

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9460 OF 2015

VINODKUMAR PANNALAL NAHAR AND ANOTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for Petitioners : Mr. V. J. Dixit, Senior Counsel, i/b Mr. Devdatt P. Palodkar.

AGP for Respondent Nos.1 &2 : Mrs. S.S. Raut.

Advocate for Respondent No.3 : Mr. A. B.A Kharosekar.

Advocate for Respondent Nos.5 & 21 : Mr. V. D. Sapkal.

Respondent Nos.4,6 to 20, 22 and 23 are served.

CORAM : S.V. GANGAPURWALA & A.M. BADAR, JJ.
DATE : 13TH JANUARY, 2016.

PER COURT:

1] Mr. V.J. Dixit, learned Senior Counsel submits that in the elections of APMC Wadwani, of which the voting was scheduled on 6.9.2015, there were large scale illegalities in the counting of votes. The said fact is also admitted by the Returning Officer in his report. Subsequently, the said Returning Officer, is also suspended and action is taken against him.

2] Learned Senior Counsel further submits that the ballot papers were substituted, the counting of votes was erroneously done to favour a particular candidate. All these facts are admitted by the Returning Officer in his report submitted to the District Deputy Registrar. In view of that, elections stand vitiated and hence, they deserve to be set aside.

3] Mr. Sapkal, learned counsel for contesting respondents submits that the elections cannot be set aside in a writ petition. It can be set aside only in an Election Petition. He refers to Rule 88 of the APMC Rules.

4] We have heard learned AGP also.

5] Mr. Dixit further submits that in fact, challenge to the validity of the elections is also made before the District Deputy Registrar on 9.9.2015 i.e. within the stipulated period of 7 days, copy of which is also forwarded to the Collector. As per Rule 88, if the election in question in respect of a market committee whose annual income from fees, as per sub-section (1) of Section 31, in immediately preceding market year does not exceed Rs. 5 crores, then, the jurisdiction to set aside the same vests with the District Deputy Registrar. Income of fees by Wadwani APMC in the preceding year was less than Rs. 5 Crores, as such, it would be the District Deputy Registrar, who would be competent to decide the same. According to petitioner, within 7 days, the validity of the election has been assailed before the District Deputy Registrar.

6] Mr. Sapkal, learned counsel submits that he is not aware of the amount of fees received by the APMC, Wadwani in the preceding year. As such, he cannot make any statement.

7] The allegations are made about the illegalities committed during the course of counting of votes and declaration of result. Some complaints were already filed. As per the affidavit filed by the respondent nos.1 & 2, three complaints have already been decided and 4 are pending. The petitioner has also filed a complaint on 9.9.2015 (page 49) with the District Deputy Registrar. As the said complaint is already filed, it would not be appropriate to consider the rival contentions in the present writ petition.

8] The District Deputy Registrar shall decide the complaint (Page 49) on its own merit, in accordance with law, expeditiously and preferably within six months from the date of appearance of the parties before the said authority. Needless to mention, the same shall be decided by observing the principles of natural justice.

9] With these observations and directions, writ petition stands disposed of. No costs.

[A.M. BADAR]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

grt/-