

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

WRIT PETITION NO. 11810 OF 2016

- 1 Taramati W/o Vasantao Dhale
Age: 39 years, Occu: Agrist
R/o : At. Post Raypur
Tq. & Dist. Parbhani
 - 2 Shivaji S/o Prakashrao Maske
Age: 35 years, Occu: Agrist
R/o : At. Post. Raypur
Tq. Dist. Parbhani
-Petitioners**

Versus

- 1 State of Maharashtra
Through Its Secretary,
Co-operation,
Mantralaya, Mumbai-32
 - 2 District Deputy Registrar
Co-operative Societies
Parbhani.
- ...Respondents.**

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

Mr. R.B. Bagul, 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 present proceeding is filed to challenge the
order made by District Deputy Registrar of Co-operative

Societies, Parbhani on 22.11.2016 by which the claim of the petitioners to include their names in the voters list for election to APMC, Parbhani is rejected. The claim is rejected by the authority by giving reasoning that the application was not made within three days before the last date of filing of the nomination for elections to APMC.

3) The submissions made and the record show that the petitioners got elected to Village Panchayat, Raypur on 27th November 2012 and they are still members of said Village Panchayat. It appears that the Secretary of Village Panchayat, Gramsevak did not inform about the names of the present petitioners to the aforesaid authority as the voters and due to that their names are not included in the voters list.

4) This Court has considered the duty of Collector with regard to preparation of voters list for such election while deciding the 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. The relevant observations are from 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."

5) The provisions discussed by this Court in aforesaid writ petitions show that it was the duty of the authority to collect the names of the members of the Village Panchayat and include those names in the voters list. As the names are not included, this Court holds that list needs to be corrected and opportunity needs to be given to the present petitioners to vote in the election.

6) In the result, the petition is allowed. The present petitioners are to be allowed to vote in the election of APMC in their constituency.

Rule is made absolute in aforesaid terms.

Authenticated copy to both the parties is allowed.

[T.V. NALAWADE, J.]

ssc/