

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

1 WRIT PETITION NO.3151 OF 2023  
WITH CA(ST)/10060/2023 IN WP/3151/2023

BAPURAO BALBHIM KOTHULE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY AND  
OTHERS

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Advocate for Petitioners : Mr. S.S. Thombre  
AGP for Respondents 1 & 4 : Mr. K.B.Jadhavar  
Advocate for Respondents 2 & 3 : Mr. V.H. Dighe  
Advocate for Respondent 5 : Mr. P.D. Bachate  
Advocate for Respondent 6 : Mr. K.J. Suryawanshi  
Advocate for intervenors : Mr. Mahesh S. Deshmukh h/f. Mr. L.H. Kawale

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**CORAM : ARUN R. PEDNEKER, J.  
RESERVED ON : 27/03/2023  
DELIVERED ON : 28/03/2023**

**ORDER :**

1. By the present writ petition, the petitioners are challenging the order dated 3.3.2023 passed by respondent No. 3 – The District Co-operative Election Officer and District Deputy Registrar, Co-operative Societies for conducting the elections of Agricultural Produce Market Committee, Patoda, District Beed (hereafter referred to as 'Election Authority' for short), deleting the names of the petitioners from the provisional voters list of trader and Hamal constituency for respondent No. 5 – Agricultural Produce Market Committee, Patoda (hereinafter referred to as 'APMC' for short).

2. Brief facts, leading to filing of the present writ petition, can be summarized as under :-

The elections to the APMC Patoda were due and the respondent No. 3 – Election Authority published a provisional voters list of the Traders and Hamal constituencies, wherein the names of the petitioners were shown in

the provisional voters list. Respondent No. 6 – Mahendra Govindrao Garje filed objections to the provisional voters list and sought deletion of the names of the petitioners from the provisional voters list on the ground that the petitioners are not holding the licences for the Traders and Hamal constituencies. Objections are also raised on the ground that the traders have no business in APMC area; they do not have necessary papers for grant of licence and as such, their names be deleted.

3. Notice was issued by the respondent No. 3 – Election Authority to the APMC, Patoda. As regard Hamal constituency is concerned, the response of the APMC is that there is no application on record of the Hamals for renewal of licences; they do not have physical fitness certificate; Aadhar card is not on record and there is no bond of Rs.100/-; so also there is no character certificate of Hamals on record and that the objected names of Hamals be deleted from the provisional voters list.

4. As regards Traders constituency is concerned, the response of the APMC Patoda is that there is no photo of the objected members; there is no character certificate; there is no Aadhar card; while renewal of the licence, there is no record of the business of the objected traders in APMC area and that the original licence copy is also not available with the APMC and that there names be deleted.

5. Considering the objections raised by the respondent No. 6/objector, the respondent No. 3 – Election Authority by order dated 3.3.2023 held that the objected members from the provisional voters list of the trader

constituency, there is no proof of the licence being renewed, although there is bond of Rs.100/- on record given at the time of renewal of the licence; so also there are receipts of renewal fees, however, there are no original copies of the traders licences issued to the traders. In case of Hamals, the Election Authority has held that there is no sufficient material produced on record to show that money is deposited towards the licence fees; that there is no record of business conducted and that the Committee fees being paid. Thus, the respondent No. 3 – Election Authority accordingly directed to delete the names of 355 traders from the Traders constituency and 134 Hamals from the Hamal constituency. Hence, the petitioners have challenged the impugned order dated 3.3.2023 in this writ petition.

6. Mr. S.S. Thombre, learned counsel for the petitioners submits that the provisional voters list contained the names of the petitioners. Subsequently there is an administrator appointed who is political opponent of the petitioners and that the APMC has changed stand although the APMC themselves have given the provisional voters list showing the names of the petitioners in the provisional voters list. It is further contended by the learned advocate for the petitioners that no notice was issued to the petitioners, nor the objections were displayed on the notice board of APMC. Notice was only issued by the election authority to the APMC and based on the say of the APMC, the names of the petitioners are directed to be deleted. The learned counsel for the petitioners contend that in the event, they were given an opportunity, they could have produced all the required material to demonstrate that the petitioners have valid licences for the said

period i.e. the period of more than two years. The learned counsel further contends that the petitioners have proof that the petitioners hold valid licence from 2020 onwards and they have produced on record various licences. However, the respondent/objector objected to the licences of the petitioners and claim that the licences produced on record are bogus and not issued by the APMC.

7. This Court has considered the scope of inquiry on the objections raised to the provisional voters list of APMC in the case of **Yogeshwar Prabhakar Marathe and ors. Vs. The State of Maharashtra and others** in **Writ Petition No. 516/2023** decided by this Court on **27.3.2023**. From para Nos. 18 to 21, this Court held 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. In the above case, this Court held that the scope of inquiry under Rule 7 of Maharashtra Agricultural Produce Committee (Election to Committee) Rules, 2017 on the objection and claims received is very limited and summary in nature. The election authority can only verify the licence and renewal of the licences and the period for which the licences have been issued, however, it cannot go into the validity of grant of licences and grant or rejection of the renewal of the licences.

9. In the instant case, no notice is given to the petitioners against whom the objections are raised. Notice is not even displayed on the APMC Notice Board. It is not disputed that the provisional voters list given by the APMC contained the names of the petitioners. However, APMC has submitted that it has re-verified the record after the objections were raised and submitted that there are no original licence copies of the petitioners with the APMC. It is to be noted that a new officer is appointed as Administrator on the APMC after the submission of provisional voters list. The election authority, has not granted opportunity to the petitioners to produce their licences and respond to the objections and has thus denied the petitioners their right to substantiate their case before the Election Authority and has thus lost their valuable right to vote and contest the elections of APMC. Along with the writ petition, the petitioners, have produced their licence copy. However, although the validity of these licences are questioned by the objector, I cannot render finding on this issue in the summary jurisdiction. The licences are produced by the petitioners on the record and the respondent No. 3 – Election authority has not granted an opportunity to the petitioners to respond to the objections. It is also to be noted that petitioners names would not have been in the provisional voters list unless there is a licence issued to the petitioners or there are other documents which indicate that the petitioners are licence holders of the APMC. In view of the same, I hold that the order passed by the respondent No. 3 – Election authority directing to delete the names of the petitioners from the provisional voters list is patently illegal.

10. This Court would not ordinarily interfere in the election process

unless the order passed by the Election Authority is patently illegal and that this Court would also take into consideration the effect of the orders of this court on the stability of the election process. I am told that in the APMC elections, stage of filing nominations would commence on 27<sup>th</sup> March 2023. Thus, the interference at this stage would not materially alter the election schedule. By the impugned order, there is deletion of names of large number of voters from the provisional voters list which would materially affect on the result of the elections of the Traders and Hamal Constituency.

11. In view of the same, the order passed by the respondent No. 3 – Election Authority dated 3.3.2023 is set aside and the direction contained in the impugned order to delete the names of members from the provisional voters list of Traders and Hamal constituencies is set aside. The names of the deleted members are to be restored back into the final voters list of Traders and Hamal constituencies and the final voters list of Traders and Hamal constituencies be drawn up accordingly. Writ petition is allowed in above terms. Civil Application filed for intervention is allowed and disposed of.

**[ARUN R. PEDNEKER J.]**

ssc/