

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

Writ Petition No. 08768 of 2017

District : Jalna

Kishanrao s/o. Sarjerao More,
Age : 48 years,
Occupation : Agriculture,
R/o. Deogaon, Taluka Mantha,
District Jalna.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Co-operation, Marketing and
Textile Department, Mantralaya,
Mumbai - 32.
2. The District Deputy Registrar,
Co-operative Societies, Jalna,
Taluka & District Jalna.
3. The Assistant Registrar Co-operative
Societies, Mantha, Taluka Mantha,
District Jalna.
4. The Agriculture Produce Market
Committee, Mantha,
Taluka Mantha, District Jalna,
Through its Secretary.
5. Pangri Budruk Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Pangri, Taluka Mantha,
District Jalna,
Through its Secretary.
6. Kirtapur Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Kirtapur, Taluka Mantha,
District Jalna,
Through its Secretary.

7. Jaypur Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd.,
Jaypur, Taluka Mantha,
District Jalna,
Through its Secretary.
8. Georai Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Georai,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
9. Shivangiri Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Shivangiri,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
10. Kendhali Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Kendhali,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
11. Mangrul Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Mangrul,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
12. Patoda Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Patoda,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
13. Vaidya Wadgaon Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd.,
Vaidya Wadgaon,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
14. Vidoli Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Vidoli,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
15. Savargaon Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Savargaon,
Taluka Mantha, Dist. Jalna,
Through its Secretary.

16. Wadegaon (Pa) Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Wadegaon (Pa), Taluka Mantha, Dist. Jalna, Through its Secretary.
17. Devgaon Khavne Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Devgaon Khavane, Taluka Mantha, Dist. Jalna, Through its Secretary.
18. Limbe Wadgaon Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Limbe Wadgaon, Taluka Mantha, Dist. Jalna, Through its Secretary.
19. Pangri Gosavi Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Pangri Gosavi, Taluka Mantha, District Jalna, Through its Secretary.
20. Pakani Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Pakani, Taluka Mantha, Dist. Jalna, Through its Secretary.
21. Uswad Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Uswad, Taluka Mantha, Dist. Jalna, Through its Secretary.
22. Ambhora Kadam Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Ambhora Kadam, Taluka Mantha, Dist. Jalna, Through its Secretary.
23. Kehal Wadgaon Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Kehal Wadgaon, Taluka Mantha, Dist. Jalna, Through its Secretary.
24. Nansi Shetkari Dhanya Adhikosh Sahkari Sanstha Ltd., Nansi, Taluka Mantha, Dist. Jalna, Through its Secretary.

25. Mantha Taluka Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Mantha, Taluka Mantha,
District Jalna,
Through its Secretary. .. Respondents.

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Mr. Mahesh P. Kale, Advocate, for the petitioner.

*Mr. Y.G. Gujarathi, Asst. Government Pleader, for
respondents no.01 to 03.*

*Mr. R.N. Dhorde, Senior Advocate, instructed by
Mr. V.R. Dhorde, Advocate, for respondents
no.05 and 08 (caveator).*

*Mr. S.S. Thombre, Advocate, for respondent
no.25 (caveator).*

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With

Writ Petition No. 08784 of 2017

District : Jalna

Mr. Daulatrao Bhaurao Jadhav,
Age : 52 years,
Occupation : Social Worker,
Chairman, Vividh Karyakari Sahakari
Seva Society, Umerkhed,
Taluka Mantha, District Jalna. .. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Co-operation and Textile Department,
Mantralaya, Mumbai - 32.
2. The Director of Marketing,
Maharashtra State,
Central Administrative Building,
Near Railway Station, Camp Area,
Pune, District Pune.

3. The District Deputy Registrar,
Co-operative Societies, Jalna.
4. The Assistant Registrar,
Co-operative Societies,
Mantha, District Jalna.
5. Sandip s/o. Bhujangrao Gore,
Age : 39 years, .. Respondents.
Occupation : Agriculture, (No.5 - Intervenor)
R/o. Vidoli, Taluka Mantha,
District Jalna.

.....

Mr. V.D. Sapkal, Advocate, for the petitioner.

*Mr. Y.G. Gujarathi, Asst. Government Pleader, for
respondents no.01 to 04.*

*Mr. S.S. Thombre, Advocate, for respondent
no.5 (caveator).*

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With

Writ Petition No. 08828 of 2017

District : Jalna

Asaram s/o. Jijabhau Borade,
Age : 42 years,
Occupation : Agriculture,
R/o. Borade Galli, Mantha,
Taluka Mantha,
District Jalna.

.. Petitioner.

versus

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

2. The District Deputy Registrar,
Co-operative Societies, Jalna,
Taluka & District Jalna.
3. The Assistant Registrar Co-operative
Societies, Mantha, Taluka Mantha,
District Jalna.
4. The Agriculture Produce Market
Committee, Mantha,
Taluka Mantha, District Jalna,
Through its Secretary.
5. Pangri Budruk Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Pangri, Taluka Mantha,
District Jalna,
Through its Secretary.
6. Kirtapur Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Kirtapur, Taluka Mantha,
District Jalna,
Through its Secretary.
7. Jaypur Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Jaypur, Taluka Mantha,
District Jalna,
Through its Secretary.
8. Georai Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Georai,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
9. Shivangiri Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Shivangiri,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
10. Kendhali Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Kendhali,
Taluka Mantha, Dist. Jalna,
Through its Secretary.

11. Mangrul Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Mangrul,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
12. Patoda Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Patoda,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
13. Vaidya Wadgaon Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Vaidya Wadgaon,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
14. Vidoli Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., vidoli,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
15. Savargaon Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Savargaon,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
16. Wadegaon (Pa) Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Wadegaon (Pa),
Taluka Mantha, Dist. Jalna,
Through its Secretary.
17. Devgaon Khavne Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Devgaon Khavane,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
18. Limbe Wadgaon Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Limbe Wadgaon, Taluka Mantha,
District Jalna,
Through its Secretary.
19. Pangri Gosavi Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Pangri Gosavi, Taluka Mantha,
District Jalna,
Through its Secretary.

20. Pakani Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Pakani,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
21. Uswad Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Uswad,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
22. Ambhora Kadam Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Ambhora Kadam, Taluka Mantha,
District Jalna,
Through its Secretary.
23. Kehal Wadgaon Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Kehal Wadgaon,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
24. Nansi Shetkari Dhanya Adhikosh
Sahkari Sanstha Ltd., Nansi,
Taluka Mantha, Dist. Jalna,
Through its Secretary.
25. Mantha Taluka Shetkari Dhanya
Adhikosh Sahkari Sanstha Ltd.,
Mantha, Taluka Mantha,
District Jalna,
Through its Secretary. .. Respondents.

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Mr. Santosh S. Jadhavar, Advocate, for the petitioner.

*Mr. Y.G. Gujarathi, Asst. Government Pleader, for
respondents no.01 to 03.*

*Mr. R.N. Dhorde, Senior Advocate, instructed by
Mr. V.R. Dhorde, Advocate, for respondents
no.05 and 08 (caveators).*

*Mr. S.S. Thombre, Advocate, for respondent
no.25 (caveator).*

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CORAM : SUNIL P. DESHMUKH, J.

DATE : 13TH JULY 2017

ORAL JUDGMENT :

01. Rule. Rule made returnable forthwith. Heard learned counsel appearing for parties at length finally by consent.

02. Petitioners in these three petitions question propriety and legality of orders passed turning down objections taken by them to the list of voters published for the election of eleven members of agriculturists' constituency of Agriculture Produce Market Committee, Mantha.

03. In order to appreciate the matter in proper perspective, succinct reference to a few facts may be worthwhile.

04. Respondent no.05 is Agriculture Produce Market Committee, Mantha, established pursuant to provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 [hereinafter referred to as "APMC Act"].

05. Term of the managing committee of an Agriculture Produce Market Committee is generally of five years. The term of the last managing committee of Agriculture Produce Market

Committee, Mantha, had expired around 19th November, 2015. However, no elections pursuant to provisions of APMC Act and the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 [hereinafter referred to as "APMC Rules"] had been held before or at expiry of the term. The term of the managing committee had been extended by a period of six months which expired on 19th May, 2016. Thereafter the Agriculture Produce Market Committee was under administration of a non-government committee appointed pursuant to provisions of the APMC Act.

06. As elections were not being held, a writ petition had been filed in high court bearing no. 8478 of 2016. Under order dated 22nd December, 2016, division bench of this court had directed the Agriculture Produce Market Committee to comply with requirements in relation to deposit of election expenses within a month and to complete process of election within a period of six months from the date of order. The administrative committee had been restrained from taking any policy decision under the same.

07. It appears that on 23rd May, 2017, after the order had been passed, the District Deputy Registrar had published list of voters. In said list, it appears, according to the petitioners,

members of managing committees of about 21 co-operative societies had been shown as voters in the agriculturists' constituency. Primary objection to their enrollment as voters has been on the ground that registration of said 21 societies had been in the month of May, 2017 itself. According to petitioners, members of managing committees of said societies do not qualify eligibility criterion under APMC Rule 36(2) which according to petitioners postulates that the societies be existing six months before or at least on the cut off date. Albeit, there is some dispute in respect of the same by the concerned respondents in writ petition no. 8768 of 2017 stating that this was not the objection and objection had been to registration of societies and request had been to remove their names. It is the contention of petitioners that 21 societies, members of managing committees of which have been shown in the voters' list on 23rd May, 2017, have not been registered six months before or on cut off date as required. Their members could not be voters and they would neither be eligible to vote nor to contest ensuing election to Agriculture Produce Market Committee, Mantha. Their further contention is that this vital aspect involved in the matter has not received attention at all and has been ignored, overlooked, sidelined and there was no application of mind to the same and their objections have been turned down. Thus, the order is untenable, invalid and improper.

08. During the course of submissions, Mr. M.P. Kale, Mr. V.D. Sapkal and Mr. S.S. Jadhavar, learned counsel appearing for respective petitioners submit, the record reflects that cut off date declared by District Deputy Registrar had been 31st December, 2016 and, as such, it had been incumbent that the societies ought to have been in existence six months before or at least on said date. According to learned counsel, basic eligibility criteria does not get satisfied in the present matter in respect of members of managing committees of 21 societies. The societies having been registered as recently as in first or at the most second week of May, 2017, they are fatally deficient to comply with eligibility criteria as is given under rule 36(2) of the APMC Rules. Learned counsel for petitioners for the said purpose rely on Rule 36(2) of the APMC Rules which reads as under :-

36. Voters' list.

(1)
.....

(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 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)

09. According to Mr. Sapkal, learned counsel who has led arguments advanced on behalf of the petitioners, the proviso stands worked out pursuant to communication dated 08-02-2017 whereunder it has been clearly stipulated that cut off date is 31-12-2016. Thus, according to him, the discretion given to the District Deputy Registrar stands exhausted while he has declared cut off date to be 31-12-2016 being any other time since elections were being held beyond expiry of the term of the market committee. This being the state of affairs, looking at the matter, in any event and particularly since 21 societies not being registered six months before or at least on the cut off date, members of said societies are not qualified and are not eligible to be included in the voters' list and thus their objections ought to have been allowed. It is further contended on behalf of petitioners, that this basic issue the authority has not at all dealt with under the order while declining the objections taken by the petitioner.

10. In support of their submissions, learned counsel for petitioners have laid stress on a decision of Hon'ble learned single judge of this court in the case of *Shri Sai Vividh Karyakari Seva Sahkari Sanstha Maryadit & others Vs. State of Maharashtra & others* [2012(2) Mh.L.J. 274]. It is submitted that the ratio in said case

applies on all fours to present matter since situation is closely similar to, or almost is, the same.

11. Mr. Sapkal, in addition to aforesaid judgment has referred to and relied on a decision of Hon'ble division bench of this court in writ petition no. 5799 of 2008 (*Eknath s/o. Vithalrao Kadam Vs. The State of Maharashtra & others*) dated 22nd October, 2008 which has been referred to by the Hon'ble learned single judge in the judgment *supra*. That was a case relating to inclusion of three new villages in the voters' list. The Hon'ble learned single judge has quoted observations from aforesaid judgment of division bench in paragraph 20 as under :-

" In the matter at hands, there is no dispute that term of last elected managing committee was to expire on 28.07.2008 (in fact now expired). Consequently, Rule 36(2) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967, required the Collector to revise the voters' list on or before 28.01.2008. If that be so, anybody admitted to the membership or voters' list after 28.01.2008 would not be in a position to vote at the election for managing committee which is to take over on expiry of the term of earlier managing committee which ended on 28.07.2008. "

12. Mr. Sapkal also refers to a judgment of Hon'ble division bench of this court in the case of *Ek Nath Ashiram Alekar & others Vs. State of Maharashtra & others* [1989 (3) Bom.C.R. 165] and places emphasis on paragraphs no.32, 33 and 34 therein whereunder the court had intercepted inclusion of 3000 voters and had restrained them from participating elections concerned. He submits that present case is one wherein this court should intervene as in aforesaid case. According to Mr. Sapkal, the position undisputedly is that 21 societies concerned have been registered only in May, 2017 and members of their managing committees do not qualify as voters in view of provisions of Rule 36(2) of the APMC Rules as has been observed in the judgments referred to above.

13. Mr. Sapkal also additionally adverts to section 27 of the Maharashtra Co-operative Societies Act, 1960, particularly, sub-section (3) thereof. He submits that on that count as well members of managing committee of 21 societies are not qualified. Said section 27(3) reads, thus :-

"(3) A society which has invested any part of its funds in the shares of any federal society, may appoint one of its members to vote on its behalf in the affairs of that federal society; and accordingly such member shall have the right to vote on behalf of the society :

Provided that, any new member society of a federal society shall be eligible to vote in the affairs of that federal society only

after the completion of the period of three years from the date of its investing any part of its fund in the shares of such federal society :

Provided further that, where the election is to a reserved seat under section 73-B, no person shall have more than one vote. "

14. Countering aforesaid submissions, Mr. R.N. Dhorde, learned senior advocate, Mr. S.S. Thombre, learned counsel and Mr. Y.G. Gujarathi, learned assistant government pleader, appearing for respective respondents, submit that final list of voters is published and election programme has already been declared and, as such, it would not be proper to interdict ongoing election process. Learned senior advocate purports to rely on various judgments in this respect and contends that the scope of the petition in writ petition is limited to the nature of objections taken before the concerned authority and cannot be expanded beyond that and the respondents cannot be taken by surprise.

15. Learned counsel for respondents submit that there is hardly any substance in contentions advanced on behalf of petitioners. According to them, the eligibility criterion being contended on behalf of petitioners cannot be said to be eligibility criterion at all. It is submitted that eligibility criteria for being voter has been contained in the substantive provision, especially section

13(1)(a)(i) of the APMC Act. Said provision is re-produced herein below for ready reference :-

13. Constitution of Market Committees.

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

(a) **Fifteen agriculturists** 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) **eleven** (of which, two shall be women, one shall be a person belonging to Other Backward Classes and one shall be a person belonging to De-notified Tribes (*Vimukta Jatis*) or Nomadic Tribes) **shall be elected by members of the Managing Committees of the Agricultural Credit Societies and Multi-purpose Co-operative Societies** (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder), functioning in the market area:

Provided that, where the market Committee is situated in Tribal areas, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (*Vimukta Jatis*) or Nomadic Tribes as aforesaid.

16. It is being submitted by learned counsel for respondents, that once aforesaid eligibility criteria is satisfied by the members of managing committees of 21 societies, subordinate legislation would

not be able to overwhelm legislative intent underlying the substantive provision as is being sought to be argued by learned counsel for petitioners. It is further being submitted that it is difficult to consider that Sub-Rule 2 of Rule 36 of the APMC Rules can be construed to lay down any eligibility criterion. It is further being submitted that while decisions of Hon'ble learned single judge and the Hon'ble division bench are being referred to and relied on, in either case, Section 13(1)(a)(i) had not fallen for consideration before the courts.

17. The next limb of submission on behalf of respondents is that even otherwise, the persons concerned who would be affected by adverse order are not party to the petitions nor they are before the court in any role. This, according to the learned counsel for respondents, is a gross case of material deficiency and, as such, in the absence of the persons concerned who are voters and have been listed as such and such capacity having been finally approved, their valuable right of being voters cannot be taken away in their absence. Learned counsel submit that the case of *Eknath Ashiram Alekar & others (supra)* wherein the court had considered in the facts of that case there had been some representation on behalf of the persons concerned, whereas in the present case, there is no representation at all on behalf of any such persons.

18. Learned counsel for respondents go on to submit that even otherwise, cut off date which is pressed in service to be 31st December, 2016, would not be said to be a cut off date for the present constituency i.e. agriculturists' constituency as it does not emerge anywhere on record that such a date had been communicated by the authorities to the concerned persons save and except communication issued by the District Deputy Registrar in response to a query by the secretary of Agriculture Produce Market Committee, Mantha. According to the learned counsel, the cut off date referred to in said communication had not been known to any other constituent categories, nor it is a case that the same had been communicated to other authorities concerned. It would emerge from a communication by the District Deputy Registrar to the authorities under the letter dated 07-11-2016, it was step being taken pursuant to rule 36(1). They further submit that pursuant to said communication, the list for the first time came to be published on 23rd May, 2017 containing names of members of managing committees of 21 societies. In accordance with other rules, thereafter, objections have been taken which have been turned down and final list of voters has been published and election programme has been duly declared.

19. Learned counsel for respondents contend, assuming that arguments advanced on behalf of petitioners in respect of the cut off date have some substance, but it would be meaningful to the elections being held pursuant to provision of rule 36(2) of the APMC Rules, but it would not be able to have a hold, in the case where proviso is required to be invoked. The provision under Rule 36(2) reads thus :-

"36(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.** "

While the proviso reads as under :-

" 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.** "

According to them, it cannot be said that requirement of six months is *sine qua non* for exercise of power vested in the Collector or the District Deputy Registrar pursuant to aforesaid proviso. They purport to submit, pursuant to communication dated 07-11-2016, the communicator of letter dated 07-11-2016 himself had published list containing the names of members of managing committee of 21 registered societies to which objection has been taken. Pursuant to rules following rule 36(2) the same has been turned down. Learned

counsel further go on to submit that even otherwise, sub-rule 2 of rule 36 only speaks about revision of list. It does not by itself make it a voters' list for election. The proviso enables Collector / District Deputy Registrar to revise the voters' list at any other time than as referred to in sub-rule 2 of rule 36 of the APMC Rules. That power is being exercised by the District Deputy Registrar under the list published on 23rd May, 2017. That can hardly be faulted with for being beyond authority.

20. In support of their submission, learned senior advocate Mr. Dhorde refers to and relies on a decision of Hon'ble division bench of this court in the case of *Karbhari Piraji Deokar Vs. State of Maharashtra & others* [1999(1) Mh.L.J. 858] observing thus :-

"8. Another submission made by Shri Hon, learned counsel for the petitioner, is that the qualifying date should have been at least six months prior to the expiry of the term of the previous committee. In support of this contention, Shri Hon relies on sub-rule (2) of rule 36 of the said Rules, which is as under :

Every such list shall be revised before each 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.

Therefore, this sub-rule requires that the voters list will have to be revised, meaning thereby that the persons who qualified and acquired the right to vote since the time of the earlier list have to be included; so also the names of those persons, who have lost their voting rights for variety of reasons, such as death, cancellation of licence, or any other reason, will have to be struck off from the list. This revision is to take place at least six months before the general election is due; but the proviso gives a discretion to the Collector to revise the list even at a subsequent date. It is a matter of common knowledge that the election schedules are often disturbed because of various reasons and if the elections are delayed; and the Collector thinks it fit, then, instead of revising it on the basis of qualifying date prior to six months when the term of the market committee is due to expire, the Collector may choose any other date. Here, in the instant case, the Collector has chosen 30th September, 1998 as a qualifying date, which was perfectly within the powers of the Collector. Therefore, even this submission will have to be rejected. "

21. Learned counsel for respondents further purport to submit that this decision reflects upon a contingency coming close to

the one involved in present matter and deals with the same and has given exposition accordingly referred to herein above.

22. Mr. Dhorde further refers to a judgment of Full Bench of this court in the case of *Rajkumar L. Kesarwani Vs. Returning Officer [2006(1) Mh.L.J. 445]* pursuant to which, according to him, amendments have been carried out to Rule 13(1)(a)(i). It is being submitted that since members of the society who have now right to vote and contest the election in view of substantive provision of Rule 13(1)(a)(i) are not before the court, in their absence, their franchise cannot be taken away.

23. Learned counsel for respondent purports to dispel, argument on behalf of petitioners, with reference to Section 27 of the Maharashtra Co-operative Societies Act, submitting that the same would not apply to APMC Act, a special enactment.

24. *Shri Sai Vividh Karyakari Seva Sahkari Sanstha Maryadit (supra)* had been dealing with holding of regular elections before the term of the committee was due to expire. In said case, a provisional voters' list had been declared on 01st July, 2011 which did not include the petitioners therein - societies' members as voters. Petitioners therein had raised objection in respect of the same before

concerned authority and their objection had been rejected on 28-07-2011 and petitioners were not included in voters' list. Thus, petitioners were before this court. It is with reference to same the decision appears to have been rendered in the matter.

25. Having heard submissions on behalf of learned counsel appearing for respective parties as aforesaid, one thing clearly emerges that the persons to be affected are not before this court. In their absence, it is difficult to go ahead and it would not be proper and decide a matter taking away their rights as accrued and available under the provisions of APMC Act and APMC Rules.

26. It would not be out of place to refer to that section 14 of the APMC Act requires members of APMC be elected in the manner prescribed by rules. Such rules *inter alia* may provide for preparation and maintenance of list of voters, persons qualified to be elected, disqualifications from being chosen as members, right to vote etc.

27. Rule 37 of the APMC Rules, subject to disqualification incurred by person, the voters' list published finally under rule 36 accords status of conclusive evidence for the purpose of determining whether any person is qualified to vote or is not qualified to be

elected.

28. Rule 38 of the APMC Rules prescribes that a person, who is an agriculturist and who is residing in market area, shall unless disqualified under the rules, be qualified to be elected.

29. Rule 39 of the APMC Rules provides as under :-

“39. Right to vote. —

(1) No person who is not, and except as expressly provided by these rules, every person who is for the time being, entered in the list of voters of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at any election in any constituency if he is subject to any disqualification under these rules. ”

30. Rule 41 of the APMC Rules is in respect of disqualifications for membership of a person, for being chosen or for being a member of market committee and further provides that a person shall not be chosen as a member representing the co-operative societies' constituency for agriculturists, if his main income is not from agriculture or if he possesses traders', commission agents' or broker licence or has interest in joint family or a firm which has a trader's or commission agents' or broker licence and question of disqualification is to be decided by director upon

reference.

31. A question has been raised about rule 36(2) at all being impliedly laying down any eligibility criterion for being a voter or for right to contest. It has been urged to consider that rule 36 empowers the authorities to amend the lists before and even after preparation of final voters' list. Question has also been raised may have to be addressed to as to whether a revision of list pursuant to rule 36(2) is a final voters' list or is a step in preparation of final voters' list. Also lots of other questions have been raised in the petitions which would not be amenable to decision without proper opportunity to parties. Further, it is disputed that 31st December, 2016 being declared as cut off date. In the submission on behalf of petitioners, said date is to be taken as a cut off date on the basis of a communication from the respondent. As a matter of fact, the State and its authorities purport to oppose the petitions.

32. It does not appear that section 27 of the Maharashtra Co-operative Societies Act, 1960 would carry forward the point for petitioners.

33. Persons, whose names have been enlisted as voters in the relevant constituency in the present matter are not said to be

persons who are disqualified or there is no dispute about them being possessing qualifications under rule 38 of the APMC Rules. There does not appear to be any express prohibition for their inclusion in voters' list albeit it is contended that it would not be in accordance with rule 36(2). A final voters' list has been published pursuant to Rule 36 of the APMC Rules and rule 39 of the APMC Rules gives entitlement to the persons who have been entered into list of voters of any constituency.

34. In view of aforesaid, it does not appear to be appropriate at this stage to intercept the ongoing process. This is not a case wherein powers of this court deserve to be exercised since the petitioners would not be remediless and can pursue other remedies as would be available in accordance with law.

35. For the foregoing reasons, Writ Petitions are not entertained and are accordingly dismissed. Rule stands discharged. In the circumstances, parties shall bear their own costs.

(Sunil P. Deshmukh)
JUDGE

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