

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

WRIT PETITION NO.3884 OF 2023

1. Raosaheb Rustum Autade,
Age 53 years, Occu. Agril,
R/o at Derda Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
2. Gayabai Eknath Kambale,
Age 60 years, Occu. Agril,
R/o at post Gajgaon
Tq. Gangapur, Dist. Aurangabad
3. Bajirao Shivram Kalawane,
Age 42 years, Occu. Agril,
R/o at Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
4. Devidas Shamrao Gawali,
Age 52 years, Occu. Agril,
R/o at Khadgaon Post Gajgaon
Tq. Gangapur, Dist. Aurangabad
5. Arjun Gawaji Dhumal,
Age 63 years, Occu. Agril,
R/o at at Khadgaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
6. Vinayakrao Narsing Bhosale,
Age 61 years, Occu. Agril,
R/o at Golegaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
7. Kayum Hasan Shaikh,
Age 45 years, Occu. Agril,
R/o at Golegaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
8. Suresh Babuappa Sangekar,
Age 57 years, Occu. Agril,
R/o at Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad

9. Tarabai Kailas Sonwane,
Age 40 years, Occu. Agril,
R/o at Golegaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
10. Appasaheb Bhavrao Kause,
Age 42 years, Occu. Agril,
R/o. at Golegaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
11. Satish Machindra Hiwale,
Age 32 years, Occu. Agril,
R/o at post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
12. Jijabai Fakirchand Thombare,
Age 47 years, Occu. Agril,
R/o. at Khadgaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad
13. Laxmibai Ashok Patekar,
Age 45 years, Occu. Agril,
R/o at Khadgaon Post Gajgaon,
Tq. Gangapur, Dist. Aurangabad

.. Petitioners

Versus

1. The State Co-operative Election
Authority Maharashtra State Pune
2. District Election Officer,
APMC and District Deputy Registrar
Co-operative Societies, Aurangabad,
Dist. Aurangabad

.. Respondents

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Advocate for Petitioners:

Mr. Suryawanshi Kamlakar J.

AGP for Respondents No.1&2: Mr. S. K. Kadam

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AND

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WRIT PETITION NO.3886 OF 2023

1. Dipak Bhanudas Jivarak,
Age 55 years, Occu. Agril,
R/o at Ghodegaon Post Ghodegaon
Tq. Gangapur, Dist. Aurangabad
2. Shivaji Rambhau Raut,
Age 70 years, Occu. Agril,
R/o. As above
3. Dagadu Bhimrao Rajdev,
Age 75 years, Occu. Agril,
R/o. As above
4. Bhavrao Rustum Rajdev,
Age 50 years, Occu. Agril,
R/o as above
5. Akbar Ismail Sayyad,
Age 70 years, Occu. Agril,
R/o. As above
6. Mangal Laxman Salunke,
Age 45 years, Occu. Agril,
R/o as above
7. Ramesh Devidas Salunke,
Age 40 years, occu. Agril,
R/o as above
8. Vimalbai Vithal Salunke,
Aged 70 years, Occu. Agril,
R/o as above
9. Ramesh Bhaskar Bhakare,
Aged 65 years, Occu. Agril,
R/o as above
10. Nandabai Popat Pandit,
Age 55 years, Occu. Agril,
R/o as above
11. Shamdas Bhikandas Vaishnav,

Age 40 years, Occu. Agril,
R/o as above

12. Pushpabai Machindra Ghule,
Age 50 years, Occu. Agril,
R/o as above

13. Nandabai Babasaheb Salunke,
Age 55 years, Occu. Agril,
R/o as above

.. Petitioners

Versus

1. The State Co-operative Election
Authority Maharashtra State Pune

2. District Election Officer,
APMC and District Deputy Registrar
Co-operative Societies, Aurangabad,
Dist. Aurangabad

.. Respondents

...

Advocate for Petitioners:

Mr. Suryawanshi Kamlakar J.

AGP for Respondents No.1&2: Mr. S. K. Kadam

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CORAM:	ARUN R. PEDNEKER, J.
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Reserved on:	11.04.2023
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Pronounced on:	13.04.2023
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JUDGMENT:

1. Heard.

2. **Rule.** Rule returnable forthwith. With consent of parties, the petitions are heard finally.

3. Both the writ petitions involve common issues, hence taken up together for hearing and facts are taken from Writ Petition No.3884 of 2023.

4. By the present petition, the petitioners are taking exception to the orders passed by Respondent No.2 – The District Election Officer, APMC and District Deputy Registrar, Co-operative Societies, Aurangabad, rejecting the application filed by the petitioners under Rule 7(5) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 and not including the names of the petitioners in the final voters list of the APMC Gangapur, Taluka – Gangapur, District – Aurangabad.

5. The facts in brief leading to the filing of the petitions can be summarized as under.

6. The petitioners are members of the Vividh Karyakari Seva Sahakari Sanstha Ltd. Gajgaon, Taluka – Gangapur, District – Aurangabad

(hereinafter referred as 'said society'). The election programme of the said society was declared on 09.02.2023. As per the said programme the date of voting, counting and declaration of election result was on 28.03.2023. The petitioners are elected as managing committee members of the said society. The petitioners being elected member of the said society are qualified to participate in the elections of APMC Gangapur as per Section 13(1) of the Maharashtra Agriculture produce Market Committee (Development and Regulation) Act, 1963 read with rule 5 and 6 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017.

7. Respondent No.2 published election programme on 27.03.2023 for election of the APMC Gangapur. As per the said programme the date of submission of nomination form was from 27.03.2023 to 03.04.2023. The petitioners made an application on 29.03.2023 to Respondent No.2, requesting the names of the petitioners be included in the voters list of the APMC. Respondent No.2 rejected the

application of the petitioners by order dated 31.03.2023 for the reason that the application was not within stipulated period as provided in Rule 7(5) of the Election Rules 2017. The petitioners have challenged the order dated 31.03.2023 passed by respondent no.2 in the present writ petitions.

8. The petitioners contend that they are eligible to vote for the APMC elections and since they were elected on 28.03.2023, the application, which was filed on 29.03.2023, ought to have been accepted by respondent no.2. The learned counsel relied upon the following Judgments passed by this court:-

"1] Writ Petition No.10493 of 2016 and 10494 of 2016, dated 20.10.2016 (Satish Ramchandra Rajput and others Vs. District Deputy Registrar and others reported in 2016 (10) CPMH 35

2] Writ Petition No.11517 of 2016 and 11803 of 2016, dated 29.11.2016 (Vividh Karyakari SevaSahkari Sanstha Ltd. and another Vs. The State of Maharashtra and others)

3] Writ Petition No.9197 of 2015 with connected petitions, dated 20.08.2016 (Subhash Rabhaji Barde and others Vs. The State of Maharashtra and others)

4] Sangali Urban Co-operative Bank Vs. The State of Maharashtra and others, 2015 (6) ALL MR 629

5] Adivasi Seva Sahkari Sanstha, Halda Vs. Hon'ble Collector, Gondia and another, 2011 (5) Mh.L.J. 745

In the above quoted Judgments, a similar provision, to Rule 7(5) of the Election Rules 2017, i.e. Rule 36 (*Rule 36 is now deleted*) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 is interpreted by this court. Relying upon the above Judgments the petitioner contend that the petitioners names should be included in the final voters list even after the period stipulated contemplated in Rule 7(5) of the Election Rules 2017 and earlier Rule 36 (15) of the APMC Rules 1967. The learned counsel submits that in the Judgments cited above, the courts have allowed the names of the candidates elected to member Societies and village panchayats to be included in the voters list even after the period stipulated in Rule 36(15) of the APMC Rules 1967, was over.

9. Per contra, the learned counsel appearing for the election authority relied upon the Judgments passed in the cases of,

[1] Bhatu Devidas Patil and another Vs. State of Maharashtra and others, 2010 (3) Mh.L.J. 903,

[2] Shri Sai Vividh Karyakari Seva Sahakari Sanstha Maryadit and others Vs. State of Maharashtra and others, 2012 (2) Mh.L.J. 274,

[3] Gram Panchayat, Nadiwadi Vs. State of Maharashtra and others, 2016 (1) Mh.L.J. 780,

wherein it has been held that the inclusion cannot be after the period as contemplated within Sub-rule 15 of Rule 36 APMC Rules 1967.

10. I have considered the rival submissions.

11. Rule 36 of the APMC Rules 1967 stands deleted. Relevant Rules 5, 6 and 7 of the Election Rules 2017 reads as under:-

"5. Preparation of list of voters

(1) For the purpose of electing fifteen agriculturists, two members to be elected by traders and commission agents and one member to be elected by hamals and

weighmen as provided by clauses (a), (b) and (b-1) of sub-section (1) of section 13 of the Act, every market area shall consists of,-

- (A) Co-operative Societies' Constituency;*
- (B) Village Panchayat's Constituency;*
- (C) Trader's Constituency; and*
- (D) Hamals and Weighmen's Constituency.*

(2) Each such Constituency shall consist of the whole of the Market area.

(3) For the purpose of electing twelve agriculturists, five representatives to be elected by Traders and Commission Agents as provided by sub-clauses (i) and (ii) of Clause (a) of sub-section (1A) of section 13 of the Act, every market area shall consists of,-

- (A) Agriculturists Constituency;*
- (B) Trader's and Commission Agents Constituency.*

(4) For the purpose of electing fifteen agriculturists, two members to be elected by traders and commission agents and one member to be elected by hamals and weighmen as provided by sub clauses (i). (ii), (iii) and (iv) of clause (c) of sub-section (1B) of section 13 of the Act, every market area shall consists of-

- (A) Agriculturists Constituency;*
- (B) Trader's Constituency;*
- (C) Hamals and Weighmen's Constituency;*

6. Preparation of voters' list

(1) The District Election Officer shall call upon the District Deputy Registrar of Co-operative Societies to prepare and furnish to him a list of members of the Managing Committees of the Agricultural

Credit Societies and the Multipurpose Co-operative Societies and call upon the Block Development officer to prepare and furnish to him a list of members of the Village Panchayat's showing distinctly the members belonging to the Scheduled Caste and Scheduled Tribes functioning in the market area before 180 days of expiry of term of the Market Committee or within such time as may be specified by him. The District Election Officer shall provide or cause to provide, a list of members of the Managing Committees of the Agricultural Credit Societies and the Multipurpose Co-operative Societies as received from the District Deputy Registrar and a list of members of the Village Panchayat's as received from the Block Development Officer, to the Secretary of the APMC for preparation of primary voters list for election to the concerned Constituency.

..

On receipt of such lists, the District Election Officer shall prepare a voters list separately for each of the Revenue Divisions and every such list shall be published on the notice board of the respective offices of District Election Officer, the District Deputy Registrar of the Co-operative Societies and the office of the Collector of the respective districts in the respective Revenue Division and in any other manner as District Election Officer may deem fit.

(1B) For the purposes of electing the representatives of the agriculturists under sub-clauses (i), (ii), (iii) and (iv) of clause (c) of sub-section (1B) of section 13 of the Act, the concerned

Collector shall call upon the concerned District Deputy Registrar of Co-operative Societies, to prepare the voter's list as per the constitution of the Divisional or Regional Market Committee.

On receipt of such lists, the concerned Collector shall prepare a voters list separately for each of the district and taluka and every such lists shall be published on the notice board of the respective offices of the concerned Collector and the concerned District Deputy Registrar of Co-operative Societies.

(2) within thirty days of receipt of list from the District Election Officer, a provisional voters list in Form 4 shall be prepared by the Secretary of the Market Committee. The voters list for Co-operative Societies Constituency shall be prepared society-wise.

The voters list for Village Panchayats Constituency shall be prepared Village Panchayat-wise, indicating the details regarding members belonging to the Scheduled Caste and Scheduled Tribes, etc.

..

***Provided** that, in case of the Market Committee where the elections could not be held before the expiry of the term of the Committee due to unforeseen situations or any other reason, a provisional list of the voters shall be prepared, on the basis of the date fixed by the State Co-operative Election Authority:*

***Provided also** that, the provisional voters list of the Market Committee on which an Administrator or Board of Administrators is appointed under second*

proviso of sub- section (2) of section 13, section 15A or section 45 of the Act, shall be prepared on the bass of the date fixed by the State Co-operative Election Authority.

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7. Claims and objections to the provisional voters list

(1) When the provisional voters list is published for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Election Officer in writing by any person whose name appears in provisional list of the Market Committee or by any agriculturist or any person who claims to be eligible for contesting the election to Committee during office hours, within ten days from the date of publication of the provisional voters list.

(2) Every claim or objection shall be in writing and state the grounds on which the claim is based or the objection is raised, as the case may be, and may accompany with the proof thereof, if any.

(3) The District Election Officer shall, or as directed by the State Co-operative Election Authority, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims and objections. Thereafter final voters list shall be published within the period of fifteen days from the last date prescribed for

receiving the claims and objections. The list finalized by the District Election Officer after deciding all claims and objection shall be final list of voters.

(4) The copies of the final list of voters in Form 5 shall be displayed on the notice board of the District Election Officer and also on the notice board of the Market Committee at least ten days before the declaration of the election programme and in no case later than fifteen days from the finalization of claims and objections.

(5) In case of newly elected committee of the Agricultural Credit Societies, Multi-purpose Co-operative Societies and Village Panchayats or where due to co-option of members of the Managing Committee by the Agricultural Credit Societies, Multi-purpose Co-operative Societies and Village Panchayats, any person whose name is not entered in the final list of voters as published under sub-rule (3), may at any time but not later than five working days before the last date of making nominations, apply to the District Election Officer; and the District Election Officer or the person authorized by him, shall conduct an inquiry, in case the inquiry is conducted by the person authorized by the District Election Officer in this behalf, he shall submit the report of inquiry to the District Election Officer. Thereafter, the District Election Officer, as he deems fit, may make necessary changes in the final voter list."

12. The Election Rules 2017 are amended and Sub-rule (5) of Rule 7 of the Election Rules 2017 is introduced, on 07.02.2023.

13. A bare reading of rule 7(5) of the Election Rules 2017 would indicate that newly elected committee members of the societies and village panchayats whose names are not entered in the final voters list as published under the sub-rule 3 of rule 7 may at any time but not later than 5 working days of the last date of making nominations apply to the District Election Officer and the District Election Officer or the person authorized by him shall conduct inquiry and after inquiry may make necessary changes in the final voters list. Rule 7(5) is added for the inclusion of the newly elected members whose names are not in the final voters list. However, there is a specific bar created that the application by the newly elected member for inclusion in the voters list should not be later than 5 working days before the last date of making the nominations.

14. It is required to be noted that the provisional voters list is prepared based on the information given of the members of the managing committee of the societies and list of members of village panchayats before 180 days of expiry of the term of the market committee or within such time as may be specified by the District Election Officer, in terms of Rule 6(1) of the Election Rules 2017.

15. It is also to be noted that in case of a market committee where election could not be held before the expiry of the term of the committee due to unforeseen circumstances, the provisional voters list shall be prepared on the basis of the date fixed by the State Co-operative Election Authority, in terms of proviso to Rule 6(2) of Election Rules 2017.

16. Thus, a provisional voters list is prepared based on a cut off date specified by the election authority or on the basis of information as may be made available of the voters, before 180

days of the expiry of the term of the market committee. However, the legislature has inserted Rule 7(5) of the Election Rules 2017 to overcome the problem of newly elected committee members being left out of the final voters list. It has provided for inclusion of newly elected members whose application is received, prior to 5 working days of the last date of filing of the nominations. Sanctity has to be given to the time provided for making application under Rule 7(5) and the last date for application as prescribed in Rule 7(5) of the Election Rules 2017 has to be strictly followed. In absence of applying the time stipulated for making application under Rule 7(5) of the Election Rules 2017 there would be no finality to the voters list. Thus, the newly elected members can be included in the final voters list, however, the application for inclusion of the newly elected members should be prior to 5 working days before the the last date of nomination.

17. All the Judgments relied upon by the learned counsel for the petitioners and the respondents have dealt with the earlier Rule 36 of the APMC Rules 1967, which is now deleted. The legislature was fully aware of the newly elected members of the societies and the village panchayats being left out of the voter list of the APMC. This situation cannot be fully avoided as the elections of the various societies and the village panchayats cannot be fully synchronized with the elections of the APMC. Thus, the legislature has amended and included Rule 7(5) in the Election Rules 2017 wherein it is provided that the newly elected members of the societies, and the village panchayats, after the publication of the final voters list can also apply for membership, however, the application has to be before 5 working days of the last day of filing nomination to the election of the concerned APMC. This cut-off is necessary to give finality to the voters list, although there would be situations, where the members of the societies and village

panchayats elected after the period stipulated in Rule 7(5) would be left out. Thus a balance is struck between the right of the newly elected committee members of the societies and the village panchayats to be included in the final voters list and giving finality to the voters list before the last date of nominations, taking into consideration, the time that may be required to process the applications of the newly elected members of the societies and the village panchayats.

18. The distinguishing feature between Rule 36(15) of the APMC Rules 1967 and the present Rule 7(5) of the Election Rules 2017 is that in the Rule 36(15) any person whose name is not entered in the final voter list as republished under Sub-rule 14 of Rule 36 may at any time but not later than three days before the last date of nomination apply to the Collector for inclusion of his name in the voters list, whereas Rule 7(5) provides for inclusion of names of only the newly elected members whose names are not included in

the final voters list as published under Sub-rule 3 of rule 7 of the village panchayats and the member societies and there is no inclusion provided of any other left out members.

19. Thus, in view of the same, the Writ Petitions stand dismissed. Rule discharged.

[ARUN R. PEDNEKER, J.]

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