

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3417 OF 2021

Punjabrao Appasaheb Pol ... Petitioner
Vs.
Assistant Registrar, Co-operative Societies and the
Returning Officer, Man Taluka Agricultural Produce
Market Committee and others ... Respondents

Mr. Vivek Vijay Salunke for Petitioner.

Mr. Vijay Patil with Mr. Vishwajeet V. Mohite and Mr. Dipak Y. Jadhav i/b.
Mr. Siddharth R. Karpe for Respondent No.1.

Ms. Neha Bhide, 'B' Panel Advocate for respondent Nos.3 and 4-State.

**CORAM : UJJAL BHUYAN &
MADHAV J. JAMDAR, JJ.**

Reserved on : SEPTEMBER 06, 2021

Pronounced on : SEPTEMBER 24, 2021

JUDGMENT AND ORDER : (Per Ujjal Bhuyan, J.)

Heard Mr. Vivek Salunke, learned counsel for the petitioner;
Ms. Neha Bhide, learned 'B' Panel counsel for respondent Nos.1, 3 and
4; and Mr. Vijay Patil, learned counsel for respondent No.2

2. Initially this petition under Article 226 of the Constitution of India was filed by the petitioner seeking a direction to respondent No.1 to accept his nomination for election as a committee member of the Man Taluka Agricultural Produce Market Committee, Dahiwadi, Taluka Man, District Satara (briefly "the APMC" hereinafter) for the term 2021-2022 to 2026-2027; to set aside and quash the order dated 13.01.2021 passed by respondent No.1 as the returning officer as well as the order dated 22.07.2021 passed by respondent No.3 as the appellate authority.

3. To elaborate on the above, we may briefly highlight the facts relevant for adjudication.

4. The APMC in question is registered under the provisions of Maharashtra Agricultural Produce Market (Development and Regulation) Act, 1963 (briefly “the 1963 Act” hereinafter).

5. In exercise of the powers conferred under the 1963 Act, Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (briefly “the Election Rules, 2017”) have been framed. Election Rules, 2017 lay down the rules for conduct of elections to the APMCs in the State of Maharashtra which are conducted by the State Co-operative Election Authority.

6. In the APMC, a constituency has been created to give representation to Hamals and Weighmen. As a matter of fact, this constituency is called ‘Hamals and Weighmen Constituency’. The Election Rules, 2017 was amended in the year 2020. As per the amended rule 5, one member is to be elected from the Constituency of Hamals and Weighmen. As election to the APMC for the period 2021-2022 to 2026-2027 was due, the voters’ list was prepared and finalized. The final voters’ list was published on 18.06.2021.

7. Petitioner is a voter whose name appears in the final voters’ list of the APMC from the Constituency of Hamals and Weighmen. Interestingly petitioner is the only voter from the said constituency. There are no other voters in the said constituency.

8. Be it stated that respondent No.1 was appointed as the returning officer by the State Co-operative Election Authority with respect to elections to the said APMC. On 06.07.2021, the election programme for the APMC was declared.

9. Petitioner filed his nomination from the Hamals and Weighmen Constituency. As a matter of fact, two sets of nomination forms were filed by the petitioner before respondent No.1 on 12.07.2021. In one set

of nomination the proposer and the seconder were Santosh Sahebrao Sawant and Nirmala Bal Jadhav respectively. Though they were voters in the final voters' list, they were from a different constituency i.e., Constituency of Society. In the other set of nomination, Vanita Nitin Sawant and Sanjay Dada Mane were the proposer and the seconder. Again though they were voters in the final voters list of the APMC, they belonged to a different constituency i.e., the Constituency of Grampanchayat.

10. Respondent No.1 scrutinized the nomination papers of the candidates on 13.07.2021. At that stage, respondent No.2 raised objection to the nomination of the petitioner. The objection was on the ground that the proposer and the seconder in both sets of nomination papers did not belong to the same constituency as that of the petitioner i.e., Hamals and Weighmen Constituency. Petitioner submitted his reply to the objection. He also questioned the *locus standi* of respondent No.2 to raise objection as to the nomination of the petitioner.

11. By order dated 13.07.2021, respondent No.1 rejected the nomination of the petitioner on the ground that the proposer and the seconder who had signed the nomination forms of the petitioner were not from the same constituency for which petitioner had filed nomination; they belonged to different constituencies.

12. The list of candidates from the different constituencies of the APMC was published by respondent No.1 on 14.07.2021. In the meanwhile, petitioner filed appeal on 15.07.2021 before respondent No.3 against the order dated 13.07.2021 passed by respondent No.1. The appeal was filed under rule 27 of the Election Rules, 2017. The appeal was contested by respondent No.2 by filing his say. However, by the order dated 22.07.2021, respondent No.3 rejected the appeal of the petitioner and confirmed the decision of respondent No.1 rejecting the nomination of the petitioner.

13. Aggrieved, the present writ petition came to be filed.
14. It may be mentioned that this Court by order dated 27.07.2021 had summed up the controversy in the following manner:-

“2. This petition under Article 226 of the Constitution of India raises an interesting question of law.

3. Petitioner’s candidature from the Hamal and Weighman constituency to the Man Taluka Agricultural Produce Market Committee, Dahiwadi, District Satara (briefly ‘the APMC’ hereinafter) was rejected by the Returning Officer on 13th July, 2021 on the ground that nomination of the petitioner was supported by voters from outside the constituency. This rejection order has been upheld by the appellate authority on 22nd July, 2021.

4. Learned counsel for the petitioner submits that petitioner is the sole voter from the Hamal and Weighman constituency. Therefore, nomination of the petitioner had to be supported by two voters from another constituency.

5. On the other hand, Mr.Siddharth Karpe, learned counsel for respondent No.2 has referred to Rules 20 and 21 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 and submits that as per Rule 20(3) any person whose name is entered in the list of voters shall be a proposer or seconder for nominating a candidate for election. As per Sub-Rule (1) of Rule 21 the nomination is to be proposed and seconded by two voters of the same constituency.

6. In the present case, petitioner is the only voter of his constituency. In such circumstances, there is no possibility of the proposer and seconder to support the candidature of the petitioner from the said constituency. Mr.Salunke also submits that compliance to the requirement of Rule 21(1) is an impossibility in the present case and therefore, the said provision has to be interpreted in a pragmatic manner.

7. In the circumstances, we are of the view that interpretation of Sub-Rule (1) of Rule 21 read with Sub-Rule (3) of Rule 20 would be relevant and important.

8. We have been told that election to the APMC in question will be held on 7th August, 2021.

9. Since the electoral process has been set in motion and rejection of nomination is part of the electoral process, we are not inclined to interfere at this stage. However, as noticed, the issue raised requires a deeper scrutiny.”

15. After the order dated 27.07.2021 was passed by this Court, petitioner carried out certain amendments in the writ petition. Post amendment petitioner has additionally prayed for a declaration that the nomination submitted by him for the election as a committee member of the APMC for the term 2021-2022 to 2026-2027 is valid and that both respondent Nos.1 and 3 had erred in rejecting the nomination of the petitioner. Further prayer made is that the petitioner should be declared as elected from the Constituency of Hamals and Weighmen being the only candidate who had filed nomination from the said constituency.

16. Respondent No.2 in his reply affidavit has contended that the writ petition is not maintainable and in this connection he has referred to and relied upon a Full Bench decision of this Court in *Karmaveer Tulshiram Autade Vs. State Election Commission*, **2021 (2) Mh.L.J. 349**. He submits that petitioner has alternative efficacious remedy of filing election petition as held in the said judgment.

16.1. He has denied the assertion of the petitioner that respondent No.2 has no *locus standi* to object to the nomination of the petitioner. According to him stand taken by the petitioner is misconceived in as much as there is no bar under the Election Rules, 2017 for a person like respondent No.2 to raise objection as to nomination of the petitioner. To support the above contention, he has placed reliance on rule 25(2) of the Election Rules, 2017.

16.2. Respondent No.2 has stated that requirement of the rules are quite clear and unambiguous. Proposer and seconder of nomination of a candidate would have to be from the same constituency. Therefore, the legal maxim relied upon by the petitioner i.e., *lex non cogit ad impossibilia* (law does not compel the doing of an impossibility) would not be applicable to the facts of the present case. Decisions cited by the petitioner are distinguishable.

16.3. Respondent No.2 has referred to different provisions of the Election Rules, 2017 and submits that in view of the unambiguity of the rules, the provisions would have to be interpreted in a literal manner. Further, when the law requires a thing to be done in a particular manner, it is axiomatic that it should be done in the said manner or not at all.

17. Respondent No.3 in his reply affidavit has stated that rule 20(2) and (3) makes it very clear that every nomination paper presented under rule 21 in form No.7 shall be completely filled up and as per rule 21(1) and (2), such nomination paper should be signed by the candidate and by two voters of his constituency, one of whom shall be the proposer and the other seconder.

17.1. Respondent No.3 has admitted that in the voters list of the said APMC, Hamal and Weighman Constituency had only one voter. Petitioner was the only voter of the said constituency. There is no provision in the Election Rules, 2017 to allow proposer and seconder from another constituency in the absence of proposer and seconder from the candidate's constituency. Therefore, the returning officer had to take a decision in accordance with law as there was no scope for exercise of any discretion by giving relaxation to the petitioner. Likewise as the appellate authority, District Election Officer is bound by the letter of the law. He, therefore, supports both the decisions in rejecting the nomination of the petitioner as legally correct.

18. Mr. Salunke, learned counsel for the petitioner at the outset narrated the undisputed facts and thereafter referred to our order dated 27.07.2021. Learned counsel for the petitioner has taken us to the provisions of the Election Rules, 2017 more particularly to rules 20 and 21. He submits that under sub-rule (1) of rule 21 the nomination paper of a candidate has to be completed as provided by rule 20 which must be additionally signed by the candidate and by two voters of his constituency, one of whom shall be the proposer and the other as the

seconder. Therefore, the requirement under sub-rule (1) of rule 21 is that both the proposer and the seconder should be voters of the constituency of the candidate. However, referring to sub-rule (3) of rule 20, his submission is that any person whose name is entered in the list of voters shall be a proposer or a seconder, as the case may be, for nominating a candidate at election.

18.1. Adverting to the facts of the present case, he submits that petitioner is the only voter in the Constituency of Hamals and Weighmen. There are no other voters in the said constituency. Therefore, the proposer and seconder could not be from the Constituency of Hamals and Weighmen. In such a situation, the requirement of sub-rule (1) of rule 21 becomes an impossibility. Therefore, one has to fall back upon sub-rule (3) of rule 20 which is a general provision.

18.2. Mr. Salunke further submits that both the provisions as alluded to hereinabove should be interpreted in a manner which advances the cause of justice, otherwise Hamals and Weighmen for whom there is a separate constituency will remain unrepresented.

18.3. Submission of Mr. Salunke is that the proposer and the seconder of the petitioner may be from a different constituency, nonetheless their names are entered in the list of voters of the APMC. Therefore, there is substantial compliance to the requirement of rule 21(1) which should be read together with rule 20(3).

18.4. In support of his contention that in the situational context compliance to rule 21(1) has become an impossibility, learned counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case of *Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal*, (2020) 7 SCC 1, to highlight the proposition that the law does not compel a man to do that which he cannot possibly perform.

19. Mr. Vijay Patil, learned counsel for respondent No.2 submits that as rightly pointed out by this Court in the order dated 27.07.2021, rejection of nomination paper is a part of the electoral process. The remedy of a candidate whose nomination is rejected is to file election petition which he submits is an efficacious remedy. In this connection he has placed reliance on the recent Full Bench decision of this Court in **Karmaveer Tulshiram Autade** (*supra*). He submits that a petition under Article 226 of the Constitution of India cannot be a substitute for an election petition. Learned counsel for respondent No.2 has also made submissions on merit touching upon rules 21(1) and 25 as well as contents of form No.7.

19.1. Mr. Patil, learned counsel for respondent No.2 submits that it is trite that election law should be strictly interpreted. Language of rule 21(1) is very clear and there is no scope for any ambiguity. Question of application of the doctrine of impossibility does not arise in the fact situation of the present case.

20. Replying to the submissions made by Mr. Patil, learned counsel for the petitioner submits that in the given facts and circumstances of the case, the alternative remedy of election petition is not at all efficacious. That apart, unlike in the case of panchayats and municipalities, there is no constitutional bar for moving the writ court under Article 226 of the Constitution of India against rejection of nomination in election to APMC, which may be part of the electoral process. He submits that this Court in the order dated 27.07.2021 had acknowledged the peculiarity of the present case and had observed that the issue raised in the writ petition would require a deeper scrutiny. Further, he has also raised the issue of *locus standi* of respondent No.2. He, therefore, submits that in the given facts and circumstances of the case, this Court may allow the writ petition by granting the reliefs as sought for by the petitioner.

21. Submissions made by learned counsel for the parties have

received the due consideration of the Court.

22. At the outset we may advert to the relevant provisions of the Maharashtra Agriculture Produce Marketing Committee (Development and Regulation) Act, 1963 (already referred to as “the 1963 Act”) and the provisions of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (already referred to as “the Election Rules, 2017”).

22.1. Chapter III of the 1963 Act deals with constitution of market committees. While section 11 provides for establishment of market committees in every market area, incorporation of the market committees is provided for in section 12. Section 13 deals with constitution of market committees. As per section 13(1)(b-1), every market committee shall consist of amongst others one member to be elected by hamals and weighmen operating as such in the market area.

22.2. Section 14 deals with election and term of office of members. As per sub-section (1), the members shall be elected in the manner prescribed by the rules. Rules may provide for determination of constituencies, preparation and maintenance of list of voters, persons qualified to be elected, disqualifications, determination of election disputes etc.

22.3. Section 60 is the rule making provision. Sub-section (1) says that the state government may by notification in the Official Gazette make rules for carrying into effect the purposes of the 1963 Act. However, as per clause (d) of sub-section (2), the state government may make rules under section 14 for prescribing the manner in which the members may be elected including all matters referred to in that section.

22.4. In exercise of the powers conferred by sub-section (1) and clauses

(d) and (u) of sub-section (2) of section 60 of the 1963 Act and of all other powers enabling it in that behalf, Government of Maharashtra has framed the Election Rules, 2017. Rule 2 defines the words and expressions used in the Election Rules, 2017. As per rule 2(5), 'constituency' has been defined to mean an electoral division as specified in the Election Rules, 2017. 'District Election Officer' has been defined under section 2(8) to mean an officer or officers approved by the State Co-operative Election Authority for the conduct of elections of agricultural produce market committee in the district or region. 'Election' has been defined under section 2(9) to mean an election to elect a committee or committee member of market committee. Section 2(17) defines 'returning officer' to mean a returning officer appointed by the State Co-operative Election Authority and includes assistant returning officer for the purpose of any election under the Election Rules, 2017.

22.5. Rule 20 deals with nomination of candidates. While sub-rule (1) says that any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the 1963 Act and the Election Rules of 2017, as per sub-rule (2), every nomination paper presented under rule 21 shall be in form No.7 and should be completely filled in. However, as per the *proviso*, the failure to complete or a defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the meaning of the Election Rules of 2017.

22.6. Sub-rule (3) of rule 20 is relevant and is quoted hereunder:-

“20(3). Any person whose name is entered in the list of voters shall be a proposer or seconder, as the case may be, for nominating a candidate at election.”

22.7. Thus, what rule 20(3) of the Election Rules, 2017 provides for is that any person who is a voter in an APMC can be a proposer or seconder for nominating a candidate at election.

22.8. Presentation of nomination paper and requirements for valid nomination are dealt with in rule 21. Sub-rule (1) is relevant for our present purpose and the same is extracted hereunder:-

“21(1). On or before the date appointed as a last date for making nomination under rule 18 each candidate shall either in person or by his proposer deliver to the returning officer during the time and at the place specified in the order made under rule 18, a nomination paper completed as provided by rule 20 and signed by the candidate and by two voters of his constituency, one of whom shall be the proposer and another as the seconder.”

22.9. Thus as per sub-rule (1) of rule 21 each candidate may submit his nomination paper complete in all respects either in person or through his proposer to the returning officer which must be signed by the candidate and by **two voters of his constituency** (*emphasis ours*). At this stage, we may mention that it was because of this requirement under rule 21(1) that the nomination paper of the petitioner for the Hamals and Weighmen Constituency was rejected which rejection order was affirmed in appeal.

22.10. Form No.7 is the form of nomination paper to be signed and filled by the candidate with signature and details of the proposer and seconder.

22.11. Rule 25 is concerned with scrutiny of nominations. We will deal with this provision a little later.

23. It may be mentioned that *vide* notification dated 16.04.2021 issued by the Government of Maharashtra in the Co-operation, Marketing and Textiles Department, the Maharashtra Agricultural Produce Market Committee (Election to Committee) (First Amendment) Rules, 2020 have been framed to introduce certain amendments in the Election Rules, 2017.

23.1. As per the amendment, rule 72A has been added after rule 72 of the principal rules. As per sub-rule (1) of Rule 72A, if the validity of any election including bye-election of a member of a market committee is brought in question by any person qualified either to be elected or to vote at the election to which such election refers, such person may within seven days after the date of declaration of the result apply in writing to the District Election Officer. Sub-rule (2) says that on receipt of an application under sub-rule (1), the District Election Officer may pass such order confirming or amending the declared result of an election or setting the election aside after giving an opportunity of hearing to the applicant and after making such enquiry as is considered necessary. Sub-rule (3) says that any person aggrieved by the decision of the District Election Officer may within seven days prefer an appeal against such decision to the Divisional Joint Registrar. Sub-rule (4) clarifies that the decision of the District Election Officer shall be final subject to decision of the Divisional Joint Registrar in appeal.

24. Having surveyed the relevant legal provisions, we may revert to the facts of the case which are undisputed. In the APMC, there is a Constituency for Hamals and Weighmen. Election to the APMC was for the period from 2021-2022 to 2026-2027. Final voters' list was published on 18.06.2021. In the Constituency for Hamals and Weighmen there is only one voter whose name figured in the final voters list published on 18.06.2021. Interestingly, petitioner is the only voter from the said constituency and there are no other voters. On 06.07.2021, election programme for the APMC was declared. Petitioner filed nomination paper for election as member from the Hamals and Weighmen Constituency on 12.07.2021. Since he was the only voter from the said constituency, his proposer and seconder were from a different constituency. Petitioner had filed two sets of nomination papers. In the first set of nomination papers, the proposer and seconder were from the Constituency of Society and in the second set of nomination papers, the proposer and seconder belonged to

Grampanchayat Constituency. Relying upon rule 21(1) of the Election Rules, 2017, the returning officer rejected the nomination of the petitioner *vide* order dated 13.07.2021 which was upheld in appeal by the appellate authority *vide* order dated 22.07.2021.

25. In our order dated 27.07.2021, we had noted the piquant situation faced by the petitioner. In paragraph 6 thereof, we had noted that petitioner was the only voter of the constituency; therefore, there was no possibility of the proposer and the seconder to support the nomination of the petitioner from the said constituency i.e., Constituency of Hamals and Weighmen. In such circumstances, compliance to the requirement of rule 21(1) was an impossibility.

26. Having noted the above, we may also refer to the provisions of rule 20(3) which says that any person whose name is entered in the list of voters shall be a proposer or seconder for nominating a candidate at election. Therefore, this provision, which is of general nature, clarifies that any person can be a proposer or seconder provided his name is entered in the voters list. This provision does not say that the proposer or seconder has to be a voter of the same constituency as that of the candidate. If that be so then provisions of rule 20(3) and rule 21(1) are to be read harmoniously and for this a purposive interpretation would be called for. Otherwise, the consequences would be that the particular constituency, in this case the Hamals and Weighmen Constituency, would remain unrepresented which is not the intent and purport of the Legislature.

27. At this stage, we may mention about two Latin maxims. The first one is *lex non cogit ad impossibilia* which means that the law does not demand the impossible and the second one is *impotentia excusat legem* which means that when there is a disability that makes it impossible to obey the law, the alleged disobedience of the law is excused.

28. In **Arjun Panditrao Khotkar** (*supra*), the issue before the Supreme Court was section 65-B of the Evidence Act, 1872 in the context of election petitions filed under sections 80 and 81 of the Representation of the People Act, 1951. In the facts of that case, it was found that despite all efforts made by the respondents to get the requisite certificate under section 65-B(4) of the Evidence Act from the concerned authorities, on one pretext or the other the authorities wilfully refused to give such certificate. Supreme Court took the view that though section 65-B(4) is mandatory, yet on the facts of that case respondents having done everything possible to obtain the necessary certificate, which was to be given by a third-party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said subsection. It was in that context that Supreme Court referred to its earlier decision in *Presidential Poll, in re*, (1974) 2 SCC 33, in the following manner:-

“14. If the completion of election before the expiration of the term is not possible because of the death of the prospective candidate it is apparent that the election has commenced before the expiration of the term but completion before the expiration of the term is rendered impossible by an act beyond the control of human agency. The necessity for completing the election before the expiration of the term is enjoined by the Constitution in public and State interest to see that the governance of the country is not paralysed by non-compliance with the provision that there shall be a President of India.

15. The impossibility of the completion of the election to fill the vacancy in the office of the President before the expiration of the term of office in the case of death of a candidate as may appear from Section 7 of the 1952 Act does not rob Article 62(1) of its mandatory character. The maxim of law *impotentia excusat legem* is intimately connected with another maxim of law *lex non cogit ad impossibilia*. *Impotentia excusat legem* is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. ‘Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.’ Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like the act of God, the circumstances will be

taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its mandatory character because of supervening impossibility caused by the act of God. (See *Broom's Legal Maxims*, 10th Edn. at pp. 162-163 and *Craies on Statute Law*, 6th Edn. at p. 268).”

28.1. Supreme Court noted that the provision in question in **Presidential Poll, in re** (*supra*) was also mandatory which could not be satisfied owing to an act of God. In the facts of that case, Supreme Court also observed that the above two maxims have been applied in different situations in other election cases as well as in matters relating to Electricity Act as well as in the context of the applicability of a mandatory provision of the Registration Act, 1908. After referring to various decisions and on an application of the aforesaid maxims to the facts of the said case, Supreme Court held that the respondents should be relieved of the mandatory obligation contained in section 65-B(4) of the Evidence Act.

29. In our view, the above decision would be squarely applicable to the facts of the present case. It is beyond the capacity of the petitioner to arrange for proposer and seconder from his constituency i.e., the Constituency of Hamals and Weighmen when there is admittedly only one voter in that constituency who is the petitioner himself. In such circumstances, we have to take a pragmatic approach and read the provisions of rule 21(1) conjointly and harmoniously with the provisions of rule 20(3) of the Election Rules, 2017. Read and interpreted so, petitioner should be relieved of the obligation contained in rule 21(1) and his nomination form so filed should have been accepted.

30. There are two other issues which we would like to address before parting with the record. The first issue is the objection raised by learned counsel for respondent No.2 that there is an efficacious alternative remedy available to the petitioner by way of election petition and,

therefore, petitioner should be relegated to the forum of election petition. In support of this contention, reliance has been placed on a recent decision of the Full Bench of this Court in **Karmaveer Tulshiram Autade** (*supra*).

30.1. The said decision pertains to elections to grampanchayats covered under the Bombay Village Panchayats Act, 1958. In those cases, the returning officer had rejected the nomination papers of the petitioners, which were challenged by way of writ petitions. Panchayats have been brought within the constitutional framework by insertion of Part IX to the Constitution of India. Under Article 243-O there is a clear bar to interference by Courts in electoral matters. This is made explicit in clause (b) by declaring that no election to any panchayat shall be called in question except by an election petition presented to such authority and in such manner as may be provided by law made by the Legislature of a State. In view of the clear bar under Article 243-O(b) of the Constitution of India, the Full Bench held that a writ petition to challenge rejection of nomination would not be maintainable.

30.2. This decision is clearly distinguishable in the facts of the present case inasmuch as unlike elections to grampanchayats, this petition deals with election to APMC which does not have constitutional protection like panchayats. Unlike Article 243-O(b), there is no bar under the Constitution to interference by Courts in matters pertaining to election to APMC. Insofar the alternative remedy provided for in rule 72-A of the Election Rules, 2017 is concerned, it speaks about determination of validity of election. The validity of any election including bye-election has to be questioned by any person qualified either to be elected or to vote at the election to which such election refers. *Stricto senso* the said provision may not be attracted to a case where nomination of the only candidate is rejected by the returning officer. As a result there was no election. If there was no election, question of determination of validity of election would not arise. Thus in the fact situation of the present case,

the remedy provided for in rule 72-A is neither alternative nor efficacious. That apart, in the present case we are primarily concerned with the interplay between rules 20(3) and 21(1) of the Election Rules, 2017. The District Election Officer may not be the competent authority to adjudicate on such intricate question of law. Therefore, we are not inclined to accept the objection of learned counsel for respondent No.2 that petitioner should be relegated to the forum of election petition.

31. In so far the second issue is concerned, that pertains to *locus standi* of respondent No.2 to object to the nomination of the petitioner. Though petitioner had raised this issue, neither the returning officer nor the district election officer had dealt with the same. However, it is the contention of respondent No.2 that there is no bar under the 1963 Act or under the Election Rules, 2017 for him to raise objection to the nomination of the petitioner. Interestingly, respondent No.2 in his reply affidavit has not stated as to whether he is a voter of the APMC and the constituency of which he is a voter. He has also not stated as to whether he was a candidate or proposer of any candidate in the election to the APMC. In the above backdrop, let us first examine the provisions of rule 25 of the Election Rules, 2017 which deals with scrutiny of nominations. Sub-rule (1) clearly states that on the date fixed for scrutiny of nominations under rule 20, only the candidate and one proposer of each candidate duly authorized in writing by each candidate may attend the scrutiny; the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered as required by rule 21. However, sub-rule (1) makes it explicit that no other person shall be allowed to attend the scrutiny of nomination. Thus what sub-rule (1) of rule 25 mandates is that at the time of scrutiny of nomination papers only the candidates and one proposer of each candidate authorized in writing by the candidate may attend the scrutiny of nominations. No other persons shall be allowed to attend the scrutiny of nominations. Sub-rule (2) which follows sub-rule (1) says that the returning officer shall then examine the nomination

papers and decide all objections which may be made to any nomination. He may reject any nomination on the grounds mentioned therein either on such objection or on his own motion. From a conjoint reading of sub-rules (1) and (2) of rule 25, it is clear that only a candidate and / or a proposer of a candidate may examine the nomination paper of a candidate and raise objection to a nomination which will then be decided by the returning officer. No other person can raise objection to the nomination of a candidate because he will not be allowed to attend the scrutiny of nomination. Then again, if we minutely observe the language used in sub-rule (1) of rule 72-A of the Election Rules, 2017, we find that validity of an election can be questioned by any person who is qualified to be elected or to vote at the election. Though the aforesaid provision does not restrict the objector or challenger to be a voter of the constituency of the candidate, what it says is that to question such election, he has to be qualified to be a voter and to be elected. As already pointed out above, respondent No.2 has not stated in his reply affidavit that he is a voter of the APMC and the constituency to which he belongs. He has also not stated whether he was a candidate or a proposer of a candidate in the election to the APMC. Therefore, petitioner had rightly questioned the *locus standi* of respondent No.2 which was not gone into by both respondent No.1 and respondent No.3 vitiating the decisions dated 13.01.2021 and 22.07.2021.

32. Thus, the upshot of the above discussion is that respondent No.1 had erred in rejecting the nomination of the petitioner and respondent No.3 further erred in upholding such rejection.

33. In view of our interpretation to rule 21(1) read with rule 20(3) of the Election Rules, 2017 in the factual context of the case, we are of the view that nomination of the petitioner ought to have been accepted and he being the only candidate and only voter of the constituency belonging to Hamals and Weighmen, he should have been declared as elected from the said constituency.

34. Consequently and in the light of the above, we pass the following orders:-

- a. Order dated 13.01.2021 passed by respondent No.1 and order dated 22.07.2021 passed by respondent No.3 are hereby set aside and quashed;
- b. Respondent No.1 is directed to accept the nomination of the petitioner in respect of the Constituency of Hamals and Weighmen of Man Taluka Agricultural Produce Market Committee, Dahiwadi, Taluka Man, District Satara for the term 2021-2022 to 2026-2027 and declare the petitioner to be the elected candidate.

35. Writ petition is accordingly allowed to the extent indicated above. However, there shall be no order as to costs.

(MADHAV J. JAMDAR, J.)

(UJJAL BHUYAN, J.)

Minal Parab