
(1998) 12 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 3516, 3517, 3518 and 3519 of 1998

Wamanrao Satpute

APPELLANT

Vs

Collector, Nagpur and others

RESPONDENT

Date of Decision : 08-12-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Representation of the People Act, 1950 — Section 22

Citation : AIR 1999 Bom 103 : (1999) 2 ALLMR 189 : (1999) 2 BomCR 47 :
(1999) 2 BOMLR 101

Hon'ble Judges : G.D. Patil, J

Bench : Single Bench

Advocate : S.P. Dharmadhikari, S.A. Bodke, U. Dastane and S.C. Khatri, for the Appellant; R.K. Deshpande, A.G.P., B.T. Patil, Rohit Deo, Anand Parchure, B.P. Dharmadhikari, A.B. Choudhari, C.A. Lokhande, J.S. Mokadam and Y.D. Raut, for the Respondent

Judgement

G.D. Path, J.—In all these petitions since the prayer is for quashing and setting aside the Supplementary voters lists at Annexure A to the respective petitions and since the petitioners are claiming restoration of their names in the voters' lists as delegates of their respective societies to vote at an election of the Managing Committee of the respondent Nagpur District Central Cooperative Bank (hereinafter referred to as "the Bank"), they were heard together and are being disposed of by this common judgment.

2. All the petitioners are members of their respective Seva Sahakari Societies registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as "the Act") which are classified as Service Societies and the respondent Bank is the federal society of these societies.

The societies of which the petitioners are delegates, are thus the member societies of the Federal Society-the respondent Bank. It is an undisputed fact in all these petitions that all the petitioners were chosen by their respective

member societies as their respective delegates, duly authorized to vote at the election to the committee of the respondent Bank, which further undisputedly is a specified society, as contemplated by the provisions of section 73-G of the Act. Since elections to the Committee/Board of Directors of the respondent Bank were to be held this year, provisional list of the voters was prepared by the respondent No. 1 Collector.

Claims and objections to this provisional list of voters were invited and ultimately final list of voters was published by the respondent No. 1 on 18-9-1998. This final list of voters also included the petitioners' names as voters being delegates of their respective member Societies. The petitioners claim that it is on the basis of this display of the final list of voters on 18-9-1998, respondent No. 1 Collector drew the election programme appointing the dates, etc. for various stages of the election for the Board of Directors to the respondent Bank. As per this election programme drawn on 6-11-1998 and displayed on notice board, the last date for making nominations was fixed as 5th of November 1998. Scrutiny of the nominations was to be held on 6-11-1998 and the date of voting is fixed as 11-12-1998.

3. The elections to the committee of the respondent Bank are undisputedly governed by the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, (hereinafter referred to as "the 1971 Rules"). The petitioners contend that having regard to the provisions of the 1971 Rules, no change in the final list of voters displayed on 18-9-1998 could have been effected by the respondent No. 1 Collector on or after 29th of October 1998 and such change, if at all was to be effected, could have been effected on or before 28th of October 1998, the last date for making nominations having been fixed by the election programme as 5th of November 1998. The petitioners have averred in the petition that the respondent Societies have not passed any resolutions between 18-9-1998 and 28-10-1998 changing their delegates nor even earlier any application for change was moved by any one including the member Societies of the concerned persons who now claim to be the delegates in place of the petitioners. The petitioners further contended that in fact the respondents member Societies had not passed any resolutions sending the concerned respondents who now claim to be the delegates in place of the petitioners as their delegates at any point of time. They further contended that surprisingly on 6-11-1998 they learnt that the respondent No. 1 on 2nd of November 1998 had published a supplementary voters list showing these respondents as delegates of their respective member Societies by deleting the names of the petitioners. The petitioners have specifically averred that no corrigendum or modification was published on 28-10-1998. The petitioners have further averred that the petitioners had submitted their nomination papers as representatives of their respective member societies on 5-11-1998, but their nominations were rejected because of the deletion of their names from the final list of voters and because of the substitution of the names of the concerned respondents in their places. Thus on coming to know that the respondent No. 1 published a supplementary voters

list on 2-11-1998, deleting the petitioners' names from the final voters list and substituting those by the names of the concerned respondents, the petitioners sought copy thereof which is annexed to each of the petition as Annexure "A". The petitioners have submitted that this copy does not bear any date.

4. The petitioners then have also made an allegation in the petition about filing of the written note for supporting their nominations alongwith an affidavit before the respondent No. 1 pointing out that there was no resolution passed by the General Bodies of the concerned member Societies for deleting their names and adding the names of the concerned respondents and making a specific averment further that the resolutions on the basis of which their names had been included in the final list of voters was the last resolution which stood valid and binding on the date of submitting the note. The notes also pointed out that notices of the General Body meetings of the member societies were not received by the concerned authorities mentioned in the note and it was further pointed out by the notes that the petitioners did not receive any hearing or opportunity from the respondent No. 1 before the decision to delete their names was taken. The petitioners that applied for other documents which they received. True copies of the alleged resolutions passed in the General Body Meetings of the concerned societies are filed on record. It is at Annexure "D" in Writ Petition No. 3516/98. A chart received by the petitioners in W.P. No. 3516/98 has been filed at Annexure "E" which pertains to the petitions bearing Nos. 3516/98, 3517/98 and 3519/98. This chart bears the decision of the respondent No. 1 permitting the change of delegates on 28-10-1998 of the member societies in these three writ petitions. The decision of the Returning Officer rejecting the petitioners' nominations as recorded on the nomination forms themselves which have been filed in these writ petitions shows that the nominations were rejected as the names of the petitioners were not there in the voters' lists.

5. It is in the above backdrop, the petitioners have filed the instant petitions. Each of the petitioners in their respective petitions have, however, made it clear that they are restricting their claims only as regards the deletion of their names from the list of voters by the respondent No. 1, making it clear thereby that they are not making any grievance about the rejection of their nomination forms. They have explained as to why they are so doing, by saying that the last date of withdrawal of the nomination forms was 23-11-1998 and it was in these circumstances, they were restricting their claims only in relation to the deletion of their names from the voters' lists and inclusion of the names therein of the concerned respondents in their places. During the course of hearing also learned Counsel for the petitioners, Shri S.P. Dharmadhikari, made it clear that none of the petitioners is making any grievance about the rejection of their nominations and each of them is restricting his claim about the deletion of his name from the voters list by substituting the same by the name of the concerned respondent. In the prayer clause also the petitioners have prayed only for quashing and setting aside the supplementary voters list at Annexure A to the respective petitions, which bears the deletion and inclusion of the names of the petitioners and of the

concerned respondents respectively. It may be noted here that it was stated before me that none of the concerned respondents/delegates has filed nomination and that they are voters only in the election.

6. Mr. Dharmadhikari, learned Counsel for the petitioners, pointed out that in all these petitions specific averments have been made about (1) the respondent member societies having not passed any resolutions authorising the concerned respondents to vote as their delegates in place of the petitioners; (2) that no General Body meetings of the concerned societies have been held for deleting the petitioners' names and for proposing the names of the concerned respondents as delegates; (3) that it was only on 2-11-1998 that the respondent No. 1 published the supplementary voters list Annexure "A" indicating the change; (4) no such corrigendum or modification was published on 28-10-1998; (5) no action as required by Rule 6(4) of the Rules was taken; (6) the alleged General Body meetings as claimed to have been held do not satisfy the requirement of section 75 and that the petitioners were not heard by the respondent No. 1 before permitting the change in the final list of voters.

7. Some of the respondents have filed their submissions so also some affidavits have been filed by the petitioners as also by some of the respondents. No detail reference is required to the submissions filed on behalf of the member societies. These submissions are filed by the Secretary of the respondent societies and the submissions indicate that the Group Secretaries were on strike on the date on which the Annual General Meetings of the member Societies were claimed to have been held by the respondents. The respondent No. 1 has filed his submissions contending therein that on receipt of the application on 27-10-1998 from the respondents whose names have been included in the final list of voters for inclusion of their names in the voters lists, alongwith the copy of resolution, the same was forwarded to the respondent No. 2 for an enquiry and report and on receipt of his report and recommendation, respondent No. 1 decided on 28-10-1998 to include the names of the respondent in the voters list as representatives of the concerned member societies. It is submitted by the respondent No. 1 that he has passed order of inclusion of the names on 28-10-1998 and it was not correct to say that the change was effected after 28-10-1998. It is also claimed that the petitioner was having alternate remedy and the writ petitions are not tenable. The respondent No. 2 in his submissions has stated that as directed by the respondent No. 1 in his letter dated 28-10-1998, he immediately on the same day directed the Assistant Registrar, Co-operative Societies, Taluka Nagpur to verify the concerned record of the respective member Societies in respect of the resolutions passed in the Annual General Meetings for appointing the concerned respondents on behalf of the Member Societies as delegates in the election of the respondent Bank. It is further submitted that accordingly the Co-operative Officer, Grade II under the Assistant Registrar specially has verified the record and proceedings of the Annual General Meetings, notices of annual general meetings, record showing the notices of the meetings sent to the members of the societies and has put his

signatures on the books of the annual general meetings. It is further submitted in the submissions that the Assistant Registrar on the same day i.e. on 28-10-1998 submitted his report to the respondent No. 2 and on the basis of the report submitted by the Assistant Registrar and on due verification of the concerned record of the societies, the respondent No. 2 submitted original report of the Assistant Registrar with his remarks to the respondent No. 1 on 28-10-1998 mentioning therein that the Annual General Meeting of the member societies were properly held and the concerned respondents were elected as delegates in place of the petitioners. In all these petitions the petitioners have filed identical affidavits on 26-11-1998 stating therein that having inspected the record of the substitution of the delegates, some tampering and fabrication of the documents was noticed. Paras 2 and 3 of those affidavits are as under

"2. The communication, issued by the Collector to the District Deputy Registrar is dated 29-10-1998. However, the said date appears to have been tampered with and changed to 28-10-1998. The relevant portion of the said communication which bears the endorsement of receipt is torn or mutilated. The District Deputy Registrar appears to have forwarded his report only on 31-10-1998. The said date i.e. 31-10-1998 appears to have been tampered with and changed to 28-10-1998.

3. The record further reveals that the District Deputy Registrar has made no enquiry whatsoever and has merely called for a report from the Assistant Registrar."

In para 4 of the affidavits it is affirmed that tampering and fabrication of the documents is done mala fide and is a fraud on the election process and that it has been done only to ensure that the substitution of the names is not challenged on the ground that the same is not within the statutorily prescribed period. On filing of these affidavits by the petitioners, the respondent No. 1 has filed his reply dated 30-11-98 to these affidavits explaining the alleged tampering and fabrication as indicated in the petitioners' affidavits dated 26-11-1998 and denying the charge of tampering and fabrication and any mala fide intention or fraud on the election process, as alleged by the petitioners. Respondents Chairmen of the respective member societies, have also filed their affidavits dated 1-12-1998 explaining as to when the annual general meetings of the member societies were held and how the notices of the said meetings were forwarded by them through G.P.O. Nagpur, to the members of the societies under Certificate of Posting and as to the displaying of the notices of the meetings on the notice boards of the Societies. The Chairmen of the respective member societies have also filed another affidavits on 17th of November 1998 explaining as to how the Annual General Meetings of the concerned member Societies were held and as to how the Collector accepted the change and published the same in the final voters list. All the respondents, whose names now have been included in the final list of voters, also have filed their submissions so also in Writ Petition Nos. 3516/ 98 and 3517/98 the Chairmen of the member Societies have filed

their sub- missions. In all these submissions the claim put forth by the petitioners have been denied mainly contending that the annual general meetings of the respective societies were held and in those meetings the concerned respondents were chosen as the delegates of the member societies in place of the petitioners and the change was communicated to the respondent No. 1 Collector, who held enquiry through the respondent No. 2 and ultimately permitted the change to be effected and accordingly the final list of voters was corrected. In all these submissions it is being contended that since the Secretaries of the member societies were on strike from 9-6-1998 to 9-10-1998, the Chairmen of the member Societies had convened the annual general meetings and they were held on 8-10-1998, 7-10-1998, 13-9-1998 and 6-10-1998 respectively in Writ Petition Nos. 3516/98 to 3519/98. It was contended that in all these cases the change was permitted to be effected by the respondent No. 1 on 28-10-1998 and the corrected list was published on 28-10-1998 and not on 2-11-1998, as alleged by the petitioners. The contrary submissions made on all these aspects by the petitioners have been denied. In all these submissions it is also contended that the petitioners were merely delegates of the member societies and once the delegate has been changed, the petitioners cannot have any locus standi to make grievances about deletion of their names from the list of voters. It is also contended that essentially the petitioners are challenging passing of the resolutions by the annual general meetings of the concerned member societies, which the petitioners can effectively challenge in a dispute u/s 91 of the Act, and the petitioners thus being in a position to avail of the efficacious alternate remedy their grievance cannot be entertained in writ jurisdiction by this Court more particularly when the election process for the election of the Board of Directors of the respondent Bank has already begun. These respondents in their submissions thus claim that there is no substance in the instant writ petitions and the writ petitions are liable to be dismissed.

8. It may be pointed out that alongwith the submissions the respondents have also filed copies of some documents to which reference will be made in due course. The respondent No. 1 Collector has produced the record of the enquiry he made through the respondent No. 2 on receipt of the applications for substituting the "names of the concerned respondents in the list of voters in place of the petitioners which has been perused by me and to which a reference will be made again in due course. Both the sides also placed reliance on some decisions, note of which is being taken in the following discussion.

9. Mr. Dharmadhikari, learned Counsel for the petitioners, contended that the impugned supplementary final list of voters at Annexure "A" to the petitions, substituting the names of the concerned respondents in place of the petitioners is liable to be quashed and set aside and the petitioners are liable to be permitted to act as the delegates of their member Societies, directing the respondent No. 1 to conduct the election of the Board of Directors of the respondent Bank scheduled to be held on 11-12-1998 by allowing the petitioners

to vote therein, inasmuch as the respondent No. 1 Collector cannot be held to be justified in permitting the respondent Member Societies to change the names of their delegates. In support of this contention Mr. Dharmadhikari further contended that the Collector cannot be said to have permitted the respondent Member Societies to change the names of their delegates on making any inquiry. He pointed out that what has come in reply from the respondents is that the respondent No. 1 Collector had forwarded the applications which he had received alongwith the copies of the resolutions to the respondent No. 2 District Deputy Registrar for his enquiry and report who in turn has again forwarded the same to the Assistant Registrar, but who again instead of conducting the inquiry himself, entrusted the job in that regard to the Co-operative Officer, Grade II. He pointed out that the say of the respondent No. 1 was that it was the Co-operative Officer Grade II under the Assistant Registrar, Co-operative Societies, Taluka Nagpur, who has verified the record, specially the proceedings of the Annual General Meetings, notices of the annual general meetings, record showing the notices of the meetings sent to the member societies, etc. and thereupon the Assistant Registrar submitted his report on 28-10-1998 to the respondent No. 2 who in turn forwarded the same to the respondent No. 1 Collector. He pointed out that the submission of the respondent No. 1 makes it clear that on receipt of the report and recommendation of the respondent No. 2 District Deputy Registrar the respondent No. 1 decided on 28-10-1998 to include the names of the concerned respondents in the voters list as delegates of the respective member societies. In the submission of Mr. Dharmadhikari, this type of enquiry cannot be said to be warranted by the provisions of Rule 5(2) of the 1971 Rules and in any case it cannot be said that it was the Collector who had applied his mind to the so-called record of the member societies noticed by the Co-operative Officer for verifying as to whether the member societies had by like resolutions effected the change in the names of their delegates-the petitioners-whose names were already included in the final lists of voters published on 18-9-1998. Shri Dharmadhikari further contended that had the record produced by the concerned member societies before the Co-operative Officer, Grade II been properly perused by all these officers, it would have been revealed to them that the so-called record of the concerned member societies having passed the like resolutions changing the names of their delegates was nothing but an attempt by fabricating the documents to show anyhow that change has been effected, which was nothing but a fraud on the election process. In the submission of Mr. Dharmadhikari, in fact, no resolutions were passed in the General Body Meetings of the respondents member societies as categorically averred by the petitioners in their petitions, in between 18-9-1998 and 28-10-1998 changing their delegates or at any other point of time. This, in the submission of Mr. Dharmadhikari, would have been revealed to the respondent No. 1 had he noticed the suspicious circumstances revealed from the record of the concerned societies. He enumerated these suspicious circumstances, which in his submission, not only create a doubt but fully establish that the entire record produced before the Authorized Officer who in turn produced the same through the Assistant Registrar

and D.D.R. to the Collector, was nothing but fabricated record brought in existence without actually holding any meetings of the General Bodies of the member societies to anyhow show the change of the delegates. Mr. Dharmadhikari pointed out that the alleged General Body meetings of the respondent member societies have been claimed to have been held on 8-10-1998, 7-10-1998, 13-9-1998 and 6-10-1998, whereas a change is alleged to have reported to the respondent No. 1 only on 17-10-1998 particularly when the final list of voters was already published on 18-9-1998. The General Body meetings of the Bahadura, Ridhora and Vela member societies have been shown to have been held at the residence of the Chairmen of those respective Societies. The total number of members of Bahadura, Ridhora, Shankarpur and Vela member Societies, to whom notices are being claimed to have been despatched under Certificate of Posting respectively on 18-8-1998 of Bahadura and 18-9-98 of other three societies are respectively 89, 157, 135 and 126 whereas the total number of members shown to have been present in the meetings of those societies is 27, 41, 29 and 31 respectively. All the resolutions have been shown to have been unanimously passed. The notices of the General Body meetings to the members of the member societies have been despatched under certificate of posting and in respect of all those four member societies only from Nagpur G.P.O. and that too on one and the same day i.e. on 18-8-98 of one society and on 18-9-98 to all other three member societies Mr. Dharmadhikari pointed out that it is also claimed that the Managing Committees of the member societies had held the meetings conferring powers on the Chairmen of the respective societies to convene the General Body Meetings and resultantly the Chairmen had written to the Assistant Registrar for extension of time for holding the General Body Meetings, in so far as Ridhora member society is concerned, the meeting of the Managing Committee has been alleged to have been held on 11-9-1998 and the communication having been sent to the Assistant Registrar on 12-8-1998. It is also pointed out that this communication addressed to the Assistant Registrar by the Chairman on 12-8-1998 is also despatched from the G.P.O. Nagpur under certificate of posting whereas the notice of the meeting dated 11-9-1998 of the Managing Committee has been shown to have been despatched also under Certificate of Posting on 4-9-1998 again from the G.P.O. Nagpur itself. The notices of the annual general meeting of the Ridhora society alleged to have been held on 8-10-1998 have been shown to have been despatched on 18-9-1998, again under certificate of posting and from Nagpur GPO only to the Assistant Registrar, Co-operative Societies, Nagpur and the Member Secretary of the Nagpur Taluka Co-operative Supervising Union Ltd., Nagpur. The despatch of notices for conveying meetings of the Managing Committees and General Bodies of societies and forwarding of the communications, as is the case with the Ridhora Member society, it was pointed out, having happened in the manner as above, was happened in relation to the other three member societies as well viz. Shankarpur, Bahadura and Vela from the concerned record of the respective writ petitions. Mr. Dharmadhikari claimed that the very fact that all the like communications are despatched practically by

all the Societies on one and the same date and that too from Nagpur G.P.O. under Certificate of Posting itself creates a doubt as to whether really these communications/notices were sent at all. He submitted that it was surprising that even the notices to few members of the Societies as regards the holding of the meetings of the Managing Committees have been despatched under Certificate of Posting and that too from Nagpur G.P.O, when there were post offices either at the places where the offices of the member societies are situated or at the nearer places. Though it is claimed that the notices of the General Body meetings were despatched under certificate of posting from Nagpur G.P.O. to the Assistant Registrar, Co-operative Societies, Nagpur and to the Member Secretary of the Taluka Supervising Society, Nagpur, the Assistant Registrar, Co-operative Societies, Nagpur, the Nagpur District Supervising Society and the Member Secretary of the Taluka Supervising Society by their say given in writing on 7-11-1998 have denied to have received any notice of such annual general meeting and the communications regarding which have been filed at Annexures H, J and I to the petitions. Mr. Dharmadhikari then contended that there are other set of suspicious circumstances as well creating a doubt as to whether really an inquiry was made by the respondent No. 1 Collector through the respondent No. 2 D.D.R. on 28-10-1998 itself. In this regard he enumerated certain circumstances, first being that in all these cases it is claimed that the respondent No. 1 having received the applications with the resolutions showing change of the delegates on 27-10-1998 and he having forwarded the same to the District Deputy Registrar on 28-10-1998, it was revealed that this was received by the D.D.R. at 15-15 p.m. as can be gathered from Annexure R-I to the respondent No. 1's reply to the affidavit filed by the petitioners. On this communication at Annexure R-I page 93 in Writ Petition No. 3516/98, the date 28th October 1998, Mr. Dharmadhikari pointed out, figure "8" has come on scoring of the original figure. Mr. Dharmadhikari also claimed that the entry at Annexure R-2 to the respondent No. 1's reply to the petitioner's affidavit also indicates some change in the original entry. He also claimed there being some lacuna in the Inward Register of the Collector's office and raising doubt as to whether the Collector really had really received any communication from the Assistant Registrar of Co-operative Societies on 27-10-1998 itself. He further claimed that whether pursuant to the permission to effect change allegedly granted to the member societies on 28-10-1998 by the Collector whether the change was really published on 28-10-1998 or it was published only on 2-11-1998 as claimed by the petitioners, cannot be said to have been established by the respondent No. 1 Collector, inasmuch as his affidavit dated 1-12-1998 stating that he passed order deleting the names of the petitioners and substituting the names of the respondents in the voters list of the Federal Society and the change was published on the same day i.e. on 28-10-1998, and not on 2-11-1998 cannot be accepted since the contents of the affidavit as per verification were true from the official records and the official record produced before the Court does not have any document showing the date of publication of the change on 28-10-1998 itself or for that matter on any other date as well.

When this was pointed out to Mr. R.R. Deshpande, learned A.G.P. and when he was asked to point out from the record as to which is the document on the basis of which the publication of the change can be said to have been effected on 28-10-1998 as stated by the respondent No. 1, Shri Deshpande conceded that there was nothing on the record in that regard and whatever statement was made, was on the basis of the endorsement of the Collector on the original document, extract of which is at Annexures E in Writ Petition No. 3516/98 indicating the Collector's acceptance of the change on 28-10-1998. Though adverse allegations in this regard have been denied by the respondent No. 1 and respondent No. 2 in their submissions and affidavits, Mr. Dharmadhikari contended that since there was no reliable material on record to indicate the change having been permitted to be effected by the respondent No. 1 Collector on an enquiry by him on or before 28-10-1998 much less the corrected voters list having been published on or before 28-10-1998, the impugned supplementary voters list on the basis of which now elections are being held, is liable to be quashed and set aside, more particularly so when even if it is assumed that the Collector had permitted the change on 28-10-1998, the change ought not to have been permitted by the Collector, the record produced by the concerned societies indicating they having effected the change of delegates by passing the resolutions in the annual general meetings itself being of a doubtful nature in the wake of the suspicious circumstances already indicated by him as above.

10. The learned Counsel for the respondents raised contrary submissions mainly contending that the petitioner's allegations about the meetings having not factually held and the concerned record being fabricated one, cannot be gone into by this Court in writ jurisdiction since there are allegations and counter allegations in that regard and since the issue now having become disputed question of facts and the petitioners having an alternate remedy available to them by raising the dispute u/s 91 of the Act. The respondents also contended that basically the petitioners cannot be termed to have locus standi to file the instant petitions they being only delegates and aggrieved persons in case of change of delegates would be not the delegates but the societies alone. Thirdly they also contended that since the election process has already begun, the courts are restrained in entertaining the petition at this stage.

11. The contention of the respondents that the petitioners cannot be said to be having locus standi to move this Court in writ jurisdiction against the supplementary voters list issued by the Collector, cannot be accepted. It would be pertinent to see that the Member/affiliated societies to the Federal Society like the respondent Bank are entitled to have their delegates on the Board of Directors of the respondent Bank. The constitution of the Board of Directors, as provided in the bye-law No. 25(1) of the respondent Bank is as under:

VIII BOARD OF DIRECTORS

"25.(1) The Board of Directors shall hold office for a period of Five years, Board

shall consist of 21 Directors by election, 4 Directors by nomination as number of Directors as required under the provisions of sections 73-B, 73-BB and 73-BBB of the Maharashtra Co-operative Societies Act, 1960 by election or co-option.

Elected Directors or Directors by Election

(a) 13 Directors representing Agricultural Credit, Large Size Multipurpose, Co-operative Adivasi, Service Co-operative Farming Co-operative Societies to be elected from amongst themselves as below.

Name an area No. of Directors to be elected

1 Nagpur Taluka 1 Director

2 Hingna Taluka 1 "

3 Kamptee Taluka 1 "

4 Ramtek Taluka 1 "

5 Parseom Taluka 1 "

6 Mouda Taluka 1 "

7 Katol Taluka 1 "

8 Karlched Taluka 1 "

9 Saoner Taluka 1 "

10 Kalmeshwar Taluka 1 "

11 Umewe Taluka 1 "

12 Bhiwapur Taluka 1 "

13 Kuhi Taluka 1 "

... ..

... ..

Directors by Nomination;

Directors by election as per provisions of sections 73-B, 73-BB and 73-BBB of the Act.

... ..

It would be seen from the bye-law that 21 Directors on the Board of Directors come by way of election, 4 Directors by nomination and remaining number of Directors as required under certain provisions of the Act by election or co-option. The respondent member societies fall in the category covered by bye-law 25(1) (a) viz. of the category where 13 Directors are to be elected from the 13 constituencies. In so far as the Chairman and the Vice-Chairman of the Board of

Directors are concerned, as per bye-law 25(3) provides that they are to be elected from amongst its elected Directors. The representatives/delegates of the affiliated society is undisputedly are not only entitled to vote in the election of the Board of Directors but are also entitled to propose or second a candidate for election of the Board of Directors. Further he is also entitled to become a Chairman or Vice-Chairman of the Board of Directors. It is no doubt true that he is a representative/delegate of his member Society and by participating in the election of the Board of Directors of the respondent Bank, he represents the Society as such. But merely because of this if his name is dropped from the delegates of the member society, it cannot be accepted that the person aggrieved in such a case would be only the member society and not the delegates himself, as sought to be urged by the learned Counsel for the respondents. Once having been proposed or elected as a delegate by the member Society, some rights are accrued and vested in such a delegate, much more so when his name stands included in the final list of voters. It is the final list of voters as per the scheme of the Act and the Rules, which ultimately governs the process of election in so far as the entitlement to participate in the election of the Board of Directors is concerned, either by way of proposing or seconding the candidate or by becoming himself a candidate for the post of Director or by voting merely and further by contesting the election of the Chairman or Vice Chairman. Once a delegate is elected, the member societies cannot have any control over the functioning of such a delegate either in the election of the Board of Directors or in the affairs of the affiliated society like the respondent Bank, and he discharges his function on his own discretion. Undisputedly there is also no power of recalling the Director in the societies beyond a certain time limit viz. 7 days before the date appointed for making nominations. Having regard to these rights accrued and vested, once elected as a delegate and once his name stands included in the final list of voters, if someone brings in controversy, his status as a delegate of his member society and in such a process if his status as a delegate is ultimately to be affected, it is difficult to understand as to how he cannot be said to be having any locus standi for challenging the decision affecting his status as a delegate. In the instant petition the petitioners are making a grievance as against the impugned decision of the Collector and his consequent action of issuing the supplementary voters list deleting their names from the final voters list and substituting the names of the respondents. Such a petition at their instance has to be held as maintainable and the contrary submissions in that regard are, therefore, not accepted.

12. In so far as the maintainability of these petitions on the ground of the petitioners having an alternate remedy of filing a dispute u/s 91 of the Act and by presenting an election petition is concerned, the submissions made in that regard by the learned Counsel for the petitioners cannot be accepted having regard to the facts and circumstances of the instant petitions. Similarly the contention raised by the learned Counsel for the respondents that this Court should not entertain the instant petitions on the ground that the election process

has already begun, also cannot be accepted having regard to the facts and circumstances obtaining in the instant matter. On considering the decisions cited by both the sides in this regard, it would suffice to observe that from all those decisions what stands laid down is that as observed by this Court in its decision reported in *Lakshmi Ammal alias Pinnayel and Others Vs. Pappathi Ammal and Another*, affirmed by Division Bench in its decision reported in *Sanjivraje Vijaysinha Naiknimbalkar and others Vs. Rajan Dinkarrao Pharate and others*, each case has to be examined on its own facts. A Remedy under Article 226 by its nature is extraordinary and is invoked only in deserving cases, but it would be too much to say that once the process of election has been set in motion, in no case the High Court can invoke its jurisdiction under Article 226 of the Constitution of India. It is further observed that ordinarily High Court should not interfere in the matters relating to the preparation of the voters lists and process of election once it has been set in motion, but there is no rule prohibiting the exercise of jurisdiction by the High Court under Article 226 of the Constitution of India in an exceptional case. The Division Bench of this Court has also held like this in its decision reported in *Karbhari Maruti Agawan and Others Vs. State of Maharashtra and Others*. What was however, contended in relation to this judgment in Rajan's case by the learned Counsel for the respondents was that the interference in that case in writ jurisdiction was held to be justified as the question of disfranchising of more than 97% of the members of the society was involved which is not a case in the instant matter. It is no doubt true that exactly similar situation as obtaining in the above case is not in existence in the instant petitions. A case in the instant matters. However, the constitution of the Board of Directors as provided under the bye-laws referred to hereinabove of the respondent bank itself demonstrates that addition or deletion of delegates, that too, to the extent of 4 in number is bound to materially affect the constitution of the Board of Directors, the election of the Chairman and Vice Chairman and resultantly its functioning as well. Moreover wrong inclusion or exclusion of a delegate from or in the final voters list does not adversely affect the rights and interests of the concerned delegate alone but it affects adversely the rights and interests of the members at large of the member society to whom he represents in the federal society. Moreover, when there are allegations of the Annual General Meeting of the member societies having not been held at all and of obtaining the permission from the Collector for effecting change on the basis of the fabricated record, the petitions at the instance of the petitioners cannot be just thrown away on the ground of they having alternate remedy and the election process having already begun. May be, if the dispute in question cannot be gone into on the basis of the material brought on record by the petitioners and the respondents, the Court ultimately may refuse to go into these disputed questions of fact, leaving the parties to avail of these remedies otherwise available to them.

13. In the instant petitions no doubt there are allegations and counter allegations as regards the factum of the Annual General Meetings of the respondent member-societies having been held at all and about manipulation of record by some of the

respondents and regarding obtaining of permission from the respondent No. 1 on its basis and further regarding permissions having also been granted without holding due inquiry and proper application of mind, and within prescribed time. In view of the controversial stand taken by both the sides, and the rival contentions raised in this regard as already pointed out, it makes the issue involved in this regard a disputed question of facts which apparently cannot be gone into in writ jurisdiction by this Court. One thing certainly, however, will have to be observed in these matters that the various circumstances pointed out by Mr. Dharmadhikari, learned Counsel for the petitioners, termed as suspicious circumstances, even if viewed in the light of the explanations in that regard by the respondents, leaves a doubt in mind as regards the genuineness of the stand taken by the respondents about the change in delegates having been legally effected. Mere denial and certain assertions by the respondents, without anything more, is not sufficient to dispel the suspicion. However, nothing more can be said in this regard in the absence of full opportunity to both the sides which they will have in case challenge is led before the appropriate forum. Restraining myself from commenting either way on this aspect, it is made clear here itself that in case such a challenge is canvassed before the appropriate forum by the concerned party, such forum shall not allow itself to be swayed by any of the observations in this judgment on the above aspects.

14. Another contention of Mr. Dharmadhikari is that the impugned supplementary voters list issued by the respondent No. 1 Collector is liable to be quashed and set aside on the ground that the said has been issued without giving an opportunity of being heard to the petitioners. The submission that no opportunity of being heard was given to either of the petitioners is not in dispute. What is being contended is, however, that the petitioners cannot claim a right of hearing before the Collector while considering the grant of permission to the member societies to effect change of their delegates. Firstly the respondents contend that primarily since the society is a member of the respondent federal Bank, it would be the Bank, if at all, which would make a grievance about the deletion or addition of its delegate in the voters list under Rule 5 (2) of the 1971 Rules and not persons like the petitioners who are merely the representatives/delegates of the member societies. Secondly it is also canvassed by the respondents that the provision of Rule 5(2) basically does not provide for any opportunity of being heard by the Collector to the delegate whose name is being substituted by another name. It was contended that the scheme of Rule 5(2) by implication excludes the grant of opportunity of being heard to the delegate who is being substituted by the member society by someone else by passing a like resolution. On the other hand, Mr. Dharmadhikari contended that though sub-rule (2) of Rule 5 does not specifically speak of opportunity of being heard to the delegate whose name is being permitted by the Collector to be substituted by another by a member society, from the final list of voters, it will have to be read as implicit in the provision of sub-rule (2) of Rule 5 as else the said rule would become amenable to challenge being ultra-vires being arbitrary and unreasonable and

violating principals of natural justice.

15. Rule 4 of the 1971 Rules provides for the provisional list of voters. Sub-rule (2) of Rule 4 enjoins upon the Collector to display the provisional list of voters received by him from the society concerned on the notice board of the society, the District Deputy Registrar and the Collector for inviting claims and objections. In case the Society fails to send the copies of the provisional list of voters, the Collector himself or through any person authorized by him in that regard has to prepare the provisional list of voters and this list again has to be displayed by him similarly on the notice boards as contemplated by sub-rule (2). Rule 5 of the 1971 Rules provides for particulars to be included in the provisional list of voters. Sub-rule (2) of Rule 5 is as follows:

"(2) Where a society is a member of a specified society, the specified society shall call for the name of the delegate duly authorized to vote at an election on behalf of the affiliated society, so as to reach it by the 2nd July. While communicating the name of its delegate to the specified society, the affiliated society shall enclose a copy of the resolution of the society or its committee under which the delegate is so authorized. The specified society shall include in the list of voters the names of all such delegates as have been communicated to it before the date fixed for publication of the provisional list. In addition to the names of the delegates, the list shall contain the names of the affiliated societies, their registration number, and addresses and the names of constituencies if any, to which they belong. A society which has communicated the name of its delegate shall by like resolution be permitted to change the name of its delegate not less than 7 days before the date appointed by the Collector under Rule 16 of said rules for making nominations."

The material change effected in sub-rule (2) by Government notification dated 9th January 1980; it was pointed out, was in respect of the underlined portion of the aforesaid sub-rule (2) of Rule 5. It was pointed out that in the 1971 Rules as modified upto December 1974 there was no provision regarding permitting the change of a delegate by a member society after the final list of voters was displayed. Sub-rule (1) of Rule 6, however, then provided, as is the case even now, that 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 authorized to vote on behalf of such society. Amendment then came to be effected to sub-rule (2) of Rule 5 by providing:

"A society which has communicated the name of its delegate shall not be permitted to change the name of its delegate after the final list of voters is displayed by the Collector under Rule 7." This provision, however, came to be substituted by the Government Notification dated 9th January 1980 by the aforementioned underlined portion which continues to be there as on date. Rule 6 provides for claims and objections to the provisional list of voters. Sub-Rule

(4) provides that the list as finalized by the Collector after deciding the claims and objections shall be the final list of voters.

16. By the 9th January 1980 notification, which had substituted the earlier sub-rule (2), of Rule 5 sub- rules (5), (6) and (7) were also added to Rule 6, giving opportunity to member of the society whose name was not included in the final list of voters prepared by the Collector under sub-rule (4) to apply in writing to the Collector for inclusion of his name within a period of 15 days from the date of display of final list of voters under Rule 7. As has become already apparent, the provision for final list of voters is contained in Rule 7 and the final list of voters in accordance with this rule has to be displayed on the notice boards of the offices of the Collector, District Deputy Registrar, and the Society. Rule 16 provides for appointment of dates, etc. for various stages of the election. The election programme has to be drawn by the Collector not earlier than thirty days of the date of display of the final list of voters of a society under Rule 7. It is during these 30 days i.e. from the date of display of the final list of voters and before drawing of the election programme by the Collector, the Collector can order the modification of the list finalized by him earlier under sub-rule (4) and the list so modified then is treated as final list of voters as displayed under sub-rule (7). Rule 18 provides for nomination of candidates and lays down that any person may be nominated as a candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Act, Rules and bye-laws and his name is entered in the list of voters. Sub-rule (3) of Rule 18 provides that any person whose name is entered in the list of voters may be proposer or a seconder for nominating a candidate for election. Rule 23 is in relation to the scrutiny of nomination papers and empowers the Returning Officer to reject any nomination paper inter alia on the ground that the candidate is dissatisfied for being chosen to fill the seat by or under the Act, and that the proposer is disqualified from subscribing a nomination paper. All these rules are indicative of the importance of finding of one's name in the final list of voters in as much as it is the final list of voters which makes a person whose name is entered therein entitled to get himself nominated as a candidate for the election, if he is qualified to be chosen to fill that seat under the provisions of the Act, Rules, bye-laws and further entitled for being a proposer or seconder for nominating a candidate and for voting in the election. Modification of such a final list of voters even though permitted by the 1971 Rules, in case of a person who is a member of the society before the first date fixed for nominations and in case of the delegate appointed by the Collector under Rule 16 for making nominations, in so far as sub-rules (5) to (7) of Rule 6 are concerned, the speak of addition to the voters list of the name of a person who is a member of the society and whose name is not included in the final list of voters whereas, sub- rule (2) of Rule 5 speaks of changing the name of the delegates of society from the final list of voters, in as much as if the society wants to change the name of its delegate earlier to the displaying of the final list of voters, it can very well do so by approaching the Collector after publication of the provisional list of voters, as provided in sub-

rules (1) to (4) of Rule 6. The aforementioned underlined provision of sub--rule (2) of Rule 5 comes into picture only after the publication of the final list of voters.

17. The underlined portion of sub-rule (2) of Rule 5 provides that the society which has communicated the name of its delegate shall by like resolution be permitted 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 nominations. This Court in its decision reported in *Shivnarayan Amarchand Paliwal v. Vasantrao Vithalrao Gurjar* 1992 M. L. J. 1952 has held that the date notified under Rule 16 for the purpose of Rule 5(2) would be only the last date for filing of nomination and not the entire period for filing of nomination. As already indicated in the instant matters the last date for filing of nominations has been fixed as 5-11-1998 and the change of its delegates by the society could have been permitted by the Collector under sub- rule (2) of Rule 5 on or before 28-10-1998. The petitioners have averred that no corrigendum or modification of the final list of voters was published on or before 28-10-1998 and to their knowledge it came to be published only on 2-11-1998. As already indicated, nothing satisfactory has been brought on record by the respondent No. 1 as to when and where the modified lists of voters came to be displayed by him though there is some documentary evidence, the veracity of which is being doubted by the petitioners to indicate that the respondent No. 1 Collector passed an order on 28-10-1998 permitting the respondent member societies to change the names of their delegates. In view of the controversy as to whether the final list of voters as modified by the change permitted by the Collector on 28-10-1998 was at all displayed by the Collector at any point of time and even if it was so displayed as to when and where it was so displayed, particularly whether on 28-10-1998 itself or thereafter, this aspect cannot be resolved here in writ petition, as disputed issues of facts will have to be resolved in deciding the same. It is in these circumstances, it also becomes redundant to decide as to whether the publication of the final list of voters as modified after permitting the change of delegates under sub-rule (2) of Rule 5 is contemplated by the provisions of the 1971 Rules, as was tried to be canvassed by the petitioners.

18. What remains to be seen is only as to whether the impugned supplementary list is liable to be quashed and set aside on the ground that the petitioners' names were substituted by the names of the other delegates without giving opportunity of hearing to the petitioners.

19. It would be pertinent to note that here as to what the Supreme Court has observed in relation to the electoral rolls. The Apex Court in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, has observed that it is the essence of the election that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the

requisite qualifications. Otherwise the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged. Proper electoral roll is a fundamental factor before the election is actually held and if the complaint is that no such roll has been prepared in accordance with the Rules, the Court can certainly step in even before the election is actually held on the imperfect electoral rolls exercising its jurisdiction under Article 226 of the Constitution.

19A. Giving of opportunity to the parties concerned to scrutinize whether the persons enrolled are properly enrolled or not as per the Apex Court's decision in Radhey Sham's case it is sine-qua-non for holding of an election on proper electoral rolls. Wherever provisions regarding holding of elections are made, preparing and publication of a provisional voters list inviting objections is provided for and it is only on considering the objections regarding inclusion or exclusion of a particular person, the provision is made for preparing and publication of a final list of voters. In case of addition of a person in the list of voters normally it is the satisfaction of the competent authority as regards that person's entitlement for being registered as a voter. But in so far as the deletion of the name of the voter already included either in the provisional list of voters or more particularly in a final list of voters is concerned, it is necessarily provided that before ordering the deleting of the name of a particular voter from the voters list that the competent authority shall give a person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him. Even the Representation of Peoples Act, 1950 has provided such an opportunity to the person concerned u/s 22 thereof. The importance and necessity of giving of a reasonable opportunity of being heard to the person whose name is being sought to be deleted and similarly in those cases where substitution of another person in place of the one whose name stands already included in the final list of voters, is apparent once the basic principle is accepted that it is the essence of the election that proper electoral roll should be maintained, in order to avoid improper deletion from the list of voters. The person whose name stands already included in the final list of voters an opportunity of being heard to him becomes sine-qua-non as else he would be robbed of the rights already vested in him by inclusion of his name in the final list of voters, which definitely would be to his prejudice and in case of delegates like the one in the instant matters to the prejudice of the society itself who has selected him as its delegate. One cannot forget that the society is a body corporate and it can act only through a person duly authorized by the resolution. It is the person so authorised by the society who has to safeguard the rights and interest of the society. Giving of an opportunity of being heard to him in case his name is being sought to be deleted from the final list of voters in a given case would ultimately be giving of an opportunity to the society itself of being heard, particularly in those cases where though the society as such did not hold a general meeting and selected a delegate in place of one whose name is

already included in the provisional list or final list and an attempt is being made on the strength of the fabricated documents alone for effecting the change, as are the allegations levelled by the petitioners in the instant petitions. An opportunity assumes much importance in the cases like the instant one to obviate unscrupulous efforts with mala fide intention to any how enter into the area of the election and/or to exclude the other illegally.

20. While deliberating upon in the earlier part of the judgment the aspect of locus of the petitioners for moving this Court it is already pointed out as to the rights of the persons who have been chosen as delegates and whose names have been included in the final list of voters and it need not be repeated again. It is suffice to say that any threat to his status as a voter as reflected in the final list of voters is definitely detrimental to his own rights and interests as also of the society to which he represents even in the backdrop of the powers of the society to effect change prior to 7 days before the last date of nomination and, therefore, taking any steps as regards the deletion of his name from the final list of voters cannot be permitted to be done without giving an opportunity of being heard to him as else the action in that regard would be nothing but be an arbitrary and unreasonable one making the provision in that regard amenable to challenge of being ultra vires. Rule 5(2) of the 1971 Rules in this backdrop has to be construed accordingly enjoying upon the Collector to afford an opportunity to the delegate of being heard before permitting the society to change his name and resultantly modifying the final list of voters. Contention of the learned Counsel for the respondents that since such an opportunity of being heard has not, been specifically provided by the Rule 5(2) and further since in the other provisions of the Act wherever necessary it is so specifically provided by implication, such opportunity stands excluded in the above backdrop cannot be accepted. The contention of the respondents that giving of an opportunity to the delegates whose name is being sought to be substituted would not subserve any purpose since as already held by this Court in *Dattu Doyanu Patil v. Collector, Distt. Sangli* 1992 C.T.J. 47 the Collector has no jurisdiction to investigate the validity of the resolutions sent by the Societies also cannot be accepted for the reason that even assuming that the Collector has no jurisdiction to investigate the validity of the resolution sent by the Society, definitely it is obligatory on the part of the Collector to at least verify the veracity of the claim put forth before him regarding the change inasmuch as under Rule 5(2) he cannot be supposed to act merely as a post office or rubber stamp without any application of mind and without verifying whether a prima facie case is made out for permitting the change of the delegate and resultantly change in the voters list which has attained finality. In such a situation giving of a hearing to the delegate whose name is already included in the final list of voters and who is sought to be deleted serve a dual purpose, in that, firstly such a hearing would assist the Collector in discharging his obligation properly and at the same time it would furnish an opportunity to the delegate whose name is being sought to be deleted to put forth his say in the matter. As regards affording opportunity of being heard

to the delegate whose name is being sought to be deleted from the final list of voters under the provisions of Rule 5(2) of the 1971 Rules though there is no express provision in that rule the omission to provide for it is not conclusive of the fact that the authority concerned should not follow the rules of natural justice. There is no warrant for inferring that the legislature by implication Rule 5(2) has excluded the application of any or all the rules of natural justice. Such an inference cannot be drawn merely on the history of legislation as was sought to be contended relying upon the earlier provision of Rule 5(2) as already mentioned. All the relevant circumstances including the nature of power conferred, the purpose for which it is conferred and the consequence of the exercise of power has to be taken into consideration while construing the provision like Rule 5(2). If the purpose for which the power conferred is likely to be defeated by giving opportunity to the person concerned, one may not insist on the principles of natural justice. One may not insist on the principles of natural justice even in those cases where any other public purpose which could conceivably outweigh the necessity of fair procedure. Such is not a case here and it would, therefore, not be justified to hold that the legislature by implication has intended to deny the principles of natural justice to the delegate whose name is being sought to be deleted. The contrary submissions made in this behalf by the learned Counsel for the respondents therefore, cannot be accepted.

21. Undisputedly the petitioners were not heard before accepting the change and before deleting their names from the final list of voters published on 18-9-1998. The impugned corrigendum/supplementary list at Annexure A issued by the Collector respondent No. 1 therefore, cannot be sustained.

22. As already indicated the petitioners are restricting their claims in these petitions only as regards their right to vote in the election and nothing more. Similarly it is also already pointed out that none of the respondents delegates who have been substituted in place of the petitioners as delegates of the respective member societies have filed any nominations and, therefore are not candidates in the election and as such were entitled only to vote in the election. Interference even at this juncture in the instant matters thus is not going to affect any election process as such. Since what remains to be done is only the taking of the poll and declaration of the result of the election and nothing more.

23. Normally if any decision or order is quashed on the ground of denial of opportunity of being heard, the matter is remitted back to the authority concerned for decision afresh on hearing the parties. In these matters however, following such a course is not warranted the last date prescribed for permitting the change having already over.

24. It is in this backdrop, and in the above view of the matter the corrigendum/supplementary list of voters at Annexure A to the petitions is quashed and set aside and the respondent No. 1 is directed to take poll for the election of the Board of Directors scheduled to be held on 11-12-1998 as per election programme dated 27-11-1998 on the basis of the final list of voters prepared

and published on 18-9-1998 reflecting the names of the petitioners as delegates of their respective member societies and allow the petitioners to vote in the said poll as delegates of their respective societies. In the circumstances of the case there will be no order as to costs.

At this juncture Shri Patil and Shri Mokadam, learned Counsel appearing for the respondents, requested for staying the operation of the judgment for two days. In the facts and circumstances of the case the request as made is rejected.

25. Petition allowed.