

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15132 OF 2022

Ingle Swapnil Balasaheb & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

Mr YS Jahagirdar, Senior Advocate, with SS Kanetkar, for the
Petitioners.

Ms Tanu Khatri, for Respondent No. 1.

Mr Dilip Bodke, for Respondents Nos. 2 and 5.

Mr Sagar A Rane, for Respondent No. 3-APMC.

Mr Ajinkya Udane, for Respondent No. 4.

Ms SS Bhende, AGP, for the Respondent-State.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 3rd July 2023

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1. On 16th March 2023 we made the following ad-interim order:

“1. The matter calls for immediate intervention. We will resist the temptation to issue Rule because that would only delay the elections in question to the Maharashtra Agricultural Produce Marketing Committee (“APMC”), Shirur, District Pune. The complaint of these 66 Petitioners is that their names have been excluded from the voters’ list. This action of the 2nd Respondent, the District Election Officer cum District Deputy Registrar of Cooperative Societies was triggered by a set of complaints made by the 4th Respondent. We are as yet unclear who this 4th Respondent is and what is his concern with the elections.

We are told that he is simply a voter. But his actions and complaints seem to far exceed any legitimate concerns of a voter. For example, at page 28 we find the complaint that the 4th Respondent addressed to the District Election Officer in which he said that certain precisely identified receipt books with specific serial numbers had ‘fraudulent’ signatures. How the 4th Respondent knows this and how any of this is to his personal knowledge is yet to be explained. It seems that this complaint was actually rejected; at which point the 4th Respondent fired off a second salvo now saying that the Petitioners’ ‘licenses had expired’, and although these had been submitted for renewal, which would cover the period in question unbroken, there was nonetheless a time gap between the expiry and the application for renewal. This gap according to the 4th Respondent, was of nine months. It seems that on the basis that for those nine months, the Petitioners did not hold licenses (although on renewal the licenses would cover the nine months and more) the Petitioners have been disqualified.

2. We do not propose to assess the actions of the 4th Respondent. He may have his own concerns and perhaps even his own motivations. What concerns us is how the District Election Officer could have found credence in complaints of this kind and which resulted in a wholesale disenfranchisement of all 66 Petitioners.

3. There is an Affidavit in Reply by one Shankar Shivaji Kumbhar, an Assistant Registrar of Cooperative Societies on behalf of the District Election Officer from the District Deputy Registrar. A bare reading of this Affidavit and especially paragraphs 4, 6, 7 and 13 *prima facie* indicates that Rule ought to be made absolute at once. But we see no reason why the District Election Officer should be bound by something that an Assistant Registrar might have ill-advisedly said on Affidavit.

4. We are not permitting an Affidavit by the 4th Respondent at this stage. In an election process, it is not an individual complainant who has a right to insist on disqualification. He may be entitled to file a complaint, but it is the handling of that complaint that comes up to judicial review. We will afford an opportunity at a later stage if it is absolutely required. However, our first objective is to give the 2nd Respondent, i.e., the District Election Officer, APMC cum District Deputy Registrar of Cooperative Societies — and we clarify this to mean the officer holding that post and not some deputy or assistant to file a further Affidavit by 5th April 2023. It is permissible for the 2nd Respondent in that Affidavit to state that the decision has been entirely reconsidered and withdrawn and that the names of the 66 Petitioners will be included in a revised voters' list. If, however, the 2nd Respondent maintains that the impugned action of exclusion is correct, then we will proceed to assess that on the next occasion.

5. List the matter on 11th April 2023. In the meantime, the election to the APMC, Shirur is not to proceed.

6. The Registry is to accept the second set of papers in this matter.”

2. Since then, Affidavits-in Reply and Rejoinder have been filed.

3. Again, the 4th Respondent seeks accommodation. We have declined. We do not see why this matter should be continuously adjourned at the instance of a private complainant.

4. The matter began with the 4th Respondent's complaint in late November 2022. A copy is at Exhibit “B” at page 28. The 4th Respondent, More, an erstwhile director of the Shirur APMC,

raised three grievances. In regard to the 66 Petitioners and some others, he said that their claims to membership were bogus, their documents were fraudulent and fabricated and that they had not worked, i.e., did not have licenses for approximately over a year. He annexed a list of these persons.

5. As the Affidavit in Reply points out, there were other objections also about the inclusion of some names on the voters' list.

6. The 2nd Respondent, the District Election Officers APMC and District Deputy Registrar called for a report from the Assistant/Deputy Registrar Cooperative Societies and obtained this on 29th November 2022. Then the 2nd Respondent issued a notice for a hearing on 2nd December 2022. The three claims or complaints, i.e., by Respondent No. 4 More and two others for excluding names from the voters list, were answered with written submissions and oral arguments through advocates. Respondent No. 3 the APMC also submitted an explanation to the objections and sought a dismissal of the objections saying that those against whom the complaints had been made held memberships for more than two years. There was a question of renewal of license fee and a report was received that licenses had been issued after the license fees were paid but there was a gap of nine months in effecting the renewal.

7. We come back to the impugned order. In the operative portion, paragraph 1 makes it clear that the allegations of Respondent No. 4 and others that there were bogus documents and bogus membership was rejected. Then there was a finding about

renewal of license fees, and we really fail to see how this arose because it did not emanate from any specific complaint by Respondent No. 4 at all.

8. Pausing for a moment, what the impugned order essentially says is that there was a period of nine months within the year from 1st April 2021 to 31st March 2022 (paragraph 4 of impugned order page 52) where there were allegedly “no licenses”.

9. This is also reiterated in paragraph 13 to 16 of the Affidavit in Reply at pages 75 to 80 which reads thus:

“13. I say that after offering the opportunity of hearing and making enquiry, the Respondent No. 2 being District election officer of APMC, Shirur vide order dated 02.12.2022 was pleased to accepted that objections raised by the Respondent No. 4 thereby ordered to delete the names of 73 voters from the final voters list. I say that mainly it was considered the said 73 traders have been given new licence in the month of February, 2021 by the Respondent No. 3 APMC for the period 01.04.2020 to 31.03.2021. I say that the renovation of the said licences was done in the month of February, 2022 for the period 01.04.2022 to 31.03.2023 and therefore it reveals that in the financial year 01.04.2021 to 31.03.2022 the said traders were not holding the valid licence for the period of 9 months. While accepting the objections of the Respondent No. 4 Objector, it was considered that the period of licence holding i.e. 01.04.2020 to cut-off date of the voters list i.e. 01.09.2022 the concerned licence holders were not possess the valid licence for the period 01.04.201 2 to 01.01.2022, which is a less period than 2 years and therefore ordered to be delete their names. Hereto annexed and marked as

Exhibit 'R-6' is copy of the order dated 02.12.2022 passed by the Respondent No. 2 District Election Officer, APMC.

14. I say that thereafter in pursuance of the abovesaid election programme the Respondent No. 2 District Election Officer was pleased to publish the final voters list on 07.12.2022 of the election of the members of the Respondent No. 3 APMC as per the Rule 7(3) of the APMC Election Rules, 2017.

15. I say that section 13(1) of the APMC Act, 1963 provides that subject to the provision of sub section (2), every Market Committee consist of the following members namely;

(b) two shall be elected by traders and commission agents, holding licences for not less then two years to operate as such in the market area;

I say that the licences issued by the Respondent NO. 3 APMC are required to be renewed in each financial year as per the provisions of Rule 6(5A) of APMC Rules, 1967, however, the Petitioners were not holding the licence for about 9 months and lately renewed their licence in the year 2022. I say that COVID-2019 pandemic period all APMC's including Respondent No. 3 were working as Essential Commodities as per the Government Policy as required to be provided to the Public at large, hence there was regular working and functioning of all the Market Committees in the State. I say that the question before the Respondent No. 2 was that, whether the Petitioners were eligible to be included in the voters list, on cut-off date and since, as per section 13(1)(b) of APMC Act, 1963, the Petitioners are not eligible voters as on the cut-off date for preparation of voters list as declared by Respondent No. 5 SCEA.

16. I say that while considering the objections it is required to be taken into consideration that, admittedly the Petitioners have renewed their licences after paying the late

fee in the year 2022 and on the cut-off date i.e. 01.09.2022 as fixed laid down by the Respondent No. 5 vide order dated 06.09.2022 they were not holding valid licences as per the provisions of section 13(1B) of the APMC Act, 1963. I say that bye-laws No. 5 of the Respondent NO. 3 APMC, Shirur, provides that application is required to be made in the month of February of each year however, the Petitioners were not renewed their licences, but it was renewed by paying the late fee and therefore on the cut-off date they were not traders and commission agents holding licences for not less than 2 years in the Respondent NO. 3 APMC market area. I say that in view of that the Petitioners were admittedly not holding licences for about 9 months intervening period and the subsequent renewal totally different concept as per section 13(1)(b) of the APMC Act, 1963. I say that therefore the names of the Petitioners are not eligible to be included for more than 2 years as on cut-off date as contemplated u/sec. 13(1)(b) of the APMC Act, 1963. I say that by way of the claims and objections the question before the Respondent No. 2 was to decide, whether the Petitioners are eligible to be included in the traders list as on cut-off date and subsequent renewal of licence after charging late fee etc. in the year 2022 cannot give rights to the Petitioners to consider and include their names on cut-off date by giving retrospective effect as they were not holding licence for about 9 intervening months. I say that it is the duty of the District Election Officer to verify the eligibility of voters as per the provisions of APMC Act, 1963, Rules 1967 made thereunder r/w. The APMC Election Rules, 2017.

17. I say that otherwise also since the election process has been commenced and reached up to advance stage the Petitioners have an alternative remedy to file an Election Dispute under Rule 88 of the APMC Rules, 1967 r/w. Rule 72A of the APMC Election Rules, 1967, therefore this

Hon'ble Court may not exercise the extraordinary jurisdiction conferred under Article 226 of the Constitution of India.

18. I say that therefore there is no illegality in the order dated 02.12.2022 passed by the Respondent No. 2 District Election Officer and thereafter publishing the final voter's list of the Respondent No. 3 APMC, therefore the Writ Petition is devoid of the merit and the same way be dismissed in limine *[sic]*."

10. The entire discussion in the impugned order and the assertions in the Affidavit in Reply cannot be accepted. They overlooked the fundamental distinction between *cessation of membership* due to non-payment of fee and a *late renewal*. By definition, a renewal implies a continuation of the previous membership and if there is any intervening gap, that is covered by the renewal. Seen from the perspective of a calendar, this might in a given case involve a member "renewing" his membership more than once in one year, first to make up for the intervening gap and second as a routine regular renewal on a scheduled date. The emphasis on "holding licenses" under Section 13(1)(b) is misplaced in the context of a renewal.

11. Such a situation is by no means unknown. As we were moved to point to the advocates before us, it is familiar to those who are members and specially officer-bearers of our advocates associations. There it happens with some regularity, that membership renewals are paid late (often just before an election). Yet nobody's membership, at least not in present memory, has been known to have been *cancelled* in any advocates association for non-payment of

a renewal fee, possibly for a very good reason. We see no reason why a different standard should now be applied in agriculturists in APMCs.

12. There is no case or reasoning or even a complaint that on account of non-payment of fee, membership had by virtue of any particular rule ceased or come to an end. Had that happened, those who had not paid would not have been entitled to a ‘renewal’ but would have had to seek membership all over again. A renewal is, lexically, a continuation of an existence license or membership. The moment a license fee was accepted, albeit late, the previous license continued. It is nobody’s case that a fresh license was issued, or that membership ceased and was taken afresh. That is not even the reasoning in the impugned order and it is not the justification in the Affidavit in Reply.

13. So far as Respondent No. 4 is concerned, this is not even his complaint and that is the end of that matter.

14. Accordingly, in our view, the Petition must succeed. It is disposed of with an order in terms of prayer clause (a), (b) and (c) which read thus:

“(a) That this Hon’ble Court may be pleased to issue writ of certiorari or any other writ, order or direction in the nature of writ of certiorari thereby to quash and set aside the impugned Order dated 02.12.2022 passed by the District Election Officer the Respondent No. 2 herein thereby allowing the objections filed by the Respondent No. 4 and removing the names of the Petitioners from the draft voters list and be pleased to reject the objections filed by the

Respondent No. 4 to the voters lists.

(b) That this Hon'ble Court may be pleased to issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus thereby directed the Respondent NO. 2 to forthwith withdraw / cancel the impugned Order dated 02.12.2022 passed by the District Election Officer the Respondent No. 2 herein thereby allowing the objections filed by the Respondent NO. 4 and removing the names of the Petitioners from the draft voters list.

(c) That this Hon'ble Court may be pleased to issue writ of mandamus or any other writ, order or direction in the nature of writ of mandamus thereby directing the Respondent Nos. 1, 2 and 5 not to publish final voters list as also the election program from stage 2 for election to the Agricultural Produce Market Committee Shirur, Dist. Pune.”

15. Prayer (c) is obviously to be qualified with the direction that there can be no voters' list finalized nor an election program announced without the inclusion of the Petitioners' names in the voters' list. We do not grant a permanent injunction against the voters' list finalization or the election programme.

16. The names of the Petitioners are to be incorporated in the final voters list and this is to be done well before any election program is announced. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)