

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 10493 OF 2016

1. Satish Ramchandra Rajput,
Age: 38 years, Occu: Agril,
R/o Kobapur, Post. Kankuri,
Tq. Gangapur, Dist. Aurangabad.
2. Kailas Bisansing Rajput,
Age: 32 years, Occu: Agril,
R/o Kobapur, Post. Kankuri,
Tq. gangapur, Dist. Aurangabad.
3. Hasraj Baban Gaikwad,
Age: 55 years, Occu: Agril,
R/o At Bolegaon, Post. Pendapur
Tq. Gangapur, Dist. Aurangabad.
4. Bisansing Hiralal Rajput,
Age: 58 years, Occu: Agril,
R/o Kobapur, Post. Kankuri,
Tq. Gangapur, Dist. Aurangabad.
5. Virsing Phulchand Rajput,
Age: 58 years, Occu: Agril,
R/o Kobapur, Post. Kankuri,
Tq. Gangapur, Dist. Aurangabad.
6. Mohan Namdev Kumavat
Age: 56 years, Occu: Agril,
R/o Sharifpur, Post. Kankuri,
Tq. Gangapur, Dist. Aurangabad.
7. Dilip Namdev Gaikwad,
Age: 52 years, Occu: Agril,
R/o Bolegaon, Post. Pendapur,
Tq. Gangapur, Dist. Aurangabad.
8. Dattatrya Kashinath Wabale,
Age: 55 years, Occu: Agril,
R/o Bolegaon, Post. Pendaaur,
Tq. Gangapur, Dist. Aurangabad.

9. Laxmibai Yadav Narwade,
Age: 52 years, Occu: Agril,
R/o Bolegaon, Post. Pendapur,
Tq. Gangapur, Dist. Aurangabad.
10. Poonam Pratapsinh Parihar,
Age: 48 years, Occu: Agril,
R/o Gangapur,
Tq. Gangapur, Dist. Aurangabad.
11. Krushna Govindrao Gaikwad,
Age: 30 years, Occu: Agril,
R/o Bolegaon, Post. Pendapur,
Tq. Gangapur, Dist. Aurangabad.
12. Mirabai Tulsiram Lahure,
Age: 55 years, Occu: Agril,
R/o Bolegaon, Post. Pendapur,
Tq. Ganagapur, Dist. Aurangabad.
13. Gorabai Bhaulal Rajpur,
Age: 55 years, Occu: Agril,
R/o Sharifpur, Post. Kankuri,
Tq. gangapur, Dist. Aurangabad.**Petitioners.**

Versus

1. The District Deputy Registrar,
Co-operative Societies, Aurangabad.
2. The Returning Officer,
Agriculture Produce,
Market Committee, Gangapur,
And Deputy Registrar,
Co-operative Societies,
Tq. Aurangabad. Dist. Aurangabad.
3. The Secretary,
Agriculture produce,
Market Committee, Gangapur,
District Aurangabad.**Respondents.**

Mr. K.J. Suryawanshi, Advocate for petitioners.

Mr. A.P. Basarkar, AGP, for respondents/State.

Mr. S.S. Dambe, Advocate for respondent No. 3.

AND

WRIT PETITION NO. 10494 OF 2016

1. Vilas Baliram Tambe,
Age: 33 years, Occu: Agril,
2. Aappasaheb Uttam Bargal,
Age: 39 years, Occu: Agril,
3. Babasaheb Yadavrao Hole,
Age: 45 years, Occu: Agril,
4. Kisan Karbhari Dangre,
Age: 39 years, Occu: Agril,
5. Ganpat Chhagan Tambe,
Age: 57 years, Occu: Agril,
6. Dattu Maroti Gaikwad,
Age: 47 years, Occu: Agril,
7. Sow. Padmabai Nanasaheb Pawar,
Age: 43 years, Occu: Housewife & Agril,
8. Sow. Mankarna Ashok Bankar,
Age: 44 years, Occu; Housewife & Agril,
9. Sukhdev Sakharam Dabhade,
Age: 58 years, Occu: Agril,

All R/o At Borgaon,
Tq. Gangapur, Dist. Aurangabad.**Petitioners.**

Versus

1. The District Deputy Registrar,

Co-operative Societies, Aurangabad.

2. The Returning Officer,
Agriculture Produce,
Market Committee, Gangapur,
And Deputy Registrar,
Co-operative Societies,
Tq. Aurangabad. Dist. Aurangabad.
3. The Secretary,
Agriculture produce,
Market Committee, Gangapur,
District Aurangabad.

....Respondents.

Mr.K.J. Suryawanshi, Advocate for petitioners.

Mr. S.N. Kendre, AGP for respondents/State.

Mr. S.S. Dambe, Advocate for respondent No. 3.

CORAM : T.V. NALAWADE, J.

DATED : 20th October, 2016.

JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) The first proceeding is filed to challenge the order made by the District Deputy Registrar of Co-operative Societies Aurangabad, by which the application given by the present petitioners to include their names in voters list of one constituency created under section 13(1) (a) (i) of the Maharashtra Agricultural Produce Marketing (Development and

Regulation), Act 1963 (hereinafter referred to as 'the Act' for short) is rejected. It is rejected on the ground that they got elected subsequent to the last date fixed for filing nomination to election which was 12.9.2016 and it was also not within three days before the last date of nomination as required by Rule 36 (15) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules 1967 (hereinafter referred to as 'the Rules' for short).

3) The learned counsel for petitioners placed reliance on the decision given by this Court in **Writ Petition No. 9197/2015 with other petitions at this Bench (Subhash s/o. Rabhaji Barde and Ors. Vs. The State of Maharashtra and Ors.) decided on 20.8.2016.** The learned counsel submitted that this Court has considered the relevant provisions of the Act and the Rules and this Court allowed the members of Village Panchayat in that case to vote in the election by making observations with regard to interpretation at para Nos. 7 and 8 which are as under :-

"7. The provision of section 13 of the Act provides for the constitution of Marketing Committee. The relevant portion of provision of section 13 of the Act and Rule 35 of the Rules show that there are four constituencies from which

members of the Marketing Committee are elected. The present case is from the category of 'Village Panchayats Constituency'. As per the provision of section 13, the members of the Village Panchayat, who are agriculturists, can contest the election from this constituency [section 13(1)(a)]. However, the provision of section 13 (1) (a) (ii) shows that all the sitting members of Village Panchayat, over which the A.P.M.C. has jurisdiction are entitled to vote in the election. This provision runs as under :-

"13. Constitution of Market

Committees.- (1) Subject to the provisions of Sub-section (2), every Market Committee consists of the following members namely :-

(a) fifteen agriculturists residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty one years of age on the date specified, from time to time, by the Collector or the District Deputy Registrar, as the case may be, 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 the Economically Weaker Section), shall be elected by members of village Panchayats functioning therein;"

8. The wording of aforesaid provision is plain and clear and it leads to only one inference that members of Village Panchayat, who are functioning on the date of election, can be the voters. If the provision is considered without referring the rules, it can be said that if the term of members of Village Panchayat has expired prior to the date of voting in A.P.M.C. Election, such ex-members cannot vote in the election and similarly, it can be said that the sitting members, whose term has commenced are entitled to vote in this election if their term has commenced prior to the date of voting."

4) The learned counsel for petitioners submitted that in section 13, the present petitioners falls in category 13 (1) (a) (i). This category is as under :-

"13. Constitution of Market Committees.-

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

(a) fifteen agriculturists residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty one years of age on the date specified, from time to time, by the Collector or the District Deputy Registrar, as the case may be, in this behalf), as specified below:-

(i) eleven (of which, two shall be women, one

shall be a person belonging to Other Backward Classes and one shall be a person belonging to De-notified Tribes (*Vimukta Jatis*) or Nomadic Tribes) shall be elected by members of the Managing Committees of the Agricultural Credit Societies and Multi-purpose Co-operative Societies (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder), functioning in the market area:

Provided that, where the market Committee is situated in Tribal areas, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (*Vimukta Jatis*) or Nomadic Tribes as aforesaid;"

5) The learned counsel for petitioners submitted that there is only one such Society i.e. Vikas Society for each village. He submitted that even if there are even two societies, the member of one society cannot become the member of other society of that village and so, it is necessary to see that there is representation to the village as a whole in the constituency. He further submitted that the Rules framed in that regard are not that strict and the Rules are held to be elastic. In the case reported as **2015 (6) ALL MR 629 [Sangli Urban Co-operative Bank Ltd. Vs. The State of Maharashtra and Ors.]** this Court at Principal Seat has made following

observations :-

"Individual was nominated by the petitioner bank when he was its director, Election of the bank and that of the federation of the urban co-operative banks was running parallel. As per result of election nominated individual was not elected as a director. Newly elected bank board substituted the nomination with a new director and conveyed of the federation. It was not allowed as it was not sought within time frame u/R. 10(4) of Maharashtra Co-operative Societies Election to Committee Rules, 2013. Results of election of bank's board were declared on the last date of filing nominations for elections of the federation. Underlying principle is to see to it that the member society does not go unrepresented. Management of member society nominates a delegate of its choice. R.10(4) in so far as the time period mentioned therein cannot be strictly applied. On technicalities democratic process should not be thwarted. In appropriate cases the delegate can be allowed to be changed and the time frame given in R.10 (4) cannot be construed as a fetter to permit such change. Petition partly allowed."

6) Rule 36 (15) which gives the period within which the claim or objection need to be made is as under :

"Rule 36 Voters List

(1)

(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 or the District Deputy Registrar, as the case may be, for inclusion of his name in the list."

7) Considering the purpose behind the creation of APMC, this Court holds that sufficient representation needs to be given to all the Villages and if the voters from the constituency are prevented from taking part in the election, it will defeat the purpose of creation of APMC for agriculturists. This Court holds that the observations made by this Court at para Nos. 7 and 8 in the matter of **Subhash** cited supra need to be used in the present matter also.

8) In the other petition, the petitioners were elected as members on 9.9.2016 when the last date of nomination for APMC was 12.9.2016. But, they made application for inclusion of their names after 12.9.2016 and so, the authority had rejected the application. Thus, the petitioners of this proceeding are on better footing. This Court holds that they are also voters of the aforesaid constituency. In the result, following order is made.

ORDER

Both the petitions are allowed. The petitioners are allowed to vote in the election of Agricultural Produce Marketing Committee, Gangapur which is to take place on 22.10.2016.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

SSC/