

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6205 OF 2019

Shankarrao Gajanan Choudhary and others.

VERSUS

The State of Maharashtra, through the Hon'ble Minister for Cooperation,
Marketing and Textiles, Mumbai and others.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. V. Samarth, Advocate for petitioners.

Shri A. V. Palshikar, Assistant Government Pleader for respondent
nos.1 & 2.

Shri A. M. Ghare, Advocate for respondent no.3.

CORAM : A. S. CHANDURKAR, J.

DATE : SEPTEMBER 26 2019

CIVIL APPLICATION (CAW) NO.2561 OF 2019

1. The petitioners seek to amend the writ petition and raise challenges to the process of election that was held on 09.09.2019. The further amendment sought is to declare the result of elections held for the post of Chairman on 24.07.2018.

2. It is submitted by the learned counsel for the petitioners that by virtue of interim order passed on 05.09.2019 the elections that were held on 09.09.2019 are sought to be challenged. The votes of the petitioners have been kept in sealed cover and the result of those elections has not yet been declared. Various illegalities

have been committed while conducting those elections and hence for challenging the same, various grounds have been raised by way of amendment. It is therefore submitted that as the order disqualifying the petitioners is under challenge in the writ petition, the amendment as sought is necessary and same deserves to be allowed.

3. The prayer is opposed by the respondent no.3 by raising an objection that the said elections that were held on 09.09.2019 were conducted pursuant to the order dated 29.08.2019 passed by the District Deputy Registrar. However, that order dated 29.08.2019 has not been challenged nor is there any amendment sought by the petitioners for challenging that order. As elections were held pursuant to that order and in absence of any challenge to said order, there is no justification for seeking amendment to the writ petition only to challenge the elections that were held on 09.09.2019. Reliance is placed on the decision in **Amarjeet Singh and others Vs. Devi Ratan and others, (2010) 1 SCC 417**. It is further submitted that separate objections have already been raised under Section 22(4) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 on 09.09.2019 itself which indicates that the petitioners have therefore taken steps to challenge that election by availing the statutory remedy. It is therefore submitted that the amendment does not deserve to be allowed.

In reply, it is submitted that the order dated 29.08.2019 has not been served on the petitioners.

4. Heard the learned counsel and perused the application alongwith documents filed therein. It is seen that the elections conducted on 09.09.2019 are pursuant to the order dated 29.08.2019 passed by the District Deputy Registrar. The reasons for holding those elections have been indicated in the said order. What has been sought to be challenged by seeking amendment in the writ petition is merely the conduct of elections on 09.09.2019. According to the petitioners there was no reason or occasion to direct holding of those elections. Thus, as long as the order dated 29.08.2019 holds the field, the consequential act of holding elections by itself cannot be subjected to challenge. The ratio of the decision in **Amarjeet Singh and others** (supra) supports the contentions raised on behalf of the respondent no.3. The grievance that copy of the order dated 29.08.2019 was not served on the petitioners has no substance. Copy of that order is addressed to the Secretary of the Market Committee and same could have been easily obtained even till today. No steps have been taken by the petitioners in that regard. Hence, in absence of any challenge being raised to the order dated 29.08.2019, mere challenge to the consequential holding of the elections would be of no avail. In that view of the matter, I am not inclined to allow application for amendment.

Civil Application is rejected.

WRIT PETITION NO.6205 OF 2019

1. In view of the order passed in Civil Application (CAW) No.2561 of 2019 by which the prayer to amend the writ

petition has been refused, the learned counsel have been heard on the question whether the results of the elections that were held on 09.09.2019 are liable to be declared by modifying the interim order dated 05.09.2019.

2. Pursuant to the interim order dated 05.09.2019, the disqualification of petitioners as members of the Market Committee has been stayed. The elections that were scheduled on 09.09.2019 were directed to be held and votes of the petitioners were directed to be kept in separate sealed cover. The result of the said election was directed not be declared.

3. It is revealed that the petitioners have not participated in the said election held on 09.09.2019. It is grievance of the petitioners that because of the change of venue of the said elections they were precluded/ prevented from attending the said meeting on 09.09.2019. A grievance is also sought to be raised with regard to service of due notice to the petitioners for attending that meeting.

4. In the reply filed on behalf of the respondent no.2, it has been stated that notice was sought to be served on the petitioners on 06.09.2019 by various modes including having the notice published in a daily newspaper on 09.09.2019. In para 9 of the said reply, it is also stated that such notice was sought to be circulated to all the Directors of the Market Committee including the petitioners by means of 'WhatsApp'. According to the

respondent no.3 after the elections were held, objections under Section 22(4) of the said Act have been raised by the petitioners to challenge that election. The adjudication of that objection against the petitioners is also placed on record.

5. In view of aforesaid aspects and the fact that the petitioners did not participate in the said elections, the respondent no.2 is directed to declare the result of the elections that were held on 09.09.2019. However, said results would be subject to the outcome of the present writ petition. However, at present the petitioner no.1 is holding the post of Vice Chairman. The Vice Chairman who would be so declared elected may not assume the charge till the next date of proceedings.

Stand over 01.10.2019.

Authenticated copy of this order be supplied to the learned counsel for the parties.

JUDGE