

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

WRIT PETITION NO.3154/2015

1. Divakar s/o Kisanrao Bhakre,
aged 53 Yrs., R/o Khubgaon,
Tah. Arvi, Distt. Wardha.
2. Sanjay s/o Uddhaorao Thorat,
aged 43 Yrs., R/o Arvi,
Tah. Arvi, Distt. Wardha.

..Petitioners.

..Versus..

1. District Election Officer,
Agricultural Produce Marketing Committee, Arvi
and District Deputy Registrar,
Cooperative Society, Wardha.
2. Agricultural Produce Marketing Committee,
Arvi, through its Secretary.

..Respondents.

Shri N.R. Saboo, Advocate for the petitioners.
Shri T.R. Kankale, A.G.P. for respondent no.1.
Shri S.D. Paliwal, Advocate for respondent no.2.

CORAM : Z.A. HAQ, J.

DATE : 24.6.2015

JUDGMENT

1. Heard Shri N.R. Saboo, the learned advocate for the petitioners, Shri T.R. Kankale, the learned A.G.P. for the respondent no.1 and Shri S.D. Paliwal, the learned advocate for the respondent no.2.

2. **Rule.** Rule is made returnable forthwith.

3. The petition takes exception to the decision of the Election Officer, rejecting the objection filed by the petitioner no.2, and maintaining the names of the persons in the voters' list, in respect of whom the petitioner no.2 had taken objection.

The programme for the elections of the Managing Body of Agricultural Produce Marketing Committee, Arvi came to be declared. The Election Officer published the notification dated 17th March, 2015 in that regards. The provisional voters' list was published by the Election Officer on 18th March, 2015. According to the programme declared by the Election Officer, the objection to the voters' list were to be filed till 15th April, 2015 and the hearing of the objections was scheduled for 28th April, 2015 and publication of final voters' list was to be made on 30th April, 2015. According to the petitioners, the petitioner no.2 had submitted an objection on 6th April, 2015 stating that the persons whose names were shown in the list annexed to the objection were granted licenses illegally, only with intention of enabling them to enrol their names in the voters' list. The petitioner no.2 had taken objection that the persons whose names are given in the list annexed to the objection were not carrying out any business activities within the market yard and, therefore, their names be deleted from the voters'

list. According to the petitioners, names of 122 persons came to be illegally included in the voters' list, on the basis of the bogus licenses issued in their favour.

According to the respondent no.1, after receiving the objection, report of Assistant Registrar, Co-operative Societies, Arvi was called. It is the case of the respondent no.1/District Election Officer that after receiving the report of the Assistant Registrar to the effect that all the persons whose names are included in the voters' list are holding valid licenses, the objection filed by the petitioner no.2 is rejected on 30th April, 2015.

4. It is submitted on behalf of the petitioners that the respondent no.2 Agricultural Produce Marketing Committee is not making available to the petitioners, the relevant documents to substantiate the claim of the petitioners that the persons whose names are shown in the list annexed to the objection are not carrying out any activities within the market yard and they are not entitled for grant of license and consequently, their names cannot be included in the voters' list. It is further submitted that the petitioners have tried to obtain the copies of the relevant documents under the Right to Information Act, however, the respondent no.2 has denied the copies of the documents to the petitioners. Shri Saboo, the learned advocate for the petitioners has submitted that the

Assistant Registrar while conducting the enquiry, was under an obligation to consider the objection taken by the petitioner no.2 and to verify as to whether the persons whose names are shown in the list annexed to the objection are carrying out any activities and business within the market yard or not and as to whether they are entitled for grant of license or not. It is submitted that the Assistant Registrar has made a farce of enquiry and has stated in the report that all the persons whose names are included in the voters' list are having license in their favour. The learned advocate for the petitioners has submitted that the objection of the petitioner no.2 is not that the persons whose names are included in the voters' list are not having valid license in their favour but the objection is that the licenses have been illegally issued in their favour and that they are not carrying out any activities and business in the market yard. It is submitted that the respondent no.1 - District Election Officer while discharging his duties as an Election Officer, is under an obligation to adjudicate upon the objection raised by the petitioner no.2, however, he has also failed in his duties and relying on the report of the Assistant Registrar, has mechanically rejected the objection of the petitioner no.2 overlooking the nature of the objection taken by the petitioner no.2. It is submitted that the non-application of mind on the part of the respondent no.1/District Election Officer vitiates his decision. It is prayed that the decision of the respondent no.1/District Election Officer, be quashed and the

matter be remitted to him for taking appropriate decision after conducting appropriate enquiry in the matter and after granting opportunity of hearing to the petitioners.

5. Shri Paliwal, the learned advocate for the respondent no.2 has submitted that the persons in respect of whom the petitioner no.2 has filed objection, are having valid licenses in their favour and, therefore, they are entitled to have their names included in the voters' list. It is further submitted that the respondent no.1/District Election Officer, while considering the objection in respect of the inclusion of name of any person in the voters' list, is required to see as to whether that person is holding valid license or not. It is submitted that the respondent no.1/District Election Officer in such case, cannot conduct an enquiry as to whether the license granted in favour of such person is proper or not. It is submitted that the petitioners had not taken any objection when the licenses were granted to the persons and against whom now such objection is being taken. Shri Paliwal, the learned advocate has further submitted that as per the election programme, the process of election has progressed and the symbols are also allotted to the contestants and now the voting is scheduled on 5th July, 2015. It is submitted that if at all the petitioners have any genuine grievance, the petitioners would be entitled to avail the remedy of filing the election petition. In

support of this submission, reliance is placed on the judgment given by the Division Bench of this Court in Letters Patent Appeal No.65/2011 and 66/2011.

6. Shri Kankale, the learned A.G.P. appearing for the respondent no.1 has supported the impugned decision.

7. In reply, Shri Saboo, the learned advocate for the petitioners has submitted that the petitioners had filed the objection within time prescribed for filing the objections and there is neither any delay nor any laches on the part of the petitioner no.1 in the matter. It is submitted that the petitioners had made representation on 29th April, 2015 to the respondent no.1/District Election Officer requesting that information be called from the Agricultural Produce Marketing Committee about 122 voters whose names are shown in the list annexed to the objection and on 29th April, 2015 application was made under the Right to Information Act seeking necessary details about the transactions or business, if any, conducted by 122 persons whose names are included in the voters' list and in respect of whom the petitioner no.2 has taken objection. It is submitted that the Secretary of the Agricultural Produce Marketing Committee had asked the petitioner no.1 to deposit Rs.5,000/- as necessary expenses for supplying the copies of the documents sought by the petitioner no.1 and accordingly the amount was also deposited, however, the Secretary of the Agricultural Marketing

Produce Committee informed the petitioner no.1 on 27th May, 2015 that the copies of the documents cannot be supplied, and the petitioners have immediately filed the writ petition on 28th May, 2015. It is submitted that considering the above-mentioned facts, it cannot be said that the petitioners are at fault, and the inclusion of names of large number of persons in the voters' list cannot be permitted. It is submitted that 122 voters out of 224 voters are enrolled illegally and if they are permitted to participate in the election, it will amount to permitting fraud on the Statute. It is submitted that in such situation, this Court should interfere by invoking its jurisdiction under Article 226 of the Constitution of India. In support of this submission, the learned advocate has relied on the following judgments :

(i) *Judgment given in the case of Rajan Dinkarrao Pharate and others V/s. State of Maharashtra and others reported in 1997(1) Mh.L.J.543,*

(ii) *Judgment given by the Division Bench of this Court in the case of Shivaji Marotrao Suryawanshi V/s. State of Maharashtra and others reported in 2000(2) Mh.L.J.306.*

8. After hearing the learned advocates for the respective parties and examining the documents filed on the record of the writ petition and considering the submissions of the respondents, I find that the decision of the respondent no.1/District Election Officer, rejecting the objection of the petitioner no.2 is

unsustainable. The petitioner no.2 had raised specific objection that the persons whose names are shown in the list annexed to the objection have not been carrying out any activities and business within the market yard and they are not entitled for license, however, they have been granted license illegally only to enable them to have their names enrolled as the voters. In my view, the objection as raised by the petitioner no.2 should have been enquired into by the respondent no.1/District Election Officer. However, the respondent no.1/District Election Officer got an enquiry conducted through the Assistant Registrar who submitted a report that all the persons whose names are included in the voters' list are having license in their favour and relying on this report, the respondent no.1/District Election Officer has rejected the objection filed by the petitioner no.2. The submission made on behalf of the petitioners that the Assistant Registrar and the respondent no.1/District Election Officer have committed farce of enquiry, in the circumstances, has to be accepted. There is a clear attempt on the part of the respondent no.1/District Election Officer to give a go-bye to the specific objection taken by the petitioner no.2. The failure on the part of the respondent no.1/District Election Officer to advert to the objection taken by the petitioner no.2 and the non-application of judicious mind on his part vitiates the impugned decision.

In the judgment given by the Division Bench of this Court in the case of

Ashok Bhumanna Chepurvar V/s. State of Maharashtra & Ors. reported in

2010(5) Bom. C.R. 432 in paragraph nos.25 and 26 it is recorded as follows :

“ 25. In our view, on conjoint reading of section 6 and 7 of the Act of 1963, it would appear that the person who intends to carry on business in the market area for marketing of the agricultural produce or for operating therein in the stated capacity, is obliged to obtain license from the committee of such market area. Obviously, the license is granted only to the aspiring persons who "actually or genuinely intend" to carry on business during the license period and not as an idle formality so as to increase the number of traders on the rolls of the Committee. The language of definition of term "trader" as also section 6 would suggest that the person should be engaged in the activity of buying and selling of agricultural produce within the market area in praesenti. The fact that a license holder is expected to carry on business in the market area, is reinforced from condition No.6 of the license which postulates that the licensee 'shall carry on business' in the stated capacity only and at such places for which the license is issued and unless the licensee carries on any other business under a license granted under the said rules, shall not carry on any other business of a market functionary in the market area or in any market therein. A priori, if the license holder discontinues his business or fails to carry on business in the market area during the relevant period, the question of renewal of license of such license holder does not arise.

26. Assuming that the license has been renewed, it is always open to the market committee to cancel or suspend such license by invoking powers under Section 8 (1) (b) of the Act of 1963 - which postulates that such action can be resorted to where the holder of license or any servant or any one acting on his behalf with his express or implied permission, commits a breach of any of the terms or conditions of the license. The power is coupled with the duty, inter alia to uphold the interest of genuine traders operating in the market

area. The grant or "renewal of license" therefor, can and should be only to persons who are genuinely interested in carrying on business in the market area for marketing of the agricultural produce or for operating therein in the stated capacity during the relevant period. If that activity is not pursued without any sufficient cause, merely because the person may declare his intention to undertake such activity, cannot be the basis to renew the license. As aforesaid, in the present case admittedly 139 members have not paid market fee during the preceding three financial years between 2004-2005 to 2006-2007, which is indicative of the fact that they were not carrying on business within the market area at all. Payment of license fee cannot absolve the person from continuing to carry on the business in the market area. The renewal of license could be only in favour of those license holders who are actually and genuinely engaged in carrying on business within the market area in the stated capacity. The fact that such members are willing to pay license fee or renewal fee, would not take the matter any further as the factum of payment of license fee is no indication of the fact that the person is in fact carrying on the business in the market area. A person who is not actually engaged in carrying on business in the market area would obviously renew his license for purposes other than carrying on business in the market area including to contest in the elections of the Committee so as to become part of the Management or affairs of the Committee. Such person will have no inkling about the difficulties and problems faced by the traders community in the market area. Therefore, renewal of license of such person would be antithesis to the democratic values and more so free and fair elections qua the traders constituency. "

It is clear that the license can be granted only in favour of the person who genuinely intends to carry on the business in the market yard and the person who is not engaged in carrying out the business in the market yard would not

have any idea about the difficulties and problems faced by the traders community carrying on the business in the market yard and the grant/renewal of license in favour of such person would be an antithesis to the democratic values and conduct of free and fair elections qua the traders constituency, as observed by the Division Bench. Hence, it is necessary that the proper enquiry is conducted on the objection taken by the petitioner no.2.

9. In normal course, the submission made on behalf of the respondent no.2 that this Court should not interfere in the matter at this stage, could have been accepted, however, if 122 persons against whom an objection is raised that they are not eligible for being enrolled as the voters as they are not carrying out any activities or business in the market yard are permitted to vote at the elections in which total 224 members would be voting, it will amount to precipitating the illegality. I am fortified in my view by the judgments relied upon by the advocate for the petitioners.

10. I am conscious that inference by this Court in the extraordinary writ jurisdiction is permissible only in exceptional cases. After considering the facts of the present case, I am of the view that the present case falls in the category of exceptional case which necessitates the interference by this Court in the

extraordinary writ jurisdiction. The petitioners had been vigilant in taking the objection for inclusion of names of 122 persons in the voters' list. The provisional voters' list was published on 18th March, 2015 and according to the election programme the objections to the voters' list were to be filed till 15th April, 2015. The petitioner no.2 filed the objection on 6th April, 2015. It is the case of the petitioners that they were not aware that 122 persons in respect of whom the petitioner no.2 has filed the objection, were granted licenses. The respondents have not been able to point out that the petitioners were aware that 122 persons in respect on whom the objection is filed were granted license. Not only this, the petitioner no.1 has taken steps to obtain the necessary documents from the respondent no.2/Agricultural Produce Market Committee and the request of the petitioner no.1 is rejected by the respondent no.2/Agricultural Produce Market Committee. The report given by the Assistant Registrar shows that there is deliberate attempt to give a go-bye to the objection taken by the petitioner no.2. The respondent no.1/District Election Officer has not applied his mind and has not considered the objection taken by the petitioner no.2 which has the effect of nullifying the stage specifically kept in the election programme which enables the taking of objection in the matter of wrong inclusion of name of any voter in the voters' list. The above mentioned facts necessitate invoking of the extraordinary writ jurisdiction in the present case.

As far as the judgment given in Letters Patent Appeal No.65/2011 and 66/2011 is concerned, the facts as recorded in paragraph no.5 of it show that the petitioners in that case were heard through their advocate and the advocate was given the relevant documents and record was also made available for inspection. Further, the contents of paragraph no.5 show that there was resolution of the General Body of the Marketing Produce Committee to grant new licenses to 16 persons and the resolutions passed by the General Body of the Marketing Produce Committee were challenged before the District Deputy Registrar who had rejected the challenge. Therefore, the judgment does not assist the respondent no.2. In this judgment, it is recorded in paragraph no.13 that the report of the Assistant Registrar provides only an input for the District Deputy Registrar to arrive at the finding regarding the objection.

In the present case, the report of the Assistant Registrar is nothing but an eyewash and does not deal with the objection raised by the petitioner no.2 and the failure on the part of the respondent no.1/District Election Officer to consider these aspects, vitiates the impugned decision.

The facts of the present case necessitates the interference by this Court to undue mischief at its inception without permitting precipitation of it.

11. In view of the above, I pass the following order :

- (i) The decision of the respondent no.1/District Election Officer dated 29th April, 2015 is quashed.
- (ii) The respondent no.1/District Election Officer is directed to conduct an enquiry on the objection filed by the petitioner no.2 and to examine as to whether the persons whose names are given in the list annexed to the objection are carrying out activities and business in the market yard which entitles them for grant of license and for enrollment of their names in the voters' list.
- (iii) The respondent no.1/District Election Officer shall take decision in the matter after conducting detailed enquiry and granting an opportunity to the petitioners and any other person he deems fit and necessary.
- (iv) The elections for the Traders and Commission Agent Constituency shall be conducted only after the decision is taken on the objection filed by the petitioner no.2.
- (v) The petition is allowed in the above terms.
- (vi) In the circumstances, the parties to bear their own costs.
- (vii) The petitioners have given up their challenge to the decision of the respondent no.1/District Election Officer, rejecting the objection in respect of Hamal (Porter)/Mapari category.

JUDGE

C.A.W. NO.1083/2015.

In view of the judgment passed in Writ Petition No.3154/2015 on 24th June, 2015 this civil application does not survive and is disposed accordingly.

JUDGE

Tambaskar.