

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8065 OF 2015

The Grampanchayat, Nadiwadi
Tq.Nilanga, Dist.Latur,
Through its Sarpanch,
Shri Sanjay S/o Sitaram Dorave,
Age-Major, Occu-Agriculturist,
R/o Nadiwadi, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,
4. The Assistant Registrar,
Co-operative Societies, AUSA /
The Returning Officer,
Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8067 OF 2015

The Grampanchayat, Wanjarwada
Tq.Nilanga, Dist.Latur,
Through its Member,
Shri Vishwnath S/o Rama Motilal,
Age-Major, Occu-Agriculturist,
R/o Wanjarwada, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

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Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
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Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8068 OF 2015

The Grampanchayat, Khadakumaraga
Tq.Nilanga, Dist.Latur,
Through its Member,
Shri Uttam S/o Parshuram Thokare,

Age-Major, Occu-Agriculturist,
R/o Khadakumarga, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
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Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8069 OF 2015

The Grampanchayat, Baspur,
Tq.Nilanga, Dist.Latur,
Through its Sarpanch
Sow.Bharatbai W/o Laxman Kalage
Age-Major, Occu-Agriculturist,
R/o Baspur, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing,
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,
4. The Assistant Registrar,
Co-operative Societies, AUSA /
The Returning Officer,
Agricultural Produce Market Committee,
Aurang (Shahajani), Tq. Nilanga,
Dist. Latur,
5. The Agricultural Produce Market Committee,
Aurang (Shahajani), Tq. Nilanga,
Dist. Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8070 OF 2015

The Grampanchayat, Tagarkheda
Tq. Nilanga, Dist. Latur,
Through its Member,
Shri Dattu S/o Yoginath Langade,
Age-Major, Occu-Agriculturist,
R/o Tagarkheda, Tq. Nilanga,
Dist. Latur

PETITIONER

VERSUS

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Through its Secretary,

Department of Agricultural Marketing
Mantralaya, Mumbai-32,

2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,
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Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8071 OF 2015

The Grampanchayat, Khadakumaraga
Tq.Nilanga, Dist.Latur,
Through its Member,
Shri Chandrakant S/o Kerba Mane,
Age-Major, Occu-Agriculturist,
R/o Waksa, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,

3. The District Deputy Registrar,
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4. The Assistant Registrar,
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Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8072 OF 2015

The Grampanchayat, Malegaon,
Tq.Nilanga, Dist.Latur,
Through its Member,
Sow.Surekha W/o Kashinath Hulsure,
Age-Major, Occu-Agriculturist,
R/o Malegaon, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,

4. The Assistant Registrar,
Co-operative Societies, AUSA /
The Returning Officer,
Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8073 OF 2015

The Grampanchayat, Hosur,
Tq.Nilanga, Dist.Latur,
Through its Sarpanch
Shri Shrimant s/o Pandurang Biradar,
Age-Major, Occu-Agriculturist,
R/o Hosur, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

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Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
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4. The Assistant Registrar,
Co-operative Societies, AUSA /
The Returning Officer,
Agricultural Produce Market Committee,

Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,

5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8074 OF 2015

The Grampanchayat, Khadakumaraga
Tq.Nilanga, Dist.Latur,
Through its Sarpanch,
Shri Ambadas S/o Maroti Pethe,
Age-Major, Occu-Agriculturist,
R/o Tadmugali, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,
4. The Assistant Registrar,
Co-operative Societies, AUSA /
The Returning Officer,
Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,

Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8075 OF 2015

The Grampanchayat, Khadakumaraga
Tq.Nilanga, Dist.Latur,
Through its Member,
Shri Chandrakant S/o Virshetti Biradar,
Age-Major, Occu-Agriculturist,
R/o Hanchnal, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
3. The District Deputy Registrar,
Co-operative Societies, Latur,
4. The Assistant Registrar,
Co-operative Societies, AUSA /
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Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

WITH
WRIT PETITION NO.8076 OF 2015

The Grampanchayat, Khadakumaraga
Tq.Nilanga, Dist.Latur,
Through its Member,
Shri Dinkar S/o Pandurang Tugave
Age-Major, Occu-Agriculturist,
R/o Shivur, Tq.Nilanga,
Dist.Latur

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Department of Agricultural Marketing
Mantralaya, Mumbai-32,
2. The District Collector,
Latur, Tq. And Dist. Latur,
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5. The Agricultural Produce Market Committee,
Aurad (Shahajani), Tq.Nilanga,
Dist.Latur,
Through its President/Secretary

RESPONDENTS

Mr.G.V.Mohekar, Advocate for the petitioners.
Mr.S.G.Sangle, AGP for respondent Nos. 1 to 4.

(CORAM : RAVINDRA V. GHUGE, J.)

RESERVED ON : 23/09/2015

DECIDED ON : 28/09/2015

JUDGMENT :

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

2. All the petitioners in these petitions are the Gram Panchayats, who are represented by their Sarpanch / Member. These petitioners have put forth their grievance on behalf of the elected members of the gram panchayats.

3. The respondents in each of these petitions are Statutory Authorities. The Agricultural Produce Market Committee, Aurad, (Shahajani) is respondent No.5, who has not caused an appearance despite service.

4. Since an identical issue is involved in all these cases, this Court (Coram : Sunil P.Deshmukh, J.) had considered these petitions and had passed a common interim order dated 04/08/2015. It is in these circumstances that all these petitions have been heard finally

together by the consent of the parties.

5. The undisputed facts in these cases are as under :-

- [a] Respondent No.5 APMC is situated at Aurad Shahajani and all the petitioners gram panchayats fall within the jurisdiction of the said APMC.
- [b] The term of the gram panchayats was to end in July, 2015.
- [c] Elections to the members of the gram panchayat for the new terms were held on 23/04/2015 and the results of the elections were declared on 24/04/2015.
- [d] The term of the newly elected members commences from the date they take charge in the gram panchayats, u/s 28 of The Maharashtra Village Panchayats Act.
- [e] All the newly elected members of the petitioner/gram panchayats, represented by their Sarpanch / Members in these petitions are aggrieved parties.
- [f] The newly elected members of the petitioners / gram panchayats have authorized their representatives by passing a Resolution to espouse their cause and put forth their grievance before the Election Officer and before this Court.
- [g] On 22/05/2015, the final Voter's List was declared for the respondent No.5 APMC.
- [h] None of the newly elected members of the petitioners / Gram Panchayats had taken charge as on 22/05/2015.
- [i] On 22/06/2015, the election programme for respondent No.5 APMC was declared.
- [j] 06/07/2015 was the last date for filing of the nomination papers for contesting the elections of respondent No.5 APMC.

- [k] In between 22/07/2015 and 28/07/2015, all the elected members of the petitioners / Gram Panchayats assumed charge.
- [j] On 01/08/2015, the representatives of the newly elected members as well as the Gram Panchayats filed objections / complaints before respondent No.3 District Deputy Registrar Co-operative Societies, Latur (in short, DDR) under Rule 36(15) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules 1967 (hereinafter referred to as the Rules of 1967), for seeking inclusion of their names in the final list of voters.
- [k] By the impugned order dated 01/08/2015, the DDR declined to entertain the said complaint and accordingly rejected the complaints.
- [l] This Court, by its order dated 01/08/2015 had granted interim relief in similar cases in WP No.7950/2015.
- [m] This Court, therefore, by its order dated 04/08/2015, granted interim relief to all these petitioners by virtue of which they were permitted to cast their votes in a separate ballot box on the date of polling 09/08/2015.
- [n] Accordingly, the earlier members whose names appeared in the final voters' list and the petitioners / members have cast their votes in two separate ballot boxes and the results were not declared under the orders of this Court.
- [o] The contentions of the petitioners is that the earlier members of the petitioners / Gram Panchayats have lost their right to vote since their term ended on 23/04/2015.
- [p] Though the newly elected members have taken charge in between 22/07/2015 and 28/07/2015 and since the elections

were scheduled on 09/08/2015, they had a legal right to vote in the elections.

- [q] By interim orders of this Court, the votes cast by the outgoing members of the petitioners / Gram Panchyats deserve to be discarded and the results deserve to be declared on the basis of the votes cast by the newly elected petitioners / members.
- [r] Respondent No.3 has mechanically rejected the application / complaint of the petitioners and thereby declined to include their names in the final voters' list.
- [s] The impugned order is cryptic in nature and evidences non application of mind.
- [t] The outgoing members have no right to cast their votes since the right is created in the newly elected members.
- [u] Respondent No.3 DDR is legally empowered to pass necessary orders for including the names of the petitioners / members and therefore the DDR was expected to follow the procedure laid down in Rule 36(16) r/w Rule 36(13) and (14).

6. The petitioners have placed reliance upon the judgment of this Court in the matter of Bhatu s/o Devidas Patil and another Vs. State of Maharashtra and others, 2010(3) Mh.L.J. 903. In the said case, the petitioners had challenged the deletion of their names before the DDR which was turned down. They had approached this Court for

challenging the decision of the DDR and this Court had dismissed their petition.

7. The learned AGP on behalf of respondent Nos. 1 to 4 / Statutory Authorities submits that these petitions deserve to be dismissed. Contention is that an application / complaint can be entertained by the DDR or the Collector, as the case may be, only if such application seeking inclusion in the Voters' list is filed at least 3 days prior to the last date for filing the nomination papers for contesting the elections.

8. He submits that the list of voters is required to be revised at least 6 months prior to the date of the term of the APMC. Elected members of the Village Gram Panchayats within the jurisdiction of the APMC are qualified as voters and for contesting elections of the said APMC. The Voters' List is prepared society wise in the Co-operative Societies Constituency and Panchayat wise in the case of Village Panchayat Constituency.

9. He submits that after the provisional Voters' List is published, objections are called for and are dealt with by the Collector or the DDR as the case may be and a final Voters' List is published under

Rule 36(12).

10. It is further submitted that the petitioners were under an obligation to file an application for inclusion in the Voters' List, at least 3 days prior to the last date for nomination. Having not so done, the DDR has rightly rejected their applications by the impugned order. He further submits that an application under Rule 36(15) can be filed only by a person whose name is not entered in the final List of Voters or through his representative if so authorized in his behalf.

11. Respondent No.5 APMC, though served, has chosen to remain absent.

12. I have considered the contentions of the litigating sides as recorded hereinabove.

13. It would be apposite to reproduce Rule 36 (1 to 16) of the Rules of 1967 hereunder :-

"36. Voters' list.--

(1) The Collector shall call upon the District Deputy Registrar of Co-operative Societies to prepare and furnish to him a list of

members of the Managing Committees of the Agricultural Credit Societies and the Multipurpose Co-operative Societies and call upon the Block Development Officer to prepare and furnish to him a list of members of the Village Panchayat showing distinctly the members belonging to the Scheduled Caste and Scheduled Tribes functioning in the market area and the Market Committee to prepare and furnish to him the list of traders and hamals and weigh men licensed by the Committee within such time as may be specified by him. Thereafter, the Collection shall cause to be prepared separately for each of the Constituencies a voters' list for holding the elections to the Market Committees :

Provided that, where a person is qualified to vote from traders constituency or from Hamals' and Weigh men's Constituency, his name shall appear in the respective registers maintained by the Market Committee at least 3 months before the preparation of such lists.]

(2) Every such list shall be revised before each general election, at least six months before the date on which the term of the Market Committee is due to expire :

Provided that, the Collector may ⁵[* *] direct the revision of such list also at any other time before any general election is due :*

(3) The voters' list for Co-operative Societies' Constituency shall be prepared society wise. The voters' list for Village Panchayat's Constituency shall be prepared panchayatwise, indicating the details regarding members belonging to the Scheduled Caste

and Scheduled Tribes etc. every list of voters for all the constituencies mentioned in sub-**rule** (1) of **rule** 35 shall provide, in alphabetical order, the name, age, residence and the category of the voters to which he belongs.]

(4) * * * *

(5) * * * *

(6) Every such list shall be published in Marathi provisionally within a period of one month from its receipt by the Collector in such manner as the Collector may deem fit.

(7) At the time of publishing the list of voters a notice shall be published in like manner calling upon persons entered in the list to lodge in the manner herein prescribed any objection that they have to make to the list as published, and upon persons claiming to be entered in the list, to lodge their claim in the manner herein prescribed.

(8) Such claim or objection shall be made in writing and shall specify the constituency in question, the grounds on which the right of any person to be entered in the list is asserted or denied, the evidence which the claimant or objector intends to lead, the address of the claimant or objector, his number, if any, in the list and in the case of an objection, the number in the list of the person to whose entry objection is taken and the constituency in the list for which he is entered.

(9) Every claim or objection shall be delivered or sent by post so as to reach the office of the Collector before the date fixed by the Collector in that behalf being a date not later than one month

from the date of publication of the list.

(10) The Collector, after hearing the evidence, if any, adduced on behalf of the parties and after further inquiry, if any, shall pass order on the claim or objection, and the order of the Collector relating to such claim or objection shall be final.

*(11) The Collector shall cause the lists to be amended in accordance with the orders passed under sub-**rule** (10) and shall cause them to be published finally in Marathi in such manner as he may deem fit.*

*(12) If, after the final publication of the list of voters, under sub-**rule** (11), the Collector on application or otherwise, is satisfied after such inquiry as he deems fit that any entry or entries in the list is or are erroneous or defective in any particular respect, the Collector may cause a list of amendments to be prepared; and thereupon the provisions of sub-**rules** (3) to (11) shall apply in the case of such list in the like manner as they apply in the case of the list of voters.*

(13) Copies of such final lists including the final list of amendments and additions shall be made available for inspection and sale in whole or in part in the offices of the Collector, the Market Committee and the Village Panchayat concerned or at any other place as the Collector may specify in this behalf.

*(14) The final list as also the final list of amendments shall be republished under sub-**rule** (11) and shall remain in force and continue in operation as the list of voters for the purpose of any*

*bye-election, until it is revised as provided by this **rule**.*

*(15) Any persons whose name is not entered in the final list of voters as republished under sub-**rule** (14) may at any time but not later than 3 days before the last date for nomination apply to the Collector for inclusion of his name in the list.*

*(16) On receipt of the application under sub-**rule** (15), the Collector shall, if satisfied that the applicant is entitled to have his name entered in the list, direct his name to be entered in the list and cause an amendment to the list to be prepared; and thereupon the provisions of sub-**rules** (13) and (14) shall mutatis mutandis apply to such amendments].”*

14. It is undisputed that though the petitioners / members were elected on 24/04/2015, they have assumed charge in between 22/07/2015 and 28/07/2015.

15. The phraseology in Rule 36(15) and 36(16) clearly indicates that any person / s, whose name is not entered in the final List of Voters, can file an application to the Collector or DDR for inclusion of his name in the list, not later than 3 days before the last date for nomination. Such application can be entertained by the Collector / DDR and upon being satisfied, a direction can be issued to enter his name in the list and cause an amendment to the list. Thereafter, by following the procedure under Rule 36(13) and 36(14) which *mutatis-*

mutandis applies to the amendment caused, the final amended Voters' List can be declared.

16. It is, therefore, evident that an individual, whose name is not entered in the final Voters List, can approach the competent authority for inclusion of his name. Ordinarily speaking, there is no provision for enabling a representative to agitate / espouse the cause of the aggrieved person. Nevertheless, considering the submission that the grievance of an individual, can be put forth by his representative and since there was no objection to such representation before the DDR, I am not required to deal with this aspect as the petitioners have been authorized to represent the elected members in all these petitions through a resolution passed.

17. The interim relief granted by this Court by order dated 01/08/2015 in WP No.7950/2015 reads as under :-

“3. Petitioners are gram panchayats situated in various talukas in Latur district.

4. After hearing learning counsel for petitioners and learned Assistant Government Pleader it starkly surfaces that the circumstances in present writ petition are almost identical with those involved in writ petition number 6027 of 2015.

5. To succinctly state, presently gram panchayats grouped in this writ petition are constituted by new members elected in April, 2015. The terms of the gram panchayats pursuant to earlier election was to be over in July, 2015. Till then, the members elected in earlier elections were to continue as members and the new members elected in 2015 were to assume charge in July, 2015.

6. In the interregnum, it appears that Agricultural Produce Market Committee, Aurad (Shahjani) had declared its elections and present group of gram panchayats functions within its area of operation. Pursuant to provisions under section 13(1) (a) (ii) of the Maharashtra Agricultural Produce Market Committee (Regulations) Act, 1963, four of the members, constituting Maharashtra Agricultural Produce Market Committee, are to be elected from gram panchayats functioning within its area of operation.

7. Voting of the Agricultural Produce Market Committee, Aurad (Shahajani) is scheduled on 09-08-2015. The period of filing nomination is long over in June, 2015. As such, learned counsel for petitioners fairly submits that the members of group of gram panchayats-petitioners are not contesting to seats constituting managing committee of Agricultural Produce Market Committee, Aurad (Shahajani). However, they intend to exercise their franchise.

8. According to learned counsel for petitioners, taking into account decision which has been considered while passing order on 10-07-2015 in writ petition no.6027 of 2015 viz; 2010 (3) Mh. L.J. 903, *Bhatu Devidas Patil v. State of Maharashtra* and one decision of division bench in *Purshottam vs. A.P.M.C. Wardha*, reported in 2013 (6) Mh.L.J. 688, relied on by him today, for being a voter, the basic requirement is that a person should be a member of the grampanchayat. He further goes on to submit that, however, having regard to the election schedule and the rules of the Agricultural Produce Market Committee since the names of present members of the petitioner-gram panchayats do not figure in the voters' list which still shows old members of the petitioners gram panchayats, similar situation arises in this matter as in writ petition no.6027 of 2015 and as such similar order be passed in this matter.

9. Learned Assistant Government Pleader does not dispute aforesaid factual scenario, however, considers that separate petitions by each of the petitioner-gram panchayats would be necessary as host of other questions are likely to arise.

10. Learned counsel for petitioner had been fair enough to accede to the request of learned Assistant Government Pleader and states that he would file separate petitions in respect of each of the gram panchayats, however, feels that by the time this arrangement is made, interest of the present petitioners-gram panchayats be protected by passing order as in writ petition no.6027 of 2015.

11. *Under the circumstances, following order is passed.*

12. *Looking at aforesaid scenario, names of petitioners be provisionally considered to be included in the voters list in the ensuing elections to managing committee of Agriculture Produce Market Committee, Aurad (Shahajani) and petitioners be allowed to cast their votes. Since date of nomination is over, learned advocate for the petitioners fairly does not insist upon to let the petitioners file nominations in said elections.*

13. *Under the circumstances, the petitioners be allowed to cast votes in the elections to managing committee of Agriculture Produce Market Committee, Aurad (Shahajani) scheduled on 9th August, 2015. Their votes, however, be kept in a separate ballot box. Votes cast by erstwhile members of Gram Panchayt pursuant to the voters list as is subsisting under the orders of the authorities in respect of aforesaid elections shall also be kept in separate ballot box. Counting of votes in respect of four posts with reference to section 13 (1) (a) (ii) of the Maharashtra Agriculture Produce Marketing (Regulations) Act, shall be stalled until further orders.”*

18. In these petitions also, this Court, by its order dated 04/08/2015, had granted interim relief as under :-

“1. Notice to respondents returnable on 12-08-2015. Learned Assistant Government Pleader waives notice for respondent

no.1 to 4.

2. *Learned Counsel for the petitioners submits that this is one of the grampanchayats functioning within the area of operation of respondent no.5-Agricultural Produce Marketing Committee, Aurad (Shahajani). He submits, petitioners granpanchayats' present members who have assumed charge in July, 2015, are similarly situated like petitioners in writ petition no.7950 of 2015. He, therefore, urges for similar relief as has been granted in said writ petition.*

3. *Having regard to aforesaid following order is passed.*

4. *Looking at aforesaid scenario, names of petitioners be provisionally considered to be included in the voters list in the ensuring elections to managing committee of Agriculture Produce Market Committee, Aurad (Shahajani) and petitioners be allowed to cast their votes. Since date of nomination is over, learned advocate for the petitioners fairly does not insist upon to let the petitioners file nominations in said elections.*

5. *Under the circumstances, the petitioners be allowed to caste votes in the elections to managing committee of Agriculture Produce Market committee, Aurad (Shahajani) scheduled on 9th August, 2015. their votes, however, be kept in a separate ballot box. Votes cast by erstwhile members of Gram Panchayat pursuant to the voters list as is subsisting under the orders of the authorities in respect of aforesaid elections*

shall also be kept in separate ballot box. Counting of votes in respect of four posts with reference to section 13(1)(a)(ii) of the Maharashtra Agriculture Produce Marketing (Regulation) Act, shall be stalled until further orders.”

19. This Court had dealt with a similar issue in the case of Bhatu Devidas Patil (Supra). It would be apposite to refer to the relevant paragraphs of the judgment as under :-

“1. By way of present petition, the petitioners have challenged the order dated 16th November 2009, passed by the District Deputy Registrar, Cooperative Societies, Jalgaon, vide which the names of the petitioners have been deleted from the voters’ list of the Gram Panchayat constituency finalized for the elections of Agricultural Produce Market Committee, Amalner.

2. Mr. V.D. Hon, learned Counsel appearing for the petitioners, submits that the programme for holding general elections to the Agricultural Produce Market Committee, Amalner, was declared on 19th January 2009. He submits that vide the said programme, the eligibility date for enrollment in the electoral roll, in so far as members of the Grampanchayat is concerned, was notified as 12th November 2008. He submits that though the election was scheduled in the month of March, the same came to be postponed on account of elections to the Legislative Assembly. He submits that subsequently, vide order dated 26th October 2009, another communication was issued by the District Deputy Registrar, respondent No. 2 herein, regarding finalization of the voters’ list. According to the said

programme, the date which was fixed for taking objections was 5th November 2009. The date for deciding objections under Rule 36(10) of the **Maharashtra** Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as "the said Rules") was fixed on 16th November 2009 and the date for publication of final voters' list was fixed on 19th November 2009. It is submitted that though the names of the petitioners were included in the provisional voters' list vide order dated 16th November 2009, their names have been excluded and some **other** names have been included vide the impugned order. Mr. Hon, learned Counsel appearing for the petitioners, submits that since the cut off date, in so far as the Grampanchayat constituency is concerned, was 12th November 2008, the respondent No. 2 has erred in deleting the names of the petitioners and including the new names.

3. Section 13 of the **Maharashtra** Agricultural Produce Marketing (Regulation) Act, 1963 (For short, hereinafter referred to as "the said Act") deals with "Constitution of Market Committees". The relevant portion of Section 13 of the Act is reproduced as under:

Subject to the provisions of Sub-section (2), every Market Committee shall consist of the following members, namely:

(a) thirteen agriculturists residing in the market area (not being less than twenty-one years of age on the date specified from time to time by the Collector in this behalf), as specified below:

(i)....

(ii) four (of which one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a person belonging to economically weaker section), shall be elected by members of the village panchayats functioning therein.

Perusal of Section 13(1)(a)(ii) would, therefore, reveal that four persons, one of which shall be a person belonging to Scheduled Castes or Scheduled Tribes and one of whom shall be belonging to economically weaker section, are to be elected to the Market Committee by the members of village panchayats. It can thus be clearly seen that the electoral college for electing a person from the said constituency, consists of members of the Village Panchayat functioning in the area of Agricultural Produce Market Committee.

4. Rule 36 of the said Rules deals with "Voters' list". The relevant Sub-rules, for the purpose of the present petition, would be Sub-rules 9 to 16, which read thus:

36. Voters' list

(1) to (8)....

(9) Every claim or objection shall be delivered or sent by post so as to reach the office of the Collector before the date fixed by the Collector in that behalf being a date not later than one month from the date of publication of the list.

(10) The Collector, after hearing the evidence, if any, adduced on behalf of the parties and after further inquiry, if any, shall pass order on the claim or objection, and the order of the Collector relating to such claim or objection shall be final.

(11) The Collector shall cause the lists to be amended in accordance with the orders passed under Sub-rule (10) and shall cause them to be published finally in Marathi in such manner as he may deem fit.

(12) If, after the final publication of the list of voters, under Sub-rule (11), the Collector on application or otherwise, is satisfied after such inquiry as he deems fit that any entry or entries in the list is or are erroneous or defective in any particular respect, the Collector may cause a list of amendments to be prepared; and thereupon the provisions of Sub-rules (3) to (11) shall apply in the case of such list in the like manner as they apply in the case of the list of voters.

(13) Copies of such final lists including the final list of amendments and additions shall be made available for inspection and sale, in whole or in part in the offices of the Collector, the Market Committee and the Village Panchayat concerned or at any **other** place as the Collector may specify in this behalf.

(14) The final list as also the final list of amendments shall be republished under Sub-rule (11) and shall remain in force and continue in operation as the list of voters for the

purpose of any bye-election, until it is revised as provided by this rule.

(15) Any persons whose name is not entered in the final list of voters as republished under Sub-rule (14) may at any time but not later than 3 days before the last date for nomination apply to the Collector for inclusion of his name in the list.

(16) On receipt of the application under Sub-rule (15), the Collector shall, if satisfied that the applicant is entitled to have his name entered in the list, direct his name to be entered in the list and cause an amendment to the list to be prepared; and thereupon the provisions of Sub-rules (13) and (14) shall mutatis mutandis apply to such amendments.

From the perusal of Sub-rule 9 of Rule 36, it would reveal that a person is entitled to raise an objection to the Collector on the date fixed. Sub-rule 10 requires the Collector, after making an inquiry, to pass order on the claim or objection. Sub-rule 11 mandates the Collector to cause the list, after amendments carried out in accordance with the orders passed under Sub-rule (10), to be published in Marathi, in the manner prescribed. Sub-rule 12 further permits the Collector, even after publication of final list of voters', to carry out amendments in the voters' list, if he finds that any entry or entries in the list is or are erroneous or defective. Sub-rule 13 requires such final list, including amendments and additions, to be made available for inspection and sale in the office of the Collector, the Market

Committee and the Village Panchayat concerned. Sub-rule 14 provides that the list so published under Sub-rule (11) shall remain in force and continue in operation as the list of voters for the purpose of any bye-election, until it is revised as provided by this rule. Sub-rule 15 provides that any persons whose name is not entered in the final list of voters as republished under Sub-rule (14), may at any time but not later than 3 days before the last date for nomination, apply to the Collector for inclusion of his name in the list. Sub-rule 16 requires that if the Collector is satisfied that the person is entitled to have his name entered in the list, he shall direct inclusion of such person in the list and cause an amendment to the list to be prepared and thereupon the provisions of Sub-rules (13) and (14) shall mutatis mutandis apply to such amendments.

5. As already discussed herein above, in view of provisions of Section 13 of the said Act, it is the members of the Grampanchayat who are entitled to elect a representative from that constituency. It is, therefore, clear that the basic qualification to be voter from the said constituency is to be a member of the Grampanchayat. In the present case, admittedly, after publication of provisional list of voters, there is change in the constituency of the Grampanchayat of which members were newly elected in the elections held on 26th March 2009. As already observed herein above, it is only the persons who are members of the Grampanchayat who are entitled to be voters from the said constituency. From the documents annexed with the petition, it is clear that the members who are elected in the

elections held on 26th March 2009 had applied to the respondent No. 2 for inclusion of their names and deletion of the names of earlier members. In view of subsequent elections held on 26th March 2009, the respondent No. 2 has deleted names of the petitioners and included the names of the persons who are elected. I find that the action taken by the respondent No. 2 is totally in consonance with the provisions of the Act, read with Sub-rule 10 of Rule 36 of the said Rules.

6. It can also be seen that in view of Sub-rule 12 of Rule 36, even after the final list is published, the Collector is empowered to make corrections in the list, if any error or defect is found in a particular respect. Not only this, but Sub-rule 15 of Rule 36 entitles a person whose name is not entered in the final list of voters as republished under Sub-rule (14), to make an application as late as 3 days before the last date for nomination. If the Collector is satisfied, the Collector is required to include name of such person in the voters' list.

7. I am, therefore, of the considered view that if there is change in the constitution of the Grampanchayat, by virtue of election, the persons who represent the Grampanchayat and who are entitled to vote would be in a position to make an application even after publication of final list of voters in view of Sub-rule 12 of Rule 36 of the said Rules and even, as late as 3 days prior to the date fixed for nomination as provided under Sub-rule 15.

8. Since the basic qualification to vote in the election, from the constituency concerned, is to be a member of the

Grampanchayat, no error could be found with the approach adopted by the respondent No. 2 in passing the order impugned in the present petition. The petition is devoid of any merit.”

20. The dates and sequence of events in the Bhatu Case (supra) are relevant. After the publication of the provisional list of voters dated 16/11/2009, there was a change in the elected members of the Gram Panchayats. Such elected members had moved applications under Rule 36(15) more than 3 days prior to the date fixed for filing nomination as provided under Rule 36(15). By order dated 16/11/2009, the DDR deleted the names of the outgoing members of the Gram Panchayat Constituency and included the names of newly elected members of the Gram panchayat. In this backdrop, this Court concluded in paragraph Nos. 6 to 8 that no error was found in the order passed by the DDR. The petition filed by outgoing members was, therefore, dismissed.

21. With regard to the effect of Rule 36, this Court has concluded in the matter of Shri Sai Vividh Karyakari Seva Sahakari Sanstha Maryadit and others Vs. State of Maharashtra and others, 2012(2) Mh.L.J. 274 that the cut-off date as provided under Rule 36(2), cannot be revised. Similarly, by placing reliance upon the judgment

of this Court in the Bhatu Case (supra), this Court held in paragraph Nos. 13 to 18 as under :-

“ 13. Rule 35 of the Rules of 1967 deals with the various constituencies, the duties of the Collector. The Collector is required to prepare the voters list separately for each of the District and Talukas. Rule 36 deals with voters list, wherein powers are given to the Collector to call upon the District Deputy Registrar of the Co-operative Societies to prepare and furnish to him the list of the members of the Agricultural Credit Societies and the Multi Purpose Co-operative Societies. So also separate list for each of the constituencies. Sub-rule (2) of Rule 36 lays down a mandate that every such list shall be revised before the general election at least six months before the date on which the term of market committee is due to expire. Reading sub-rule (2) of Rule 36 it is manifest that the list has to be revised at least six months before the due date of the expiry of the term of the market committee. The proviso to sub-rule (2) gives the power and authority to the Collector to direct the revision of such lists also at any **other** time before any general election is due. Much emphasis was placed by **Shri** Deshmukh, the learned Counsel on this proviso to submit that the said proviso gives power to revise the list at any time before any general election is due, it cast duty on the Collector to revise the list as and when the new members are enrolled.

14. The proviso to a particular provision of a statute only embraces the field which is covered by the main

*provision. A proviso cannot be construed as enlarging the scope of an enactment, when it can be fairly and properly construed without attributing to it that effect. A proviso has no repercussion on the interpretation of enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment. The general rule in construing an enactment containing a proviso is to construe them together and read the whole section/Rule, inclusive of the proviso in such a manner that they naturally throw light on each **other** and result in harmonious conclusions so that neither of them is made redundant or otiose,*

15. The proviso to sub-rule (2) of Rule 36 will have to be interpreted on the touch stone of the aforesaid principles. The phraseology of sub-rule (2) of Rule 36 is unambiguous and when the meaning of the proviso does not admit of any ambiguity, a literal meaning is to be attached to it. Sub-rule (2) of Rule 36 lays down that every such list shall be revised before the general election atleast six months before the date on which the term of market committee is due to expire. It lays down a mandate and obligation that the list shall be revised at least six months before the term of market committee is due to expire. Once the said list is revised as per sub-rule (2), then in such circumstances, the same would be the voters list. The scheme of Rule 36 is such that after the list of voters is published, then objections are invited as per sub-rule (7) of Rule 36. The objections having been received are to be decided by the Collector and the order passed by the Collector

on the said objection is made final by virtue of sub-rule (10) of Rule 36. As per the decision on the objections the list is to be amended and final list is to be published as per sub-rule (11) of Rule 36.

16. Proviso to sub-rule (2) of Rule 36 will have to be read harmoniously with Rule 2. It will have to be read in a manner that both co-exists and head on collusion between the two shall have to be avoided. The proviso cannot be interpreted in a manner which would render sub-rule (2) of Rule 36 as a useless lumber or a dead letter. Sanctity will have to be given to the mandate cast upon the Collector or the authority to revise the list at least six months before the date on which the term of market committee is due to expire. If the proviso is interpreted in the manner that even after the publication of list of voters as provided in sub-rule (2), the Collector can still revise the cut off date, then the same would not be in consonance with the mandate. It would be doing violence to the language and the phraseology of sub-rule (2) of Rule 36.

17. Much emphasis was laid by the learned Counsel for the petitioner on the interpretation of word 'may' in the said proviso that said word may in the proviso shall be interpreted as shall.

18. In sub-rule (2) the legislature has used the word shall, whereas in proviso the legislature has used the word 'may'. The fact that the legislature in its wisdom has used the word 'may' in proviso and shall in sub-rule (2), clearly speaks

about its intention. It strengthens the inference that the said words are sed in their primary sense and the literal meaning should be attached to it. The said word 'may' in the proviso gives discretion to the authority i.e. in certain contingencies such list can be revised before the general election is due. The same would be under certain contingencies, the same cannot be read in a blanket manner. In the case of Bhatu Devidas Patil referred supra, this Court had held that the members of the village panchayat had changed and so their names were required to be included in the voters list. The gram panchayat was already in existence and was in the list of voters which was revised six months prior to the due date of election. But during the interregnum, the members of the panchayat had changed and so their names were required to be included. This Court had held that the same is permissible. In the present cases, the petitioners were registered as Co-operative Societies in May and June 2011 i.e. just three to four months before the date when the general elections were due and after the voters list was revised. If the argument of the learned Counsel for the petitioner is accepted that at any time i.e. up to three days prior to the last date of filing the nomination the list can be revised, then that would lead to anomalous situation and different cut of date would be required to be provided for different constituencies. The proviso cannot be stretched so far."

22. As such, this Court considered that the Collector / Returning

Officer (DDR) can republish the list if he finds that the names of any persons were not entered in the final list of voters and such inclusion is permissible prior to 3 days from the last date of filing of the nomination papers. In paragraph No.18, it was therefore concluded that the argument of the petitioner that the application for inclusion of name in the Voters' List can be entertained at any time, if is accepted, that would lead to an anomalous situation.

23. I do not find that Rule 36(15) needs any further interpretation. The Collector / DDR can entertain an application under Rule 36(15) for inclusion of names in the final Voters List only if such application is filed at least 3 days prior to the last date for nomination.

24. In the instant case, the last date for nomination was 06/07/2015. The petitioners / members assumed charge under Section 28 of the Maharashtra Village Panchayats Act as members of the petitioners / Gram Panchayats in between 22/07/2015 and 28/07/2015, by which time, the date for filing nominations was over. The date for withdrawal of applications was also over. Polling was scheduled on 09/08/2015. The final Voters' List under Rule 36(13) and (14) was therefore finalized.

25. There is no provision cited by the petitioners that the Voters List could be revised or amended by filing an application after the last date for nomination is over. These petitioners had filed their applications under Rule 36(15) on 01/08/2015, which is 25 days after the last date for nomination.

26. As such, considering the view taken by this Court in the case of Bhatu Devidas (supra) and Shri Sai Vividh (supra), neither can Rule 36(15) be relaxed so as to give any latitude to the petitioners or to any aggrieved person to file an application under Rule 36(15) within 3 days from the last date for nomination nor can such latitude be given to the aggrieved person to file such an application after the last date for nomination has lapsed.

27. In the light of the above, these petitions fail. The ballot papers / votes cast by those newly elected members of the Gram panchayats / petitioners, whose names were not included in the final Voters' List and which have been preserved in a separate ballot box, are directed to be discarded. The results of the elections to respondent No.5 APMC on the basis of the ballot papers of the voters, whose names are found in the final Voters' List shall be opened in accordance with the procedure laid down in Law for enabling the

counting of votes and for declaration of the election results.

28. Rule is, therefore, discharged. No order as to costs.

29. Pending civil applications, in the light of the above do not survive and are therefore disposed of.

(RAVINDRA V. GHUGE, J.)