

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4466 OF 2017
(Swantraya Sainik Vinayakrao Tadkalaskar Pani Watap Sahakati
Sanstha Ltd., Vs.The State of Maharashtra and others)

Mr.U.M.Maske h/f Mr.S.B.Ghatol, learned counsel for the petitioner.
Mr.S.R.Yadav, learned AGP for respondent Nos. 1 to 5.
Mr.S.H.Panchal, learned counsel for respondent No.6.
MR.H.D.Deshmukh, learned counsel for the intervener.

(CORAM : M.S.Sanklecha, J.)

DATE : 13/04/2017

PER COURT :

1. As the challenge in this petition is likely to affect the election to Agricultural Produce Market Committee (APMC), to be held on 16/04/2017 all the counsel in unison request that this petition be disposed of finally at this stage. Therefore, the petition taken up for final disposal at the request of the counsel

2. This petition challenges the order dated 24/03/2017 passed by respondent No.4-District Deputy Registrar, Co-operative Societies, Parbhani. The impugned order dated 24/03/2017 rejects the petitioner's application for entering its name in the final voters' list in respect of elections of A.P.M.C. Tadkalas, scheduled to be held on 16/04/2017.

3. The impugned order has rejected the application of the petitioner society on the ground that it is not a multi-purpose co-operative society in terms of Section 13(1)(a)(i) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (Act).

4. The grievance of the petition is that the impugned order is contrary to the decision of this Court in the case Pimpla Lokhande Shetkari Dhanya Adhikosh Seva Sahakari Sanstha Ltd., and others Vs. The State of Maharashtra and others (WP No.1669/2017), decided on 21/02/2017. In the above case, societies identical to the petitioner society have been held to be a multipurpose society for the purposes of the Act, in particular Section 13(1)(a)(i) thereof.

5. Neither the respondents nor the intervener dispute the above position before me. Therefore, the petition has to be allowed following the decision of this Court in Pimpla Lokhande case (supra).

6. However, the respondents and the intervener submit that the petition should not be entertained for the following reasons :-

(a) That the petitioner had failed to register its objection to its

name missing in the final voters' list at least 3 days before the last date for submission of nomination ;

(b) The State Government has issued a GR dated 06/04/2016 wherein the petitioner/society has been handed over/transferred to the Irrigation Department and they were directed to remove the word “co-operative” in their name and the bye-laws were also cancelled.

(c) There is an alternative remedy of challenging the election u/s 88 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (Rules) within 7 days of the date of declaration of the results before the District Deputy Registrar, Co-operative Societies.

7. So far as objection (a) and (b) are concerned, admittedly this is not the basis of the impugned order dated 24/03/2017. The order has to be tested on the basis of the reasons in the impugned order and it cannot be improved upon by affidavits. Moreover, none of the above two grounds urged by the respondents and intervener goes to the root so as to raise questions of the very existence of the petitioner. In fact, the GR dated 06/04/2016 only bring the petitioner society under the administrative control of the Irrigation Department. It does not obliterate its existence. Therefore, the above two grounds urged by the respondents would not lead to the dismissal of the

petition. In any case, the delay in filing the objection is concerned, is also concluded in favour of the petitioner by the decision of this court in WP NO.3520/2017 in Ambadas Warpudkar Krishi Upayogi Sahitya Puravatha Sah.Sanstha and others Vs. The State of Maharashtra and others, rendered on 29/03/2017 wherein applications filed for inclusion of name in the voters' list after the expiry of last date for submission of nomination, was allowed and the petitioner therefore was allowed to vote.

8. So far as the issue of alternative remedy is concerned, it must be pointed out that the similar petitions (see Pimpla Lokhande and others (supra) has been entertained and granted relief. Therefore, consistency would compel me to follow the view taken by a Co-ordinate Bench of this Court in an earlier petition. In any case, in the present facts, the election petition under Rule 88 of the Rules has to be filed before a District Deputy Registrar. It is this very authority i.e. District Deputy Registrar who has passed the impugned order and rejected the petitioner's application for being included in the voters' list. In that view, the alternative remedy of filing an election petition before the District Deputy Registrar who has already taken the decision on the issue may not be an efficacious remedy. Thus this object is also not acceptable.

9. In the above view, the impugned order dated 24/03/2017 of respondent No.4-the District Deputy Registrar, Co-operative Societies, Parbhani is quashed and set aside. Further he is directed to include the name of the petitioner in the voters' list for the elections scheduled to be held on 16/04/2017.

10. Petition is allowed in the above terms. No order as to costs.

(M.S.Sanklecha, J.)