

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 695 OF 2018**

Mr. Vikas V. Prabhu, major of age,
Indian, House No. 19, Chafegal,
Nirankal, Ponda, Goa.

.... Petitioner

Versus

1. The Registrar of Co-operative Societies, Department of Co-operation, Government of Goa, Panaji, Goa.
2. The Goa State Agricultural Marketing Board, Margao, through its Secretary, having its office at Main Yard, Arlem, Raia, Salcete, Goa.
3. State of Goa, Through Chief Secretary, Secretariat, Porvorim, Bardez, Goa.
4. The Goa Krishi Bazaar Marketing and Processing Co-op. Society Ltd., a registered co-operative society, represented by its Chairman, Market Subyard, Mapusa, Goa.
5. Pedne Taluka Farmers Service Co-operative Society Ltd., a registered co-operative society, represented by its Chairman, Sahakar Bhavan, Pernem, Goa.
6. Sattari Taluka Farmers Service Co-operative Society Ltd., a registered co-operative society, represented by its Chairman, Valpoi, Sattari, Goa 403 506.

.... Respondents

Shri A.F. Diniz with Shri Ryan Menezes, Advocates for the Petitioner.

Shri Pravin Faldessai, Additional Government Advocate for the Respondent Nos. 1, 2 & 3.

Shri Vibhav Amonkar, Advocate for the Respondent Nos. 4 & 6.
Shri Prasad Shahapurkar, Advocate for the Respondent No. 5.

CORAM : C.V. BHADANG, J.

Reserved on : 2nd AUGUST 2018

Pronounced on : 6th AUGUST 2018

JUDGMENT:

Rule made returnable forthwith. The learned Additional Government Advocate waives service for respondent nos. 1, 2 and 3, Advocate Shri Amonkar waives service for respondent nos. 4 and 6 and Advocate Shri Shahapurkar waives service for the respondent no. 5. Heard finally by consent of parties.

2. By this petition, under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the order dated 02.07.2018, passed by the respondent no. 1/Registrar of Co-operative Societies, thereby rejecting the objection raised by the petitioner, to the voters list, for election to the Board of Directors, of the Goa State Agricultural Marketing Board (Board, for short).

3. The board is established by the State Government, under Section 10 of the Goa Agricultural Produce Marketing (Development and Regulation) Act, 2007 (Act of 2007, for

short). As per Section 12 of the Act of 2007, the board *inter alia* consists of eleven “agriculturist members” to represent “agriculturists”, from each Taluka, of the State. Presently, we are not concerned with the other members.

4. The State Government, in exercise of powers conferred under Section 13 read with Section 81(2)(iii) of the Act of 2007 has framed the Goa Agricultural Produce Marketing (Development and Regulation) Rules, 2010 (Rules, for short). The respondent no. 1 had undertaken the exercise of preparation of the voters list in accordance with the said Rules.

5. The petitioner raised an objection to the voters list, on the ground that the same is not prepared in accordance with Rule 5 of the Rules. The petitioner raised a specific objection about the members of the three societies, which are respondent nos. 4, 5, and 6, for being enrolled as voters. The respondent no. 1, by the impugned order, has refused to entertain the objection. It is this order, passed by the respondent no. 1, which is subject matter of challenge in this petition.

6. I have heard Shri Diniz, the learned Counsel for the petitioner, Shri Faldesai, the learned Additional Government

Advocate for the respondent nos. 1, 2 and 3. I have also heard Shri Amonkar, the learned Counsel for the respondent nos. 4 and 6 and Shri Shahapurkar, the learned Counsel for the respondent no. 5. Perused record.

7. Shri Diniz, the learned Counsel for the petitioner has made the following submissions:

(i) That, the Registrar has been defined in Rule 2(v) of the Rules and thus, could not have travelled beyond the rules in, taking aid from the definition of an “agriculturist”, under Section 2(b) of the Act of 2007. The precise contention is that the wider definition of an agriculturist, under Section 2(b) of the Act of 2007, cannot be called into aid in view of Rule 5(2)(iii) of the Rules. It is contended that Section 13 of the Act *inter alia* provides for framing of rules, pertaining to the right to vote. The rules which are relatable to Section 13 would prevail, while deciding the right of any person to be a voter.

(ii) The respondent nos. 4, 5 and 6, which are governed by the Goa Co-operative Societies Act, 2001 (Act of 2001, for short) are agricultural service co-operative societies. As per Section 2(2) of the Act of 2001, an agricultural service co-operative society is one, the primary object of which, is to render assistance, financial or otherwise to farmers, rural artisans and agricultural labourers. Thus, the

members of respondent nos. 4, 5 and 6, would not even fall under the wider definition of the agriculturists as contained in Section 2(b) of the Act of 2007. It is pointed out that the definition of an agriculturist under Section 2(b) of the Act of 2007, excludes from its ambit, a person, who is a trader.

(iii) Insofar as respondent no. 4 is concerned, the Society has membership of 1722 members and has paid market cess of Rs.15,352.48 for the marketing year 2016-17 and Rs.20,736.24 for the year 2017-18. The above fees is not from the agricultural produce, procured from the local agriculturists, but, from the traders outside the State of Goa.

(iv) As regard to respondent no. 5, it has membership of 8792 members and has not paid any market cess from the year 2016-17 and has paid Rs.1,055.30 for the year 2017-18 and the said fee is paid from the sale of paddy. However, paddy is no longer an agricultural commodity, which has been de-notified on 23.11.2016. The said society had sent three different voters list, which shows that the society is not serious while sending the list of voters.

(v) Insofar as respondent no. 6 is concerned, the said society is not dealing with any market activities, till today.

(vi) The respondent no. 1, without holding any inquiry, has brushed aside the objection of the

petitioner and thus, the impugned order suffers from infirmity and is required to be set aside.

8. Shri Faldessai, the learned Government Advocate has raised the following preliminary objections to the maintainability of the petition:-

(i) It is submitted that the individual voters, who are likely to be adversely affected, are not made parties and therefore, the petition suffers from the vice of non-joinder of necessary parties. It is submitted that the respondent nos. 4, 5 and 6, which are the co-operative societies cannot, per se represent their members, whose individual right as voters is likely to be affected.

(ii) It is submitted that the petitioner is contesting from the Mormugao Constituency and none of the voters, whose names are objected to by the petitioner, are the voters from the said constituency, from where the petitioner is contesting his election. It is thus submitted that the petitioner is not personally affected by the inclusion of the names in the voters list (which names are objected to by the petitioner).

(iii) It is submitted that the election programme has already been notified in July 2017 and once, the election process has started, the same cannot be interfered with.

9. Insofar as merits are concerned, it is submitted by Shri Faldessai, the learned Additional Government Advocate for the respondent nos. 1, 2 and 3 that the objection raised by the petitioner to the voters lists, is not in accordance with Rule 7(8) of the Rules. It is submitted that the objection has to be specific in relation to each of the voters, whose names are objected. It is submitted that the Registrar cannot be said to be a creation of the Rules, only because the Registrar is defined in Rule 2(v) of the Rules. It is submitted that the respondent no. 4 is registered as “agricultural marketing society” as defined in Section 2(1) of the Act of 2001, while the respondent nos. 5 and 6 are the “agricultural service co-operative societies” as defined in sub-section 2 of Section 2 of the Act of 2001. The learned Additional Government Advocate has referred to Section 5 and 6 of the Act of 2001, in order to submit that there is rigorous procedure, which has to be followed before a society can be registered.

10. It is submitted that the provisions of Section 12 of the Act of 2007 and Rule 5 of the Rules, have to be read together. It is submitted that Section 12 of the Act of 2007 as well as Rule 5 refer to “agriculturists” and in view of the Rule

2(2) of the Rule, the word agriculturist, not being defined under the Rules, shall have the same meaning as assigned to it in the Act.

11. Shri Amonkar, the learned Counsel for the respondent nos. 4 and 6 and Shri Shahapurkar, the learned Counsel for the respondent no. 5 have reiterated the preliminary objections, as raised on behalf of the State. Shri Amonkar, the learned Counsel for the respondent nos. 4 and 6 has submitted that the alleged non-payment of cess by the society has nothing to do with the members, not being agriculturists or voters. It is submitted that the notification dated 16.06.2016, regulating paddy, has no effect of paddy being de-notified as an agricultural produce. In other words, it is contended that the regulation of the agricultural commodity and it being a notified agricultural commodity, are two distinct aspects and even if, the agricultural produce is deregulated, it cannot be said that paddy is not an agricultural produce.

12. Shri Amonkar, the learned Counsel for the respondent nos. 4 and 6 has then referred to the records of the individual societies in order to submit that the objection, as raised, is without any substance. It is pointed out that the Act

of 2007 does not make any distinction or impose any restriction as to from where the purchase of the agricultural produce has to be made.

13. Shri Shahapurkar, the learned Counsel for the respondent no. 5 has submitted that there are separate lists maintained by the said society styled as list "A-1" and "A-2". It is pointed out that list A-1 contains only those members, who are agriculturists and the said list contains 8792 members. It is thus submitted that only the names of the agriculturists have been sent to the Registrar, which have been included in the list of voters. It is pointed out that the society is not only dealing with paddy, but, is also dealing with other agricultural produce.

14. Shri Diniz, the learned Counsel for the petitioner has countered the submissions made on behalf of the respondents. Firstly, it is submitted that the present petition is not an original proceeding and it arises out of the order passed by the respondent no. 1. Secondly, it is submitted that Rule 7 of the Rules does not require that a voter from the same constituency can lodge an objection to the list of voters. Reliance is placed on Rules 15, 16 and 17 of the Rules, in order to point out that a person can contest from any constituency and thus, the

objection as to the locus standi of the petitioner, in the submission of the learned Counsel for the petitioner, cannot be accepted. Insofar as the contention about non-joinder of individual voters is concerned, it is submitted that the challenge is essentially, to the manner in which, the voters list is prepared. It is submitted that the voters list is not prepared in accordance with Rule 5(2)(iii) of the Rules and the objection being on principle and not to individual voters, can be entertained, particularly, when the societies of which, these voters are members, are there to espouse the cause of their individual members.

15. I have carefully considered the rival circumstances and the submissions made. Following points fall for determination in this petition:

- (i) Whether, the petition as framed and filed, can be entertained, in view of the preliminary objections, as raised on behalf of the respondents ?
- (ii) If yes, whether, the respondent no. 1, was justified in refusing to entertain the objection, as raised on behalf of the petitioner ?

As to Point No. (i):

16. This point has to be taken up for consideration at the outset, as it goes to the root of the matter. It is undisputed that

the petitioner is not contesting the election from any of the three Talukas, namely, Bardez, Pernem and Sattari, in which, the members of respondent nos. 4, 5 and 6 have been enrolled as members. The petitioner is contesting election from Mormugao constituency, where none of the members of the respondent nos. 4, 5 and 6 have been enrolled as voters. It can thus be seen that the petitioner is not directly affected by such enrollment. The question is whether, in such circumstances, the petition can be entertained, at the instance of the petitioner.

17. The present challenge is under Articles 226 and 227 of the Constitution of India. The remedy under Article 226 is extra ordinary and discretionary remedy, for enforcement of fundamental and other statutory rights. Unless and until, the rights of the petitioner are directly and proximately affected, this Court can decline to invoke the extra jurisdiction, particularly, in view of the fact that the election process has already commenced. It is not disputed that the last date of the withdrawal of the nomination was 02.08.2018 and the election is scheduled to be held on 19.08.2018.

18. The contention that any person can challenge the list of voters, in my opinion, would not be decisive, in view of the

nature and the parameters within which, the extra ordinary jurisdiction under Article 226 of the Constitution of India is exercised. It was submitted by the learned Counsel for the petitioner that the bar akin to Article 243 ZG of the Constitution of India is not applicable in this case and therefore, there is no prohibition for this Court to interfere, notwithstanding the fact that the election process has commenced. The said contention also, in my considered view, cannot be accepted. The provisions as contained in Article 243 ZG of the Constitution of India, may not apply in this case. However, it is well settled that the Court would be slow in interfering with any democratic election process, after it has commenced. Furthermore, an aggrieved person, if any, has an alternate remedy of challenging the election under Rule 60 of the Rules and this is one more reason as to why, it is not necessary to invoke the extra ordinary jurisdiction of this Court.

19. Rule 7(8) of the Rules prescribes that any claim or objection to the voters list shall be in writing and shall specify, (i) the constitution in question (ii) the grounds on which the right to any person to be entered in the list is asserted or denied (iii) the evidence, which the claimant or objector intends to lead (iv) the address of the claimant or the objector, his

number, if any in the list and in case, of objection, the number in the list of the person to whose entry objection is taken and (v) the constituency in which, his name is entered. A bare perusal of the objection, as raised on behalf of the petitioner shows that it does not comply with Rule 7(8) of the Rules. The right to vote is an important statutory right, which cannot be lightly interfered with, otherwise than in accordance with law. A perusal of Rule 7(8) of the Rules, also shows that the objection should be voter specific. In other words, it should be in relation to an individual voter, whose name is objected to. The petitioner cannot get away by saying that the objection, being on principle can be entertained without the individual voter/s being made parties. The society cannot perforce represent the cause of the individual members, when it comes to the individual listing of the members as voters. For the aforesaid reasons, I am of the considered view that the preliminary objection as raised, are well founded and consequently, point no. (i) has to be answered in the negative.

As to Point No. (ii):

20. Normally, in view of the finding on point no. (i), it would not be necessary to examine point no. (ii), as it turns upon the merits of the objection raised. However, considering

the fact that substantial arguments were advanced at the Bar on either sides, I propose to briefly examine the ground on merits. I would hasten to add that I only propose to examine the ground on a *prima facie* basis, inasmuch as an aggrieved person, if any, would have remedy to challenge the validity of the election under Rules 60 of the Rules and the findings and the observations made herein, on merits, may not come in the way of any such person, if he chooses to challenge the validity of the election, in accordance with law.

21. The objection in relation to respondent nos. 4, 5 and 6 may be reproduced as under:

"1. The Goa Krishi Bazar Marketing and Proceesing Coop. Society Ltd.

The above society has paid market cess of Rs.15,352.48 for marketing year 2016-18 and Rs.20,736.24 for the year 2017-18. Their membership is 1722 and the above fee is not from the agricultural produce procured from the local agriculturists but from the produce purchased from the traders outside the State of Goa.

2. The Pedne Taluka Farmers Coop. Sty. Ltd.,
The above society has paid market cess of Rs. Nil for marketing year 2016-17 and Rs. 1055.30 for the year 2017-18. Their membership is 8792 and the above fee is from the sale of paddy from the agriculturist

byt is not a notified commodity as required by the Act. These figures show the manipulations on behalf of the society, moreover they have sent three different voters lists which itself proves that they are not serious while preparing the voters list since the names of the first list submitted are repeated in the second list and the names of this second list are repeated in the third list.

3. Sattari Tal Farmers Coop. Society Ltd.

This society is not dealing in any agricultural marketing activity till today. Their membership is 7399 which are likely to be enrolled as voters."

It can thus be seen that the objection is qua the individual society and not to any individual member as such. For instance, insofar as respondent no. 4 is concerned, it is contended that the market cess paid for the marketing year 2016-17 and 2017-18 are not in respect of agricultural produce procured from the local agriculturist, but, the produce purchased from the traders outside the State of Goa.

22. Insofar as respondent no. 5 is concerned, the contention is that the market cess paid for the marketing year 2016-17 and 2017-18, is from the sale of the paddy from the local agriculturist, however, paddy is not a notified commodity

as notified by the Act of 2007 and lastly, in respect of the respondent no. 6, it is contended that the society is not dealing with any marketing activities till today. The contentions are traversed by the respondent nos. 4, 5 and 6.

23. It is difficult to accept as to how, on the basis of such objection, the inclusion of the names of the voters can be objected to.

24. Rule 5 of the Rules *inter-alia* provides for “eleven agriculturist members” to represent each Taluka of the State. Rule 5(1)(i) of the Rules provides for the constituencies consisting of the “agriculturists” as contained in clauses (a) and (b) of sub-Section (1) of Section 12 of the Act. As per the said Rule, the Registrar shall cause to prepare the list of the “agriculturists” Taluka wise and District wise to be elected by the “agriculturist constituencies”. It can thus be seen that Rule 5 of the Rules, if read as a whole, speaks of preparation of the list of the “agriculturists” from the respective constituencies. The word “agriculturists” is not defined in the Rules. Rule (2)(2) of the Rules says that the words and expressions used in the Rules, but, not defined shall have the same meaning as assigned to them in the act. That apart, Rule

5(1)(i) of the Rules makes a specific reference to “agriculturists” as specified in clauses (a) and (b) of sub-section (1) of Section 12 of the Act of 2007.

25. An agriculturist is defined under Section 2(b) of the Act as under:

“2. Definitions.— In this Act, unless the context otherwise requires,—

(a)

(b) “*agriculturist*” means a person who ordinarily by his own labour or by the labour of any member of his family or by the labour of his tenants or servants or hired labour or otherwise, is engaged in the production or growth of any notified agricultural produce, and includes—

(a) a member of a co-operative society registered in the State of Goa which is dealing with agricultural produce; or

(b) a person who has sold agricultural produce to the co-operative society, of the value not less than Rs. 5000/- or of such amount as may be determined by the State Marketing Officer from time to time in the preceding financial year; but does not include a trader, trading agent, broker, processor or commission agent;”

26. The contentions on behalf of the petitioner is that the Registrar has to confine to Rule 5(2) of the Rules and in particular, Rule 5(2)(iii) thereof, to ascertain as to who should be enlisted as voter and cannot take recourse to the wider

definition of the “agriculturists” as contained in Section 2(b) of the Act of 2007. The contention, in my considered view, cannot be accepted for the reason that Rule 5 of the Rules, read as a whole, refers to an “agriculturist” and as per Rule 2(2) of the Rules necessarily a reference has to be made to an “agriculturist”, as defined under the Act of 2007. Under Section 2(b)(a) of the Act, an agriculturist would mean a member of the co-operative society registered in the State of Goa, which is dealing with agricultural produce. Insofar as the contention that paddy is de-notified, *prima facie*, it appears that there is clear distinction between an “agricultural produce” as defined under Section 2(b) of the Act of 2007 and the “notified agricultural produce” as defined under Section 2 (ze) of the Act of 2007. Paddy finds place in the schedule and as such, paddy can be said to be an agricultural produce, within the meaning of Section 2(a) of the Act, notwithstanding the fact that it was notified by a notification dated 03.06.2016 for the purpose of its regulation, under the Act of 2007 and subsequently denotified on 23.11.2016. In any case, the petitioner has not come with a case about any individual voter, as included in the list, who may not fall under Rule 5(2)(iii) of the Rules. To put it otherwise, it is not even averred or shown that the individual member/s of the respondent nos. 4, 5 and 6-societies (who are enrolled as

voters in the voters list) are not the growers of the agricultural produce, owner of the livestock and livestock produce in the notified area for the agriculturist constituency. Thus, the objection as raised, cannot be accepted.

27. In the result, the petition is dismissed. It is however made clear that the observations, on the merits of the objection, as raised herein, may not come in the way of any person, who may choose to challenge the validity of the election under Rule 60 of the Rules. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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