

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12477 OF 2022

Sow. Laxmibai Vishwanath Gaware,
Age 57 Years, Occ. Agri.
R/o. Pimprala, Tq. Vasmata,
Dist. Hingoli.

.. PETITIONER

VERSUS

- 1] The State Co-operative Election Authority,
MS Pune through its Secretary
- 2] District Election Officer APMC and
District Deputy Registrar Co-operative
Societies, Hingoli, Dist. Hingoli.
- 3] Returning Officer,
The Agricultural Produce Market
Committee, Vasmata, Dist. Hingoli.
- 4] The State of Maharashtra
Through Secretary,
Co-operation Marketing &
Textile Dept. Mantralaya,
Mumbai
[Amendment as per Hon'ble Court's
Order dated. 08.12.2022]

.. RESPONDENTS

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Mr.K.J.Suryawanshi, Advocate for the petitioner.
Mr.V.H.Dighe, Advocate for the respondent nos.1 to 3
Mr.D.R.Kale, Government Pleader of the respondent-State

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CORAM : ARUN R. PEDNEKER, J.

Reserved on : 09.12.2022
Pronounced on : 12.12.2022

JUDGMENT :

1] The petition was mentioned at 2.30 p.m. on 08.12.2022 and notices were issued by this Court to the respondents. The petition is taken up for hearing on 09.12.2022 at 10.30 a.m.

2] The petitioner is challenging the order dated 06.12.2022 passed by the respondent no.2 District Election Officer (APMC) and District Deputy Registrar, Co-operative Societies Hingoli in Appeal No.2/2022 and the order dated 25.11.2022 passed by the respondent no. 3 - Returning Officer, Agricultural Produce Market Committee [for short' AMPC'], Vasmat, rejecting the nomination form of the petitioner to contest the election of APMC, Vasmat from VJNT Category.

Brief facts leading to filing of the present Writ Petition are as under:

3 [a] The respondent no.3 published the election programme for APMC, Vasmat on 17.11.2022. As per the said election programme, the nominations were to be filed

on 17th November, 2022 to 23rd November, 2022 up to 3.00 p.m.

b] The State of Maharashtra issued an Ordinance on 22.11.2022 to amend the provisions of Section 13 (1) of the Maharashtra Agricultural Produce Marketing (Development and Regulations) Act, 1963 [for short 'the Act of 1963'], giving right to contest the elections of APMC to all agriculturists, residing in the area of operation of the APMC although the agriculturist may not be voters in the voter list of the concerned APMC. As per the said Ordinance, the amendment in the Act of 1963 is given effect from the date of Ordinance dated 22.11.2022.

c] The petitioner submits that in view of the said amendment, the petitioner being an agriculturist and residing at local area of operation of Vasmat APMC, is eligible and qualified to contest the election of the APMC, Vasmat through the name of the petitioner is not included in the final voters list of APMC, Vasmat.

d] It is the contention of the petitioner that on 23.11.2022 the petitioner submitted her nomination form for the election of APMC, Vasmat, from the reserved VJNT category. However, on 25.11.2022, the respondent no.3 rejected the nomination form of the petitioner on the ground that the name of the petitioner is not included in the final voter list as required under Rule 9 (1) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 [for short 'Election Rules of 2017'].

e] Thereafter on 28.11.2022, the petitioner filed Appeal bearing No. 2/2022 before the respondent no.2 – District Election Officer APMC and District Deputy Registrar Co-operative Societies, Hingoli under Rule 27 (1) of the Election Rules of 2017, challenging the order dated 25.11.2022 passed by the respondent no.3 - Returning Officer contending that as per the amendment in Section 13 (1) of the Act of 1963, by Ordinance dated 22.11.2022, the petitioner is eligible and qualified to contest the election of

APMC, Vasmat, though her name is not included in the final voters list.

f] The petitioner contends that the respondent no. 2 has dismissed the appeal filed by the petitioner, by order dated 06.12.2022, without considering the effect of amendment in Section 13 (1) of the Act of 1963 observing that though the Act is amended but the Election Rules of 2017 are not amended suitably. Against the said order, the present Writ Petition is filed by the petitioner.

4] The learned counsel for the petitioner submits that both the authorities below i.e. the Returning Officer as well as the Appellate Authority has non-suited the petitioner on the ground that her name is not reflected in the final voters list. The learned counsel further submits that in view of the amendment in Section 13 (a) of the Act of 1963, the requirement of name being in the final voters list to be eligible to contest elections of APMC is done away with, however, the corresponding change is not made to Rule 9 of the Election Rules of 2017. Rule 9 provides for qualification

of the candidates and one of the qualifications is that the candidate's name has to be in the final voters list. The petitioner submits that Rule 9 of Election Rules, 2017 being subsumed into Section 13 (a) of the Act of 1963, the additional qualification prescribed in Rule 9 should be done away with.

5] Having considered the rival submissions and considering the relevant provisions which are quoted as under :

A] Un-amended section 13 (1) (a) of the Act of 1963 reads as under :

13. Constitution of Market Committees.

(1) Subject to the provisions of sub-section (2), every Market Committee consists 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 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 Co-operative Societies (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder), [which disburse the crop loan to its members,] functioning in the market area :

Provided that, where the Market Committee is situated in Tribal areas, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid; and

(ii) four (of which, one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a person belonging to Economically Weaker Section), shall be elected by members of village panchayats functioning in the market area;]

[(ii) -----;]

B] Amendment in Section 13 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 by Maharashtra Ordinance No. XI of 2022, reads as under :

1. *Short, title and commencement.*

(1) This Ordinance may be called the Maharashtra Agricultural Produce Marketing (Development and Regulation) (Amendment) Ordinance, 2022.

(2) It shall come into force at once.

2. In section 13 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, in sub-section (1), in clause (a), the words “whose names appear in the voter’s list for the concerned constituency and” shall be deleted.

C] The statement and object of Section 13 of the Act of 1963, is as under :

STATEMENT

Section 13 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (Mah. XX of 1964) provides for constitution of Agricultural Produce Market Committee consisting of representations from agriculturists, traders, commission agents, hamals and weighmen.

2. At present the Agricultural Produce Market Committee consists of agriculturists elected from the agriculturist residing in market area whose names appear in the voters list for the concerned constituency and satisfy other criteria specified in clause (a) of sub-section (1)

of selection 13 of the said Act. The Government considers it expedient to provide that any agriculturist should have right to contest the election of Agricultural Produce Market Committee irrespective of whether his name appears in the voters list or not. Therefore, to enable all the agriculturists residing in the Market area, fulfilling the other criteria specified therein, to contest the election of Agricultural Produce Market Committee, clause (a) of sub-section (1) of section 13 of the said Act is proposed to be amended suitably.

3. As both Houses of the State Legislature are not in session and the Governor of Maharashtra is satisfied that circumstances exists which render it necessary for him to take immediate action further to amend the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, for the purposes aforesaid, this Ordinance is promulgated.

D] Rule 9 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 is as under:

9. Persons qualified to be elected

(1) Every person who is an agriculturist and who is residing in the market area and is not less than twenty-one years of age on the date specified 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, unless disqualified under the Act

or rules and whose name appears in the final voters list shall be qualified to be elected by the agriculturists constituency.

(2) Every person whose name in the voters list of traders constituency under these rules, be qualified to be elected by the traders constituency.

(3) Every person whose name is included in the voters' list prepared under rules 6 and 7 shall, unless disqualified under these rules, be qualified to be elected to the Market Committee.

(4) Every person whose name is in the voters' list of the hamals and weighmens constituency shall, unless disqualified under these rules, be qualified to be elected from that constituency.

6] It may be noticed that the election programme had started on 17th November, 2022 whereby the nominations were to be filed between 17.11.2022 to 23.11.2022. The amendment to Section 13 of the Act of 1963 by Maharashtra Ordinance No. XI of 2022 was brought into effect on 22nd November, 2022 with immediate effect. However, I am of the view that the qualification prescribed for filing nomination of the candidates has to be as prescribed on the date when the election programme is

declared to commence and since in the instant case, the election process had commenced on 17.11.2022, the qualification to file nomination has to be as prescribed under 13 (a) of the Un-amended Act.

7] It is the contention of the petitioner that she should be qualified as on the date of filing of the nomination. Although a candidate can be qualified on the date of filing of the nomination but the qualification prescribed for contesting the election cannot be altered after the election process has started. For instance, if the amendment had provided for an additional qualification in terms of age or the further requirements for nomination of candidates, the same could not have been made applicable to the ongoing election process. Thus, although, it is possible for the candidate to be qualified on the last date of filing of the nomination, but required qualification is not to be altered once the election process has started. In the instant case, since the election process had commenced under the un-amended provisions of Section 13 (a) of the

Act of 1963, the qualifications prescribed under the amended provisions of the Act of 1963 (as amended by Maharashtra Ordinance No. XI of 2022) would not be applicable to the present elections of APMC Vasmat. The amended provision of Section 13 (1) (a) would apply to the elections programme commencing after 22nd November, 2022.

8] In view of the same, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

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