

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

Writ Petition No. 11860 of 2015

Chandrashekhar s/o. Shivram Mudkanna,
Age : 53 years,
Occupation : Agriculture,
R/o. At Post Murum,
Taluka : Omerga,
District : Osmanabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai - 32.
2. The Director of Marketing,
Pune.
3. The District Deputy Registrar,
Co-operative Societies,
Osmanabad.
4. The Election Officer,
For Agriculture Produce Market
Committee,
Murum /
Assistant Registrar (Administration),
Affiliated to District Deputy Registrar,
Co-operative Societies,
Osmanabad.
5. Agriculture Produce Market Committee,
Murum, Taluka : Omerga,
District : Osmanabad.
6. Vijaykumar s/o. Sadashiv Sonkatala,

(2)

W.P. No. 11860 of 2015 &
W.P. No. 11864 of 2015

Age : 32 years,
Occupation : Agriculture,
R/o. Yenegur,
Taluka : Omerga,
District : Osmanabad.

.. Respondents.

.....

Mr. N.B. Khandare, Advocate, holding for
Mr. M.P. Tripathi, Advocate, for the petitioner.

Mr. S.N. Morampalle, Asst. Government Pleader, for
respondent nos.1 to 4.

Mr. N.P. Patil Jamalpurkar, Advocate, for
respondent no.5.

Mr. S.R. Chaukidar, Advocate, for respondent no.6.

.....

With

Writ Petition No. 11864 of 2015

Shamshoddin Ghudulal Jamadar,
Age : 26 years,
Occupation : Agriculture,
R/o. At Post Muruli,
Taluka : Omerga,
District : Osmanabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai - 32.

2. The Director of Marketing,
Pune.
 3. The District Deputy Registrar,
Co-operative Societies,
Osmanabad.
 4. The Election Officer,
For Agriculture Produce Market
Committee,
Murum /
Assistant Registrar (Administration),
Affiliated to District Deputy Registrar,
Co-operative Societies,
Osmanabad.
 5. Agriculture Produce Market Committee,
Murum, Taluka : Omerga,
District : Osmanabad.
- .. Respondents.

.....

Mr. K.J. Ghute Patil, Advocate, for the petitioner.

*Mr. S.N. Morampalle, Asst. Government Pleader, for
respondent nos.1 to 4.*

*Mr. N.P. Patil Jamalpurkar, Advocate, for
respondent no.5.*

.....

**CORAM : S.V. GANGAPURWALA &
A.M. BADAR, JJ.**

**Date of reserving
the judgment : 11th January 2016**

**Date of pronouncing
the judgment : 22nd January 2016**

JUDGMENT *(Per S.V. Gangapurwala, J.) :*

1. Both the Writ Petitions are based on similar set of facts and involve common question of law. As such, to avoid rigmarole, the same are decided together.

2. The elections of respondent no.5 - Agriculture Produce Market Committee were declared and election programme was published. The same was to commence from 25-8-2015. Polling was scheduled on 25-10-2015. Counting of votes was to take place on 26-10-2015. On 18-10-2015, after nomination papers were filled in, one of the contesting candidates expired. In view of Rule 55 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 [**For short, hereinafter referred to as “Rules of 1967”**], the order countermanding the elections was passed. As such, the poll scheduled on 25-10-2015 could not take place.

3. Fresh elections are declared polling of which is to be held on 31-1-2016. The programme states that the nomination papers would be filed from 3-12-2015 to 17-12-2015 and different states of elections are contemplated. The counting of votes is to be held on 1st February 2016.

4. Mr. Khandare, the learned Counsel appearing for the petitioner in W.P. No. 11860/2015, during the course of his erudite arguments, submits that Rule 55 of the Rules of 1967 will have to be read in its entirety. Though Rule 55 refers to countermanding of poll, the said Rule further makes it abundantly clear that after poll is countermanded, proceeding with reference to the elections has to be commenced a new ‘in

all respects'. The process of election would commence from preparation of voters' list as laid down in Rule 35 of the Rules of 1967. The preparation and finalization of the voters' list is an integral part of the process of election. In the present case, respondent no.4 - Election Officer did not prepare fresh voters' list. The same is not in consonance with Rule 55 of the Rules of 1967. To buttress his submission, that preparation of the voters' list would be an intermediate stage in the process of election, the learned Counsel relies on judgment of the Hon'ble Apex Court in the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & another Vs. The State of Maharashtra & others***, reported in **2001(8) SCC 509**. The learned Counsel further relies on judgment of the Hon'ble Apex Court in the case of ***Nandi Infrastructure Corridor Enterprises Limited & others Vs. Election Commission of India & another***, reported in **(2010) 13 SCC 334**, to submit that 'cancel' means 'to destroy the force, effectiveness or validity of an order' and when the elections are countermanded, the same tantamounts to cancellation of the election and the stage from the preparation of the voters' list has to be commenced afresh. The learned Counsel submits that a similar provision to that of Rule 55 of the Rules of 1967 was the subject matter of interpretation before the learned Single Judge of Karnataka High Court in the case of ***Neelasekhara Raju Vs. Returning Officer***, reported in **ILR 1987 Karnataka 224**, and it was interpreted by the learned Single Judge therein that the voters' list has to be in existence for beginning of a new election. Though the nominations are saved, election has to be a new election. If the new election has to take place, it has to conform to the law on the date a new election has to commence and the voters' list in accordance with the amended provision has to be in existence for the beginning of a new

election.

5. Mr. Khandare, the learned Counsel for the petitioner, submits that during the interregnum i.e. cancellation of the earlier election and declaration of the election programme of the new election, some new Village Panchayats have come into existence because of which nominees of the said Village Panchayats will be eligible to cast their votes and participate in the election. In view of the said fact also, preparation of fresh voters' list is appropriate. The learned Counsel refers to Rule 36 of the said Rules in this regard.

6. Mr. N.P. Patil Jamalpurkar, the learned Counsel for respondent no.5 - Agriculture Produce Market Committee, in his usual lucid style submits that Rule 55 of the Rules of 1967 speaks of countermanding the polls and refers to the election as a new election would be limited to the fresh declaration of the election programme as contemplated under Rule 43 of the said Rules. Voters' list would not be the part of the same. The learned Counsel relies on judgment of the Hon'ble Apex Court in the case of ***Rama Kant Pandey Vs. Union of India***, reported in ***AIR 1993 SC 1766***. According to the learned Counsel, even reading proviso to Rule 55, it would be manifest that the stage from filling in the nomination paper has to be commenced a new because those persons who had already filled in nomination papers are not required to further fill in nomination papers and a person who had already given a notice of withdrawal is entitled to fill in a fresh nomination.

7. Mr. Chowkidar, the learned Counsel appearing for respondent

no.6 - intervener, submits that if any person who claims that whose name is not in the voters' list, has got a right to incorporate his name in the voters' list and for the said purpose, the stage from preparation of fresh voters' list need not be resorted to.

8. We have considered the submissions canvassed by the learned Counsel for respective parties, so also, the Rules. Before proceeding to deal with the contentions canvassed by the learned Counsel for respective parties, it would be appropriate to consider the relevant rules. Rules 36, 43 and 55 of the Rules of 1967 read thus :-

36. Voters' list.

(1) The Collector shall call upon the District Deputy Registrar of Cooperative Societies to prepare and furnish to him a list of members of the Managing Committees of the Agricultural credit societies and the multipurpose cooperative 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 licensed 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 at least 3 months before the preparation of

such lists.]

Provided further that, in respect of the Market Committees, whose elections are to be held by the District Deputy Registrar, under clause (a) of sub-section (1) of section *[14] of the Act, the District Deputy Registrar shall cause such list to be prepared.

(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 or, the District Deputy Registrar, as the case may be, may direct the revision of such list also at any other time before any general election is due.

(3) The voters list for Cooperative societies constituency shall be prepared societywise. The voters list for village panchyats constituency shall be prepared panchayatwise, indicating the details regarding membes belonging to the Scheduled Caste and Scheduled Tribes, etc. Every list of voters for all the constituencies mentioned in sub-rule (1) of rule 35 shall provide, in alphabetical order, the name, age, residence and the category of the voters to which he belongs.]

[(4) Deleted]

[(5) Deleted]

(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;

Provided that, in respect of the Market Committees, whose elections are to be held by the District Deputy Registrar under clause (a) of sub-section (1) of section *[14] of the Act, the

District Deputy Registrar shall himself publish such list in such manner as he 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.

(8) Such claim or objection shall be made in writing and shall specify the constituency in question, the grounds on which the right of any person to be entered in the list is asserted or denied, the evidence which the claimant or objector intends to lead, the address of the claimant or objector, his number, if any, in the list and in case of an objection, the number in the list of the person to whose entry objection is taken and the constituency in the list for which he is entered.

(9) Every claim or objection shall be delivered or sent by post so as to reach the office of the Collector or the District Deputy Registrar, as the case may be, before the date fixed by the Collector or the District Deputy Registrar, as the case may be, in that behalf being a date not later than one month from the date of publication of the list.

(10) The Collector or the District Deputy Registrar, as the case may be after hearing the evidence, if any, adduced on behalf of the parties and after further inquiry, if any shall pass order on the claim or objection, and the order of the Collector or the District Deputy Registrar, as the case may be, relating to such claim or objection shall be final.

(11) The Collector or the District Deputy Registrar, as the case may be, shall cause the lists to be

amended in accordance with the orders passed under sub-rule (10) and shall cause them to be published finally in Marathi in such manner as he may deem fit.

(12) If, after the final publication of the list of votes under sub rule (11), the Collector or the District Deputy Registrar, as the case may be, 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 or the District Deputy Registrar, as the case may be, may cause a list of amendments to be prepared; and thereupon the provisions of sub-rule (3) to (11) shall apply in the case list in the like manner as they apply in the case of the list of voters.

(13) Copies of such final lists including the final list of amendments and additions shall be available for inspection and sale in whole or in part in the offices of the Collector, the Market Committee and the Village Panchayat concerned or at any other place as the Collector or the District Deputy Registrar, as the case may be, may specify in this behalf.

(14) The final list as also the final list of amendments shall be republished under sub-rule (11) and shall remain in force and continue in operation as the list of voters for the purpose of any bye-election, until it is revised as provided by this rule.

(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.

(16) On receipt of the application under sub-rule

(15) the Collector [or the District Deputy Registrar, as the case may be,] shall, if satisfied that the applicant is entitled to have his name entered in the list, direct his name to be entered in the list and cause an amendment to the list to be prepared; and thereupon the provisions of sub-rules (13) and (14) shall *mutatis mutandis* apply to such amendments.

43. Appointment of dates, etc for various stages of election.

(I) The Collector or the District Deputy Registrar, as the case may be shall, by order draw and declare a programme of various stages of election as indicated herein below not earlier than fifteen days and not later than thirty days of the date of display of the final list of voters of the Market Committee:

(i) Last date for making nominations-Fifteen days from the date of declaration of Election programme.

(ii) Date of publication of list of nominations received- As and when received till the date fixed for making nominations.

(iii) Date of scrutiny of nominations.-3rd day of the last date for making nominations.

(iv) Date of publication of list of valid nominations after scrutiny.- Next day after the date of completion of scrutiny or where there is an appeal after the appeal is decided.

(v) Date by which candidature may be withdrawn. -Two days from the date of publication of list of valid nominations after scrutiny.

(vi) Date of publication of final list of contesting candidates. - The date next succeeding the last day fixed for withdrawal of candidature.

(vii) Date and time during which and the place or places at which the poll shall be taken.- Not earlier than fifteen days but not later than thirty days from the date of publication of final list of contesting candidates.

(viii) Date, time and place for counting of votes.-Not later than 3rd day from the date on which the Poll shall be taken.

(ix) Date of declaration of results of voting-Immediately after the counting of votes.

Explanation.

(1) (a) If the last date in reckoning dates as specified in the above cases is a public holiday, the next succeeding working day shall be fixed for the respective events.

(b) The proportion of polling stations to number of votes at each polling station and the place of polling station shall be fixed in consultation with the Market Committee concerned. In case the polling stations are spread over in the market area, the Returning Officer shall make arrangements to get all the ballot boxes to the office of the Returning Officers.

(2) The Collector or the District Deputy Registrar, as the case may be shall, not less than forty-five days before the date fixed for the poll, publish in Marathi, the dated so appointed by means of notice published in a newspaper circulating in the market area and cause the copies of such notice to be displayed on the notice board of the Market Committee and in the Village Panchayat concerned.

(3) The time during which the poll shall be taken shall be mentioned in the election programme. The time of poll shall not be earlier than 8-00 a.m and later than 5-00 p.m.

(4) Whether it is necessary to fix time, date and place for any stage in the election programme, it shall be fixed by the Collector or the District Deputy Registrar, as the case may be and shall be mentioned in the election programme declare by him.

(5) The Collector or the District Deputy Registrar,

as the case may be may change the dates fixed under this rule within seven days of the date fixed for the Poll:

Provided that if due to any unavoidable circumstances and in the public interest it has become imminent to modify the programme and there is no sufficient time for obtaining the previous approval of the Collector or the District Deputy Registrar, as the case may be to such modification, the Returning Officer may, for reasons to be recorded in writing, modify the election programme. In every such case the Returning Officer shall forthwith send the copy of the modified election Programme along with the reasons recorded by him for such modification to the Collector or the District Deputy Registrar, as the case may be.

55. Death of candidate before poll.

If a contesting candidate dies and a report of his death is received by the Returning Officer before the commencement of the poll, the Returning Officer shall, upon being satisfied of the fact of the death of the candidate, countermand the poll and the Returning Officer shall report the fact to the Collector or the District Deputy Registrar, as the case may be and all proceeding with reference to the election shall be commenced a new in all respects as if for a new election:

Provided that-

(i) no further nomination shall be necessary in the case of a person who was a contesting candidates at the time of the countermanding of the poll; and

(ii) no person who has given a notice of a withdrawal of his candidature under sub-rule(I) of

rule 52 before the countermanding of the poll, shall be ineligible for being nominated as a candidate for the election after such countermanding.

9. Upon perusal of Rule 55, it is manifest that on the death of a candidate, poll is required to be countermanded and all proceedings with reference to the election are required to be commenced a new in all respects as if for a new election. The moot question would be whether the stage would be relegated to the preparation of fresh voters' list or that the stage would commence from appointments of dates, etc for the various stages of election as contemplated in Rule 43 of the Rules of 1967.

10. Rule 55 ordains that upon death of a candidate, the Returning Officer shall countermand the poll. The word '*poll*' means to give a vote at an election, also to receive a vote. So, what is countermanded is the poll. However, the second part of Rule 55 states that upon countermand of the poll, all proceedings with reference to the election shall be commenced a new in all respects, as if for a new election. The phraseology '*election*' has both wider and narrower meaning depending upon the scheme of the Act and the Rules. In the narrower sense, the word '*election*' means the finalization of the candidate by taking poll when polling is necessary and without taking poll when the candidate is returned unopposed. In the wider sense, this word connotes the entire process culminating in a candidate being declared elected. The word '*election*' would mean every stage from the time the notification for election is issued till declaration of result.

11. Much emphasis has been placed by the learned Counsel for the petitioner on the judgment of the Apex Court in the case of *Shri Sant*

Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & another referred to supra and the judgment of Karnataka High Court in the case of ***Neelasekhara Raju*** referred to supra. The judgment of the learned Single Judge of Karnataka High Court in the case of ***Neelasekhara Raju*** may not of much assistance to petitioners. Though the Rule referred to therein is similar to Rule 55 of the Rules we are concerned, however, there is nothing on record to ascertain as to whether any Rule similar to Rule 36 and Rule 43 of the Rules of 1967 were subject matter of consideration in the said case.

12. In the case of ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha & another*** referred to supra before the Apex Court, the elections in question were of a specified Society under the Maharashtra Co-operative Societies Act, 1960, and as observed in para 7 of the judgment, Section 114-X of the Maharashtra Co-operative Societies Act, as it stood then, laid down that various stages of election shall also include preparation of the list of voters. In the said case, the statute itself states that the preparation of the voters' list shall be part of the election process and as per the Rules under the Maharashtra Co-operative Societies Act, the list of voters is required to be prepared by every Society for the year in which general election is due to be held. In the present case, the scheme of the Act and rules is altogether on a different premise. Rule 36 lays down the manner of preparation of the voters' list, revision of the voters' list and amendment of the voters' list. As per Sub-Rule 2 of Rule 36, the voters' list is to be revised six months before the date on which the term of Market Committee is due to expire. The revision of voters' list is commensurate with the term of the Committee due to expire. Sub-Rule 14

of Rule 36 mandates that the final list as also final list of amendment shall be re-published under Sub-Rule 11 and shall remain in force and continue in operation as the list of voters of any bye-election until it is revised as provided by this Rule. This Sub-Rule 14 would make it abundantly clear that the voters' list as finalized and published continues to remain in operation even for the purpose of any bye-election. This would indicate that the stages of election to be commenced a new, as referable in Rule 55 would be limited to the stages from declaration of election after countermanding of poll. There is one more reason to hold the same. Proviso to Rule 55 further clarifies that if a person has filled in his nomination paper before the countermand of poll, he will not be required to fill in further nomination form. Rule 43 specifies that the Collector or the District Deputy Registrar shall by order draw and declare programme of various stages of election as indicated in Rule 43, wherein Schedule of election itself is carved out by the said Rule. Upon reading the scheme of the Rules of 1967 in its entirety, more particularly Rules 55, 43 and 36 harmoniously, the only irresistible conclusion that can be drawn is that after the poll is countermanded on the death of a contesting candidate, the process of election has to be commenced a new in all respect from the date of declaring a programme of various stages of election as laid down in Rule 43 of said rules of 1967.

13. The apprehension of the petitioners is that after the poll has been countermanded and the fresh election programme is declared, new Grampanchayats have come into existence and they would be entitled to vote. If it is not held that all proceedings of the election in all respects shall be commenced a new from the preparation of the voters' list, then these Grampanchayats would not be in a position to exercise their right to vote

and contest the election. The said apprehension of the petitioners is unfounded. Sub-Rule 15 of Rule 36 takes care of such contingency. Any person whose name is not entered in the final list of voters as re-published under Sub-Rule 14, may at any time but not later than three days before the last date of nomination apply to the Collector or the District Deputy Registrar, as the case may be, for inclusion of his name in the list and thereafter as per Sub-Rule 16, if the authority is satisfied that the applicant is entitled to have his name entered in the list, direct his name to be entered in the list and cause an amendment to the list to be prepared and thereupon the provisions of Sub-Rules 13 and 14 shall *mutatis mutandis* apply to such amendments. When new election programme is required to be declared under Rule 43, wherein the last date of filing nomination has to be at least 15 days from the date of declaration of election programme, the person who wants his name to be included in the voters' list, if eligible, can apply to the authority as late as three days prior to the last date of filling in the nomination for inclusion of his name in the voters' list. Such an eventuality as apprehended by the petitioner can be met and redressed under Sub-Rules 15 and 16 of Rule 36.

14. Considering the aforesaid scheme of the Rules, the phraseology '*proceedings with reference to the election shall be commenced a new in all respects as if for a new election*' will have to be interpreted to mean and include the entire process from the issuance of declaration of a programme of various stages of elections under Rule 43. There was no impediment in the present case for the persons claiming to have acquired new rights to vote to file an application to include their names in the voters' list to the authority even three days prior to the last date of filling nomination paper and the

authority if satisfied could have included their names in the voters' list as per Sub-Rules 15 and 16 of Rule 36.

15. Considering the above, the fresh election programme published by respondent nos.3 and 4, dated 3-12-2015, after the countermand of poll in respect of respondent no.5 - Agriculture Produce Market Committee does not suffer from any illegality. Hence, we do not find any merit in the Writ Petitions.

16. In the result, the Writ Petitions are dismissed, however, with no order as to costs.

(A.M. BADAR)
JUDGE

(S.V. GANGAPURWALA)
JUDGE

.....