

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

WRIT PETITION NO.511 OF 2023

ANKITA GAURAV MUNGAD AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners:

Mr. V. D. Hon, Senior Advocate a/w. Mr. A. D.
Sonkawade i/b. Mr. A. V. Hon

AGP for Respondent/State: Mr. K. B. Jadhavar

Advocate for Respondent No.2: Mr. V. H. Dighe

Advocate for Respondent No.3: Mr. V. B. Patil

Advocate for Respondents No.4&5: Mr. G. V. Wani

Advocate for Respondent No.4: Mr. V. D. Sapkal,
Senior Advocate i/b. Mr. S. R. Sapkal

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	24.03.2023
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Pronounced on:	27.03.2023
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JUDGMENT:

1. Heard.

2. Rule. Rule returnable forthwith. With consent of parties, matter is taken up for final hearing.

3. By the present petition, the petitioners have taken objection to the order passed by respondent no.2 – election authority deleting 512

names of the traders from the provisional voters list of the traders constituency of the APMC – Jalgaon.

4. That the elections to APMC Jalgaon were due and steps for preparation of voters list of various constituencies including the traders constituency was undertaken. The provisional voters list was published and the petitioners names were included in the provisional voters list. The respondents no.4 and 5 raised objections to several voters in the provisional voters list. It was contended therein that the committee had taken a decision to cancell license of 521 traders whose names are in the provisional voters list. The APMC had also resolved to return the license fees deposited with them of the objected members. The same was also intimated to the objected members. However, in spite of the APMC resolution the objected traders names find place in the provisional voters list. It was further submitted that in view of the decision taken by the APMC – Jalgaon dated 04.06.2019, 523 traders be deleted

from the provisional voters list. It further sought a declaration that the decision taken by the APMC as regards the 523 members to include them in the provisional voters list be declared illegal and sought deletion of 523 names from the provisional voters list.

5. Per contra, in the notice issued to the APMC, the APMC submitted to the election authority that the APMC had granted license to the objected members after accepting license fees and that resolution was passed on 04.06.2019 to cancell license of 523 members and return the license fees of Rs.150 of the said members. However, the money has not been returned to the members and another decision was taken on 26.10.2021 by the license sub committee to receive money towards the license fees of the 525 traders and accordingly license fees were accepted. In view of the decision of the license sub committee of the APMC dated 26.10.2021 approval was granted to the licenses of 523 members for which the objections are raised.

6. Respondent No.2 after taking into consideration material produced before it held that the licenses of objected 523 traders is doubtful and that it is not certain whether there is any membership to these 512 members. Further the election authority held that, whether 512 members have valid license has not been shown by any of the documents and the license is not produced before respondent no.2 and as such directed to delete 512 members.

7. The law on the scope of inquiry under Rule 7 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 has been examined in Judgment dated 27.03.2023, Writ Petition No.516 of 2023 (*Yogeshwar Prabhakar Marathe and others Vs. The State of Maharashtra and others*) and relevant portion reads as under:-

"18. Thus it would be seen from the above two Judgments of Dhondiba (supra) and Balasaheb (supra) that the election authority under Rule 6 of the Maharashtra Cooperative Societies (Election to Committee) Rules can inquire into the disqualification incurred by a member

under bye-laws of the society which prevents the member from voting or any other disqualification under the rules that the member incurs from voting. Dhondiba's case this court has categorically held that the returning officer cannot decide the issue of the validity of membership and has to limit it's inquiry only to the aspects mentioned in Rule 6(1).

19. *Thus applying the law laid down in Dhondiba's case and Balasaheb's case, the election officer cannot go into the validity of grant of license or renewal of lincense. However, in absence of a statutory register as available in case of Section 38 of the Maharashtra Cooperative Societies Act, the election authority, has to verify the date of license and renewals of license and whether the license is for the period of 2 years as contemplated under Section 13(1)(b) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 read with Rule 6 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017.*

20. *Thus on the combined reading of Dhondiba's Judgment and Balasaheb Gadhave's Judgment, the words "omission or error in name" used in Rule 7 of the the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 would mean if a trader has a license for 2 years and his name is not shown in the provisional list, and the same can be enquired by election authority under Rule 7(3) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules 2017. However, validity of grant of*

license or renewal cannot be inquired by the election officer.

21. Section 7 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 has also a deeming provision for grant and renewal of traders license. Thus the election authority will have to verify the trader license and in absence of formal trade license, in view of the deeming provision may have to verify the license fees paid and accepted and license renewal fees paid and accepted by APMC for over two years, in the event of deemed grant of traders license. Section 7 (1) and proviso reads as under:-

"7. Grant of licences

(1) Subject to rules made in that behalf, a Market Committee may, after making such inquiries as it deems fit, grant or renew a licence for the use of any place in the market area for marketing of the agricultural produce or for operation therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehousemen or in any other capacity in relation to the marketing of agricultural produce, or may, after recording its reasons in writing thereof, refuse to grant or renew any such licence:

Provided that, if the Market Committee fails to grant or renew or refuse a licence within a period of sixty days from the date of receipt of the application therefore, the licence shall be deemed to have been granted or renewed as the case may be."

8. The APMC have accepted the license fees of the 512 members. Under Section 7 of the

Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 there is a deeming provision for grant of APMC traders license and reads as under:-

"7. Grant of licences.

(1) Subject to rule made in that behalf, a Market Committee may, after making such inquiries as it deems fit, grant or renew a licence for the use of any place in the market area for Marketing of the agricultural produce or for operating therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of agricultural produce; or may, after recording its reasons in writing therefor, refuse to grant or renew any such licence:

Provided that, if the Market Committee fails to grant or renew or refuse a licences within a period of sixty days from the date of receipt of the application therefor, the licences shall be deemed to have been granted or renewed, as the case may be."

9. There are trading receipts and other relevant documents showing trading activity by the objected members in the provisional voters list and thus it is submitted that and in view of the license of trading activity for last 2 years their

names are included in the provisional voters list. The validity of grant of license cannot be questioned by the returning officer as the scope of inquiry under Rule 7 of the APMC Election Rules is very limited and summary in nature. In the instant case, admittedly, there are payment receipt towards license fees of the traders license and the resolution supporting it for acceptance of license fees. The resolution for cancelling the license has not been acted upon by the APMC and subsequent decision is taken to accept the fees of the members. In view of the resolutions of the APMC the members names appearing in the provisional voters list are the license holders of the APMC. The validity of grant of license is not to be inquired into by the respondent no.2 under Rule 7 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017. More so, when the APMC has accepted the license fees and has not taken steps to cancel their license in terms of it's resolution and in the subsequent decision, the

APMC has decided to retain the license fees and grant membership. However, there is no formal traders license issued. But the evidence in terms of APMC resolution and acceptance of license fees is on record. The APMC has thus included the names of 512 traders in the provisional voters list. The election authority on the face of enormous evidence and acceptance by the APMC that the objected members are the license holders of the APMC and having included them in the provisional voters list, the election authority should have been slow in directing deletion of 512 members, more so, the deeming provision of Section 7(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 would also be applicable in the instant case.

10. This being an election matter this court would be very slow in interfering with the election process. However large numbers of voters are sought to be deleted by the impugned order and the order passed by respondent no.2 has travelled far beyond the scope of Rule 7. In view of the

same the order passed by the respondent no.2 is patently illegal. Deleting such large number of voters would largely affect the outcome of the election.

11. I am informed that from 27.03.2023 filing of nomination would commence and interference at this stage would not destabilize the election process. In view of the same, I set aside the order passed by the returning officer holding that it is a patently illegal order and that the names deleted by the impugned order are directed to be restored in the final voters list. The final voters list of traders constituency be prepared accordingly and the election process be continued.

12. Rule is made absolute in above terms.

13. The writ petition is allowed and disposed of.

[ARUN R. PEDNEKER, J.]

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