

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

WRIT PETITION NO. 6942 OF 2018

1. Sanjay s/o Kishanrao Rampure
Age : 43 years, occup. Agril.
R/o Shelgaon (Thadi), Taluka :
Dharmabad, Dist. Nanded .. Petitioner

versus

1. The State of Maharashtra,
through the Secretary in the
Department of Agricultural
Marketing, Mantralaya, Fort,
Mumbai
2. The District Deputy Registrar,
Co-operative Societies, Nanded
3. The State Co-operative Election
Authority, Maharashtra State, Pune,
Central Building, Ground Floor, Pune,
through its Secretary
4. The Collector, Nanded,
The District Election Officer,
Agriculture Produce Market Committees,
Dist. Nanded
5. The Agricultural Produce Market
Committee, Dharmabad,
Taluka Dharmabad, Dist. Nanded,
through its Secretary .. Respondents

Mr A. N. Irpatgire, Advocate for petitioner
Mr S. N. Morampalle, Assistant Government Pleader for
respondents no. 1 and 2
Mr. S. K. Kadam, Advocate for respondents no. 3 and 4
Mr. U. B. Bilolikar, Advocate for respondent no. 5

CORAM : SUNIL P. DESHMUKH, J.
DATE : 11th July, 2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for parties finally by consent.

2. Petition has been moved, challenging order passed by respondent no. 4 Collector, Nanded – District Election Officer on 25-06-2018 rejecting objections raised by petitioner on 14-06-2018 declining inclusion of names of agriculturists from three villages in the final list of voters for elections to Agricultural Produce Market Committee, Dharmabad ("APMC" Dharmabad)) and seeking reliefs, *inter alia*, to include names of agriculturists from said three villages in voters' list for elections to APMC, Dharmabad.

3. Three villages, namely, Patoda (Thadi), Shelgaon (Thadi) and Masti till 30-01-2018 were part of the market area of Agricultural Produce Market Committee, Kundalwadi. Under notification issued on 30-01-2018 these three villages were included in market area of APMC, Dharmabad.

4. Issuance of aforesaid notification dated 30-01-2018 by Respondent no.2 - the District Deputy Registrar had been preceded by due procedure therefor under notification dated 04-12-2017 by calling objections and suggestions.

5. While objections and suggestions were called under said notification of 04-12-2017, on 05-12-2017, the State election authorities had issued directions to secretaries of APMCs to submit a correct list of villages in their market area, getting the same duly certified under signatures of District Deputy Registrars (Co-operative Societies) and upon receipt of the same, the District election officer shall divide the market area of APMCs into 15 divisions (GAN) taking into account number of eligible landholders and had also issued other directions.

6. In the meanwhile, under notification dated 05-01-2018, the State co-operative election authority had determined cut off date to be 31-12-2017.

7. It appears, petitioner had moved writ petition no. 1506 of 2018 seeking directions to respondent no. 2 to act upon

notification dated 04-12-2017 and include three villages referred to above in the market area of AMPC, Dharmabad. During pendency of said writ petition, notification dated 30-01-2018 came to be published including the three villages viz; Patoda (Thadi), Shelgaon (Thadi) and Masti in market area of APMC, Dharmabad

8. Subsequently on 04-06-2018 programme of finalization of voters list for elections to APMC, Dharmabad was undertaken calling objections to provisional voters list.

9. Since the names of eligible agriculturists from said villages added to market area of APMC, Dharmabad, did not find place in provisional voters list, the petitioner and others had filed objections and had given suggestions to respondent no. 4. The petitioner had also objected to division of market area into fifteen divisions (GAN) excluding aforesaid three villages before respondent no. 4 - District election officer. Thereupon, the district election officer had called suggestions from deputy registrar and APMC and said authorities had opined that since eligible agriculturalists from said three villages have been included in market area of APMC, Dharmabad subsequent to cut off

date 31-12-2017, it would not be proper to include said villages in the voters list for election to Dharmabad APMC. Thereafter without application of mind and without assigning reasons, in the submission of the petitioner, respondent no. 4 – district election officer had passed orders on 25-06-2018 ignoring objections and suggestions and overruling objections raised by petitioner.

10. The petitioner is thus before this court, contending that order passed by respondent no. 4 – district election officer on 25-06-2018 suffers various weaknesses and is arbitrary and as such, unsustainable.

11. The decision, according to learned counsel for petitioner, is incomparable with intendment and purpose underlying the Agricultural Produce Market Committees Act, 1963 and rules made thereunder as also Agricultural Produce Market Committee (Election to Committees) Rules, 2017.

12. Learned counsel for the petitioner submits, on the request of the district election officer, the cut off date had undergone alteration and had been changed to 01-01-2018

from 31-12-2017 upon guidance being sought by respondent no. 4 under communication dated 13-02-2018. He further purports to point out that such a change had been only in respect of Dharmabad APMC.

13. Learned counsel Mr Irpatgire submits that the Agricultural Produce Market Committees Act has undergone sweeping changes under the amendments to the same in 2017 and the structure of voters had been radically altered. He submits, agriculturists at large have now been given the status of voters albeit, on fulfillment of certain eligibility conditions which right hitherto before amendments otherwise had been restricted under then prevailing position. He submits that franchise accrued under the amendments, to the agriculturists, so far as three villages in present matter are concerned, is getting deprived under pedantic approach adopted by the concerned authorities.

14. He goes on to submit that the petitioner is aware of that the elections to the committee of APMC, Dharmabad have been long overdue and hastens to add that no disruption in the election process undertaken is intended by petitioner. He submits that the request is only to keep alive

franchise for eligible agriculturalists from the three villages included in market area of Dharmabad APMC.

15. He further submits that inclusion of eligible persons from the three villages can be brought about in voters list without disturbance to on-going process.

16. Learned counsel for petitioner incidentally also refers to earlier rules under which, according to him, there had been a facility available for the persons whose names were not included in voters list, to have the names included in the list at the eleventh hour in the election process. He further submits, the elections could be questioned by election petition under earlier position, however, that facility is also taken away under the amendments to Agricultural Produce Market Committees Act and the rules thereunder. He submits that the petitioner and persons like him cannot be deprived of exercise of their franchise for five years.

17. On the other hand, learned counsel Mr. S. K. Kadam appearing on behalf of respondent no. 3 and 4 – State election authorities and the district election officer submits that the authorities have to abide by rules and provisions of

law and accordingly actions are being taken. He submits that it is not a case wherein it can be said that the authorities have not acted in accordance with rules and the provisions of law. He contends that since cut off date is 01-01-2018 and the three villages having not been included in Dharmabad APMC on said crucial date, the request to enlist persons from the villages had to be declined by respondent no.4 under order dated 25-06-2018. In the circumstances, the same cannot be found fault with. He submits that in case order is passed by this court in favour of the petitioner, it is likely to impel hectic activities at the end of respondents no. 3 and 4, in order to keep up with provisions of law. In the circumstances, he opines that there should be reluctance to give indulgence to request under writ petition.

18. Mr Kadam also adverts to Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017. He refers to that the date of declaration of election process coincides with the date of declaration of provisional list of voters.

19. Learned Assistant Government Pleader Mr Morampalle appearing on behalf of respondents no. 1 and 2 and learned

counsel Mr Bilolikar for respondent no. 5 align with learned counsel Mr S. K. Kadam.

20. Having regard to submissions advanced by learned counsel for parties as aforesaid, it appears that the situation is very peculiar in the sense that while process of inclusion of three villages concerned in market area of APMC, Dharmabad had been undertaken on 04-12-2017, almost parallelly simultaneously, on 05-12-2017 directions had been issued by the authorities concerned for preparation of elections to APMCs across the State wherever administrators had been working. While objections and suggestions were called, further process of inclusion of three villages, namely, Patoda (Thadi), Shelgaon (Thadi) and Masti in market area of APMC, Dharmabad had been finalized and completed on 30-01-2018.

21. It appears, cut off date had been declared on 05-01-2018 to be 31-12-2017. So far as APMC, Dharmabad is concerned, it had undergone change to 01-01-2018 under communication dated 15-03-2018 of respondent no. 3. It appears, while cut off date had been altered on 15-03-2018, the development about inclusion of

three villages under notification dated 30-01-2018 had not been noted, rather was ignored and not taken cognizance of. In the process, it appears that valuable franchise of persons like petitioner had been put in peril depriving them of the same.

22. The authorities while deciding on their suggestions and objections have considered that the rules do not accommodate any variation after cut off date had been declared, regardless of subsequent addition of villages to APMC, Dharmabad. So was the case about the communication by district election officer dated 15-03-2018.

23. Learned counsel refers to that as of now, election programme may have been prepared, however, fairly refers to that it is not declared yet.

24. In the circumstances, it appears that the rights accrued to the petitioner and similarly placed persons, in the interregnum, will have to be given their due and protected.

25. As such, impugned order dated 25-06-2018 passed by respondent no. 4 is set aside. The three villages, namely, Patoda (Thadi), Shelgaon (Thadi) and Masti be included in

voters list for scheduled elections to Agricultural Produce Market Committee, Dharmabad regardless of declared cut off date, which shall not affect persons from said villages who satisfy the required criteria of eligibility for inclusion of their names in the voters list. The divisions (GANs) be constituted accordingly.

26. Rule made absolute in aforesaid terms.

27. Writ petition is disposed of.

28. Parties to act on authenticated copy of operative order.

SUNIL P. DESHMUKH,
JUDGE

pnd/-