

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5022 OF 2017

(Balaji Pani Purwatha Sah.Sanstha Maryadit Warpud Vs. State of
Maharashtra and others)

Mr.S.B.Sontakke, counsel for the petitioner

Mr.M.B.Bharaswadkar, AGP for respondent/State.

Mr.R.N.Dhorde, Senior Counsel i/b Mr.P.S.Dighe, for the intervenor.

(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 is taken up for final disposal at the request of counsel.

2. This petition challenges the order dated 10/04/2017 passed by the District Deputy Registrar, Co-operative Societies, Parbhani. By the impugned order, the petitioner's application for inclusion of its name in the final voters' list was rejected on the ground that the objection/claim to be included in the final voters list, eligible to vote at the elections to the APMC, Tadkalas (in short, referred to as APMC), scheduled to be held on 16/04/2017, was not made 3 days before the last date of nomination as required in the Maharashtra Agricultural Produce Marketing (Development

and Regulation) Rules, 1967 (Rules).

3. The impugned order had rejected the applications of 4 co-operative societies to be included in the final voters' list by the common impugned order dated 10/04/2017. However, only 1 of the 4 co-operative societies namely the petitioner herein has challenged the impugned order dated 10/04/2017 before this Court. The ground on which the impugned order rejected the petitioner's application to be included in the voters list is no longer *res-integra* in view of the decisions 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. The above decision takes a view that a right of a member to vote at the elections of the APMC, cannot be denied merely on account of the fact that the objection that its name has not been included in the final voters' list, has not been received 3 days before the last date for submission of the nomination. Therefore, following the above decision, the petition would have to be allowed.

4. In any event, it is contended by the respondents and the intervenor that alternative remedy under Rule 88 of the Rules is available to the petitioner i.e. filing an election petition after the election results are declared. I note that other societies challenging similar orders were entertained and allowed by this Court. (See Ambadas Warpudkar Krishi Upayogi) (supra). No distinguishing feature is shown which would warrant

taking a different view in this case. Therefore, following the principle of consistency, the above submission is not acceptable. Further, in any case in the facts of this case, the election petition under Rule 88 of the Rules is to be filed before the District Deputy Registrar, Co-operative Societies. It is the same person who has passed the impugned order and taken a view in respect thereof. Therefore, the alternative remedy is apparently not an efficacious remedy.

5. In the above view, the petition is allowed by setting aside the order dated 10/04/2017 of respondent No.2-District Deputy Registrar, Parbhani. Further he is directed to include the name of the petitioner-society, who alone has challenged the impugned order dated 10/04/2017, in the voters' list for the election to be held on 16/04/2017,

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

(M.S.Sanklecha, J.)