) Every claim or objection shall be in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(3) The District Co-operative Election Officer or Taluka or Ward Co-operative

Election Officer shall, or as directed by the SCEA, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter final voters list should be published within the period of fifteen days from the last date prescribed for receiving the claims and objections. The list finalized by the election officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters shall be displayed on the notice board of the District Co-operative Election Officer and also on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections. The District Co-operative Election Officer may also cause it to be published on the official website of the SCEA, if any. "

7. The declaration of election programme is covered under "Part V -Conduct of Elections" chapter. Rule 18 with explanation (A) and (B) reads as under:-

"18. Declaration of election programme.(1) The Returning Officer, with prior approval of the SCEA, shall draw and declare a programme of various stages of election, within ten days of the display of final list of voters of the society, which shall be as follows:

Explanation. (a) If the date in reckoning dates as specified in the above cases is a public holiday, the next succeeding working day shall be fixed for the respective events;

(b) The proportion of polling station to number of voters at each polling stations and the place of polling stations shall be fixed in consultation with the SCEA or District Co-operative Election Officer. Where the polling Stations are spread over entire district, town or village in the District, the Returning Officer shall make arrangement to get all the ballot boxes or Electronic Voting machines to the office of the Returning Officer or to the concerned Registrar's office or to the societies" or to such other safe place as he may deem fit. "

8. The grievance of the petitioner is that Rule 8(1) provides for displaying the provisional list of voters and for inviting claims and objections or omissions or errors with regard to the said voters. These objections are to be brought to the notice of the concerned District Cooperative Election Officer or Taluka or Ward Cooperative Election Officer within ten days from the date of publication of the provisional list. Submission, therefore, is that ten days are provided for raising such objections. Per contra, the provisional voters" list has been declared on 1.1.2015 and objections are to be listed on/or before 6.1.2015. Same is against the import of Rule 8(1).

9. Shri Salunke, learned Advocate for the petitioner further submits that Rule 8(4) mandates the displaying of the final voters" list only after the due compliance of Rule 8(3) has been done by the authority prescribed for

entertaining such objections. He further adds that the final list of voters" has to be published on the notice board of the society at least ten days before the declaration of the election programme and in no case later than fifteen days from the date of finalization of the claims and objections. By the election programme dated 1.1.2015, the final voters" list is published on 8.1.2015 and the last date for filing the nomination forms is declared to be 15.1.2015.

10. Shri Salunke, learned Advocate, therefore, submits that the declaration of the election programme under Rule 18 can only occur after ten days from the displaying of the final list of voters of the society. He adds that there needs to be a harmonious interpretation of Rule 8(4) and Rule 18(1) as regards declaration of the election programme, so as to ensure that the object for which the Rules of 2014 have been introduced, is not defeated.

11. Shri Salunke, learned Advocate submits that his serious grievance at this stage is that the objections raised by the petitioner have been cursorily and casually dealt with. The eighteen persons who had been wrongfully deleted, have been rightly included in the final voters" list. However, sixty four persons mentioned in the list annexed to the objections have been held to be inducted as members on the ground that they need not have any share of land in order to be members of the society as prescribed under bye-law 6(3), reproduced at page No. 28.

12. Prima facie, Shri Salunke, learned Advocate appears to be correct in contending that the eligibility criteria prescribed under bye-law 6(3) has to be followed while considering objections as regards the eligibility of any person. He further submits that the impugned order has resulted in the rejection of the petitioner"s objections to the extent of sixty four persons, because, the concerned authority has wrongly followed bye-law 4(14) which is not pertaining to the eligibility of a member, but only defines the objects for which respondent No. 4 society has been registered. In his submissions, the impugned order is, therefore, unsustainable.

13. Shri Salunke, learned Advocate further submits that as a consequence of the passing of the impugned order, sixty four persons mentioned by the concerned authority from Sr. No. 1 to 35, 37, 39 to 64, 67 and 68 mentioned at page Nos.60 to 63 have been rendered valid voters, despite they having not fulfilled the requirements of bye-law 6(3). As such, the entire election is in jeopardy. He, therefore, submits that these persons cannot be permitted to vote.

14. Shri Salunke, learned Advocate further points out that the objections raised need to be decided by the District Cooperative Election Officer, under Rule 8(3) and who has been specifically defined under Rule 2(8) of the Rules of 2014. Rule 2(8) reads as under:-

"2.Definitions.-

(8) "District Co-operative Election Officer" means an officer or officers approved

by the SCEA, not below the rank of the Deputy Registrar, Co-operative Societies of the district to assist the SCEA in performance of its functions for the conduct of elections of societies in the District under the supervision and control of the SCEA ; "

15. It is in the above circumstances that I am issuing notice before admission to the respondents, returnable on 29.1.2015. Litigating parties shall note that despite the request of the petitioner, ex-parte orders are not being passed today, so as to enable the litigating parties to assist this Court on the returnable date. As such, request for adjournment on the returnable date shall not be entertained.

16. The learned AGP waives service on behalf of respondents 1 to 3. Hamdast granted for respondent No. 4.

17. In the light of the request of Shri Salunke, learned AGP shall inform respondent No. 3 to affix this order at a conspicuous place in respondent No. 4 Society's premises so as to enable any member of the society to represent his cause before this Court. Shri Salunke, learned Advocate has made this submission in view of the contention of the learned AGP that the sixty-four persons, included in the final voters' list will have to be heard in the event any adverse order is to be passed by this Court affecting their right to vote."

2. Shri Salunke has thereafter contended today as follows :-

a] Chapter III of the 2014 rules applies to all the societies.

b] Rule 4 defines the various types of societies.

c] Rule 6, 8 and 9 indicate the authorities which would decide the claims and objections.

d] The Returning Officer (RO) is not the competent authority to decide the objections.

e] Bye laws 4 (14) and 6 (3) pertain to the objects for which the society is formed and the membership granted to an applicant. He however, submits that the requirement of 10 R land cannot be done away with and no membership can be granted de-hors the said requirement.

f] The question as to whether the 64 members are agriculturists or not, whether they have been inducted as members on fulfilling of the object required by the bye laws and whether their membership is sustainable under bye law 6(3) read with 4(14), needs to be gone into.

g] There is no material before this Court to conclusively establish that the 64 members mentioned in the final voters list can indeed be held to be valid members.

h] In the event the dispute that emerges before this Court is to be considered, the said 64 persons can be permitted to vote through a separate ballot box which can be sealed and kept aside till the decision in this petition.

i] The result of the elections which would be affected by this petition should not be declared, though the election process can be completed up to the casting of votes.

j] The petitioner relies upon the judgment of this Court in the case of Alka d/o Ramkrishna Narke and others Vs. The Divisional Joint Registrar Co-operative Societies, Aurangabad, Aurangabad in Writ Petition No. 7024 of 2010 decided on 17th December, 2013 to support his contention that the said 64 votes could be preserved in a separate ballot box and the results of the said election should not be declared till the decision of this petition.

k] The Petitioner has also relied upon the Division Bench Judgment of this Court in the case of Shivaji Suryawanshi Vs. The State of Maharashtra and others, to contend that election petition is not the only remedy available to a litigant and the petitioner need not be relegated to the alternate remedy.

3. Shri V.D. Sapkal learned Advocate has appeared on behalf of some of the members of the respondent No. 4 Society, in response to the observations made in paragraph No. 17 of the order dated 15-01-2015 passed by this Court.

4. Shri Sapkal submits that Rule 75 of the 2014 Rules would be squarely applicable in the instant case. He points out that the said rule falls under part IX pertaining to special provision in respect of election of the committee to the type "C" societies. He, therefore, indicates that the election programme placed on record is perfectly in tune with the proforma supplied below Rule 75.

5. Shri Sapkal has referred to Rule 75 (4) (a) to state that rejection of nomination by the RO. gives rise to an appeal to the Registrar by the aggrieved candidate within a period of three days from the date of rejection of the nomination. He has then placed reliance upon Rule 78 which falls under Part XI and pertains to the election disputes. Submission is that no election shall be called in question except by an election petition presented to the Cooperative Court as laid down in Section 91.

6. Shri Sapkal has therefore, relied upon the judgment of this Court in the case of Shivajirao s/o Prataprao Chalukya Vs. The State of Maharashtra and others, decided on 20-02-2009 in Writ Petition No. 74 of 2009. Placing reliance upon the said judgment, which has inturn relied upon the judgment of the Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , he submits that this Court had in fact interfered with the order passed by the Collector and had directed the inclusion of the name of respondent No. 4 in the voters list for holding elections to the Board of Directors of the respondent No. 3 Sugar cane factory.

7. He submits that the said judgment of this Court was carried to the Apex Court in Civil Appeal No. 1178 of 2009 decided on 24-02-2009. The Apex Court set aside the judgment of this Court and held that this Court could not have

entertained a writ petition on the ground that the election programme was not yet declared. He, therefore, states that in the instant case, the election programme has already been declared and several stages prescribed in the programme have been reached. It is contended that once the prescribed procedure is followed by the competent authority, an election petition can be the only remedy available.

8. Shri Sapkal has relied upon the judgment of the Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another (supra). He points out that preparation of list of voters is an intermediate stage in the process of election. The view taken by the High Court in the Karbhari Maruti Agawan and others Vs. The State of Maharashtra and others, is not good law. The Apex Court therefore ruled that even at an intermediate stage in the process of conducting elections to the specified societies, the High Court should not interfere and an election petition would be an appropriate remedy.

9. It would be apposite to reproduce paragraph Nos. 7, 9 and 12 of the Shri Sant Sadguru judgment (supra) as follow :-

"7. In the light of the aforestated provisions of Chapter XIA of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above shows that Chapter XIA was enacted and the rules were framed specially to deal with the election of the specified societies under Section 73G of the Act. Section 144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and Rules, the preparation of voters list must be held to be part of the election process for constituting managing committee of a specified society. In Someshwar Sahakari Sakhar Limited and etc. Vs. Shrinivas Patil and others, etc., , it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the managing committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in Sivnarayan Amarchand Paliwal Vs. Vasantrao Vithalrao Gurjar and Others, . However, in Karbhari Maruti Agawan and Others Vs. State of

Maharashtra and Others, , although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court to entertain a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XIA of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XIA and the Rules framed thereunder, is an intermediate stage in the process of election for constituting managing committee of a specified society.

8. If the contention of the appellant is that there was a breach of rule or certain mandatory provisions of the rules were not complied with while preparing of the electoral roll, the same could be challenged under Rule 81 (d) (iv) of the Rules by means of an election petition. In view that, the preparation of electoral roll is part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the tribunal.

12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the managing committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal."

10. Shri Sapkal has then relied upon a judgment of this Court in the case of Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. Vs. Collector of Kolhapur and Another, . This Court has also taken a view that disputes in relation to persons who may have no right to vote, should be gone into through a proper challenge. Any election held in the back drop of such disputes, can be challenged in accordance with the statute. Paragraph No. 6, 7 and 12 of the said judgment are reproduced herein below :-

"6. Mr. Thorat, learned Counsel for the Petitioner however, submitted that the laws laid down by Their Lordships in Shri Sant Sadguru's case is not Page 54 inflexible and that in a subsequent decision in Ahmednagar Zilla S.D.V. and P. Sangh Ltd. and Another Vs. State of Maharashtra and Others, . Their Lordships

have distinguished the earlier case. The learned Counsel therefore submitted that the present case is covered by the facts of the Ahmednagar Zilla case. It is, therefore, necessary to compare the circumstances in the Ahmednagar Zilla case with the present case. In the Ahmednagar Zilla Case the voters' names were deleted on the basis of an amendment in the bye laws which were struck down by the Appellate Authority. The High Court directed the inclusion of those names in the electoral roll. The contention before the Supreme Court was that the direction of the High Court was illegal since the High Court had interfered at an intermediary stage in the process of election and had therefore committed an error of jurisdiction. This contention was rejected by the Supreme Court on the ground that the exercise of the jurisdiction by the High Court was justified since the names of the voters had been deleted on the basis of a non-existent bye-law.

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

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

11. Shri Sapkal thereafter placed reliance upon the Division Bench Judgment of this Court in the case of Dhondiba Parshuram Lakade and others Vs. Someshwar Sahakari Sakhar Karkhana Ltd., and others, reported at 1979 (0) BCI 43. Paragraph Nos. 35, 39 to 42 and 53 of the said judgment are reproduced herein below:-

"35. Rule 6 is as under:

6. Claims and objections to provisional list of voters.(1) When any provisional list of voters is published for inviting claims and objections, any omission or error in

respect of the name or address or other particulars in the list may be brought to the notice of the Collector by any member of the society concerned who is a voter or any delegate authorised to vote on behalf of such society.

(2) Every person making a claim or raising an objection shall do so by a separate petition, which shall be presented to the Collector on or before the 31st July, during office-hours. (3) Every claim or objection shall be preferred in writing and state the grounds on which the claim is based or the objection is raised, as the case may be.

(4) The Collector shall after considering each claim or objection, give his decision thereon in writing to the person concerned before the 10th August and take steps to correct the provisional list wherever necessary. The list as finalised by the Collector after deciding all claims and objections shall be the final list of voters.

39. From Rule 6 (1) emerges the extent of the powers or jurisdiction of the Collector. Under this Rule, certain things can be brought to the notice of the Collector. What can be brought to the Collectors notice? And by whom? The answers are to be found in Rule 6 (1) itself: An omission or error regarding the name or address or other particulars in the list can be brought to his notice, not by anyone, but only by the Member of the Society who himself is a voter. This is the plain reading of Rule 6 (1). There is no reason to give to this Rule a different interpretation or to induct a concept other than what the plain reading thereof reveals. Thus it would be open under this Rule to the voter to bring to the notice of the Collector, that the particulars required in the voters list are erroneous inasmuch as they do not tally with the particulars in the Register of Members. Thereupon, under this Rule, the Collector would be competent to correct the provisional voters list so as to bring it on a par with the particulars in the Register of Members. Hence the identity of the voter is assured. Furthermore, the phraseology in Rule 6 (1), or other particulars in the list, is significant. The nature of the particulars in the voters list is to be found in Rule 5 which is headed, Particulars to be included in provisional list of voters. What those particulars are, have already been stated above. Thus the words in Rule 6 (1), other particulars in the list, necessarily have reference to Rule 5. Rules 5 and 6 are complementary of each other and as such they must be read in their plain and natural meaning.

40. Thus, under Rule 6 (1), all that the Collector is entitled to, and permitted to, do is to ensure the identity of the voter concerned, and if per chance, the identity is not sufficiently established in the provisional voters list to take steps within the ambit of Rule 6 (1) to see that it is. There is nothing in Rule 6 (1) which empowers the Collector to hold a detailed inquiry, as was done in the instant case, whether a person is qualified to be on the Register of Members, and if not to delete his name from the provisional list of voters. Under section 38(2) of the Societies Act, the Register of Members is prima facie evidence of membership. It is not open to the Collector to upset that Register by holding an inquiry under

Rule 6 (1), which contemplates a very summary inquiry, confined only to the aspects set out in that Rule and nothing; else.

41. The combined effect of Rules 4, 5 and 6 is that the powers of the Collector under Rule 6, though not without responsibility, are more in their nature, mechanical. He has to act as a guard or watch-dog and ensure that the identity of every person whose name appears in the provisional voters list tallies with the person in the Register of Members. The intention behind, and the scope of these three Rules is to ensure that every person whose name appears in the Register of Members, should also appear in the voters list, so that no person in the Register of Members is left out from the provisional voters list by reason of some omission or error in respect of the particulars enumerated in Rules 5 and 6.

42. Furthermore, what cannot be lost sight of is that under Rule 4 (2), it is an authenticated list that has to be sent by the Society to the Collector. In the Act or the Rules, there is no definition of the word authenticated. However, the dictionary meaning of the word authenticate to be found in Random House Dictionary is: To make authoritative or valid. To establish as genuine. To establish the authorship or origin conclusively or unquestionably. Thus it must be assumed that the authenticated list required to be sent to the Collector under Rule 4 (2) is the correct list and correctly sets out the names of the person appearing in the Register of Members. Under Rule 6, there is no presumption or any scope for inference that the Collector is expected to go out of his way and to do detection work, in the face of the authenticated list furnished to him. In this case, we are informed that the authenticated list has in fact been authenticated by the Chartered Accountant of the Society. There is nothing even remotely to suggest that this list is any other than what it purports to be, namely a correct reproduction of the names of the persons appearing in the Register of Members.

53. On behalf of the objector-respondents, it was contended that the decision of the Collector should be accepted as the petitioners did not file their reply before the Collector to the objections raised by the objector respondents. There is no merit in this contention. Apart from the fact that objections were raised by the 1st respondent-Karkhana and these objections were adopted by the petitioners before the Collector, what cannot be lost sight of is that the entire inquiry and finding of the Collector are vitiated, as under Rule 6, the Collector had no authority or jurisdiction to embark upon the inquiry of the nature that he did, much less come to the findings that he has."

12. Shri Sapkal therefore, contends that such issues which are disputed questions, need to be gone into through a proper remedy.

13. It is further contended that 36 members of the respondent No. 4 society have been inducted as founder members on 25-10-2000. Seventeen Members are inducted by virtue of resolution No. 5 dated 30-05-2009 and 10 members were inducted by resolution No. 3 on 15-06-2009. Two amongst such members are contesting elections. Any appeal against the membership could have been

preferred before the competent authority long ago. Only after the election programme is declared and on the pretext of raising objections to the provisional voters list, would not mean that the cause of action has arisen only after the publication of the election programme.

14. It is further submitted that the petitioner himself is a defaulter and his nomination form has been rejected. No challenge at the behest of a defaulter be entertained by this Court since he has no locus-standi to raise such objections. According to Shri Sapkal, he would not be a competent person to raise a challenge as has been done in the instant case and this Court ought not to entertain such a challenge.

15. Shri Ghute Patil learned A.G.P. has filed an affidavit in reply on behalf of respondent nos. 2 and 3 through Shri Sachin Shivaji Mali, who is in Government service as Cooperative Officer Grade-I and has been appointed as the RO by the Assistant Registrar Cooperative Societies. It is contended that the RO is empowered under Rule 75 to prepare the election programme and exercise his power thereunder. Rule 75 applies to "C" type societies. He refutes the contention of the petitioner that the election programme is prepared as per Rule 18 since Rule 18 deals with "B" type societies.

16. The learned AGP has further submitted that the record reveals that the concerned members have been inducted under bye law 4 (14) for achieving its objects.

17. He further submits that guide lines to the RO have been prescribed in the circular dated 13-11-2014 which would indicate the manner of holding elections for the "C" type societies. It is therefore canvassed that the RO is empowered to decide the objections raised before him by the objectors.

18. Having considered the submissions of the respective sides and having gone through the petition paper book with the assistance of the learned Advocates, the issue would be as to whether this Court could cause an interference at this stage by embarking upon the exercising of scrutinising whether the impugned order of the RO is sustainable or not in the face of the documents placed before me and which have been disputed by the petitioner. Whether this Court could go into the factum of the membership of 64 persons and whether this Court could then consider the contentious issues raised by the respective parties.

19. In my view, though Mr. Salunke places reliance upon the judgment of this Court in the case of Alka d/o Ramkrishana Narke and others (supra), to contend that 64 members shall drop their votes in a separate ballot box and the results of the election be withheld, I am not convinced to accept the said proposition, in view of the peculiar facts of this case. In the light of the law, laid down by the Apex Court in the case of Shri Sant Sadguru judgment (supra) and the view taken by this Court in the case of Gadhinglaj Taluka Sahakari Sakhar Karkhana Ltd. (supra) and Dhondiba Parshuram Lakade and others (supra), I find it appropriate to relegate the petitioner to the remedy as provided under Rule 78 of

the 2014 Rules.

20. The Division Bench of this Court at Nagpur has adopted a similar view in Writ Petition No. 3781 of 2014 and companion matters in its order dated 03-12-2014. So also, the Division Bench of this Court (Aurangabad Bench) in the matter of Manik Baburao Kale Vs. The State of Maharashtra and others in Writ petition No. 11202 of 2014 with Civil Application No. 296 of 2015 and Writ Petition 7171 of 2014 decided on 21-01-2015 has disposed off the petition and has declined to cause any interference in the ongoing election process.

21. As such, this petition is disposed off without causing any interference in the impugned orders. However, it needs mention that I have not considered the petition on its merits. Similarly I have not taken into account the contentions of the respondents so as to draw any inference or conclusion on their merits. I do not intend to cause any interference in the ongoing election process as I hold that disputed and contentious issue can be gone into by a competent Court under Rule 78 of 2014 Rules.

22. I have not drawn any conclusions either in favour or against any of the litigating sides. The contentions and averments set out by the rival sides are kept open for the competent authority under section 91 of the Maharashtra Cooperative Societies Act, 1960 read with Rule 78 of 2014 Rules to be considered on there own merits, in the event the petitioner or any other member of the society or aggrieved person prefers to lodge an election petition.

23. With the above observations this petition is disposed off.