



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

WRIT PETITION NO.6188 OF 2023

[Tulshiram Dadarao Kale .Vs. The District Election Officer and Ors.]

WITH

WRIT PETITION NO.6190 OF 2023

[Asha Nandkishor Shinde and another .Vs. The District Election Officer and Ors.]

WITH

WRIT PETITION NO.6189 OF 2023

[Raju Fakira Mule .Vs. The District Election Officer and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Writ Petition No.6188 of 2023

Mr M. V. Samarth, Senior Advocate a/b Ms I. Singh, Advocate for Petitioner.
Mr A. A. Madiwale, AGP for Respondent/State.
Mr S. P. Bhandarkar, Advocate for Respondent No.2.
Mr R. D. Karode, Advocate for Respondent No.5.

Writ Petition No.6190 of 2023

Mr M. V. Samarth, Senior Advocate a/b Ms I. Singh, Advocate for Petitioners.
Mr A. A. Madiwale, AGP for Respondent/State.
Mr S. P. Bhandarkar, Advocate for Respondent No.2.
Mr R. D. Karode, Advocate for Respondent No.4.

Writ Petition No.6189 of 2023

Mr M. V. Samarth, Senior Advocate a/b Ms I. Singh, Advocate for Petitioner.
Mr A. A. Madiwale, AGP for Respondent/State.
Mr S. P. Bhandarkar, Advocate for Respondent No.2.
Mr R. D. Karode, Advocate for Respondent No.4.

CORAM : ANIL L. PANSARE, J.

DATE : 16th DECEMBER 2024.

1. On 02.09.2024, following order was passed :

“Heard for some time.

An important common question is involved in these petitions. For the sake of convenience, I will refer the facts of Writ Petition No. 6188/2023.

The petitioner is elected member of Managing

Committee of Agricultural Produce Market Committee (APMC), Buldhana. The petitioner has been elected from the Gram Panchayat (General) category. The elections were held on 28-4-2023. The result was declared on 28-4-2023.

Rule 64 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (hereinafter referred to as 'the Rules of 2017') provides for recount of votes. Sub-rule (1) of Rule 64 provides, after completion of counting, the Returning Officer shall record in the result sheet, the total number of votes polled by each candidate and announce the same. Sub-rule (2) of Rule 64 of the Rule of 2017 provides that after such announcement, a candidate or, in his absence, his election Agent may apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount with depositing amount with Returning Officer which he may deem fit. Sub-rule (3) of Rule 64 provides that on such application being made, the Returning Officer shall decide the matter and may allow the application in whole or in part or may reject totally, if it appears to him to be frivolous or unreasonable. Sub-rule (4) of Rule 64 provides for the decision of the Returning Officer under sub-rule (3) shall be in writing and contain the reasons therefor. Sub-rules (5) and (6) of Rule 64 deals with the contingency, if the application is allowed.

Bare perusal of Rule 64 of the Rules of 2017 indicates that candidate, who has contested election, may apply in writing for recounting of votes on the day, when the result of poll is announced by the Returning Officer in terms of sub-rule (1) of Rule 64.

In the present case, such result having been announced on 28-4-2023, the application for recounting, if any, ought to be made on the same date. Further, the application ought to be in writing stating therein the grounds on which the applicant demands recounting by depositing amount with the Returning Officer.

Rule 65 of the Rule of 2017 provides for declaration of result and publication of names of the members of the committee. This is to be done once the decision of recounting is taken by the Returning Officer. The Returning Officer is duty bound to declare the result and certify the return of election in Form No. 19 where the District Election Officer himself is not the Returning Officer and shall send signed copies thereof to the District Election Officer.

I am informed that in the present case, the Returning Officer was not the District Election Officer. In that eventuality, the District Election Officer has to, in terms of Rule 65, on receipt of the declaration of the result by the Returning Officer, publish the names of all elected committee members list together with their permanent address on the notice board of his office which the District Election Officer in the present case has done on 28-4-2023.

Section 19 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as 'the Act of 1963') provides for election of Chairman and Vice-Chairman. The procedure for election is provided under Section 22. Sub-section (1) thereof provides that on the constitution of the Market Committee after a general election, authorized officer shall, within 30 days from the publication of the result of the general election, call a meeting for election of Chairman and Vice-Chairman. In the present case, this election has been held on 16-5-2023.

As could be seen, if the provisions of the Act of 1963 and the Rules of 2017 which have been referred to above are read together, one would gather the importance of time schedule to be followed in the matter of the elections of APMC.

The alleged challenge to election of petitioner is to be considered in the light of above.

As stated earlier, the elections were held on 28-4-2023. The result was declared on the same day. Respondent no. 2, the candidate, who also contested the

election, drafted application dated 28-4-2023 for recounting votes. However, the application was submitted with the Returning Officer on 2-5-2023 stating therein that he was not given opportunity to make a request of recounting prior to declaration of result in terms of sub-rule (1) of Rule 64 of the Rules of 2017. This application, however, does not show that the amount as required to be deposited in terms of sub-rule (2) of Rule 64 has been deposited by respondent no. 2.

Thereafter, on 8-5-2023, the respondent no. 2 carried the same request i.e. to recount the votes but under Rule 72A of the Rules of 2017. The respondent no. 2 has not challenged the election of petitioner but only seeks to recount the votes. This, to my mind is not permissible under Rule 72A of the Rules of 2017, which provides for determination of validity of election. Further, this application ought to have been filed within seven days of the date of publication of result i.e. within seven days from 28-4-2023 viz. on or before 5-5-2023. The application, however, has been filed on 8-5-2023.

The reply filed by respondent no. 1 indicates that the cognizance of this application was taken for the first time on 4-7-2023. It appears that notice was issued only to the Returning Officer and none else. However, on 7-7-2023, though the matter was listed for hearing of Returning Officer, surprisingly, the respondent no. 2 also appeared and filed application seeking amendment to add petitioner and respondent no. 3 as party – non-applicants to the application filed by him under Rule 72A of the Rules of 2017. It is not known as to how did respondent no. 2 come to know of the proceedings before the respondent no. 1 when the respondent no. 1 has issued notice only to the Returning Officer and not to respondent no. 2.

The effect of delayed cognizance is that election of Chairman and Vice-Chairman was held in the intervening period.

The respondent no. 1 shall, therefore, file affidavit justifying his casual approach in the matter and also his views on importance of time schedule to be followed in

entertaining the request as regards recounting of votes, the challenge to the election, the election of Chairman and Vice-Chairman for the smooth administration of Agricultural Produce Market Committee.

On the point of what has been noted herein above, learned counsel Mr. S. P. Bhandarkar seeks time to take instructions.

List in the week commencing from 30-9-2024.

Learned Assistant Government Pleader shall produce copy of inward and outward register dated 8-5-2023 of the respondent no. 1.

Interim order to continue till then.”

2. As could be seen, the respondent No.2 has not applied for recounting of votes, in terms of Rule 64 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (hereinafter referred to as “the Rules of 2017”), but has filed the petition under Rule 72A of the Rules of 2017 challenging the election of petitioner. However, prayer to that effect was not even made and precisely for that reason, he appears to have not made the petitioner as party respondent in his petition.

3. The respondent No.1, however, entertained the same, but has taken cognizance of the petition only in the month of July-2023 knowing fully well that in the intervening period, the elections of Chairman and Vice Chairman were taken, in terms of Section 19 read with Section 22 of the Act of 1963. Respondent No.2 then appeared on 07.07.2023 and filed an application seeking amendment to the petition seeking

addition of petitioner and respondent No.3 as party non-applicants. The notices were accordingly issued to the petitioner. He appeared and filed an application raising preliminary objection on maintainability of the petition on two grounds; one was that it is time barred as recounting is permissible only on the day of announcement of votes and secondly, the parties to the election petition cannot be joined after the limitation for filing petition has expired.

4. Mr M. V. Samarth, learned Senior counsel for petitioner submits that even if the petition is to be treated under Rule 72A of the Rules of 2017, the petition was to be filed within seven days after the date of declaration of result naming petitioner as party non-applicant. The same has been not done. Accordingly, he argued that the respondent No.1 committed an error of law by permitting the respondent No.2 to add the petitioner as party non-applicant in the month of July-2023 i.e. subsequent to the period of limitation for filing of election petition.

5. In support of his contention, he relied on the judgment of the Hon'ble Supreme Court in the case of *K. Venkateswara Rao and Anr. vs. Bekkam Narasimha Reddy and Ors.*, *AIR 1969 SC 872*, wherein the Supreme Court held that the amendment to the petition in civil proceedings and the addition of parties to such proceedings are generally possible

subject to law of limitation. But, an election petition stands on a different footing. The Court, further, held that the Limitation Act cannot apply to the proceedings like an election petition inasmuch as the Representation of the People Act is a complete and self-contained code which does not admit of the introduction of the principles or the provisions of law contained in the Limitation Act. Accordingly, the Supreme Court held that the necessary parties, who were not joined within the limitation period for filing petition, cannot be joined subsequently.

6. The respondent No.1 in his affidavit has, however, stated that joining of parties after limitation period is permissible, but has not quoted any provision of law in support nor could learned A.G.P. cite any provision or authority.

7. Thus, it appears that the respondent No.1 could not have allowed respondent No.2 to add the petitioner as party non-applicant after the period of limitation i.e. seven days from the date of declaration of result. Permitting such addition appears to be in contravention of the law laid down by the Supreme Court, as quoted above.

8. Nonetheless, the main emphasis should be whether the petition as was filed under Rule 72A of the Rules of 2017 was maintainable. In my view, it was not, for the simple reason

that the prayer therein is only to recount the votes, which is permissible only in terms of Rule 64 of the Rules of 2017.

9. Mr Bhandarkar, learned counsel for respondent No.2 has invited my attention to proviso to sub-rule (1) of Rule 64 to contend that recounting will be a subject matter of dispute only where there is an equality of votes between the candidates and addition of one vote will entitle the candidate to be declared elected.

10. To understand the aforesaid submission, it will be appropriate to reproduce Rule 64, which reads as under :

“64. Recount of votes

(1) After the completion of counting, the Returning Officer shall record in the result sheet in FORM 18 the total number of votes polled by each candidate and announce the same:

Provided that, when an equality of votes is found to exist between any candidates either for the reserved or the unreserved seats and the addition of one vote will entitle any of the candidate to be declared elected, the determination of the person or persons to whom such an additional vote shall be deemed to have been given shall be made by lots to be drawn in the presence of the Returning Officer and the candidates who may desire to be present, and in such manner as the Returning Officer may determine.

(2) After such announcement has been made, a candidate or, in his absence, his election Agent may apply in writing to the Returning Officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount with depositing amount with returning officer which he may deem fit.

(3) On such application being made, the Returning Officer shall decide the matter and may allow the application in whole or in part or may reject totally, if it appears to him to be frivolous or unreasonable.

(4) Every decision of the Returning Officer under sub-rule (3) shall be in writing and contain the reasons therefor.

(5) If the Returning Officer decides under sub-rule (3) to allow an application either in whole or in part, he shall,-

(a) count the ballot papers again in accordance with his decision;

b) amend the result sheet in FORM No. 18 to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(6) After the total number of votes polled by each candidate has been announced under sub-rule (1) or sub-rule (5), the Returning Officer shall complete and sign the result sheet in FORM 18:

Provided *that, no steps under this sub-rule shall be taken on the completion of the counting until the candidates present at the completion thereof have been given reasonable opportunity to exercise the right conferred by sub-rule (2)."*

11. As could be seen, sub-rule (1) of Rule 64 provides that after completion of counting of votes, the Returning Officer has to record total number of votes polled by each candidate and announce the same. The proviso to sub-rule (1) comes in play when there is an equality of votes. Such is not the case here. It is nobody's case that the parties herein had equal votes. Then comes sub-rule (2) which provide that after announcement is made, a candidate or, in his absence, his

election Agent may apply in writing to the Returning Officer to recount all or any of the ballot papers already counted stating the grounds and by depositing amount with the Returning Officer. Sub-rule (2) commences with the expression “After such announcement has been made”, which has a nexus with sub-rule (1) of Rule 64, wherein the Returning Officer has to announce the number of votes polled by each candidate. Proviso to sub-rule (1) is a contingency where there is an equality of votes and addition of one vote is decisive.

12. The aforesaid contingency does not restrict recounting of votes only where there is an equality of votes because sub-rule (2) clearly provides that the candidate can apply for recounting of all or any of ballot papers already counted and not restricted to the additional vote. Thus, recounting of votes, if any, has to be in tune with sub-rule (2) of Rule 64 of the Rules of 2017.

13. The respondent No.2 had in fact applied for the same on the same day, but without depositing the amount. Naturally, the application was not entertained by the Returning Officer nor has respondent No.4 pressed for any order for recounting of votes. He has then applied for a recount of votes once again, but under Rule 72A of the Rules of 2017, may be because he was aware that the remedy under

Rule 64 was not available to him.

14. The petitioner had accordingly raised an objection before the Respondent No.1 that the petition of recounting is time barred. Respondent No.1 has not assigned any reason except to note that the matter ought to be decided on merit since the petitioner has been added as party non-applicant and will have opportunity of hearing while deciding the petition on merit. The respondent No.1 has not really examined the provisions of Rule 64 coupled with Rule 72A of Rules of 2017 read with Sections 19 and 22 of the Act of 1963 and rejected the application only on the count that the petitioner will get opportunity of hearing while deciding the petition on merit.

15. To my mind, the respondent No.1 was under obligation to decide the issue of maintainability of petition. The respondent No.1, however, was not only casual and negligent in entertaining the petition, but has further failed to decide the application in accordance with law. The petition which was apparently not maintainable was entertained by respondent No.1, after an unreasonable period and then permitted respondent No.2 to amend the petition by adding petitioner as party non-applicant, which was time barred. The order impugned is, therefore, unsustainable and is liable to be set aside.

16. Since, common question is involved, all the petitions are **allowed**. The orders dated 05.09.2023 passed by the respondent No.1 - District Election Officer and District Deputy Registrar, Buldhana in Election Dispute Nos.7 of 2023, 8 of 2023 and 9 of 2023 are quashed and set aside. The applications filed by the petitioners questioning maintainability of election petition are allowed. All the petitions filed under Rule 72A of the Rules of 2017 are held not maintainable.

17. The writ petitions are disposed of in above terms. No order as to costs.

JUDGE