

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.11192 OF 2022**

1. Dhairyashil S/o Vishnu Darekar,
Age:-32 years, Occu:- Agri. & Trader,
R/o. Kurund Galli, Kaij road,
Kasbha Vibhag, Dharur, Tq. Dharur,
Dist. Beed.
2. Hirabai Vishmbhar Gaikwad,
Age:-69 years, Occu:- Trader,
R/o. Jadhav Galli, Kasbha Vibhag
Dharur, Tq. Dharur,
Dist. Beed.
3. Santosh S/o Vinayak Nandure,
Age:-44 years, Occu:- Agri. & Trader,
R/o. Rui Dharur, Post Anjandoh,
Tq. Dharur, Dist. Beed.
4. Vishwambhar S/o Narayanrao Gaikwad,
Age:-69 years, Occu:- Agri. & Trader,
R/o. Jadhav Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.
5. Balaji S/o Udhavarao Gundewar,
Age:-52 years, Occu:- Agri. & Trader,
R/o. Wadgaonkar Galli,
Dharur, Tq. Dharur, Dist. Beed.
6. Sudhir S/o Sarjerao Solanke,
Age:-43 years, Occu:- Agri. & Trader,
R/o. At post Anjandoha,
Dharur, Tq. Dharur, Dist. Beed.
7. Anand S/o Limbaji Bhavathanakar,
Age:-50 years, Occu:- Agri. & Trader,
R/o. Main Road, Dharur, Tq. Dharur,
Dist. Beed.
8. Abhay S/o Bhaskar Chidrawar,
Age:-51 years, Occu:- Agri. & Trader,
R/o. Main road, Kranti Chowk,
Dharur, Tq. Dharur, Dist. Beed.

9. Attar Hajimaula Salem Saheb,
Age:-62 years, Occu:- Agri. & Trader,
R/o. Samata Colony, Kaij,
Tq. Kaij, Dist. Beed.
10. Vijay S/o Vilas Chidrawar,
Age:-51 years, Occu:- Agri. & Trader,
R/o. House No.2/903/1, Misal Galli
Kranti Chowk, Dharur, Tq. Dharur,
Dist. Beed.
11. Sangita Anand Bhavathankar,
Age:-45 years, Occu:- Trader,
R/o. Main road, Dharur, Tq. Dharur,
Dist. Beed.
12. Deepak S/o Vasanttrao Wadgaonkar,
Age:-50 years, Occu:- Agri. & Trader,
R/o. 2-181, Wadgaonkar Galli,
Nagareshwar Mandir, Dharur, Tq. Dharur,
Dist. Beed.
13. Vishvaparakash S/o Narayan Gaikwad,
Age:-51 years, Occu:- Agri. & Trader,
R/o. Jadhav Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.
14. Vishnu S/o Kashinath Komatwar,
Age:-67 years, Occu:- Agri. & Trader,
R/o. Komatwar Galli, Dharur, Tq. Dharur,
Dist. Beed.
15. Jayshri Vishvaparakash Gaikwad,
Age:-49 years, Occu:- Agri. & Trader,
R/o. Kurund Galli, Kaij road,
Kasbha Vibhag, Dharur, Tq. Dharur,
Dist. Beed.
16. Sakkilabi Atik Shekh,
Age:-44 years, Occu:- Trader,
R/o. Dudhay Galli, Dharur, Tq. Dharur,
Dist. Beed.
17. Trimbak S/o Vishwambhar Gaykwad,
Age:-39 years, Occu:- Agri. & Trader,
R/o. Jadhav Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.

18. Mahadev S/o Babasaheb Chalak,
Age:-36 years, Occu:- Trader,
R/o. Pratibha Nagar, Dharur, Tq. Dharur,
Dist. Beed.
19. Shashikala Vishnu Komatwar,
Age:-52 years, Occu:- Trader,
R/o. Komatwar Galli, Dharur, Tq. Dharur,
Dist. Beed.
20. Shaikh Ateeque Hameed,
Age:-51 years, Occu:- Agri. & Trader,
R/o. Dudhiya Galli, Dharur, Tq. Dharur,
Dist. Beed.
21. Ankush S/o Ganpatrao Jagtap,
Age:-70 years, Occu:- Agri. & Trader,
R/o. At post Awargaon, Dharur, Tq. Dharur,
Dist. Beed.
22. Mahadeo S/o Sadashiv Shingare,
Age:-37 years, Occu:- Agri. & Trader,
R/o. Shingare Galli, Kasbha Vibhag,
Dharur, Tq. Dharur, Dist. Beed.
23. Pradip S/o Bhaurao Garad,
Age:-49 years, Occu:- Agri. & Trader,
R/o. Gaikwad Galli, Dharur, Tq. Dharur,
Dist. Beed.
24. Ashok S/o Babasaheb Chalak,
Age:-39 years, Occu:- Agri. & Trader,
R/o. Pratibha Nagar, Dharur, Tq. Dharur,
Dist. Beed.
25. Suchita Pralhad Munde,
Age:-35 years, Occu:- Trader,
R/o. Kranti Chowk, Main road,
Dharur, Tq. Dharur, Dist. Beed.
26. Ashok S/o Dhondiba Gonne,
Age:-52 years, Occu:- Agri. & Trader,
R/o. Math Galli, Kasbha Vibhag,
Dharur, Tq. Dharur, Dist. Beed.

27. Ashok S/o Haribhau Shingare,
Age:-47 years, Occu:- Agri. & Trader,
R/o. Shingare Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.
28. Shivaji S/o Sukhdeo Gavhane,
Age:-49 years, Occu:- Agri. & Trader,
R/o. Math Galli, Kasbha Vibhag,
Dharur, Tq. Dharur, Dist. Beed.
29. Satish S/o Sudamrao Munde,
Age:-48 years, Occu:- Agri. & Trader,
R/o. Pahadi Dahifal, Post Pahari, Pargaon
Tq. Dharur, Dist. Beed.
30. Gajanan S/o Vasantryao Tambve,
Age:-33 years, Occu:- Agri. & Trader,
R/o. Jodhadha Galli, Dharur, Tq. Dharur,
Dist. Beed.
31. Vasant S/o Kashinath Tambve,
Age:-75 years, Occu:- Agri. & Trader,
R/o. Judad Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.
32. Kaushalya Vishnu Darekar,
Age:-50 years, Occu:- Trader,
R/o. Darekar Galli, Kasbha Vibhag
Dharur, Tq. Dharur, Dist. Beed.
33. Pralhad S/o Sunderrao Munde,
Age:-50 years, Occu:- Agri. & Trader,
R/o. Zare Galli, Kasbha Vibhag,
Dharur, Tq. Dharur, Dist. Beed.
34. Kaushalya Vantryao Shingare,
Age:-54 years, Occu:- Trader,
R/o. Shingare Galli, Kasbha Vibhag,
Dharur, Tq. Dharur, Dist. Beed.
35. Shaikh Sabiya Begam Shafek,
Age:-28 years, Occu:- Agri. & Trader,
R/o. Dudhiya Galli, Guljar Masjid,
Dharur, Tq. Dharur, Dist. Beed.

36. Punjab S/o Bharat Shingare,
Age:-36 years, Occu:- Agri. & Trader,
R/o. Kasbha Vibhag, Dharur, Tq. Dharur,
Dist. Beed.

Versus

1. The State of Maharashtra,
through its Secretary,
Cooperation and Marketing Department,
Mantralaya, Mumbai-32.
2. The Director of Marketing,
Central Building at Pune.
3. The State Co-operative Election Authority,
Maharashtra State, Central Building, Pune-1.
4. The District Election Officer (APMC)/
The District Deputy Registrar of
Co-operative, Societies, Beed.
5. The Assistant Registrar,
Co-operative Societies Kille Dharur,
Tq. Kille Dharur, Dist. Beed.
6. Administrator,
Agricultural Produce Market Committee,
Kille Dharur, Tq. Dharur, Dist. Beed.
7. Secretary,
Agricultural Produce Market Committee,
Kille Dharur, Tq. Dharur, Dist. Beed.
8. Baliram S/o Kundlik Mayakar,
Age: 60 years, Occu: Agri.
R/o at post Chardari,
Tq. Dharur, Dist. Beed.
9. Chintamn S/o Sanjay Solanke,
Age: 37 years, Occu: Agri. & Ex-Director,
R/o Hingni Budruk, post Hingni,
Budruk, Tq. Dharur, Dist. Beed.

Mr. A. B. Kale h/f Mr. B. V. Thombre, Advocate for the Petitioners.

Mr. K. B. Jadhavar, AGP for Respondents-State.

Mr. S. K. Kadam, Advocate for Respondent Nos.3 and 4.

Mr. K. J. Suryawanshi, Advocate for Respondent No.8.

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CORAM : SANDEEP V. MARNE, J.

DATED : 11th NOVEMBER, 2022.

JUDGMENT:-

1. Rule. Rule is made returnable forthwith. With the consent of parties, matter is taken up for final hearing at the admission stage.

2. By this petition, petitioners challenge orders dated 28.10.2022 issued by the Assistant Registrar, Co-operative Societies, Dharur, cancelling their licenses as traders in the Agricultural Produce Marketing Committee. They also challenge consequential order dated 31.10.2022 passed by the District Election Officer/District Deputy Registrar, Co-operative Societies deleting their names from the provisional voters list.

3. The election programme to the APMC, Dharur has been declared on 03.09.2022. The programme envisaged *inter alia* publication of provisional voters list on 12.10.2022, invitation of objections thereto between 12.10.2022 to 21.10.2022 and decision on the objections between 21.10.2022 to 31.10.2022.

4. In the light of the fact that the election programme is already declared, I straightaway put across to Mr. Kale, the learned counsel appearing for the petitioners as to how present petition can be entertained in the light of the law laid down by this Court in **Dattatray Genaba Lole and Ors. Vs. The Divisional Joint Registrar, Co-operative Society, Pune and Ors.**, Writ Petition No.5878/2021 decided on 26.11.2021. In that judgment, this Court has held that writ petition challenging any of the intermediate stages of election process cannot be entertained and the only remedy available to the aggrieved party is to file an Election Petition under the provisions of Section 91 of the Maharashtra Co-operative Societies Act, 1960 read with Rule 78 of the Election Rules, 2014.

5. Confronted with this position, Mr. Kale, has attempted to canvas before me that the illegalities committed by the authorities while cancellation of licenses of the petitioners and deletion of their names from the provisional voters list are so glaring that this Court would be justified in entertaining the present petition rather than relegating them to alternate remedy of filing Election Petitions. The contentions of Mr. Kale are being dealt with only for the limited purpose of examining whether any gross case is made out for entertaining the present petition contrary to the law laid down by this Court in the case of **Dattatray Genaba Lole (supra)**.

6. The petitioners are the license holders of APMC, Dharur and their licenses have been renewed from time to time. The respondent no.8 sought cancellation of licenses of the petitioners by making representation dated 26.09.2022 *inter alia* on the ground that the licenses were procured solely for the purpose of participation in the election process and that the petitioners were not doing any business/transaction in the APMC in any manner. While the complaint of respondent no.8 was pending, the election programme was declared on 03.09.2022 and a provisional voters list in pursuance thereof was published on 12.10.2022. The provisional voters list included the names of the petitioners. Therefore, respondent no.8 filed his objection to the provisional voters list on 28.10.2022 and sought deletion of names of the petitioners therefrom. In the meantime, show cause notices were issued by the Assistant Registrar of Co-operative Societies, Dharur to the petitioners calling them upon to show cause as to why their licenses shall not be cancelled. After hearing the petitioners, orders were passed by the Assistant Registrar of Co-operative Societies on 28.10.2022 cancelling the licenses of the petitioners on the ground that they had not conducted any business/transaction within the jurisdiction of APMC, Dharur. Consequent upon cancellation of their licenses, the District Election Officer (APMC) has proceeded to delete the names of the petitioners

from the provisional voters list by order dated 31.10.2022.

7. Appearing for the petitioners Mr. Kale, learned counsel would refer to the provisions of Section 13(1)(b) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short 'the Act, 1963') which reads thus:

"13. Constitution of Market Committees.

(1) (b). Two shall be elected by traders and commission agents, holding licenses for not less than two years to operate as such in the market area."

8. He would submit that as on the date of declaration of the election programme on 03.09.2022, the petitioners undisputedly possessed licenses for a period not less than two years and therefore, they were eligible to be included in the provisional voters list. He would submit that subsequent cancellation of their licenses on 28.10.2022 after declaration of the election programme was inconsequential and would not result in deletion of their names from the provisional voters list. Mr. Kale would further submit that the language of Section 13(1)(b) of the Act, 1963 is such that the same does not refer to the word 'trading' and all that is required is possession of licenses. Referring to Rule 6(4) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 Mr. Kale

would submit that the rule has not been amended to bring the same on par the provisions of Section 13(1)(b) of the Act, 1963. Mr. Kale would further submit that the ambit of power under Rule 7 of the Maharashtra Agricultural Produce Market Committee (Election of Committee) Rules, 2017 is restricted only to an omission or error in respect of name or address or other particulars of a voters in the list and same does not include the power to delete the name of a person from voters list.

9. It is on these submissions that Mr. Kale has strenuously urged before me that the present petition be entertained on account of gross errors committed by the authorities by deleting the names of the petitioners from the provisional voters list. In support of his contention Mr. Kale would rely on the judgment of this Court in **Lakhansingh S. Chandel Vs. Vinod M. Atram and Others** reported in 2012 (2) ALL MR 221. Mr. Kale, however, fairly admits that in so far as the order dated 28.10.2022 cancelling the licenses of the petitioners are concerned, the petitioners have an alternate remedy of filing an Appeal under the provisions of Section 9 of the Act. However, because the order cancelling the licenses of the petitioners has resulted in further damage to the petitioners in the form of deletion of their names from the voters list, they are constrained to file the present petition challenging both the orders dated 28.10.2022 and 31.10.2022.

10. Per contra, Mr. Suryawanshi, learned counsel appearing for respondent no.8, Mr. Kadam, learned counsel appearing for respondent nos.3 and 4 and Mr. Jadhavar, learned AGP appearing for respondents-State strenuously oppose the petition.

11. As observed hereinabove, I am examining the contentions raised by Mr. Kale only for the purpose of determining whether any gross case is made out by the petitioners for interference by this Court in the election process in exercise of jurisdiction under Article 226/227 of the Constitution of India. The first contention of Mr. Kale is that they held valid licenses on the date of declaration of election and that subsequent cancellation of their licenses on 28.10.2022 cannot result in deletion of their names from the provisional voters list. I find this objection to be too technical in nature. The very eligibility of a person to be included in the voters list is holding of a valid license for a period not less than two years. If the contention of the petitioners is accepted, then the same would result in incongruous situation where a person whose license has been cancelled would be permitted to vote in an election. This is not the object behind Section 13(1)(b) of the Act. The licenses of the petitioners have been cancelled on account of the fact that they have not done any business/transaction in the jurisdiction of APMC, Dharur. This order could have been passed before

the declaration of the election program as well. In the present case the order of cancellation of licenses has been passed after declaration of result of the election, but during the time frame when the objections to the provisional voters list were yet to be decided. In my view, since the licenses of the petitioners have been cancelled before 31.10.2022 which was the last date for decision of objections to the provisional voters list, the Election Officer was well within the jurisdiction to take notice of factum of cancellation of licenses of the petitioners and based thereon by delete their names from the provisional voters list.

12. In fact, it must be borne in mind that the Director of Marketing had issued circular dated 15.12.2021 to all the District Deputy Registrars in the State to undertake the exercise of cancellation of the licenses of persons who were not trading and who had procured the licenses only with the objective of participation in the election process. Referring to the circular dated 15.12.2021, this Court has passed order dated 30.06.2022 directing the authorities to exercise powers under Section 8 of the Act read with Rule 6(4) of the Rules of 1967, for cancellation of licenses of such kind of persons. It appears that, before cancellation of licenses of the petitioners, licenses of similarly placed 382 persons had been cancelled by the Assistant Registrar. Though there has been some

delay in taking action in respect of the petitioners, their licenses have been cancelled by order dated 28.10.2022. As fairly submitted by Mr. Kale, the petitioners would have alternate remedy of challenging the orders dated 28.10.2022 under Section 9 of the Act, 1963.

13. The contention of Mr. Kale that Section 13(1)(b) of the Act, 1963 is silent with regard to the word 'trading' is stated only to be rejected. Section 13 of the Act provides for constitution of market committee and Clause (b) of sub-Section 1 provides that two members for the Committee shall be elected by traders and commission agents holding licenses for not less than two years to operate as such in the market area. As against this, Rule 6 of the Rules of 1967 deals with the issue of licenses to be issued to the traders, brokers and commission agents. Clause 4 of Rule 6 deals with the power to refuse to grant or renew a license to any person if he has not traded in the market area for more than a week without any valid reasons. In my view, both are independent and distinct provisions and therefore, absence of word 'trading' in Section 13(1)(b) of the Act, 1963 is clearly inconsequential.

14. After considering the submissions of the Mr. Kale, I am of the view that this is not a case where any gross error or illegality is committed while deleting the names of the petitioners from

the provisional voters list. Therefore, this is not a fit case for making an exception by entertaining the present petition in view of the law laid down by this Court in a case of **Dattatray Genaba Lole** (supra). I therefore, hold that the present petition is not maintainable.

15. The present petition is accordingly dismissed. The petitioners shall, however, have an alternate remedy of filing Appeal under Section 9 of the Act of 1963 to challenge the orders dated 28.10.2022. They would also have the liberty of filing Election Petition challenging the result of election, if available under the law.

16. Rule discharged.

(SANDEEP V. MARNE)
JUDGE