

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Writ Petition No.9485 of 2016

- 1) Kamalbai w/o Bhagwanrao Pawar,
Age 72 years, Occu: Household.
- 2) Kaushalyabai w/o Shivaji Pawar,
Age 58 years, Occu: Household.
- 3) Rabbanibee Ibrahim Pathan,
Age 50 years, Occu: Household.
- 4) Shobhabai w/o Ramchandra Pawar,
Age 55 years, Occu: Household.
- 5) Renukabai w/o Baburao Rathod,
Age 58 years, Occu: Household.
- 6) Sudam s/o Dhenu Pawar,
Age 45 years, Occu: Agriculture.
- 7) Dalsing s/o Tukaram Pawar,
Age 60 years, Occu: Agriculture.

All R/o. Wardada Tanda,
Taluka Mudkhed,
District Nanded.

.. Petitioners.

Versus

- 1) The State of Maharashtra
Through its Secretary,
Cooperation, Marketing and
Textile Department,
Mantralaya, Mumbai - 32.
- 2) The State of Maharashtra,
Through its Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32.

- 3) The Director of Marketing,
Maharashtra State, Pune.
- 4) The District Deputy Registrar
Cooperative Societies, Nanded.
- 5) The Assistant Registrar,
Cooperative Societies, Bhokar,
Taluka Bhokar, District Nanded.
- 6) The Assistant Registrar,
Cooperative Societies, Mudkhed,
Taluka Mudkhed, District Nanded.
- 7) The Agricultural Produce Market
Committee, Bhokar,
Taluka Bhokar, District Nanded.
Through its Secretary. .. **Respondents.**

Shri. Shahaji B. Ghatol-Patil, Advocate, for petitioners.

Shri. S.K. Tambe, Assistant Government Pleader, for
respondent Nos.1 to 6.

CORAM: T.V. NALAWADE, J.

DATE : 15 OCTOBER 2016

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard by
consent for final disposal.

2) During arguments the learned Assistant
Government Pleader produced copy of correspondence
made by the Deputy Secretary of the State Government
from the concerned department dated 6-10-2016 showing

that the Government has approved the inclusion of the village Wardada Tanda in market area of Agricultural Produce Market Committee, Bhokar (APMC). The members of this village panchayat want to vote in the elections to the aforesaid APMC.

3) The present proceeding is filed to challenge the order made by the Returning Officer of the elections to the APMC Bhokar. The objection filed by the present petitioners to the voters list is rejected by order dated 6-9-2016.

4) The programme for election was declared on 20th August 2016. Nomination papers were to be filed between 24th August 2016 and 7th September 2016. The objection was taken on 1st September 2016 by the petitioners as their names are not included in the voters list of their constituency.

5) The objection, claim is rejected on the ground that no separate notification is issued by the State Government as provided in section 3 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963

(hereinafter referred to as “the Act”). Submissions made and the record show that in the past by the notification dated 18-8-1969 Group Gram Panchayat Waiwadi was included in the market area of the aforesaid APMC. Present village Wardada Tanda was separated from the aforesaid Group Gram Panchayat and separate Gram Panchayat was created for this village in the year 1999. However, separate notification was not issued in respect of this village when in the past in the year 1969, notification was issued in respect of the Group Gram Panchayat Waiwadi. Learned Assistant Government Pleader submitted that unless and until notification is issued under section 3 of the Act by the State Government, the members of such Village Panchayat cannot be allowed to vote in the election. On the other hand learned counsel for the petitioners submitted that under the notification only the area is required to be covered and specified area is given to each APMC and due to this circumstance it needs to be presumed that in the year 1969 the area of Wardada Tanda was also covered in the APMC Bhokar.

6) Learned counsel for the petitioner took this Court through Rule 36(15) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 and he submitted that the objection was raised in time and it was the duty of the authority in view of the provision of rule 36 (1) of the Rules to collect necessary information and to take steps to include the names of members of the village Panchayat which is covered by the area of operation of the market committee and so even the objection or the claim was not necessary in this regard.

7) The provisions of the Act and the Rules show that power is given to the State Government to attach particular area to market committee. The definition of "Market Area" is given in section 2(i) and the definition of the "Market Committee" is given in section 2(j). They read as under:-

"(i) "market area" means an area specified in a declaration made under section 4 and includes the area deemed to be a market area under clause (a) of sub-section (1A) of section 13."

(j) "Market Committee" "Committee" means a committee constituted for a market area under section 11 and includes The Bombay Agricultural Produce Market Committee established under clause

(a) of sub-section (1A) of section 13 and a committee or committees constituted as a result or amalgamation of Market Committee or division of a Market Committee under section 44."

8) Section 3 which relates to the requirement of issuance of notification reads as under :

"3. Notification of intention of regulating marketing of agricultural produce in specified area. (1) The State Government may, by notification in the Official Gazette, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in the language of the area in any newspaper circulating therein, and shall also be published in such other manner as in the opinion of the State Government is best calculated to bring to the notice of persons in the area, the intention aforesaid.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within a period of not less than one month to be specified in the notification will be considered by the State Government."

9) The aforesaid provisions show that only the area is required to be declared in the notification and the area is required to be attached to a particular market committee. In the year 1969 when area of the present village Wardada Tanda was attached to the same APMC, issuance of notification to that effect would be the only formality for the State Government. Further it was the

duty of the authority to take steps. Unfortunately such steps were not taken and separate notification in respect of new village was not issued. In view of the object behind the Act and the aforesaid provision, this Court holds that the previous notification covered the new Village Panchayat also and so the members of this new Village Panchayat are necessarily the voters for the election to the APMC Bhokar and they are entitled to vote in the constituency created under section 13 of the Act. In view of these circumstances, following order :-

10) The writ petition is allowed. The present petitioners, members of the Wardada Tanda Village Panchayat are allowed to vote in the election to the Agricultural Produce Marketing Committee Bhokar. Rule is made absolute in the above terms. Learned Assistant Government Pleader to inform the decision to the Returning Officer. Authenticated copy is allowed to both.

Sd/-
(T.V. NALAWADE, J.)

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