

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3282 OF 2021

IN

WRIT PETITION NO. 7677 OF 2021

WITH

INTERIM APPLICATION (ST) NO. 22129 OF 2021

(Not on Board)

AND

INTERIM APPLICATION (ST) NO. 22130 OF 2021

(Not on Board)

Tushar Sarva Sadharan Bahu-Uddeshiya Sahakari

Sanstha Maryadit & Ors

...Petitioners

Versus

State of Maharashtra through Department of

Agricultural and Marketing & Ors

...Respondents

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**Mr Girish S Godbole, with KS Patil, Pratik Rahade, i/b PN Joshi, for
the Petitioners.**

Mr PG Sawant, AGP, for the Respondent-State.

**Mr Atul Damle, Senior Advocate, i/b Sachin Gite, for the Applicant
in IAST/22129/2021.**

**Mr Satyajeet Anil Rajeshrike, for the Applicant in
IAST/22130/2021.**

**CORAM G.S. Patel &
Madhav J. Jamdar, JJ.**

DATED: 17th November 2021

PC:-

1. Heard.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the matter is taken up for hearing and final disposal.
3. Leave to amend in terms of draft tendered by Mr Godbole for the Petitioners, taken on record and marked “X1” for identification with today’s date.
4. We allow the Intervention Application (ST) No. 22129 of 2021 on behalf of the two individual applicants. Similarly, Intervention Application (ST) No. 22130 of 2021 for intervention is also allowed.
5. The main grievance of the Petitioners in this Writ Petition under Article 226 of the Constitution of India is the manner in which a provisional voters list has been published by the 5th Respondent, the Assistant Registrar, Cooperative Society, Deola and the manner in which this has been accepted by the Administrator of the 4th Respondent committee as also by the 3rd Respondent, the Deputy Registrar, Nashik. The amendment now has a formal challenge to the order of 29th October 2021 of the District Deputy Registrar, Nashik.
6. Very briefly stated, the illegality alleged against Respondents Nos. 3, 4 and 5 is that in the preparation of the provisional voters’ list, the Respondents have allowed the inclusion of only managing

committee members of Agricultural Credit Societies but have wholly excluded the names of all managing committee members of Multi Purpose Agricultural Cooperative Societies. Mr Godbole for the Petitioners clarifies this to mean that the exclusion is bad to the extent that it excludes agriculturists who are members of Multi Purpose Cooperative Societies. It is his submission that irrespective of what any particular society bye-law says or does not say, the amended statutory provisions and the extent rule do not permit the exclusion of agriculturists merely because they are members of the managing committee of a Multi Purpose Cooperative Society. The statute no longer permits, he submits, the inclusion in the provisional voters' list of members of the managing committees of *only* Agricultural Credit Society.

7. The factual conspectus need not detain us. On 1st September 2021, the State Cooperative Election Authority, Maharashtra State issued directions to conduct elections of the market committee. On 11th October 2021, it was found that the names of the Petitioners' societies, all of them Multi Purpose Societies (as are the applicants in Interim Application No. 22130 of 2021) were excluded. The Petitioners objected on 20th October 2021 but were orally informed that their names could not be included in the provisional voters' lists. Then there was the 29th October 2021 order of the District Deputy Registrar, Nashik on the Petitioners' objections.

8. In order to appreciate the statutory context, it is necessary to see the provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act 1963 ("APMC

Act”) before and after a 2020 amendment. Section 13(1)(a) as it stood before 2020 amendment reads thus:

13. Constitution of Market Committees.—(1) Subject to the provisions of sub-section (2), every Market Committee shall consist of the following Members, namely:

—

(a) fifteen agriculturist 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 the age on the date specified, from time to time, by the State Co-operative Election Authority, if required with the help of the Collector or the District Deputy Registrar, as the as may be in this behalf), as specified below:—

(i) fifteen (of which, two shall be women, one shall be a person belonging to Other Backward Classes, one shall be a person belonging to De-notified Tribes (*Vimukta Jatis*) or Nomadic Tribes and one shall be a person belonging to the Scheduled Castes or Scheduled Tribes) shall be elected by eligible voters (agriculturist who holds minimum 10 R land and who are not less than eighteen years of age on the date specified by the State Co-operative Election Authority and who has sold his or her notified agriculture produce in the concerned Market Committee at least three times in preceding five years before date of declaration of election) residing in the market area:

9. This was amended in 2020 by Maharashtra Act XI of 2020. The amended provision reads thus:

“13(1)(a): (1) Subject to the provisions of sub-section (2), every Market Committee shall consist 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 the age on the date specified, from time to time, by the State Co-operative Election Authority, if required with the help of 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 a 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 Cooperative Societies** (within the meaning of the Maharashtra Cooperative Societies Act, 1960 and the rules made thereunder), functioning in the market area;

(Emphasis added)

10. From the provisions emphasised above, it is clear that a market committee has to include agriculturists who satisfy certain criteria. There is the age requirement and then there are in sub-clause (1) other requirements, namely, that two are to be women, one is to be OBC etc, but the inclusion of the eleven members is now to be drawn from *both* Agricultural Credit Societies *and* Multi

Purpose Cooperative Societies. The word used is the conjunctive ‘and’, not a disjunctive ‘or’.

11. Mr Damle for the opposing interventionists may be correct in saying that allowing managing committee members of a Multi Purpose Society generally and without restriction will result in a complete effacing of the purpose of APMCs and the statutory intent of the APMC Act. But this argument is fully met once it is conceded by Mr Godbole that the requirement of being an agriculturist is a prerequisite. It is not his suggestion that non-agriculturist members of the managing committees of Multi Purpose Societies should be included in the provisional voters’ list at all.

12. Mr Godbole points out that the Maharashtra Agricultural Produce Market Committee (Election to Committee) (First Amendment) Rules 2020 at page 63 of the Petition contain an amended definition of a voter. This substituted the original definition in the APMC Rules and it reads thus:

“21(1):- “Voter” means,—

(i) for the purpose of the sub-clause (a) of sub-section (I) of section 13 of the Act, an agriculturist residing in the Market Area, not being less than 18 years of age on the date specified from time to time by the State Co-operative Election Authority and be the member of the Managing Committee of the Agricultural Credit Societies or Multipurpose Co-operative Societies (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the Rules made thereunder), functioning in the market

area; or the member of the Village Panchayat, functioning in the market area.”

13. This clearly contemplates that the qualification is that the person must be of a certain age and must be an agriculturist who is a member of either Agricultural Credit Society *or* a Multi Purpose Cooperative Society within the meaning of the Maharashtra Cooperative Societies Act and its Rules.

14. Rule 5 was also amended in regard to the preparation of the list of voters. Mr Damle submits that what has happened in this particular case is that a large number of Multi Purpose Societies had been registered at a very last minute. According to him, this does not meet the criteria specified in amended Rule 6 (1), which reads thus:

“Rule 6:—

(1) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:—

“(1) The District Election Officer shall call upon the District Deputy Registrar of Co-operative Societies to prepare and furnish to him a list of members of the Managing Committees of the Agricultural Credit Societies and the Multipurpose Co-operative Societies and call upon the Block Development officer to prepare and furnish to him a list of members of the *Village Panchayat’s* showing distinctly the members belonging to the Scheduled Caste and Scheduled Tribes functioning in the market area before 180 days

of expiry of term of the Market Committee or within such time as may be specified by him. The District Election Officer shall provide, a list of members of the Managing Committees of the Agricultural Credit Societies and the Multipurpose Co-operative Societies as received from the District Deputy Registrar and a list of members of the Village Panchayat's as received from the Block Development Officer, to the Secretary of the APMC for preparation of primary voters list for election to the concerned Constituency.”

15. He says that none of these newly introduced or constituted Multi Purposes Societies meet the 180 day prescription of pre-existence before the expiry of the term of office. But in the present scenario where COVID and the lockdown have turned everything upside down and inside out, this is met by the extensions of time and the curtailing time periods that have been periodically notified. This is an inevitable consequence and Exhibit B at pages 51 to 53 shows that these statutory limits have been changed. In any case, the 180-day period is not rigid. The rule says “180 days or within such time as may be specified”.

16. Once, therefore, a shorter period is specified, it is that period that will govern.

17. If we accept Mr Godbole's formulation, as indeed we are inclined to do, that agriculturist managing committee members of a Multi Purpose Society cannot be excluded merely because it is a Multi Purpose Society (that is to say it is not an Agricultural Credit

Society), then it seems to us clear that these agriculturist managing committee members of such Multi Purpose Societies cannot be excluded from the voters' list preparation. Mr Godbole is actually not making a concession when he says that this is to be restricted to agriculturist managing committee members of Multi Purpose Societies. That is the requirement of both the statute and the rules because the eligibility is determined minimally by three factors: 1) age; 2) being an agriculturist; and 3) being a member of either an Agricultural Credit Society or a Multi Purpose Cooperative Society. Once these three criteria are met, there is no question of a member being disqualified merely because he is a member of a Multi Purpose Society and not purely of any Agricultural Credit Society.

18. In this view of the matter, we allow the Writ Petition in terms of prayer clause (a) and amended prayer (b), which read thus:

“(a) This Hon’ble Court be pleased to issue an appropriate writ/order declaring the actions of excluding the names of the Petitioners Societies Managing Committee Members to be included in the provisional voters’ list by the Respondent No. 3 to 5, in the forthcoming election programme as declared on 01.09.2021 to be illegal and arbitrary and which actions may kindly be declared to be the failure of their statutory duties;

(b) Issue an appropriate writ/order for quashing and setting aside the order dated 29.10.2021 passed by the District Deputy Registrar, Nashik on objections raised by Petitioners.”

19. The Respondents are directed to prepare a final voters’ list including the names of agriculturists who are members of the

managing committees of registered Multi Purpose Cooperative Societies.

20. It is clarified that the use of the word “members” in this order does not and cannot mean members of the society but means members of the managing committee of the societies. That is the requirement of the statute.

21. The managing committee members who are to be included will submit their nomination papers and forms to the 3rd Respondents by 22nd November 2021. The election schedule may need to be altered. At the result of this order, the authorities will take necessary steps in that regard.

22. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)