

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

WRIT PETITION NO. 11517 OF 2016

- 1 Vividh Karyakari Seva Sahakari
Sanstha Ltd. Narsapur, Tq. & Dist. Parbhani
Through Its Chairman
Ramesh S/o Bhimrao Deshmuk
Age: 45 years, Occu: Agri,
R/o Narsapur, Tq. & Dist. Parbhani.
 - 2 Manikrao S/o Sopanrao Shinde
Age: 48 years, Occu: Agri,
R/o Narsapur, Post. Brahmangaon,
Tq. & Dist. Parbhani.
-Petitioners**

Versus

- 1 The State of Maharashtra
Through Its Principal Secretary,
Co-operation, Marketing and Textile
Department, Matralaya, Mumbai
 - 2 The District Deputy Registrar,
Co-opative Societies,
Parbhani.
 - 3 The District Election Officer
Returning Officer,
Parbhani.
- ...Respondents.**

Mr. P.S. Dighe, Advocate for petitioners.

Mr. S.K. Tambe, AGP for State.

AND

WRIT PETITION NO. 11803 OF 2016

Vividh Karyakari Seva Sahakari
Sanstha Maryadit Mandakhali
Through Its Secretary
Suryakant S/o. Kishanrao Deshmukh

At Post. Mandakhali
Tq. & Dist. Parbhani

....**Petitioner**

Versus

1 State of Maharashtra
Through Its Secretary,
Co-operation,
Mantralaya, Mumbai-32

2 District Deputy Registrar
Co-operative Societies
Parbhani.

3 The Assistant Registrar
Co-operative Societies
Parbhani

4 Agriculture Produce Market (Formal Party)
Committee, Parbhani
Through Its Secretary
New Mondha, Parbhani
Tal. & Dist. Parbhani

...**Respondents.**

Mr. S.B. Sontakke, Advocate for petitioners.

Mr. B.A. Shinde, AGP for State.

CORAM : T.V. NALAWADE, J.

DATED : 29th November, 2016.

JUDGMENT :

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

2) The two proceedings are filed to challenge the order
made by the District Deputy Registrar of Co-operative Societies,
Parbhani by which in the first proceeding the claim of the

petitioners to include the names of 12 new elected Directors of one Vikas Co-operative Society from Narsapur is rejected and in the second proceeding, the claim of petitioners to include the names of 13 persons in the voters list of Agricultural Produce Marketing Committee (APMC), Parbhani is rejected. Thus, in both the cases, newly elected Directors of Vikas Society want to vote in the elections to APMC, Parbhani. The District Deputy Registrar has rejected the claims by observing that their names were not included in the provisional voters list and they had not made application before the cut-off date i.e. three days before the last date of filing nomination paper for the election.

3) The learned counsels for the petitioners in both the proceedings placed reliance on the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules 1967 and the order made by this Court in **Writ Petition No. 10493/2016 and other connected matters [Satish Ramchandra Rajput and ors. Vs. The District Deputy Registrar and ors.] decided on 20.10.2016**. They also placed reliance on the decision given by this Court in **Writ Petition No. 9197/2015 and other connected matters [Subhash s/o. Rabhaji Barde and ors.**

Vs. The State of Maharashtra and Ors.] decided on 20.8.2016.

4) Admittedly, in both the proceedings the Directors of the Vikas Societies came in power after the cut-off date. This Court had an occasion to consider the decision given by this Court at Principal Seat 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 while deciding **Writ Petition No. 10493/2016** cited supra used the observations made by this Court in the case of **Subash Vs. State of Maharashtra [Writ Petition No. 9197/2015]** cited supra and made the following observations in Writ Petition No. 10493/2016 at para Nos. 3 to 8 :-

"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."

5) This Court has considered the duty of the Collector who is expected to supervise the things and prepare the voters list in **Writ Petition No. 9197/2015** cited supra and the observations are made in para Nos. 11 to 18 and they are as

under :-

"11. Rule 36 of the Rules is about preparation of the voters list. This Rule needs to be considered in different parts first and then as a whole. Rule 36 (1) runs as under :-

"36. Voters' list - (1) The Collector shall call upon the District Deputy Registrar of Co-operative Societies to prepare and furnish to him a list of members of the Managing Committees of the Agricultural credit societies and the multipurpose co-operative societies and call upon the Block Development Officer to prepare and furnish to him a list of members of the Village Panchayat's showing distinctly the members belonging to the Scheduled Caste and Scheduled Tribes functioning in the market area and the market committee to prepare and furnish to him the list of traders and hamals and weighmen licenced by the committee within such time as may be specified by him. Thereafter, the Collector shall cause to be prepared separately for each of the constituencies a voters list for holding the elections to the market committees :

Provided that where a person is qualified to vote from traders constituency or from Hamals and weighmens constituency his name shall appear in the respective register maintained by the market committee atleast 3 months before the preparation of such lists."

12. The word 'shall' used in the aforesaid portion shows that it is the 'duty' of the Collector to see that Block Development Officer prepares and furnishes to the Collector a list of members of Village Panchayat functioning in the market area. This provision again shows that separate list for each constituency of voters is required to be prepared. The provision of section 28 (1) of the Bombay Village Panchayat Act, 1958 shows that it

is the Collector who is expected to fix the date of first meeting of Village Panchayat after General Election is over. The term of such members commences on the date of first meeting. The provision shows that the date of such meeting shall not in the case of first meeting after General Election, be later than the day immediately following the day of expiry of the term of outgoing members. In the present case, all the petitioners were outgoing members at the relevant time and so, it needs to be inferred that the term of the newly elected members started on the next day of the expiry of the term of present petitioners.

13. The provision of Rule 36(2) of the Rules runs as under :-

"(2) Every such list shall be revised before general election at least six months before the date on which the term of the market committee is due to expire.

Provided that the Collector may direct the revision of such list also at any other time before any general election is due".

This provision shows that the Collector is expected to start the process of preparation of voters list before six months of the last date of the term of sitting members of Marketing Committee. The wording used in this Rule also shows that it is mandatory in nature. The proviso of this sub-rule shows that at any other time also, the Collector can direct to revise all voters lists.

14. While preparing and revising the voters list, the authority cannot ignore the eligibility conditions mentioned in provision of section 13 of the Act in respect of the voters and in the present matter, specific provision is section 13(1)(a)(ii) of the Act. In view of this position of law and when in the cases like present one, it is always certain that before the election of members of Marketing Committee, the term of the voters of a particular Village Panchayat will be

over, the names of such voters need to be deleted from the voters list. This deletion will, however, be subject to exceptional circumstances. The lists are to be prepared for general election and so, such steps need to be taken. To cope with the exceptional circumstances, there is procedure laid down in other sub-rules of Rule 36 like 36 (2), 36(6) to 36 (11). The provisions of Rule 36 (6) and (7) of the Rules read as under :-

"(6) Every such list shall be published in Marathi provisionally within a period of one month from its receipt by the Collector in such manner as the Collector may deem fit.

(7) At the time of publishing the list of voters a notice shall be published in like manner calling upon persons entered in the list to lodge in the manner herein prescribed any objection that they have to make to the list as published, and upon persons claiming to be entered in the list, to lodge their claim in the manner herein prescribed"

The reading of Rule 36 as a whole shows that aforesaid two sub-rules are applicable to both the original list and revised list mentioned in Rule 36 (1) and 36 (2). In view of the nature of duty of the authority mentioned in Rule 36, ordinarily for this constituency, there should not be need to use provisions of section 36 (3) to (16) relating to objections, claims and amendments. They will be required to be used in exceptional circumstances in view of the certainty about the tenure of the members of Village Panchayat and about the certainty about the commencement of the term of newly elected members. Thus, due to the duty imposed on the authority in Rule 36 of the Rules, the newly elected members can presume that they are voters in the elections of their Marketing Committee provided that their term had commenced prior to the date of election to Marketing Committee. In this regard, the provision of Rule 36 (12) is also important and it runs as under :-

"(12) If, after the final publication of the list of

voters, under sub-rule (11), the Collector on application or otherwise, is satisfied after such inquiry as he deems fit that any entry or entries in the list is or are erroneous or defective in any particular respect, the Collector may cause a list of amendments to be prepared; and thereupon the provisions of sub-rule (3) to (11) shall apply in the like manner as they apply in the case of the list of voters."

This provision shows that the word 'otherwise' is used and it indicates that application of the concerned is not required and if otherwise also, the information reaches to the authority, the steps are required to be taken for inclusion of the newly elected members of Village Panchayat in voters list. In view of this provision, it can be said that there is no force in the contention made for the petitioners that only one person viz. Vaibhav Khalate had given applications for newly elected members of 9 Village Panchayats and so, this application ought not to have entertained.

15. The provisions of Rule 36 (6) to (16) of the Rules are in respect of making amendments in voters list due to objections to the voters list and claims of persons for inclusion of their names in the voters list. The learned counsel for petitioners laid emphasis on Rule 36 (15) which runs as under :-

"(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 for inclusion of his name in the list."

16. It is already observed that the members of Village Panchayat are not expected to apply for inclusion of their names in the voters list. Thus, they are not expected to apply under Rule 36 (15) of the Rules and such situation should never arise for them in view of the discussion

already made. If such situation arises, it can be said that the situation was created due to lapse on the part of the authority mentioned in Rule 36. If the Village Panchayat was already attached to Marketing Committee, then in such case the members of the Village Panchayat are entitled to vote in the elections if their term has commenced prior to the date of election and the term has not come to an end. For the same reason, the ex-members of such Village Panchayat, who are in voters list cannot be allowed to vote in the election as their term had expired prior to the date of election to Marketing Committee. The provision of Rule 36 (15) of the Rules cannot override the provision of section 13(1)(a)(ii) of the Act. For the same reason, the provision of Rule 37 mentioning that the final voters list is conclusive and the provision of Rule 39 mentioning the right of persons appearing on the voters list to vote cannot be used by the ex-members of Village Panchayat whose term was over prior to the date of election. Conversely, these provisions cannot be used against the newly elected members of the Village Panchayat.

17. When the Rules are made in any Act giving substantive right like right to vote, the Courts needs to go with presumption that the Rules are their to enable the enforcement of such right and the Rule is not there to prevent the use of such right. The institutions like Agricultural Produce Marketing Committee are created to give power in the hands of citizens to manage own affairs with regard to marketing of agricultural produce and the other purpose behind such institutions is to inculcate culture of democracy by making the agriculturists and others aware of their rights in democracy. So, the interpretation of the Rules always needs to be in support of such right.

18. Due to circumstances like different due dates for elections of various Village Panchayats, various societies and also A.P.M.C., every member of every Village Panchayat may not be able to contest the election to A.P.M.C., but if his term has

commenced, he will be definitely entitled to vote in the elections. Due to the difference in programmes of elections, the members of Village Panchayat in some case may lose their right to contest the election from the constituency, but in that regard nothing can be done. Such approach needs to be taken to remove the ambiguity, if any, felt in the aforesaid provisions."

6) In view of the aforesaid observations, this Court holds that in the present matters also as voting of the elections will take place on 11.12.2016, the Directors of Vikas Societies cannot be prevented from voting.

7) So, both the petitions are allowed. The Directors of the aforesaid Societies are to be allowed to vote from their constituencies in the election of APMC, Parbhani.

Rule is made absolute in those terms.

Authenticated copy is allowed to both the learned counsels for petitioners.

[T.V. NALAWADE, J.]

ssc/