

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3318 OF 2022

1. MIDC Prakalpgrasth Majur Sahkari : **PETITIONERS**
Sanstha, Wagholi, Tq. and Dist. Amravati,
through its President Shri Deepak Sukhdeo
Khadse, Aged about 53 years, Occ. : Labour,
R/o C/o MIDC Prakalpgrasth Majur
Sahkari Sanstha, Wagholi, Tq. and Dist.
Amravati
2. Magasvargiya Suyash Tantrik Majur Sahkari
Sanstha, Amravati through its President Shri
Sukhdeorao Raybole, Aged about 58 years,
Occ : Labour
R/o C/o Magasvargiya Suyash Tantrik
Majur Sahkari Sanstha, Amravati
3. Jagdamba Majur Sahkari Sanstha Ltd.,
Shivarpan Colony, Amravati, through its
President Shri Vinod Bhilpwar, Aged about
56 years, Occ : Labour,
R/o C/o Jagdamba Majur Sahkari Sanstha
Ltd., Shivarpan Colony, Amravati
4. Bhushan Majur Sahkari Sanstha, Tiwsa,
through its Secretary Shri Bhushan
Ramchandra Yavale, Aged about 50 years,
Occ : Labour
R/o C/o Bhushan Majur Sahkari Sanstha,
Tiwsa
5. Shri Balaji Majur Kamgar Sahkari Sanstha,
Amravati through its President Shri Nitin
M. Wankhede, Aged about 54 years, Occ :
Labour R/o C/o Shri Balaji Majur Kamgar
Sahkari Sanstha, Amravati
6. Shri Laxmikant Majur Sahkari Sanstha,
Amravati through its President Shri Manoj
Uttamrao Khole,
Aged about 52 years, Occ : Labour

R/o C/o Shri Laxmikant Majur Sahkari
Sanstha, Amravati

7. Vaishali Majur Sahkari Sanstha, Amravati
through its President Shri Vasant Purandas
Thavare, Aged about 58 years, Occ : Labour
R/o C/o Vaishali Majur Sahkari Sanstha,
Amravati
8. Jwalamukhi Majur Sahkari Sanstha,
Shelgund, Tq. Daryapur, District Amravati,
through its President Shri Nitin P Joshi,
aged about 50, Occ : Labour, R/o C/o
Jwalamukhi Majur Sahkari Sanstha,
Shelgund, Tq. Daryapur, District Amravati
9. Biogas Plant Labour Society, Amravati,
through its President Shri Vasantrao
Uttamrao Jagtap, Aged about 72 years,
Occ : Labour, R/o C/o Biogas Plant Labour
Society, Amravati
10. Hemant Majur Sahkari Sanstha, through its
President Shri Ganesh Bapurao Charpe,
Aged about 68 years, Occ : Labour,
R/o C/o Hemant Majur Sahkari Sanstha,
Amravati
11. Rohidas Majur Sahkari Sanstha, Amravati
through its President Shri Vaibhav Deepak
Malkhede, Aged about 28 years, Occ :
Labour, R/o C/o Rohidas Majur Sahkari
Sanstha, Amravati
12. Nav Yuvak Majur Sahkari Sanstha,
Amravati through its President Shri Deepak
Maruti Malkhede, Aged about 56 years,
Occ : Labour, R/o C/o Nav Yuvak Majur
Sahkari Sanstha, Amravati
13. Indira Majur Sahkari Sanstha, Amravati,
through its President Shri Rajendra Nagada,
Aged about 55 years, Occ : Labour, R/o C/o
Indira Majur Sahkari Sanstha, Amravati

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14. Shivneri Majur Kamgar Sahkari Sanstha, Amravati, through its President Shri Malu Nage, Aged about 65 years, Occ : Labour R/o C/o Shivneri Majur Kamgar Sahkari Sanstha, Amravati
15. Gajanan Electrical and Civil Labour Co-op Society, Amravati through its President Shri Bittu Chinuulal Chadda, Aged about 60 years, Occ : Labour, R/o C/o Gajanan Electrical and Civil Labour Co-op Society, Amravati
16. Bhojraj Majur Sahkari Sanstha, Nandgaon (Khand) through its President Shri Kishor Bhasme, Aged about 54 years, Occ : Labour, R/o C/o Bhojraj Majur Sahkari Sanstha, Nandgaon (Khand)
17. Santaji Majur Sahkari Sanstha, Kapustalni, Tq. Anjangaon (Surji), District Amravati through its President Shri Keshav N. Umak, Aged about 50 years, Occ. Labour, R/o C/o Santaji Majur Sahkari Sanstha, Kapustalni, Tq. Anjangaon (Surji), District Amravati
18. Vishal Majur Sahkari Sanstha, Amravati, through its Secretary Shri Prakash Kokate, Aged about 51 years, Occ. : Labour, R/o C/o Vishal Majur Sahkari Sanstha, Amravati

PETITIONERS

VERSUS

1. The District Deputy Registrar and District Co-operative Election Officer, Co-operative Societies, Amravati : **RESPONDENTS**
2. Amravati Jilha Majur Sahkari Sansthancha Sangha Maryadit, Amravati, Shyam Nagar, Congress Nagar Road, Amravati through its President Shri Mohd. Tanvir Mohd. Sadiq, Aged about 51 years, Occ. : Labour,

R/o Shyam Nagar, Congress Nagar Road,
Amravati

Mr. K.P. Mahalle, Advocate for petitioners

Mr. K.L. Dharmadhikari, AGP for respondent No.1

Mr. A.M. Ghare, Advocate for respondent No.2

CORAM : MANISH PITALE, J.

RESERVED ON: 07/07/2022

PRONOUNCED ON: 01/08/2022

JUDGMENT

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the rival parties.

2. By this writ petition, the petitioners, who are Co-operative Societies and Members of respondent No.2 – Federal / Apex Society, have approached this Court for quashing and setting aside of final voters list published on 15/06/2022, by the respondent No.1 i.e. the District Deputy Registrar and the District Co-operative Election Officer of Co-operative Societies, Amravati, with a further prayer to direct the respondent No.1 to publish a fresh programme for finalization of voters list. The petitioners prayed for an interim direction to restrain the respondent No.1 from publishing election programme of the respondent No.2 - Federal Society.

3. While issuing notice on 17/06/2022, this Court took note of a specific judgment on which the petitioners placed reliance and interim relief was granted, restraining respondent No.1 from publishing election programme of the respondent No.2 – Federal Society. Upon receiving notices, the respondents appeared through counsel and filed replies, opposing the present petition.

4. Mr. K. P. Mahalle, the learned counsel appearing for the petitioners relied upon the contents of the writ petition and contended that in the present case, the manner in which the respondent No.1 had published the final voters list demonstrated that more than 85% of voters i.e. member societies of the respondent no.2 – Federal Society were not included in the final voters list, thereby showing that the entire process of finalization of voters list was vitiated. It was submitted that the programme for finalization of voters list was not duly published and even the statutory requirements were not followed, as a consequence of which the petitioners were deprived of an opportunity to raise objections at the relevant time. It was further submitted that due to the defective manner in which the respondent No.1 proceeded with the process of finalization of voters list, the petitioners and other similarly situated member societies

were deprived of an opportunity to raise objections at the opportune time and the final voters list came to be published, depriving more than 85% voters of their right to vote.

5. It was further submitted that the ostensible reason for non-inclusion of names of petitioner societies in the final voters list, was that such societies were allegedly defaulters. The petitioners and other such member societies were illegally branded as defaulters for not having paid 1% supervision charges to the respondent No.2 – Federal Society for the works allegedly allotted by the respondent No.2 – Federal Society to the petitioners and other member societies. It was submitted that, in the first place, in terms of the law laid down by this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit and Others Vs. The District Co-operative Election Officer and Others (Judgment and order dated 29/04/2015, passed in Writ Petition No.2113/2015)**, non-payment of 1% supervision charges could not lead to the petitioners and other member societies being treated as defaulters making them ineligible for inclusion in the final voters list. It was further submitted that the respondent No.2 – Federal Society had stated fictitious figures towards alleged amounts due from the petitioners and other member societies towards 1% supervision charges. Therefore, the final voters list deserved to be

quashed and a fresh programme ought to be declared by respondent No.1 for finalization of voters list.

6. It was submitted that the respondent No.2 was not justified in relying upon judgment of this Court in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd. and another (judgment and order dated 09/06/2016, passed in Writ Petition No. 527/2016)**, wherein it was held that non-payment of 1% supervision charges was a ground for holding the member society as defaulter, dis-entitling inclusion in voters list, for the reason that the said judgment was *per incuriam*, as the aforesaid earlier judgment of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), was not brought to the notice of the learned Single Judge in the aforesaid subsequent judgment. The learned counsel for the petitioners relied upon judgments of the Hon'ble Supreme Court and this Court on the concepts of binding precedent, *per incuriam*, and *stare decisis* to contend that the respondent No.2 was not justified in relying upon the subsequent judgment, which had ignored the position of law clarified in the earlier judgment.

7. It was submitted that a bare perusal of the documents placed on record on behalf of respondent No.2 would show that the figures towards alleged defaults of the petitioners were concocted and that, therefore, the contentions raised on the basis of such documents did not deserve consideration. The learned counsel appearing for the petitioners relied upon judgments of the Hon'ble Supreme Court in the case of **State of Bihar Vs. Kalika Kuer alias Kalika Singh and others reported in (2003)5 SCC 448** and **Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another reported in (2005)2 SCC 673** and judgments of this Court in the cases of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer (supra), Rajan Dinkarrao Pharate and Others Vs. State of Maharashtra and Others reported in 1997(1) Mh.L.J. 543** and **Mahindra & Mahindra Ltd. Nagpur Vs. Mr. Avinash D. Kamble reported in 2008(3) ALL MR 1.**

8. On the other hand, Mr. A.M. Ghare, learned counsel appearing for respondent No.2 relied upon affidavit-in-reply filed in the present writ petition on behalf of the aforesaid respondent. It was submitted that the petitioners had indulged in suppressing facts and misleading this Court and that, therefore, this Court ought to dismiss the

writ petition on that ground alone. It was submitted that even otherwise, there were disputed and complicated questions of facts sought to be raised in the writ petition, which could be decided only by way of an election dispute under Section 91 of the Maharashtra Co-operative Societies Act, 1960 and not in writ jurisdiction. It was emphatically submitted that the petitioners were not justified in claiming that the election programme was not publicized for the reason that the programme was published in newspaper “Deshonnati”, calling for objections to the provisional voters list. Even prior to that, as per procedure, each of the member societies were called upon to send the names of their representatives for the purpose of election of the Executive Committee of the respondent No.2 – Federal Society. This was done as far back as on 08/04/2022 and that, therefore, the petitioners could not claim that they were not aware about the election programme.

9. It was submitted that petitioner Nos. 4, 9, 13, 15 and 17 did not even care to send names of their representatives and yet, they had joined other petitioners in filing the present petition. It was further submitted that the election programme was published on the notice board as per the statutory requirement and even the *panchanama* was drawn, thereby indicating that the allegation about the election

programme for finalization of voters list being clandestinely conducted by respondent No.1 in conspiracy with respondent No.2, was a hollow and unsustainable allegation.

10. As regards supervision charges of 1% payable to the respondent No.2 – Federal Society, it was submitted that reliance placed on the judgment in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), was misplaced because the issue in the said petition was different. It was submitted that the judgment of this Court in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), was exactly on the point that is sought to be raised in the present petition. It was held therein that failure to pay 1% supervision charges would result in member society being held as a defaulter and hence, not entitled for inclusion in the final voters list. As regards the contention raised on the concepts of binding precedent, *per incuriam* and *stare decisis*, it was submitted that there could be no quarrel with the propositions and judgments upon which reliance was placed, but, the same did not apply to the facts of the present case.

11. It was further submitted that there was enough material placed before respondent No.1, upon the said respondent giving an opportunity to the petitioner societies to demonstrate that they had paid supervision charges of 1%, but, the petitioners and other member societies had failed to demonstrate that they had indeed paid such charges. The petitioner Nos.6 and 11, after the proceedings before the respondent No.1, did pay the charges that were due and their names were included in the final voters list, thereby indicating that the process of finalization of voters list was fair. Yet, the said petitioners joined the other petitioners to file the present writ petition.

12. It was submitted that reliance placed on the position of law elucidated in the judgment in the case of **Rajan Dinkarrao Pharate Vs. State of Maharashtra** (supra), was not justified, for the reason that although large number of member societies may not have been included in the final voters list, but, there was a reason for the same, which was supported by the position of law. It was further submitted that only 18 member societies as petitioners had filed the present writ petition, while the remaining member societies had chosen not to raise any grievance about the final voters list.

13. Attention of this court was invited to a judgment of a learned Single Judge of this Court in the case of **Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative and Ors. Vs. The State of Maharashtra and Ors. (order dated 09/02/2022, passed in Writ Petition No.1154/2022)**, to contend that the petitioners were not justified in relying upon the earlier judgment of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer (supra)**.

14. Mr. K.L. Dharmadhikari, learned Assistant Government Pleader appeared on behalf of respondent No.1 and defended the finalization of voters list, submitting that by the operation of the relevant provisions of the aforesaid Act and Rules framed thereunder, the respondent No.1 had correctly finalized the voters list. It was further submitted that the disputed questions being raised on behalf of the petitioners could be decided only in a properly instituted election dispute under Section 91 of the aforesaid Act and not by way of the present petition before this Court.

15. Heard learned counsel for the rival parties and perused the material on record. Before dealing with the contentions raised on behalf

of the rival parties, as regards the question of entertaining the present writ petition and whether grounds are made out by the petitioners to interfere with the final voters list published by respondent No.1, it would be necessary to deal with the question as to whether the case of the petitioners is covered in their favour as per the judgment of a learned Single Judge of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra) and in that context, applicability of the principles of *per incuriam*, *binding precedent* and *stare decisis*.

16. The basis on which final voters list is restricted by respondent No.1 to only 13 out of 102 member societies of the respondent No.2 – Federal Society, is that all those not included in the final voters list were defaulters under the provisions of the said Act. The basis for not including the names of the petitioners and several other member societies is that they failed to pay 1% supervision charges to the respondent No.2 – Federal Society for the works made available by the said Federal Society to its member societies. The basis on which respondent No.1 held the petitioners and other member societies not eligible for being included in the final voters list as defaulters is application of explanation (c)(ii) to Section 73CA(1)(i) of the said Act.

17. According to the petitioners, the petitioners and other member societies could not be treated as defaulters because under Section 26 of the said Act, they were active members and continued to be so, as they had made payment of membership of the respondent No.2 – Federal Society and there was no default on that count in their cases. As regards the question of they being branded as defaulters for having failed to pay 1% supervision charges to respondent No.2 – Federal Society, reliance was placed on the said judgment of a learned Single Judge of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra). As opposed to this, the respondents relied upon judgments of other learned single Judge of this Court in the case of **M.I.D.C. Prakalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd. and Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. The State of Maharashtra** (supra).

18. It was specifically contended on behalf of the petitioners that the said two subsequent judgments of learned Single Judges of this Court were *per incuriam* and that, therefore, they ought to be ignored and the writ petition ought to be allowed on the basis of the law clarified by the

learned Single Judge of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra).

19. In order to examine the correctness or otherwise of the said contentions raised on behalf of the petitioners, it would be appropriate to refer to the judgments brought to the notice of this Court by the learned counsel appearing for the rival parties. In the case of **State of Bihar Vs. Kalika Kuer alias Kalika Singh** (supra), the Hon'ble Supreme Court referred with approval the elucidation of principle of *per incuriam* in Halsbury's Laws of England, wherein it was stated that a decision is *per incuriam* when the Court has acted in ignorance of a previous decision of its own or of a Court of co-ordinate jurisdiction, which covered a case before it. It was further laid down in the said judgment by the Hon'ble Supreme Court that the earlier decision cannot be ignored merely because certain aspects of the matter were not raised before the Court or more aspects should have been gone into and that the matter would have to be resolved only in two ways i.e. either to follow to earlier decision or to refer the matter to a Larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.

20. Thereafter, in the case of Central Board of **Central Board of Dawoodi Bohra Community Vs. State of Maharashtra** (supra), a Constitution Bench of the Hon'ble Supreme Court reiterated the said position of law and it was further stated that when the earlier decision is referred to and considered, the subsequent decision cannot be said to be *per incuriam*.

21. In the case of **Jagannath Temple Managing Committee Vs. Siddha Math and others** reported in (2015) 16 SCC 542, in the context of a decision being *per incuriam* and the concept of *stare decisis*, it was held as follows :

“We agree with the contention advanced by the learned Senior Counsel appearing on behalf of the appellant Temple Committee. Most respectfully, we opine that the decision of this Court in *Jagganath Vs. State of Orissa, 1989 Supp (1) SCC 553*, referred to supra, wherein this Court upheld the validity of the Notification dated 18-03-1974 insofar as it pertains to the estate of Lord Jagannath is *per incuriam* for non-consideration of the provisions of Sections 5 and 30 of the Temple Act, 1955 and the law laid down by this Court as regards between the two State enactments, which one will be the Special Act over other. While the doctrine of *stare decisis* is crucial to maintain judicial discipline, what cannot be lost sight of the fact is that decisions which are rendered in ignorance of existing statutes and law laid down by this Court cannot bind subsequent Benches of this Court. In the case of *State of Gujarat Vs. Mirzapur Moti Kureshi Jamat, (2005) 8 SCC 534*, referred to supra, it was held as under:

“112. The trend of judicial opinion, in our view, is that *stare decisis* is not a dogmatic rule allergic to logic and reason; it is a

flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.”

35. It becomes clear from a perusal of the case law adverted to by the learned senior counsel appearing on behalf of the appellant Temple Committee that a judgment can be said to be per incuriam when it is passed in forgetfulness or ignorance of a statute operating in that field. The notification dated 18-03-1974 vested the estates of Lord Jagannath, Puri in the State Government in view of the amended provision of the proviso to Section 2(oo) of the OEA Act, 1951 inserted by way of an Amendment in the year 1974. The judgment in Jagannath was passed only on consideration of the OEA Act, 1951. The provisions of the Temple Act, 1955, which is the principal Act that applies to the Lord Jagannath Temple, Puri were not adverted to at all.”

22. In the case of **Mahindra & Mahindra Ltd. Nagpur Vs. Mr. Avinash D. Kamble** (supra), a Division bench of this Court held that where a statute is inadequate or does not provide for a situation, judicial precedent will have to be followed. But, in matters concerning appreciation of evidence and drawing factual conclusions, even by resorting to legal presumption, there could be no precedent.

23. It is also significant that when a contention is raised that an earlier judgment is a binding precedent, it is necessary to examine as to what was the main issue in such a matter and whether in the subsequent

decisions, which are claimed to be *per incuriam*, such an issue fell for consideration and the decisions were rendered in ignorance of the earlier judgment.

24. In the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), upon which much emphasis is placed by the learned counsel for the petitioners to contend that it was a binding precedent, the question that fell for consideration before a learned Single Judge of this Court was, as to whether the insistence on the part of the Election Officer for furnishing no dues certificate from the Federal Society as per Rules or bye-laws of the Federation was mandatory and in case of failure to produce such no dues certificate, could the member societies be deprived of the right of voting, when there was no such requirement under the aforesaid Act and the Rules framed thereunder. It is in this context that the learned Single Judge of this Court held that an Election Officer was not justified in insisting upon such no dues certificate on the basis of bye-laws of Federal Society and accordingly, the writ petition stood allowed in favour of the petitioners therein.

25. While deciding the said issue, there was indeed reference

made to the aspect of 1% supervision charges required to be paid to the Federal Society, but, this was examined only in the context of clause 17 of bye-law No. 9 of the concerned Federal Society. It was observed by the learned Single Judge of this Court in the said judgment that no provision of the Act or Rules framed thereunder was brought to his notice, requiring member societies to submit no dues certificates in respect of 1% supervision charges. Thus, the entire controversy in the said case revolved around the insistence of no dues certificates on the part of the Election Officer. In this backdrop, the learned Single Judge of this Court in the said case held in favour of the petitioners and directed the names of the petitioner - member societies to be included in the final voters list.

26. The petitioners have contended before this Court that in the subsequent judgment in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), the said earlier judgment in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), was not brought to the notice of the learned Single Judge, although the controversy was identical and in the said subsequent judgment, the learned Single Judge in ignorance of the earlier judgment, held against the petitioners and upheld non-inclusion

of the petitioners thereof in the final voters list. But, a perusal of the said subsequent judgment of a learned Single Judge of this Court in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), would show that the issue specifically decided was, as to whether the petitioner societies therein could be said to be defaulters by applying Section 27(10) read with Section 73CA(1)(i)(c)(ii) of the aforesaid Act. The said provisions were analyzed in detail and the learned Single Judge of this Court in the aforesaid judgment found that the petitioner member societies in the said case had admittedly availed services of the respondent - Federal Society for allotment of works for which 1% supervision charges were payable and such charges were found to be due on the petitioners therein, thereby indicating that they could not be permitted to vote by operation of Section 27(10) of the said Act, which says that if a member is a defaulter, as provided in explanation (c) (ii) to Section 73CA(1)(i) of the said Act, such a member will not have the right to vote.

27. Thus, in the said subsequent judgment in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), the issue for consideration was distinct from the earlier judgment of the

learned Single Judge of this Court in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), in as much as the issue in the subsequent case revolved around the question of member societies being defaulters by operation of Section 27(10) read with explanation (c) (ii) to Section 73CA(1)(i) of the said Act. The issue in the earlier judgment was, as to whether the Election Officer could insist upon a no dues certificates from the Federal Society as per its bye-laws. Therefore, even if the subsequent judgment in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), did not refer to the aforesaid earlier judgment in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), such subsequent judgment cannot be said to be *per incuriam*.

28. In any case, in another subsequent judgment of a learned Single Judge of this Court in the case of **Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. State of Maharashtra** (supra), when an identical issue as regards member societies being treated as defaulters due to failure of payment of 1% supervision charges and their non-inclusion in the final voters list was considered, reliance was

sought to be placed on the said judgment of the learned Single Judge in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra). But, the learned Single Judge in the case of **Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. State of Maharashtra** (supra), specifically held that the issue in the earlier judgment in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), concerned no dues certificate to be produced in terms of bye-laws of the Federal Society for inclusion in the final voters list and there was no issue or discussion pertaining to defaulters as per the aforesaid two provisions.

29. It was noted that, in any case, the learned Single Judge in the case of **Bajrang Majoor Kamgar Sahakari Sanstha Maryadit Vs. The District Co-operative Election Officer** (supra), had observed that there was no provision under the Act and Rules brought to his notice, requiring members to submit no dues certificate in respect of 1% supervision charges. There was no discussion on the concept of defaulter under Section 27(10) and explanation (c)(ii) to Section 73CA(1)(i) of the aforesaid Act.

30. Therefore, even if the principles pertaining to the concepts of *per incuriam* and *stare decisis*, as laid down by the Hon'ble Supreme Court and this Court in the aforementioned judgments, are to be applied to the facts of the present case, it becomes clear that the subsequent judgments in the cases of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra) and **Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. State of Maharashtra** (supra), cannot be said to be *per incuriam* or in ignorance of a binding precedent. The contentions raised on behalf of the petitioners in this regard are, therefore, rejected.

31. As noted above, in the two cases of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** and **Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. State of Maharashtra** (supra), in the backdrop of facts that are identical to the present case, it was held that the member societies of a Federal Society, who failed to pay 1% supervision charges for the services rendered by the Federal Society are defaulters under the aforesaid provisions.

32. For the sake of clarity Section 27(10) and explanation (c)(ii) to Section 73CA(1)(i) of the said Act read as follows :

“Section 27(10) – If a member has taken a loan from the society, such member shall, whenever is a defaulter, as provided in the Explanation to clause (I) of sub-section (1) of section 73CA have no right to vote in the affairs of the society.

73CA – [Disqualification of committee and its members]

(1) Without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualification of being member of a committee, no person shall be eligible for being appointed, nominated, elected, co-opted or, for being a member of a committee, if he -

(i) is a defaulter of any society, -

Explanation – For the purpose of this clause, the term “defaulted” includes -

(c) in the case of any society, -

(i) a member who has taken *anammat* or advance; or

(ii) a member who has purchased any goods or commodities on credit or availed himself of any services from the society for which charges are payable; and fails to repay the full amount of such *anammat* or advance or pay the price of such goods or commodities or charges for such service, within thirty days from the date of withdrawal of *anammat* or advance by him or from the date of delivery of goods to him or availing of services by him, whichever is earlier;”

33. The petitioners have not disputed that being members of the respondent No.2 - Federal Society, on services provided by the said Federal Society in the form of providing work to member societies, they are obliged to pay 1% supervision charges. As held in the aforesaid two judgments in the cases of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari**

Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd. and Vinay Kore Majur Sahkari Sanstha Ltd. thru Authorized Representative Vs. State of Maharashtra (supra), this Court is of the opinion that non-payment of the said 1% supervision charges by the member societies would render them ineligible for voting and, therefore, non-inclusion of names of such member societies in the final voters list cannot be said to be an arbitrary act, deserving interference at the hands of this Court in writ jurisdiction.

34. Having noted the said position of law and applying it to the facts of the present case would show that the respondent No.2 – Federal Society had treated some member societies, including the petitioners herein, as defaulters for non-payment of 1% supervision charges. Some of the member societies had contested this position before the respondent No.1 and documents, including ledger books of the member societies and respondent No.2 - Federal Society were considered by the respondent No.1 and it was found that there were indeed member societies, who had defaulted and accordingly, their names were not included in the final voters list. It is brought to the notice of this Court that when two societies, upon being made aware about their default in payment of 1% supervision charges, had paid the said amount, their names were indeed

included in the final voters list by the respondent No.1 – Election Officer. These are petitioner Nos.6 and 11 before this Court.

35. By testing the action of respondent No.1 on the touchstone of the aforesaid position of law as regards defaulter members under the aforesaid provisions of the Act, this Court is of the opinion that the final voters list determined by respondent No.1 at this stage, cannot be said to be a decision requiring interference in writ jurisdiction. The petitioners have sought to emphasize that figures have been fudged and documents have been created by the respondent No.2 - Federal Society to falsely show the petitioner societies as defaulters and certain submissions were made in that regard. But, the Election Officer, on the basis of the material available on record, by the very nature of proceedings undertaken while finalizing voters list, arrived at a reasonable conclusion. If at all serious disputed questions of facts are sought to be raised by the petitioners, filing an election dispute under Section 91 of the said Act read with Rule 78 of the Maharashtra Co-operative Societies (Election to Committee) Rules 2014, is the only remedy.

36. The petitioners sought to rely upon judgment of the learned Single Judge of this Court in the case of **Rajan Dinkarrao Pharate Vs.**

State of Maharashtra (supra), wherein this Court, despite availability of alternative remedy of filing election dispute under Section 91 of the said Act, entertained the writ petitions and partly allowed the same. It was emphasized that in the said judgment, writ jurisdiction was invoked because it was found that about 97% of the voters were sought to be disenfranchised and that in the present case, such a scenario existed because about 85% of the member societies were not included in the final voters list. It was submitted that in the subsequent Division Bench judgment of this Court in the case of **Pandurang Laxman Kadam & Ors. Vs. State of Maharashtra & Ors. (2016) 6 BOM C.R. 75**, this Court held that Section 91 of the aforesaid Act provided for an efficacious alternative remedy and writ petition could not be entertained even when question pertaining to finalization of voters list was raised, except in cases like the aforesaid case of **Rajan Dinkarrao Pharate and Others Vs. State of Maharashtra** (supra), wherein majority of the voters were sought to be kept out of the final voters list.

37. But, this Court is of the opinion that reliance on the said judgment of the learned Single Judge of this court in the case of **Rajan Dinkarrao Pharate and Others Vs. State of Maharashtra** (supra), is misplaced because the fact that large number of voters are not included in

the final voters list alone cannot be a ground for invoking writ jurisdiction, when the basis of non-inclusion of voters in the final voters list is based on a reasonable view taken by the Election Officer, on the basis of material on record and those raising a dispute in that regard are raising questions necessarily pertaining to seriously disputed questions of facts, requiring enquiry and recording of evidence, indicating that redressal can be sought only by instituting an election dispute under Section 91 of the said Act.

38. This Court is of the opinion that, considering the nature of factual disputes being raised by the petitioners as regards alleged fudging of figures by respondent No.2 – Federal Society, a factual enquiry is necessary entailing recording of evidence and hence, the only remedy available in such a scenario is filing of an election dispute under Section 91 of the said Act.

39. As regards the contention raised on behalf of the petitioners that they were caught unaware because sufficient publicity was not given to the election programme of finalization of voters list, this Court found that there is no substance in the said contention because admittedly, the election programme was published in daily newspaper “Deshonnati”. It

was published on the notice board of the Federal Society, as required by the Act and Rules and a *panchanama* in that regard was also executed.

40. At the same time, there is substance raised in the contention raised on behalf of the respondent No.2 – Federal Society that the petitioners have indulged in suppression of relevant facts. The petitioner No.1 is the very society, which was party to the case in which the aforementioned judgment of the learned Single Judge of this Court in the case of **M.I.D.C. Prkalpgrast Majur Kamgar, Sahakari Sanstha, Maryadit Vs. Amravati District Labour Cooperative Society's Union Ltd.** (supra), was rendered and yet, the said fact was suppressed from this Court. It was also suppressed from this Court that when the respondent No.2 – Federal Society had called upon the member societies to forward the names of their representatives for the purpose of the proposed election, petitioner Nos.4, 9, 13, 15 and 17 had not even forwarded the names of their representatives, thereby showing that they could not raise a grievance about non-inclusion of their names in the final voters list.

41. Similarly, it was suppressed from this Court that after the question regarding default in payment of 1% supervision charges was taken up and decided by the respondent No.1 – Election Officer, the

petitioner Nos.6 and 11 had actually paid the said amount and consequently, the names of these two societies were included in the final voters list, thereby showing that they could not have any grievance. This demonstrates that the petitioners did not place all the facts correctly before this Court while invoking writ jurisdiction, thereby indicating another reason why the writ petition ought not to be entertained.

42. It is also relevant that in view of some of the aforesaid societies not even forwarding the names of their representatives to the respondent No.2 - Federal Society, only 14 of the petitioner societies could be said to have grievance. But, there is nothing to show that other member societies, large in numbers, whose names were not included in the final voters list, have any grievance in that regard. They did not even care to raise grievance as regards non-inclusion of their names in the final voters list. In this backdrop, it can be said that there is some substance in the contention raised on behalf of respondent No.2 – Federal Society that such member societies, who have not even come forward to raise grievance are either not aggrieved, or being defaulters, they are aware that their names could never be included in the final voters list. This is another reason to hold that the contention raised on behalf of the petitioners that the entire process of finalization of the voters list was

vitiated, cannot be accepted and the present writ petition deserves to be dismissed.

43. In view of the above, it is found that there is no substance in the contentions raised on behalf of the petitioners and the impugned final voters list does not deserve interference.

44. Accordingly, the writ petition is dismissed. Interim relief stands vacated. Pending applications, if any, are disposed of.

45. Needless to say, if the petitioners have any grievance, they would be at liberty to raise the same in a properly instituted election dispute under Section 91 of the said Act, if so advised. Such a dispute, if filed, will be decided without being influenced by the observations made hereinabove. Rule is discharged.

JUDGE

MP Deshpande