

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO.16411 OF 2015

Shri. Murlidhar Champalal Chandak and others .. Petitioners

Versus

The Nashik Agricultural Produce

Market Committee, Nashik and others .. Respondents

Shri. Pramod N. Joshi, for the Petitioners.

Shri. S. D. Rayrikar, AGP for the Respondent Nos.2 & 3.

CORAM : R.M. SAVANT, J.

DATE : 21st JULY, 2015

PC.

1. The order dated 20.05.2015 passed by the Additional Collector, Nashik overruling the objection of the Petitioners as regards inclusion of their names in the voters list is taken exception to by way of the above Petition. The Petitioners are traders who have been issued licenses by the Respondent No.1 Market Committee for operating as traders within the area of Market Committee. The elections to the Respondent No.1 Market Committee were announced and the provisional list of voters was published pursuant thereto. Since the names of the Petitioners were not appearing in the voters list, the Petitioners took an objection to the said list and sought the inclusion of their names. Since the

Collector of the District is the designated authority, the said objection of the Petitioners was considered by the Additional Collector who by the impugned order dated 20.05.2015 has overruled the said objection. The Additional Collector whilst overruling the said objection has relied upon Section 13(1)(b) of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963, which lays down the eligibility for a person to contest elections from the Traders Constituency. The said eligibility is that a person should be holding a licence for not less than two years. The Additional Collector in the impugned order has observed that since the Petitioners were issued the licenses in the beginning of the year 2014, on the day when the provisional list was published they had not completed the period of two years.

2. In so far as the said ground is concerned, the Learned Counsel for the Petitioners sought to place reliance on Rule 36 of the Rules framed under the said Act. The said Rule 36 governs the preparation of the voters list and it is mentioned in the said Rule 36 that the name of the person who is qualified to vote from the Traders Constituency, shall appear in the respective register maintained by the Marketing Committee at least three months before preparation of the such lists. Relying upon the said Rule, it is the contention of the Learned Counsel for the Petitioners that the qualification to be a voter is that the name has to appear three months

before the preparation of the provisional list. The next contention of the Learned Counsel for the Petitioners is that having regard to the definition of the “Market Year” as posited in the said Act, the Petitioners fulfilled the qualifying period of two years as mentioned in Section 13(1)(b). In my view, it is not possible to accept either of the contentions raised on behalf of the Petitioners. In so far as the Section 13(1)(b) is concerned, the said section is a substantive provision which prescribes the eligibility for a person to contest the elections implicit in the said eligibility would be the eligibility prescribed for a voter also. In so far as Rule 36 is concerned, it regulates the preparation of the voters list and cannot be said to prescribe the eligibility which as indicated above is prescribed by the substantive provision that is Section 13(1)(b). It is well settled that a substantive provision cannot be overridden or supplanted by subordinate legislation.

3. In so far as the contention of the Learned Counsel for the Petitioners based on “Market Year” is concerned, in my view the said contention is misconceived in view of the eligibility mentioned in Section 13(1)(b). If the interpretation sought to be advanced by the Learned Counsel for the Petitioners is to be accepted, then the same would result in an anomalous position where a person holding a licence for a lesser period being qualified to participate in the elections. In the instant case, the licenses have been issued in January-February 2014 though for the year

2013-2014. However, in effect what would happen is that the said licenses would be only about 15 months old taking into consideration that they were valid for three months in the preceding year and for the whole year thereafter. The Petitioners therefore do not satisfy the eligibility prescribed by Section 13(1)(b) of the said Act. In my view, the order passed by the Additional Collector refusing to include the names of the Petitioners on the touchstone of Rule 13(1)(b) cannot be found fault with. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]