

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3501 OF 2016

Dnyaneshwar Baliram Thakre	..Petitioner
Versus	
Agriculture Produce Market	
Committee Ulhasnagar, Dist: Thane	
& Ors.	..Respondents

Mr. Abhijeet Kulkarni with Mr. Manoj Badgujar, Advocates for the Petitioner.
Mr. Vikas Mali , AGP for the State.
Mr. Kirit J. Hakani, Advocate for Respondent Nos.1, 6 to 8.

**Coram : SHANTANU KEMKAR &
RANJIT MORE, JJ.**

Date : 2nd May, 2016.

P. C. :

Parties through their counsel.

2 **Rule.** Rule made returnable forthwith. With consent of the parties, the petition is taken up for final hearing forthwith.

3 The Petitioner claims to be elected as member of Village Panchayat, Pali for the term of 5 years commencing from September, 2015 to 2020. He also claims to be Sarpanch of the said Village Panchayat. According to the Petitioner, the Respondent Nos.6 to 8 were elected as members of the Respondent No.1-Market Committee by the members of Village Panchayats

functioning therein under Clause 13(1)(a)(ii) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (In short '**Act**'), which reads as follows:

"13. Constitution of Market Committees.

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

³[(a)²¹[fifteen agriculturalists 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) Not relevant

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 Economically Weaker Section), shall be elected by members of village Panchayats functioning therein;"

4 It is not in dispute that the term of Gram Panchayat, from which the private respondents were elected has expired in September, 2015.

5 The contention of the learned counsel for the Petitioner is that in view of proviso to Section 15 of the Act, on expiry of the term of the Village Panchayats, the Respondent Nos.6 to 8's right to hold the office of the Respondent No.1-Market Committee has already ceased. Section 15 of the Act reads as follows:

Section 15. Commencement of term of office of members.

(1) The term of office of members of a Market Committee shall be deemed to commence on the date of the first meeting of the Market Committee at which business is transacted:

[Provided that, a person who is a member by virtue of his being a representative, or holding office, or holding licence belonging to any of the categories of members referred to in sub-section (1) or (1A) of section 13, shall hold office as such member so long only as he continues to be such representative or to hold such office or such licence and on his ceasing to be such representative or holding such office or licence he shall cease to be such member and he shall be deemed to have vacated his office.]

6 The learned counsel for the Petitioner submits that as per the proviso to Section 15 of the Act, by operation of law, private Respondents cannot continue to be the member of the first

Respondent-Market Committee as they were elected by the erstwhile Village Panchayats of which terms have expired. In support of his contention, the learned counsel for the Petitioner has placed reliance upon the judgment of the Division Bench of this Court in **Purshottam Pandharinath Tonpe v. Agriculture Produce Market Committee Wardha & Ors.**¹

7 On the other hand, Mr. Hakani, the learned counsel for Respondent Nos.1 and 6 to 8 submits that private Respondents will not be governed by proviso to Section 15 of the Act as they are elected being agriculturalists under Sub-section (ii) of Section 13(1) (a) of the Act and therefore, their term in Market Committee can not be said to have come to an end on the expiry of the term of the Village Panchayats. In support of his contention, he has placed reliance upon the judgment passed by the Nagpur Bench of this Court in Writ Petition No.218 of 1988 in **Laxman Sakharam Balsare v. Municipal Council, Warud and Ors.**².

8 Mr. Mali, the learned AGP did not dispute legal position that in view of proviso to Section 15 of the Act, the Respondent Nos.6 to 8 cannot continue to hold the office as members of the Market Committee as the terms of the Village Panchayats which had elected them has expired. He submits that the term of the private respondents would be co-extensive with the term in Gram Panchayats which have elected them.

1 2014 (1) Bom.C.R.826

2 1988(4)Bom CR 576

9 Having considered submissions made by the learned counsel for the Parties and having gone through the provisions of Clause 13(1)(a)(ii) and proviso to Section 15 of the Act and the judgments of the Division Bench of this Court referred to above, we find that reliance placed by Mr. Hakani, the learned counsel for Respondent Nos.6 to 8 on the judgment in the case of **Laxman Sakharam Balsare (Supra)** is misplaced. In this judgment the Division Bench has dealt with the representative character of the member of the committee under Section 13(1)(e) of the Act and dealt with the term “being representative” referred in proviso to Section 15 of the Act. On the other hand, we are in complete agreement with a view expressed by the Division Bench of this Court in the case of **Purshottam Pandharinath Tonpe (Supra)**. The Division Bench in paragraph 9, 10 and 11 held thus

“9. A perusal of aforesaid provisions of the Act of 1963 makes it clear that the Market Committee is required to be constituted as provided by section 13 of the Act of 1963. out of 15 agriculturists, residing in the market area, eleven are to be elected by members of the managing Committees of the Agricultural Credit Societies and Multipurpose Cooperative Societies. The other four are to be elected by members of Village Panchayats functioning therein. It is, therefore, clear that eleven members of the Market Committee are elected from the constituency of the Managing Committees of Cooperative Societies and four members are elected by a constituency comprising of members of Village Panchayats. Under the proviso to section 15(1) of the Act of 1963, a person who is a member of the Market Committee by virtue of his being a representative or holding office or holding licence from any of

the categories of members referred to in section 13(1) is entitled to hold office as such member only as long as he continues to be such representative or hold such office or such licence. It is further stipulated that on such member ceasing to be a representative or holding such office or licence, he ceases to be such member and is, therefore, deemed to have vacated his office.

Similarly, perusal of Rule 35(1)(B) and Rule 36 of the Rules of 1967 indicate that there is a separate constituency of Village Panchayats duly carved out and a separate voters list for the constituency of members of Village Panchayats is also required to be maintained.

10. In so far as the submission made on behalf of the petitioner that as the petitioner continued to be an agriculturist, his ceasing to be a member of the Gram Panchayat would not disentitle him to continue as member of the Market Committee is concerned, the same cannot be accepted. The scheme of section 13(1) of the Act of 1963 is clear in as much as it provides for representation on the Market Committee from two constituencies namely members of Managing Committees of Cooperative Societies and members of Village Panchayats functioning in the market area in so far as fifteen members are concerned. It is only such member of the Gram Panchayat who is eligible to contest elections from the constituency of Village Panchayats under provisions of section 13(1)(a)(ii) of the Act of 1963. It is because such person is a member of the Gram Panchayat and his name is shown in the list of voters from the Village Panchayats Constituency as required by Rule 35(1)(B) read with Rule 36 of the Rules of 1967 that enables him to participate in the said election. It is, therefore, clear that the sine qua non for contesting elections of member of the market Committee from the Village Panchayats constituency is being a member of a Gram panchayat. It is even the case of the petitioner

that he has been duly elected as member of the Market Committee from the Village Panchayats constituency comprising of 679 voters. Thus, the eligibility of a person to represent such constituency continues as long as he is a member of the Gram Panchayat. The moment such member who is elected from the Village Panchayats constituency ceases to be a member of the Gram Panchayat, he loses the right to represent such constituency. It is in this context, therefore, that the submission made by the learned Counsel for the petitioner that he was neither a representative, nor was holding office, nor holding licence and thus, was not liable to be removed as member of the Market Committee cannot be countenanced. The petitioner, in fact, was a representative of the Village Panchayats in the market area of the respondent no.1- Market Committee and hence, on his resignation as a member of the Gram Panchayat, he ceased to be such representative. It is clear from a reading of the proviso to section 15(1) of the Act of 1963 that the entitlement to hold office as member of the Market Committee continues only till such time that such member continues to be a representative. In fact, there is a deeming fiction that is created in the said proviso that on ceasing to be such representative, the member would be deemed to have vacated his office. That he continues to be an agriculturists cannot change the situation. Therefore, on a plain reading of the aforesaid provisions, it is clear that the petitioner cannot continue as a member of the Market Committee after he had resigned from his membership of the Gram Panchayat.

11. A perusal of the order dated 10.6.2013 passed by the respondent no.2 indicates that the said authority has rightly considered the aforesaid controversy and has held that as the petitioner ceased to be a member of the Gram Panchayat, he had consequently lost the right to continue as member of the Market Committee. The appellate authority-respondent no.3 has

affirmed the order passed by the respondent no.2 while accepting the reasons given therein. In view of the clear provisions of section 13(1)(a)(ii) read with the proviso to section 15(1) of the Act of 1963, no fault can be found with the said impugned orders. The challenge, therefore, as raised by the petitioner fails. The writ petition deserves to be and is accordingly dismissed with no order as to costs. Rule stands discharged. At this stage, Shri Paliwal the learned counsel for the Petitioner seeks continuation of the interim order granted on 6.8.2013. Said request is strongly opposed by the learned counsel for the respondents. Considering the provisions of section 15(1) proviso of the Act of 1963 and the view that we have taken, the said prayer for continuation of interim relief is rejected.

Petition dismissed."

10 We are in agreement with ratio of the said judgment and we hold that the Respondent Nos.6 to 8 have ceased to hold the office of the Respondent No.1-Market Committee. As a consequence of passing of this order, we direct Deputy Registrar to hold fresh elections and to fill up the vacancy.

11 Rule made absolute accordingly.

12 At this stage, the learned counsel appearing for the Respondent Nos.6 to 8 has prayed for stay of the order passed by this Court. We find no justifiable reasons for staying the order . The prayer is, therefore, rejected.

[RANJIT MORE, J.]

[SHANTANU KEMKAR, J.]