

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4731 OF 2021

1. Subash S/o Wamanrao Patil,
Aged about 71 years, Occupation : Agriculturist,
R/o At Post Rantham, Tq. Malkapur,
Dist. Buldhana
2. Sujeet S/o Bhaurao Bhosale,
aged about 44 years, Occupation agriculturist,
R/o At Tighara Post Vivara
Tq. Malkapur, District Buldhana
3. Sunilkumar s/o Bhikulal Agrawal,
aged about 50 years, Occupation : trader,
R/o Malkapur, District Buldhana
4. Akram Khan Haidar Khan,
Aged 36 yrs, Occupation Hamal,
R/o Madartekadi, Parpet.
Tq. Malkapur, District Buldhana

... Petitioners

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032
2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Malkapur, Tah and District Buldhana
(Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Khamgaon, having office at Malkapur,
District Buldhana (Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Malkapur through its Secretary, Tahsil and
Malkapur, District : Buldhana (Maharashtra State)

... Respondents.

Shri A. M. Ghare, Advocate for petitioners.
Smt H. N. Jaipurkar, Assistant Government Pleader for respondent Nos.1,3 and 4.
Shri D. I. Jain, Advocate for respondent No.5.
Shri A. S. Mardikar, Senior Advocate with Shri Mohit Bobde, Advocate for
Intervenor.

with
WRIT PETITION NO.4733 OF 2021

1. Prakash S/o Bhagwantrao Tikar,
Aged 58 yrs, Occ. Agriculturist,
R/o At and Post Bori Adgaon, Khamgaon,
Tahsil Khamgaon, District Buldhana
2. Ashok S/o Sukhdev Hatkar,
Aged 55 yrs, Occ. Agriculturist,
R/o Hiwarkhed, Khamgaon,
Tahsil Khamgaon, District Buldhana
3. Vishnu S/o Parmeshwar Kalsundar,
Aged 34 yrs, Occ. Agriculturist,
R/o At and Post Ghatpuri,
Tahsil Khamgaon, District Buldhana
4. Sanjay Shitaldas Bhagdewani,
Aged 33 yrs, Occ. Trader,
R/o Zulelal nagar, Khamgaon,
Tahsil Khamgaon, District Buldhana
5. Sambhaji S/o Vitthal Tastode,
Aged 46 yrs, Occ. Hamal,
R/o Chandmari Fail, Khamgaon,
Tahsil Khamgaon, District Buldhana

... **Petitioners**

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.
2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)

3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Buldhana, Tah and District Buldhana
(Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Khamgaon, having office at Khamgaon,
District Buldhana (Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Khamgaon through its Secretary, Tahsil and
Khamgaon District : Buldhana (Maharashtra State) ... Respondents.

Shri A. M. Ghare, Advocate for petitioners.
Smt K. R. Deshpande, Assistant Government Pleader for respondent Nos.1,3 and 4.
Shri S. S. Ghate, Advocate for respondent No.2.
Shri U. J. Deshpande, Advocate for Intervenor.

WITH
WRIT PETITION NO.4923 OF 2021

1. Manohar s/o Shankarrao Khadse,
Aged about 60 years, Occupation : Agriculturist,
R/o At Post Kharda, Tah. Deori,
Dist. Wardha.
2. Devanand s/o Wamanrao Bhagat,
aged about 40 years, Occupation agriculturist,
R/o At Kolona Post Goul,
Ta. Deoli, District Wardha.
3. Sushil Gayaprasad Tiwari,
aged about 68 years, Occupation : Hamal,
R/o At Post Pulgaon (Gandhi Chowk)
Ta. Deoli, District Wardha.
4. Ashok Narayanrao Parale,
Aged 65 years, Occupation Trader,
R/o Ward No.7, Near Bus Stop, Pulgaon,
Tah. Deoli, District Wardha.

... Petitioners

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.

2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Wardha, Tah and District Wardha
(Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Deoli/Karanja, District Wardha.
(Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Pulgaon, through its Secretary, Tahsil
Deoli District : Wardha (Maharashtra State)

... **Respondents.**

Shri A. M. Ghare, Advocate for petitioners.

Ms. N. P. Mehta, Assistant Government Pleader for respondent Nos.1,3 and 4.

Shri N.R.Tekade, Advocate for respondent No.5.

WITH
WRIT PETITION NO.4924 OF 2021

1. Sandip S/o Manikrao Raut,
Aged about 50 years, Occupation : Agriculturist,
R/o Pujai, Post Bhankheda,
Ta. and Dist. Wardha.
2. Sunil s/o Hemraj Pant,
aged about 48 years, Occupation agriculturist,
R/o Sewagram,
Ta. Wardha, District Wardha.
3. Shriram Ajabrao Ingale,
aged about 62 years, Occupation : Hamal,
R/o Tigaon, Ta. and District Wardha.
4. Pawan s/o Ramgopalji Singhaniya,
Aged about 61 years, Occupation trader,
R/o Shivr Nagar, District Wardha.

... **Petitioners**

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.

2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Wardha, Tah and District Wardha.
(Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Wardha, having office at Wardha District-Wardha,
(Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Wardha through its Secretary, Tahsil Wardha,
District : Wardha (Maharashtra State)

... Respondents.

Shri A. M. Ghare, Advocate for petitioners.

Ms. N. P. Mehta, Assistant Government Pleader for respondent Nos.1,3 and 4.

Shri N.R.Tekade, Advocate for respondent No.5.

WITH
WRIT PETITION NO.4925 OF 2021

1. Gunwant s/o Laxmanrao Kadu,
Aged about 54 years, Occupation : Agriculturist,
R/o at Chandarmal, Post Junona, Tah. Selu,
Dist. Wardha.
2. Nikhil s/o Ananta Kawalkar,
aged about 27 years, Occupation agriculturist,
R/o at Khadka, Post Kopara, Tah.Selu.
District Wardha.
3. Babanrao s/o Ramji Hinganekar,
aged about 69 years, Occupation : Trader,
R/o Ward No.13, Bhoipura, Post Sindi Railway Selu,
Sindi Railway, Dist. Wardha.
4. Gopal s/o Laxmanrao Koparkar,
Aged about 54 years, Occupation Hamal,
R/o 57, Ward No.6, At Post Sindhi Railway,
Tah. Selu, Dist. Wardha.

... Petitioners

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.
2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Wardha, Tah and District Wardha.
(Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Selu, having office at Selu District-Wardha,
(Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Sindi through its Secretary, Tahsil Selu,
District : Wardha (Maharashtra State)

... Respondents.

Shri A. M. Ghare, Advocate for petitioners.

Ms. N. P. Mehta, Assistant Government Pleader for respondent Nos.1,3 and 4.

Shri N.R.Tekade, Advocate for respondent No.5.

WITH
WRIT PETITION NO.4866 OF 2021

1. Ramesh Tulashiram Narnavare,
Aged 62 years, Occ.: Agriculturist,
R/o Dhanora, Tah. Hinganghat, Dist. Wardha,
Director of Vividh Karyakari Seva Society Dhanora.
2. Mrs. Nitu Sunil Dambhare,
Aged 33 years, Occ. Agriculturist,
R/o Dhochi, Tah. Hinganghat, Dist. Wardha.
Member of Grampanchayat, Dhochi.
3. Shubham Deorao Tadas,
Aged 27 years, Occ. Commission Agent.
R/o Nandgaon (Bo), Tah. Hinganghat, Dist. Wardha.
Commission Agent License Holder of APMC,
Hinganghat.
4. Anand Trilochand Kankariya,
Aged 46 years, Occ. Business.
R/o Hinganghat, Tah. Hinganghat, Dist. Wardha.
Trader License Holder of APMC, Hinganghat.

5. Tajas Devrao Tadas,
Aged 30 years, Occ. Mapadi.
R/o Nandgaon, Tah. Hinganghat, Dist. Wardha.
Mapadi License Holder of APMC, Hinganghat. **..Petitioners**

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.
2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Hinganghat, Tah. Hinganghat
District Wardha. (Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Hinganghat, having office at Hinganghat, Tah.Hinganghat,
District-Wardha, (Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Hinganghat through its Secretary, Tahsil Hinganghat,
District : Wardha (Maharashtra State) **... Respondents.**

Shri Anjan De, Advocate for petitioners.
Ms. K.R.Deshpande, Assistant Government Pleader for respondent Nos.1,3 and 4.
Shri S.S.Ghate, Advocate for respondent No.2.
Shri K.R.Lule, Advocate for respondent No.5.

WITH
WRIT PETITION NO.4867 OF 2021

1. Naresh Ganpatrao Mandavkar
Aged 38 years, Occu.: Agriculturist,
R/o Ajada, Tah. Samudrapur, Dist. Wardha,
Director of Vividh Karyakari Seva Society Ajada.
2. Mrs. Indira Gajanan Avachat,
Aged 45 years, Occ. Agriculturist,
R/o Kandhali, Tah. Samudrapur, Dist. Wardha.
Member of Grampanchayat, Kandhali.

3. Gajanan Bapurao Nighot
Aged 45 years, Occ. Commission Agent.
R/o Ralegaon, Tah Samudrapur, District Wardha.
Commission Agent License Holder of APMC,
Samudrapur.
4. Shalik Jagannath Vaidya,
Aged 55 years, Occ. Business.
R/o Lasanpuer, Tah. Samudrapur, Dist. Wardha.
Trader License Holder of APMC, Samudrapur.
5. Hemant Ramdasji Pahune,
Aged 35 years, Occ. Mapadi.
R/o Mandagaon, Tah. Samudrapur, Dist. Wardha.
Hamal-Mapadi License Holder of APMC, Samudrapur. ..Petitioners

-versus-

1. State of Maharashtra,
Through its Secretary, Department of
Co-operation, Marketing and Textile,
Mantralaya, Mumbai 400 032.
2. The State Co-operative Election Authority,
Maharashtra State, having Office at
Old Central Building, Ground Floor,
Pune 411003 (Maharashtra State)
3. District Co-operative Returning Officer
and District Deputy Registrar, Co-operative
Societies, Samudrapur, Tah. Samudrapur
District Wardha. (Maharashtra State)
4. Assistant Registrar Co-operative Societies,
Samudrapur, having office at Samudrapur,
District-Wardha, (Maharashtra State)
5. Agricultural Produce Market Committee (APMC),
Samudrapur through its Secretary, Tahsil Samudrapur and
District : Wardha (Maharashtra State) ... Respondents.

Shri Anjan De, Advocate for petitioners.
Ms. K.R.Deshpande, Assistant Government Pleader for respondent Nos.1,3 and 4.
Shri S.S.Ghate, Advocate for respondent No.2.
Shri K.R.Lule, Advocate for respondent no.5.

**CORAM : A.S.CHANDURKAR AND SMT. M. S. JAWALKAR, JJ.
THE ARGUMENTS WERE HEARD ON 28.01.2022
THE JUDGMENT IS PRONOUNCED ON : 04.02.2022**

JUDGMENT (Per A.S.CHANDURKAR, J.)

Since identical challenges are raised in these writ petitions, they are being decided together by this common judgment.

2. **RULE.** Rule made returnable forthwith and heard learned counsel for the parties.

3. Writ Petition No.4731/2021 has been filed by four petitioners. The petition no.1 is an elected Executive Committee member of a Co-operative Society that functions within the jurisdiction of Agricultural Produce Market Committee, Malkapur. The petitioner no.2 is an elected member of Gram Panchayat, Tighara within the jurisdiction of the Market Committee. The petitioner nos. 3 and 4 claim to hold traders license and hamal's license with the Market Committee. The petitioners claim that they have a right to vote and contest the elections of the Executive Committee of the concerned Market Committee.

In Writ Petition No.4733/2021 the petitioners no. 1 and 2 are elected Executive Committee members of Co-operative Societies within the jurisdiction of Agricultural Produce Market Committee, Khamgaon. The petitioner no.3 is a member of Gram Panchayat, Ghatpuri within the jurisdiction of the Market Committee. The petitioner nos. 4 and 5 claim to hold traders license and hamal's license with the Market Committee.

In Writ Petition No.4923/2021 the petitioner no.1 is an elected Executive Committee member of a Co-operative Society within the jurisdiction of Agricultural Produce Market Committee, Deoli. The petitioner no.2 is an elected member of Gram Panchayat, Kolona Chore within the jurisdiction of the Market Committee. The petitioner nos. 3 and 4 claim to hold traders license and hamal's license with the Market Committee.

In Writ Petition No.4924/2021 the petitioner no.1 is an elected Executive Committee member of a Co-operative Society within the jurisdiction of Agricultural Produce Market Committee, Wardha and the petitioner no.2 is an elected member of Gram Panchayat, Sewagram within the jurisdiction of the Market Committee. The petitioner nos. 3 and 4 claim to hold traders license and hamal's license with the Market Committee.

In Writ Petition No.4925/2021 the petitioner no. 1 is an elected Executive Committee member of a Co-operative Society within the jurisdiction of Agricultural Produce Market Committee, Sindi. The petitioner no.2 is an elected member of Gram Panchayat, Khadka within the jurisdiction of the Market Committee and the petitioner nos.3 and 4 claim to hold traders license and hamal's license with the Market Committee.

In Writ Petition No.4866/2021 the petitioner no. 1 is an elected Executive Committee member of a Co-operative Society within the jurisdiction of the Agricultural Produce Market Committee, Hinganghat, the petitioner no.2 is an elected member of Gram Panchayat, Dhochi, within the jurisdiction of the Market Committee, the petitioner no.3 holds a commission agent license and the petitioner

nos.4 and 5 claim to hold traders license and mapadi license respectively with the Market Committee.

In Writ Petition No.4867/2021 the petitioner no.1 is an elected Executive Member of a Co-operative Society within the jurisdiction of the Agricultural Produce Market Committee, Samudrapur. The petitioner no.2 is a member of Gram Panchayat, Kandhali within the jurisdiction of the Market Committee. The petitioner no.3 holds a commission agent license, the petitioner no.4 holds a trader's license and the petitioner no.5 holds a hamal-mapadi license with the Market Committee.

4. By these writ petitions the petitioners pray that the State Co-operative Election Authority (Election Authority, for short) as well as other officers under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, 'the MAPM Act') be directed to forthwith complete the elections to the Executive Committee of the respective Market Committees pursuant to the election programme as already declared. While seeking this relief the petitioners have also prayed that it be declared that the judgment in Writ Petition No.11669/2021 (*Vishwanath Baburao Kadam vs. State of Maharashtra and others*) decided on 18.11.2021 at the Aurangabad Bench be declared as not being applicable to the respective Market Committees who have been arrayed as respondents herein. By amending the writ petitions a challenge is also raised to the order dated 22.11.2021 that has been issued by the Election Authority cancelling the process of finalization of the provisional voters' list and further directing that the elections to the Executive Committee of the respective Market

Committees be held after elections of the Primary Co-operative Societies within the jurisdiction of the respective Market Committees are held.

5. Before considering the challenges as raised, it would be necessary to refer to earlier adjudication by this Court that has been referred to by the learned counsel for the parties in support of their respective contentions.

Writ Petition No.2802/2021 (*Suresh Maroti Gorale and ors. vs. State of Maharashtra and ors.*) was filed before the Nagpur Bench. The petitioners therein were members of Primary Agricultural Credit Societies within the jurisdiction of Agricultural Produce Market Committee, Katol. It was their grievance that without holding elections of the Managing Committee of such Primary Agricultural Credit Societies, the election programme of Agricultural Produce Market Committee, Katol had been declared. It was prayed that the elections to the Executive Committee of the Market Committee be directed to be held after elections of the Primary Agricultural Credit Societies were held. During the course of hearing a preliminary objection was raised to the maintainability of the said writ petition on the ground that the petitioners had no locus to raise grievance with regard to the elections of the Market Committee and secondly, the election process of the elections to the Market Committee had commenced and the last date of submission of nomination form was 01.09.2021. While hearing the writ petition, the Division Bench upheld both the said objections and the writ petition was held to be not maintainable as the petitioners had no *locus standi* to seek such prayers and as the election process had already commenced, no interference at that stage was called for. By observing that the Court did not want to go into the merits of the matter the writ petition

came to be dismissed.

Writ Petition No.11669/2021 (*Vishwanath Baburao Kadam vs. State of Maharashtra and others*) and other writ petitions were filed before the Aurangabad Bench by the petitioners who claimed to be the members of Primary Agricultural Societies that were entitled to participate in the elections of the Market Committee. It was their grievance that the term of the Managing Committee of the Primary Agricultural Societies had come to an end and if the elections to the various Marketing Committees were held, the members of the Primary Agricultural Societies would be precluded from participating in the election process of those Market Committees. The State Government through the Ministry of Co-operation, Marketing and Textile Department submitted before the Court that it would be desirable and appropriate to first hold elections of Primary Agricultural Societies before the elections of the Managing Committee of the Market Committees were held. After noting that out of total 144 Primary Agricultural Societies, the members/Directors of 126 Societies would not be in a position to participate in the elections of the Market Committee as their term was over, the Division Bench in the light of the stand as taken directed that the elections of the Primary Agricultural Societies be first conducted and thereafter the elections of the Market Committees be held.

In Writ Petition No.7375/2021 (*Dattu Namdeo Kale vs. State Co-operative Elections Authority, Maharashtra State and others*) decided at the Principal Seat on 22.11.2021 the decision in *Vishwanath Baburao Kadam* (supra) was cited and by adopting that view the elections of Primary Agricultural Societies were directed to be first conducted and thereafter the elections of the Market

Committees were directed to be held.

In Writ Petition No.12666/2021 (*Dattatray Ramrao Shinde and anr. Vs. State of Maharashtra and others.*) filed at the Aurangabad Bench it was found that the elections to various Primary Agricultural Societies had been declared and the election process of the Agricultural Produce Market Committee had not commenced. It was held that since the election process of the Market Committee had not commenced, the Authorities could proceed to hold the elections of the Primary Agricultural Societies in a phased manner. The order dated 06.12.2021 in that writ petition was subsequently corrected on a motion made for speaking to minutes and reference to the order passed in *Suresh Maroti Gorale* (supra) was added in paragraph 3 of that order.

6. In the light of the judgment in *Vishwanath Baburao Kadam* (supra) the Election Authority on 22.11.2021 in exercise of powers under Section 14 A (1)(a) of the MAPM Act read with Rule 3(4) of the Maharashtra Agricultural Produce Market Committee (Elections of Committee) Rules, 2017 (for short, the Rules of 2017) proceeded to cancel the process of elections of various Market Committees and observed that independent orders would be passed in the matter of holding elections of the eligible Primary Multi-Purpose Co-operative Societies.

The petitioners have thus sought to challenge the order dated 22.11.2021 and have also sought a declaration that the judgment of the Aurangabad Bench in *Vishwanath Baburao Kadam* (supra) be declared as not applicable to the Market Committees in question. In other words, the process of election for the respective Market Committees is prayed to be completed in terms

of the programme as declared.

7. On 24.11.2021 when Writ Petition Nos. 4731/2021 and 4733/2021 were taken up for admission, an ad-interim order was passed staying the effect and operation of the order dated 22.11.2021 passed by the Election Authority to the extent it applied to the respective Market Committees and the Authorities were directed to proceed with the election process of the Market Committee in accordance with law. Considering the urgency as sought to be made by the learned counsel for the petitioners, the learned counsel for the parties sought to place on record their written notes of arguments to enable expeditious adjudication of the writ petitions. Since virtual mode of hearing commenced from 17.01.2022 the parties were permitted to place on record their written notes of arguments. The written notes of arguments having been placed on record by the contesting parties, the matters were taken up for adjudication.

8. The principal grounds of challenge raised by the petitioners for seeking a direction that the Election Authority was not legally justified in cancelling the elections of the Executive Committee of the Market Committee are that (a) the Election Authority on 15.11.2021 having published the programme for preparation and finalization of the voters' list after inviting objections to the provisional voters' list, it could not have cancelled the elections to the Executive Committee of the Market Committee as the election process had commenced. It was incorrect on the part of the Election Authority to contend that the election process would commence only on finalisation of the voters' list. There was no embargo for holding elections of Primary Agricultural Societies before holding elections of the

Executive Committee of the Market Committee. The decision dated 22.11.2021 of the Election Authority was not a policy decision but the outcome of the judgment in *Vishwanath Baburao Kadam* (supra) and (b) that as the order in *Suresh Maroti Gorale* (supra) passed on 02.09.2021 refusing to accept the prayer for holding the elections of Primary Agricultural Societies prior to the elections of the Executive Committee of the Market Committee was not cited and considered in the case of *Vishwanath Baburao Kadam* (supra) the latter adjudication was rendered *per incuriam*.

According to the Election Authority, (a) the election process had not commenced since what was undertaken was the preparation of the provisional voters' list and the election programme as contemplated by Rule 18 of the Rules of 2017 had not been published. Reliance is sought to be placed on the decisions in Writ Petition No.4488/2017 (*Hemraj Marotrao Shingne and others vs. Principal Secretary*) decided on 16.01.2018 and ***Chandrashekhar Shivram Mudkanna vs. State of Maharashtra 2016 (2) Mh. L. J. 818*** and (b) the writ petition in *Suresh Maroti Gorale* (supra) having been dismissed as not maintainable, the decision in *Vishwanath Baburao Kadam* (supra) was not rendered *per incuriam*.

The intervenors have supported the stand taken by the Election Authority and they have relied upon the decision in ***The State of Goa and anr. vs. Fouziya Imtiaz Shaikh and anr. (2021) 8 SCC 401***.

9. We have gone through the written notes of arguments filed by the learned counsel for the parties and we have given due consideration to the respective contentions.

Point (a) It is undisputed that with regard to each Market Committee the provisional voters' list was published sometime in November, 2021 and objections were invited to such provisional voters' list. It is at that stage that the Election Authority on 22.11.2021 issued the impugned order and cancelled holding of elections to the Executive Committee of various Market Committees. It would therefore be first necessary to consider whether "election process" as contended by the petitioners had actually commenced or that preliminary steps were taken for progressing towards the actual "election process". The petitioners contend that the stage of preparation of the voters' list is also a part of the election process and hence the Election Authority had no jurisdiction to cancel the elections. The question whether preparation of electoral rolls and its revision is part of "election" as contemplated by Article 329 (b) of the Constitution of India has been the subject matter of consideration in various decisions. Reference to two decisions in this context would suffice. In ***Lakshmi Charan Sen and others vs. A.K.M. Hassan Uzzaman (1985) 4 SCC 689*** the Constitution Bench of the Hon'ble Supreme Court observed that preparation and revision of electoral rolls is a continuous process not connected with any particular election. It observed that it would be difficult, consistent with such view to hold that preparation and revision of electoral rolls is part of "election" within the meaning of Article 329(b) of the Constitution of India. This was reiterated by another Constitution Bench in ***Indrajit Barua and others vs. Election Commission of India and others (1985) 4 SCC 722*** by referring to the decision in *Lakshmi Charan Sen* (supra). It was reiterated that preparation of electoral rolls was not part of "election" within the meaning of Article 329 (b) of

the Constitution of India. In *Election Commission of India through Secretary vs. Ashok Kumar and others (2000) 2 SCC 216* it was held by the Hon'ble Supreme Court that the term "election" occurring in Article 329 of the Constitution of India would mean and include the entire process from issuance of notification under Section 14 of the Representation of the People Act, 1951 to the actual declaration of the results thereafter.

From the aforesaid decisions, it becomes clear that the process of finalization of voters' list has been held to fall beyond the term "election" insofar as Article 329(b) of the Constitution of India is concerned. On the same analogy, it will have to be held in the present case that since the provisional voters' list was published and objections were invited to that provisional voters' list when the order dated 22.11.2021 was passed, the actual process of "election" as understood generally could not be said to have commenced. Perusal of the order dated 22.11.2021 issued by the Election Authority indicates this aspect as it has been stated therein that the process of calling for objections to the provisional voters' list was being cancelled by that order. Hence for aforesaid reasons the contention raised by the petitioners that the election process for electing members of the Executive Committee of the various Market Committees having commenced, the Election Authority had no jurisdiction to cancel the elections cannot be accepted. There is no legal and statutory bar pointed out which precludes the Election Authority from postponing/cancelling the process of finalization of provisional voters' list for elections to the Executive Committee of the Market Committee under the MAPM Act.

10. Point (b) For considering the question as to whether the decision in *Vishwanath Baburao Kadam* (supra) dated 18.11.2021 is rendered *per incuriam* for failure to notice and consider the decision *Suresh Maroti Gorale* (supra), it would be necessary to consider both the decisions. In *Suresh Maroti Gorale* (supra) the petitioners were members of Agricultural Credit Societies who had prayed that the elections of the Agricultural Credit Societies should be first held before holding elections of the Managing Committee of Market Committee, Katol. The Division Bench upheld the preliminary objections raised to the maintainability of the writ petition by observing that since the petitioners were not voters at the elections of the Executive Committee of the Market Committee, Katol, they had no *locus standi* to seek the reliefs as sought in the writ petition coupled with the fact that the election process had already begun and 01.09.2021 was the last date of submission of nomination forms while the elections were scheduled on 03.10.2021. The aforesaid case was decided on 02.09.2021 thus holding the writ petition to be not maintainable. The Court in paragraphs 15 and 16 expressly stated that it did not enter into the merits of the matter and thereafter dismissed the writ petition finding it to be not maintainable. It is thus clear on a complete reading of the order dated 02.09.2021 that the writ petition in *Suresh Maroti Gorale* (supra) was not entertained since it was not found maintainable. The Court therefore did not enter into the merits of the prayers made therein namely, the request to hold elections of the Primary Agricultural Societies first before holding the elections of the Executive Committee of the Market Committee, Katol.

In *Vishwanath Baburao Kadam* (supra) decided on 18.11.2021 the Court noticed that out of 144 Primary Agricultural Societies, the members of about

126 such Societies would not be able to participate in the elections as the term of those Societies had come to an end. In paragraph 10 of the said decision it was observed as under :

10. *"We can understand if the few Primary Agricultural Societies are not in position to participate in the elections and for that purpose the elections of the APMC may not be stalled but here the majority of the Primary Agricultural Societies (Directors/members) would not be in a position to participate in the elections as is illustrated in case of Beed. Out of 144 Primary Agricultural Societies, the members/Directors of 126 societies would not be in a position to participate in the elections because the term is over".*

Thereafter considering the stand taken by the State Government of deciding to conduct elections of Primary Agricultural Societies prior to elections of Market Committees, directions to do so were issued.

From the aforesaid adjudication, it is clear that the Court was of the view that since about 126 Societies out of 144 Societies through their members would not be in a position to participate in the elections of the Market Committee as their elective term was over and in the light of the stand taken by the State Government, it was directed that the elections of the Primary Agricultural Societies be first conducted.

11. We are not in a position to accept the contention urged on behalf of the petitioners that since the order passed in *Suresh Maroti Gorale* (supra) was not considered by the Court in *Vishwanath Baburao Kadam* (supra), the latter judgment is rendered *per incuriam*. As stated above, the writ petition preferred by *Suresh Maroti Gorale and others* was not entertained for want of locus of the petitioners therein. Even if that decision was not cited before the Aurangabad

Bench, the same would not have any bearing on the adjudication in *Vishwanath Baburao Kadam* (supra) wherein absence of representatives of 126 Societies out of 144 Societies primarily weighed with the Court while deciding those proceedings. Since the Court in *Suresh Maroti Gorale* (supra) expressly stated that it had not entered into the merits of the prayers made therein as it found that the writ petition itself was not maintainable, we do not find that said adjudication would render the judgment in *Vishwanath Baburao Kadam* (supra) *per incuriam*. In that view of the matter, we do not find that the petitioners have any legal basis to urge that the latter decision in *Vishwanath Baburao Kadam* (supra) was rendered *per incuriam*. In the passing we may note that in *Dattatraya R.Shinde* (supra) decided on 06.12.2021 the position has been clarified by observing in paragraphs 3 and 4 as under :

“3. Mr.Dighe, learned counsel for respondents No.2 and 5 placed on record the order dated 24.11.2021 in Civil Application No.1860 of 2021 and Writ Petition No.4731 of 2021 of the Division at Nagpur the judgment dated 2nd September, 2021 in Writ Petition No.2802 of 2021 and submitted that in the said cases election programme was declared. However, as observed in the present case, elections of Primary Agricultural Societies are to commence in phase wise manner and elections of APMC has not been declared as yet and election process is not initiated. Even voters list is not finalised. In most of the Agricultural societies, Administrative Board / Authorized Officer are appointed and managing Committee's term is not extended.

4. In Writ Petition No.11669 of 2021 and other connected writ petitions, decided by this Court under order dated 18th November, 2021, it was brought to our notice that in none of the matters, the election programme of APMCs was declared. Even voters lists were not finalized. As the election programme for the election of APMCs was not declared, hence we

entertained the petitions and in the matters where the election programmes were declared, the same were dismissed by passing separate orders”.

These observations make the position amply clear and nothing further is required to be said in the matter.

12. Besides, the aforesaid, another vital aspect that cannot be ignored is that during the pendency of the proceedings on 21.01.2022 the Joint Secretary (Marketing), Co-operation, Marketing and Textile Department has issued a fresh order in exercise of power conferred by Section 59 of the MAPM Act. By this order the Executive Committees of Market Committees that were functioning and against whom there was no actual enquiry undertaken were permitted to so continue by extending their term till formation of a new Executive Committee or for a period of three months from 23.01.2022, whichever occurred earlier. The rider put was that no policy decision could be taken in the extended period except with prior permission of the State Government. In other words, for a period of three months from 23.01.2022, the Executive Committees of various Market Committees that were functioning have been given extension for a period of three months. Thus, there is no vacuum now remaining nor is there any urgency to hold elections to the Executive Committee of such Market Committees. This subsequent order dated 21.01.2022 is not under challenge in these writ petitions. The State Government being empowered to issue such directions under Section 59 of the MAPM Act, the same would be another reason for not accepting the prayers made by the petitioners.

13. Another vital aspect that requires consideration is that the right to participate in any electoral process is purely a statutory right. There is no involvement of any common law right in the matter. In *Ashok Kumar and others* (supra) it has been clarified that any action taken or orders issued by the Election Commission are open to judicial review on the well-settled parameters permitting judicial review of decisions of statutory bodies such as on a case of malafides or arbitrary exercise of power being made out or the statutory body having acted in breach of law.

This position has been reiterated in *Fouzia Imtiaz Shaikh and anr.* (supra) by observing that judicial review of an order of the State Election Commission is available on grounds of review of administrative orders.

There is no material on record to hold that the issuance of the order dated 22.11.2021 is actuated by any malafides or is the outcome of any arbitrary exercise of power. Since the provisional voters' list has been published, the election process by issuance of notification for conduct of elections under Rule 18 of the Rules of 2017 has not commenced.

14. Hence for all these reasons and in the absence of breach of any statutory provision, we do not find that the petitioners have made out any case for interference in writ jurisdiction. In absence of breach of any legal right, there would be no scope to interfere with the decision of the Election Authority which has merely cancelled the stage of preparation of the provisional voters' list with a view to hold elections of Primary Agricultural Societies before conducting elections to the Executive Committee of the Market Committees.

15. The writ petitions therefore stand dismissed. All civil applications are also disposed of. Rule stands discharged with no order as to costs.

(SMT. M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

Andurkar..