

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11149 OF 2022
(Omesh Sahebrao Jape and others Vs. The State of Maharashtra,
Through it's Principal Secretary and others)
WITH
WRIT PETITION NO.11151 OF 2022
WITH
CIVIL APPLICATION NO.15391 OF 2022
IN WRIT PETITION NO.4761 OF 2022

Mr.S.S.Thombre, Mr.V.D.Hon, Sr.Counsel i/b Mr.A.V.Hon, Advocate for
the petitioners in respective petitions/applications.
Mr.D.R.Kale, GP for the respondent/State.
Mr.V.H.Dighe, Advocate for the respondent/Election Authority.

(CORAM : RAVINDRA V. GHUGE AND
SANJAY A. DESHMUKH, JJ.)

DATE : NOVEMBER 15, 2022

PER COURT :

1. On 04.11.2022, the Vacation Court had passed the following
order :-

*"1. This is a petition filed by members of A.P.M.C., Rahata who are
agriculturists. The case of the petitioners is that the elected members
of the village panchayat are, by virtue of their membership are
members of the market committee and they can contest the election
and they have right to vote. It is stated that in 12 Grampanchayats in
the area under A.P.M.C., Rahata the term of Grampanchayat is over and
there are no members as on today. The learned advocate for the*

petitioners submits that it is necessary before A.P.M.C. elections are held to complete the election of the Grampanchayat so that they can participate and vote in the election of A.P.M.C. It is submitted that unless election of these Grampanchayats are held, the election of A.P.M.C. society be directed to be stayed.

2. The election of A.P.M.C. is scheduled to be held in the month of December 2022. Though till now no notification is issued, however the list of voters is finalized. The petitioners are relying upon two judgments passed by this Court. First is, in group of petitions along with Writ Petition No. 11669 of 2021 dated 18.11.2021 wherein, this Court had directed the Taluka Co-operative Election Officer and the District Election Officer of A.P.M.C. to first conduct elections of Primary Agricultural Societies and thereafter of all the A.P.M.C's. Secondly, an order passed by this Court in Writ Petition No. 10593 of 2022 dated 19.10.2022 wherein, Co-operative Election Authority was expected to make endeavour to complete the elections of societies and thereafter to hold elections to Aurangabad A.P.M.C. as far as possible, within a period of around 4/5 months.

3. This Court prima facie, finds that the position as regards the society cannot be equated with that of the Grampanchayat since the nature of these bodies is totally different. The Grampanchayat is local self Government whereas, societies are creation of State enactment that is Co-operative Societies Act.

4. Considering that, the election programme may be declared any

time in the month of November, 2022, issue notice to respondents, returnable on 10.11.2022. Mr. Kale, learned in-charge Government Pleader waives notice for respondent Nos. 1, 2, 4 and 5.

5. Learned advocate for the petitioners to serve other respondents by way of private mode of service recognized by the Court and to file affidavit of service in addition to Court notice."

2. Respondent No.3, which is the State Co-operative Election Authority, Maharashtra State has filed an affidavit in reply dated 09.11.2022 through Shri Ganesh Gautam Puri, District Deputy Registrar, Co-operative Societies, Ahmednagar and District Election Officer, APMC, Ahmednagar, upon due authorization by the State Co-operative Election Authority. In the said affidavit in reply, the Election Authority has set out the following aspects :-

[a] There has been an excess rainfall in the Rahata Taluka covering the APMC, Rahata to the extent of 148.7 percent, over and above the average rainfall.

[b] Such heavy rainfall has resulted in severe loss of crops to the farmers.

[c] Such farmers are, therefore, held up in the agricultural activities considering the sudden act of nature.

[d] This Court has directed that the APMC, Rahata election should be completed on or before 31.11.2022 vide order dated 13.06.2022 in WP No.4761/2022.

[e] The Election Authority has taken necessary instructions for conducting elections of the APMC, Rahata.

[f] The Authority has issued an order dated 28.09.2022 for preparing the voters' list. The cut off date prescribed was 01.09.2022.

3. Rule 2(21) of the Maharashtra APMC (Election to Committee) Rules, 2017 defines a 'Voter' which means an agriculturist who would be the Member of the Managing Committee of the Agricultural Credit Co-operative Society functioning in the market area or the members of the Village Panchayat functioning in the market area on the dates specified by the Election Authority.

4. The final voters' list has been formalized on 21.10.2022. The filing of the nomination forms was to commence on 31.10.2022. However, the District Election Officer, by letter dated 28.10.2022, requested the State Election Authority to postpone the election programme due to heavy rainfall.

5. The District Election Officer and the Returning Officer have prepared a revised election programme from the stage of filing of nomination forms. Such programme has to be approved by the State Co-operative Election Authority, Maharashtra State. Rule 18 mandates prior approval before declaring the election programme. The authority approved the election programme by order dated 02.11.2022.

6. Considering the unsurmountable difficulties, the State Election Authority itself prays that the election be postponed by 2 months, so as to ensure that the results of the APMC elections are declared on 30.01.2023, akin to the election programme of the 12 other APMCs' of the Ahmednagar District, having been declared by the State Election Authority.

7. We find that all the learned Advocates, including the learned Senior Advocate on instructions alongwith the learned Government pleader and the State Election Authority, consent for the postponement of the elections to ensure that the results are declared on 30.01.2023, instead of 30.11.2022.

8. In view of the above and by consent of all the parties, that these petitions are partly allowed. The order of this Court dated 13.06.2022, referred to hereinabove [(Coram : Ravindra V. Ghuge and Anil L.Pansare, JJ), (Hon'ble Shri Justice Anil L.Pansare is not available at Aurangabad)] delivered in WP No.4761/2022 would stand modified and the date 30.11.2022 set out in paragraph No.4 of the order would read as 30.01.2023.

9. This order is passed purely on consent and in the peculiar facts and circumstances of this case. Consequentially, the civil application would not survive and stands disposed off.

(SANJAY A. DESHMUKH, J.)

(RAVINDRA V. GHUGE, J.)