IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5258 OF 2026

1. Sanjay Harishchandra More
Age: 45 years, Adult, Occupation: Agriculture
R/o. Ughad, Taluka Mahabaleshwar,
District Satara, Maharashtra - 412806 ...Petitioner

Versus

1. The State Co-operative Election Authority,
Maharashtra State, Pune - 411001, through Its
Commissioner/Secretary

2. The District Co-operative Election Officer, Satara
and District Deputy Registrar,
Co-operative Societies, Satara – 416416

3. The Election Returning Officer,
Satara District Central Co-operative
Bank Ltd., Satara – 416416

4. The Satara District Central Co-operative
Bank Ltd., Satara – 416416
Through its Managing Director/
Chief Executive Officer.

5. Khingar Vikas Seva Society Ltd.,
Through its Secretary,
Tal – Mahabaleshwar, Dist – Satara – 412806

6. Rajendra Nivrutti Rajpure,
R/o. Khingar, Taluka Mahabaleshwar,
District Satara – 412806

7. The State of Maharashtra
AGP Office, High Court
Circuit bench Kolhapur ...Respondents

PATHAN ZEENAT ISMAIL
Digitally signed by PATHAN ZEENAT ISMAIL
Date: 2026.10.15 10:45:53 +0530

WITH
WRIT PETITION NO.5260 OF 2026

1.	Chandrakant Maruti Kokate Age: 45 years, Adult, Occupation: Agriculture R/o. Shenwadi, Taluka Khatav, District Satara, Maharashtra – 415505	]]]]...Petitioner
	Versus	]]
1.	The State Co-operative Election Authority, Maharashtra State, Pune, through Its Commissioner/Secretary - 411001	]]]]
2.	The Election Returning Officer, District Co-operative, Satara and District Deputy Registrar, Co-operative Societies, Satara – 416416	]]]]]
3.	The Satara District Central Co-operative Bank Ltd., Satara – 416416 Through its Managing Director/ Chief Executive Officer.	]]]]]
4.	Shri. Anil Shivajirao Desai, Age:Adult; Occ- Business R/o. Varkute, Tal-Man District Satara – 415508	]]]]]
5.	The State of Maharashtra AGP Office, High Court Circuit bench Kolhapur - 416001	]]]...Respondents

.....

Adv. Ashutosh Kumbhakoni a/w Adv. Arun Khot, Adv. Siddharth Karpe, Adv. Akshay Shinde and Adv. Vishwajeet V. Mohite i/b Adv. Harsh A. Khot, for Petitioner in WP/5260/2026 and Adv. Pradeep Dalvi a/w Adv. Nitin Nikam and Adv. Rahul Khot, for Petitioner in WP/5258/2026.
Adv. Ruturaj R. Pawar, for Respondent Nos.1 to 3 in both Petitions.
Adv. Louis S. Shah i/b Adv. Rushabh D. Phade, for Respondent No.6 in WP/5258/2026 and for Respondent No.4 in WP/5260/2026.
Adv. Dilip Bodake a/w Adv. Sharad T. Bhosale, for Respondent No.4 in WP/5258/2026 and for Respondent No.3 in WP/5260/2026.

Adv. Kirankumar J. Phakade a/w Adv. Shweta Phakade and Adv. Arjun Mohite, for Respondent No.5 in WP/5258/2026.
Mr. Ravi P. Kadam, 'B' Panel Counsel, for the Respondents-State.

.....

CORAM : SHAILESH P. BRAHME, J.

RESERVED DATE : 12th OCTOBER, 2026.
PRONOUNCED DATE : 14th OCTOBER, 2026.

JUDGMENT :

Leave is granted to amend the prayers. Amendment to be carried out forthwith.

2. **Rule**. Rule is made returnable forthwith by the consent of the parties. Heard litigating sides.

3. The paper-book of Writ Petition No. 5260 of 2026 is referred. In that matter, the nomination of the respondent No.4 was objected. In Writ Petition No. 5258 of 2026, the nomination of the respondent No.6 was objected. In both matters, objections were overruled by order dated 05.10.2026 passed under Rule 25(2) of the Maharashtra Co-operative Societies (Election to Committee) Rules, 2014 (hereinafter referred to as "Rules of 2014" for the sake of convenience and brevity), which are questioned in the petitions.

4. The petitioners raised objection to the eligibility of the respondent Nos. 4 and 6 in the respective petitions, on the ground that they were directors of the Federal Society - the Satara District Central Co-operative Bank, for more than 10 years and incurred disqualification

IBC Laws | www.ibclaw.in

by Section 10A(2A) of the Banking Regulation Act, 1949 (hereinafter referred to as "B.R. Act" for the sake of convenience and brevity). The election process of respondent - the Satara District Central Co-operative Bank is underway. Admittedly, it's an Urban Co-operative Bank. As per the election programme, the nominations were submitted and those were scrutinised on 05.10.2026 when the impugned orders were passed. The time for withdrawal of nomination is scheduled from 06.10.2026 to 21.10.2026. Thereafter, allotment of symbol is scheduled on 22.10.2026 and the voting is on 01.11.2026.

5. The submissions of learned Senior Counsel, Mr. Ashutosh Kumbhakoni, appearing for the petitioner are summarised as:

The Returning Officer misconstrued the objections of the petitioners and failed to exercise the jurisdiction vested in him. Section 10A(2A) of the B.R. Act has retroactive application and the earlier term of the respondent private parties as a director of Federal Society would be counted to determine the eligibility. The Directions of 2026 issued by the Reserve Bank of India would corroborate the claim of the petitioners. The Returning Officer is obliged to determine eligibility and disqualification of a member in the summary enquiry under Rule 25(2) of the Rules of 2014. It is not disputed that respondent Nos. 6 and 4 in respective petitions enjoyed term of more than 10 years and have incurred disqualification, which needs to be dealt with in the writ

IBC Laws | www.ibclaw.in

jurisdiction as there is no statutory remedy provided under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the "Act" for the sake of convenience and brevity).

6. Learned counsel, Mr. Louis Shah, appearing for the private respondents, would counter the submissions by raising preliminary objections for entertaining the petitions after commencement of election process, the involvement of disputed questions of facts, and availability of alternate remedy under Section 91 of the Act. It is tried to be impressed upon me that Section 91 the Act is a statutory remedy, and besides that, Reserve Bank of India has independent power to examine the disqualification of the member under Section 10A(2A)(5) of the B.R. Act. The intricate questions can not be gone into by the Returning Officer.

7. Learned counsel, Mr. Ruturaj Pawar, appearing for respondent Nos.1 to 3 would submit that the scope of enquiry under Rule 25 of the Rules of 2014 is very limited. The B.R. Act cannot be made applicable, as it is outside of the purview of Rule 25 of the Rules of 2014. The intricate questions of interpretation cannot be gone into in such an enquiry. It is further submitted that opinion expressed by the competent authority vide letter dated 21.08.2026 is binding upon the Returning Officer. The claim of the petitioners is stated to be outside of the realm of the Returning Officer. The learned 'B' Panel Counsel for the

respondents-State and the learned counsel, Mr. Bodake, appearing for the respondent - Federal Society adopt the submissions.

8. The litigating sides have cited various judgments to support rival claims regarding self-imposed restriction on High Court while exercising writ jurisdiction under Article 227 of the Constitution of India and the scope of enquiry under Rule 25(2) of the Rules of 2014.

9. At the outset, it needs to be made clear that the claim of the petitioners challenging the eligibility of respondent Nos.4 and 6 in the respective petitions is to prevent them from being chosen to fill the seat under the respective constituency. Their disqualification being member is not *per se* is germane in such an enquiry. The enquiry under Rule 25(2) of the Rules of 2014 is summary in nature and restricted to examine the eligibility of a person to be chosen to fill the seat. Any finding recorded by the returning officer in such a summary enquiry would not operate as r*es judicata* for claiming declaration of status in a substantive proceedings as is permissible under Section 91 of the Act or Section 10A(2A)(5) of the B.R. Act.

10. The respondents have placed reliance on the judgment of Hon'ble Supreme Court in the matter of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & Anr. Versus State of Maharashtra & Ors.***[1]**,** the judgment of Co-ordinate Bench of this

1 **(2001) 8 Supreme Court Cases 509.**

Court (Aurangabad Bench) in the case of ***Bhagwanrao Ramchandra Patil Versus State of Maharashtra & Ors.***[2] and the judgment of Co-ordinate Bench of this Court (Nagpur Bench) in the case of ***Shriram Ganpatrao Yawale Versus Resident Deputy Collector, Amravati & Ors.***[3] to buttress that petitions cannot be entertained.

11. Petitioners have relied upon the judgment of Hon'ble Supreme Court in the case of ***Union Territory of Ladakh & Ors Versus Jammu and Kashmir National Conference & Anr.***[4]**,** Co-ordinate Bench of this Court in the case of ***Murlidhar Rangrao Gaikwad versus State Co-operative Election Authority & Ors***.[5] and Division Bench of this Court in the case of ***Nilesh Chhaburao Bhojane Versus State of Maharashtra & Ors.*** passed in Writ Petition No.156 of 2026 on 09.01.2026.

12. The jurisdiction of the High Court under Article 226 and 227 of the Constitution of India has self-imposed restrictions. The indulgence which stalls the election process, create hindrance or delays it, should be avoided. Simultaneously, it is not that there is absolute prohibition to entertain the petitions. If without staying or delaying the election process, the interference is possible to rectify a patent illegality or the defect, then such an indulgence is permissible.

13. The objections of the petitioners are overruled by impugned

2 **2021 (6) Bom. C.R.18.**
3 **2007 (3) Mh.L.J. 95.**
4 **2023INSC804.**
5 **2025 SCC OnLine Bom 893.**

orders observing that the Returning Officer has no jurisdiction to decide disqualification of the candidate. The reliance is placed on the Government's letter dated 21.08.2026, which refers to Section 10A(2A) of B.R. Act to opine that it would be outside of the purview of powers of the Returning Officer.

14. The question to be decided in these petitions is as to what would be the scope of the jurisdiction of the Returning Officer under Rule 25 of the Rules of 2014 when such a type of objections are raised. It is trite law that executive instructions, which are in the form of letter dated 21.08.2026, cannot override the statutory provisions or interpretations of law. Those are the perceptions of individual executive, which cannot bind this Court. It is necessary to refer to following provision of the Rules of 2014 to understand scope of enquiry :

> *"**25. Scrutiny of nomination papers.**--(1) On the date fixed, for the scrutiny of nomination papers under rule 18, the candidates, one proposer of each candidate duly authorized in writing by each candidate, may attend at the time and place appointed in this behalf, and the Returning Officer shall give or cause to give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 20. No other person shall be allowed to attend the scrutiny of nomination.*
> *(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary reject any nomination on any of the following grounds, that is to say*
>
> *(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act, the Rules and the bye-laws;*
> *(b) that the proposer or seconder is disqualified from*

subscribing a nomination paper;

(c) that there has been a failure to comply with any of the provisions of rule 21 or 23;

(d) that the signature of the candidate or the proposer or the seconder on the nomination paper is not genuine.

(3) Nothing contained in clause (c) or (d) of sub-rule (2) shall be deemed to authorize the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.

(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

(5) The Returning Officer shall hold the scrutiny on the date appointed in this behalf under rule 18, and shall not allow any adjournment of the proceedings, except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control:

Provided that, in case any objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it, not later than the next day before the publication of list of valid nomination and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned.

(6) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, he shall record in writing, a brief statement of his reasons for such rejection, and a copy of such statement shall be immediately supplied on demand to the candidate or to the proposer concerned. The copy of such statement shall be sent invariably to the SCEA or District Co-operative Election Officer, as the case may be."

15. The Returning Officer is obliged to decide all objections made to any nomination pertaining to the disqualification of candidate for being chosen to fill the seat by or under the Act, Rules and the Bye-laws. The adjudication is summary in nature, but it is *qua* the eligibility of the candidate to be nominated and to be elected to the post in question. The purport of the provision is to see that competent and eligible

IBC Laws | www.ibclaw.in

persons only should participate in the election and ultimately in the administration of the Co-operative Societies. No case is made out by the delegate nominee that they did not complete 10 years as director.

16. The Returning Officer, while adjudicating the eligibility of the candidate, does not substantively decide disqualification as contemplated by Section 73CA of the Act. The adjudication is *prima facie* in nature and restricted to the participation in the election process. The outcome of the enquiry under Rule 25 of the Rules of 2014 is without prejudice to the substantive remedy provided for declaring a candidate or a member as disqualified under the Act or B.R. Act. Therefore, the opinion expressed in a letter dated 21.08.2026 that the Returning Officer does not have jurisdiction to decide eligibility *qua* the provisions of Section 10A(2A) of the B.R. Act is without any merit and substance.

17. My attention is adverted by learned Senior Counsel, Mr. Kumbhakoni to Section 73AAA(1) of the Maharashtra Co-operative Societies Act, 1960, which is as follows:

> *"73AAA. Constitution of committee*
>
> *(1) The Committee shall consist of such number of members as may be provided in the by-laws:*
>
> ***Provided*** *that, the maximum number of members of the committee shall not exceed twenty one:*
>
> ***Provided further*** *that, in case of an apex society and, in exceptional circumstances, in case of any other society, the Registrar may increase the number of members of the committee upto twenty-five with the prior approval fo the State Government :*

IBC Laws | www.ibclaw.in

Provided also *that the provisions of the Banking Regulation Act, 1949, shall apply to all the societies carrying the business of banking."*

18. For constitution of the committee, provisions of the B.R. Act are made applicable. Therefore, the following provisions of the said Act are relevant:

"10A. Board of director to include persons with professional or other experience. - *(1) ********

*(a) ********
*(b) ********
*(2) ********

(2A) Notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or in any other law for the time being in force,—

(i) no director of a banking company, other than its chairman or whole-time director, by whatever name called, shall hold office continuously for a period exceeding eight years; [and ten years in case of a co-operative bank]'

(ii) a chairman or other whole-time director of a banking company who has been removed from office as such chairman, or whole-time director, as the case may be, under the provisions of this Act shall also cease to be a director of the banking company and shall also not be eligible to be appointed as a director of such banking company, whether by election or co-option or otherwise, for a period of four years from the date of his ceasing to be the chairman or whole-time director, as the case may be.]

(3) If, in respect of any banking company, the requirements, as laid down in sub-section (2), are not fulfilled at any time, the Board of directors of such banking company shall re-constitute such Board so as to ensure that the said requirements are fulfilled.

(4) If, for the purpose of re-constituting the Board under sub-section (3), it is necessary to retire any director or directors, the Board may, by lots drawn in such manner as may be prescribed, decide which director or directors shall cease to hold office and such decision shall be binding on every director of the Board.

(5) Where the Reserve Bank is of opinion that the composition of the Board of directors of a banking company is such that it does not fulfil the requirements of sub-section (2), it may, after giving to such banking company a reasonable opportunity of being heard, by an order in writing, direct the banking company

IBC Laws | www.ibclaw.in

to so re-constitute its Board of directors as to ensure that the said requirements are fulfilled and, if within two months from the date of receipt of that order, the banking company does not comply with the directions made by the Reserve Bank, that Bank may, after determining, by lots drawn in such manner as may be prescribed, the person who ought to be removed from the membership of the Board of directors, remove such person from the office of the director of such banking company and with a view to complying with the provisions of sub-section (2), appoint a suitable person as a member of the Board of directors in the place of the person so removed whereupon the person so appointed shall be deemed to have been duly elected by the banking company as its director.

(6) Every appointment, removal or reconstitution duly made, and every election duly held, under this section shall be final and shall not be called into question in any court.

(7) Every director elected or, as the case may be, appointed under this section shall hold office until the date up to which his predecessor would have held office, if the election had not been held, or, as the case may be, the appointment had not been made.

(8) No act or proceeding of the Board of directors of a banking company shall be invalid by reason only of any defect in the composition thereof or on the ground that it is subsequently discovered that any of its members did not fulfil the requirements of this section."

19. It is not disputed that the Satara District Central Co-operative Bank is Urban Co-operative Bank. The conjoint reading of Section 73AAA and Section 73CA of the Act would indicate that eligibility needs to be tested to touchstone of Section 10A(2A) of the B.R. Act by the Returning Officer in a limited enquiry under Rule 25 of the Rules of 2014.

20. The prohibition for a director to hold the office continuously for exceeding period of 10 years is introduced in (2A)(i) with effect from 01.08.2025 and the question has cropped up as to such a prohibition is prospective, retrospective or retroactive.

21. Learned Senior Counsel has relied upon the Directions of 2026 introduced with effect from 25.05.2026 by Reserve Bank of India, which are called as Reserve Bank of India (Urban Co-operative Banks - Governance) Amendment Directions, 2026. Following are the relevant extracts:

> *"3. In a few cases, directors have been found to be resorting to certain methods to circumvent the provisions of the Act, such as resigning briefly from office and being re-elected/co-opted to the Board within a short period of time, thereby continuing to be on the Board of a UCB for an extended period beyond the legally permissible tenure, which defeats the intent and spirit of the statutory provision.*
> *4. Accordingly, in exercise of the powers conferred by Section 35A read with Section 10A(2A)(i) and Section 56 of the Act, and all other provisions / laws enabling the Reserve Bank of India ('RBI') in this regard, RBI being satisfied that it is necessary and expedient in the public interest so to do, hereby issues these Directions hereinafter specified.*
> *(1) These Directions shall be called the Reserve Bank of India (Urban Co-operative Banks Governance) Amendment Directions, 2026.*
>
> *(2) These Directions shall come into force with immediate effect.*
> *(3) These Directions shall modify the Reserve Bank of India (Urban Co-operative Banks - Governance) Directions, 2025 in the manner as specified hereinafter.*
> *(4) After paragraph 7 of the Reserve Bank of India (Urban Co-operative Banks -Governance) Directions, 2025, the following shall be inserted, namely:*
> *"7A. A director on the Board of a UCB, after completing a continuous tenure of ten years in office, shall be eligible to be re-appointed, whether by election or co-option or in any other manner, as a director on the Board of the same UCB only after undergoing a minimum cooling-off period of three years. During the cooling-off period, the said director shall not be associated with the UCB in any capacity / manner other than as a member/customer. This, however, shall not preclude him / her from being appointed as a director on the Board of another bank, if otherwise eligible.*
> *Explanation:*
> *For calculating the period of continuous tenure, the total time served on the Board of the UCB including the period of directorship preceding an interruption of less than three years*

but excluding the period of directorship preceding at least a three-year interruption shall be reckoned."

22. It is emphasized that the newly amended disqualification of 10 years is retroactive in nature. I find substance in this submission. The Directions of - 2026 of Reserve Bank of India corroborates the interpretation. In order to fortify the submission, reliance is placed on the judgment of Hon'ble Supreme Court in the matter of ***Newtech Promoters And Developers Private Limited Versus State of Uttar Pradesh And Ors.***[6]. I have gone through paragraph Nos. 46 to 50 of the judgment, which expound meaning of retroactive interpretation, *inter alia* relying on earlier judgment. Following is the relevant extract:

*"**50.** Thus, it is clear that the statute is not retrospective merely because it affects existing rights or its retrospection because a part of the requisites for its action is drawn from a time antecedent to its passing, at the same time, retroactive statute means a statute which creates a new obligation on transactions or considerations already passed or destroys or impairs vested rights."*

23. Further reliance is placed on the judgment of Hon'ble Supreme Court in the case of ***Securities And Exchange Board of India Versus Rajkumar Nagpal And Ors.***[7] Following are the relevant observations:

*"**101.** The terms "retrospective" and "retroactive" are often used interchangeably. However, their meanings are distinct. This Court succinctly appreciated the difference between these*

6 **(2021) 18 SCC 1.**
7 **(2023) 8 Supreme Court Cases 274.**

> *concepts in State Bank's Staff Union (Madras Circle) v. Union of India:*
>
> *""Retroactivity" is a term often used by lawyers but rarely defined. On analysis it soon becomes apparent, moreover, that it is used to cover at least two distinct concepts. The first, which may be called "true retroactivity", consists in the application of a new rule of law to an act or transaction which was completed before the rule was promulgated. The second concept, which will be referred to as "quasi-retroactivity", occurs when a new rule of law is applied to an act or transaction in the process of completion....The foundation of these concepts is the distinction between completed and pending transactions...." [T.C. Hartley, The Foundations of European Community Law 129 (1981).]*
>
> ***102.** Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective."*

Both the judgments are useful to understand meaning of retroactive interpretation, which can be adopted in the present matter.

24. Further reliance is placed on the judgment rendered by the Division Bench of this Court (Circuit Bench, Kolhapur) in the case of ***Kolhapur District Urban Banks Co.op. Association Ltd & Ors. Versus Union of India & ors.*** passed in Writ Petition No.12121 of 2025 on 12.12.2025. In that case, writ was solicited for directing the Returning Officers in the election of the petitioner bank not to disqualify the member from contesting forthcoming election on the ground that they have already completed their continuous tenure of 10 years. The

interim relief was refused by the Division Bench and the matter was posted for further consideration. But the observations have the persuasive value, which are as follows:

> *"**10.** Heard. It is pertinent to note that there is no challenge to the constitutional validity of either the 2020 Amendment or the 2025 Amendment to the Banking Regulation Act, 1949 in this petition. The entire case of the petitioners is that the RBI is wrongly applying the amendments retrospectively. Prima facie, we are of the opinion that the plain reading of the provisions of Section 10E to 10A of the Banking Regulation Act, makes it clear that the legislative intent of Section 10A(2A)(i) is to avoid concentration of Board power in the hands of directors who have held their positions for long periods. We ind substance in the submissions of learned counsel for the respondents that to achieve this, the Parliament has capped the maximum period that a director (other than a Chairman or whole-time director) of a co-operative bank can continuously hold office for 8 years, vide Banking Regulation (Amendment) Act, 2020. Accordingly, all such directors who had completed / were completing 8 continuous years on or after 29th June 2020 on the board knew that they would by operation of law, cease to hold office upon completion of their term. Subsequently, the Banking Laws (Amendment) Act, 2025 prescribes that in case of Co-operative banks, if on or after that date the amendment coming into force (i.e. 1st August 2025) any such director, who has been in office continuously for a term of 10 years, he / she cannot hold office.*
> ***11.** The Hon'ble Supreme Court in Keshavan Madhava Menon Vs. State of Bombay (1951) SCC OnLine SC 3 has clearly held that it is the rule of interpretation of statutes that every statute is prima facie prospective unless expressly or by necessary implication made retrospective. We thus ind that the Reserve Bank of India has, by the impugned Circular, merely implemented the amended provisions by not permitting any Director (other than the Chairman or whole-time directors) of the Co-operative bank who completed the continuous tenure of 10 years on or after 1st August 2025 to continue in office. By operation of law, such persons become disentitled to continue in office."*

25. As against the judgments of the petitioners, respondents also have relied on judgment of learned Single Judge of Gujarat High Court

in the case of ***Mukesh Chandrakant Dalal Versus The Returning Officer, Surat Peoples Co-operative Bank Limited*** passed in R/Special Civil Application No.12986 of 2023 along with R/Special Civil Application No.13099 of 2023 on 02.08.2023. In that case, the order of the Returning Officer was challenged, disqualifying the petitioner by implication of the provisions of Section 10A(2A)(i) of the B.R. Act. It is held that the Election Officer at the stage of scrutinizing the nomination form was not empowered to decide the eligibility of the candidate in view of Section 10A(2A) of the B. R. Act. Following is the relevant para:

> *"9.1. In the instant case, as could be made out from a plain reading of Section 10A(2A)(i), a Director is prohibited from holding office continuously for a period exceeding eight years and whereas it is the Reserve Bank, which is empowered to ensure that Banking Companies comply with the said provision. The Election Officer at the stage of scrutinizing the nomination form, was not empowered to decide whether the Director had completed eight years or not and whereas what would be the consequences thereof. Again the Election Officer was not empowered to act as a nominee of the RBI, when he was acting as an Election Officer for conducting election to the Managing Committee of the Bank. Under such circumstances, the action taken by the Election Officer, prima facie being without jurisdiction, interference at this stage is warranted."*

26. I am unable to be persuaded by the view taken by learned Single Judge of the Gujarat High Court. I have assigned independent reasoning in foregoing paragraphs, interpreting the provisions and laying down the scope of enquiry of the Returning Officer. This judgment would not enure to the benefits of the respondents.

IBC Laws | www.ibclaw.in

27. Further reliance is placed on the judgment of the Division Bench of this Court (Nagpur Bench) in case of ***Ram Anantrao Deosarkar Versus The State of Maharashtra Through its Secy. Department of Cooperation and Textiles, Mumbai And Ors.*** passed in Writ Petition No.7695 of 2026 on 01.10.2026. In that matter, no order passed by any Returning Officer or Election Officer was questioned before the Division Bench in respect of disqualification under 10A(2A) of the B.R. Act. A prayer was made by the petitioner to direct Reserve Bank of India to decide representation and prohibit the respondent No.5 therein from contesting the election of Yavatmal District Central Co-operative Bank. The facts are distinguishable from the present matter. The issue germane in the present petitions was not fallen for consideration and this judgment also will not help the respondents.

28. I reiterate that the Returning Officer in his limited jurisdiction can examine the eligibility or qualification of the candidate within powers under Rule 25(2) of the Rules of 2014, notwithstanding availability of the substantive remedy to the aggrieved parties provided either under the Maharashtra Co-operative Societies Act or the B.R. Act. If such a recourse is undertaken, then the observations and the findings of the Returning Officer would not be an impediment. The observations made in this order are *prima facie* in nature and that would be without prejudice to substantive remedy.

29. Its a common knowledge that the objections regarding eligibility of the candidates or the members are frequently raised during the process of elections and if the challenge is discarded or overruled, the aggrieved party hardly would take recourse to Section 91 of the Act or any other substantive remedy provided by other statute. The net result is that ineligible candidates participate in the election and would become part of administration, which is not the purport of rigorous provisions made under the Act or the B.R. Act. The disqualification provided by sub-section (2A) of Section 10A of the B.R. is with object to avoid concentration of power and monopoly. It is aimed at providing equal opportunity to other eligibles. This larger public interest can not be overlooked, be it interim stage of election process or substantive post election proceedings.

30. In such a situation, I am of the considered view that relegating the parties to the alternate remedy would perpetuate the illegality. There is no statutory remedy provided under Maharashtra Co-operative Societies Act. The remedy provided under Section 91 of the Act is general in nature, *albeit* challenge to the election and its results is permissible.

31. I propose to adopt the approach as is expounded by the Apex Court in the case of ***Union Territory of Ladakh & Ors*** (supra) as follows.

> *"37. We would indicate that the restraint, self-imposed, by the*

IBC Laws | www.ibclaw.in

> *Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances loath are to interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order."*

32. For the reasons stated above, I find that interference is required. The ineligible candidate is participating in the election and the indulgence of this Court would not cause any hindrance in further election process or its smooth conclusion. I, therefore, pass the following order :

::ORDER::

A. Rule is made absolute in terms of prayer clause (a).

B. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

33. After pronouncement of judgment, the learned counsel, Mr. Louis

IBC Laws | www.ibclaw.in

Shah, appearing for Respondent Nos.6 and 4 in the respective petitions prays for suspension of the operation of the judgment for a period of 15 days so as to enable his client to approach the Apex Court.

34. The request is opposed by the counsel appearing for the petitioners.

35. The matter pertains to the interim orders passed by the Returning Officer in the election process. The election process is under way and, therefore, both matters are heard urgently and decision is rendered. Hence, I am not inclined to grant the relief. It stands rejected.

[SHAILESH P. BRAHME, J.]