

(2008) 04 BOM CK 0115

In the Bombay High Court

Case No : Writ Petition No. 1649 of 2008

Atul Nanasaheb Kambe and Others

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 — Rule 36, 36(1), 38(2)

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13(1)

Citation : (2008) 6 BomCR 369 : (2008) 5 MhLj 452

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : Anjan De, for the Appellant; S. Ahirkar, Asstt. Government Pleader for respondent Nos. 1 to 3 and S.C. Mehadia, for the Respondent

Judgement

A.H. Joshi, J.—On 11th April, 2008, this Court had issued notice of final disposal, in response whereof, the respondents are present before this Court.

2. Hence Rule. Rule is made returnable forthwith.

3. Petitioners' grievance is that though proviso to Rule 36(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 provides as follows:

36. Voters' list-

(1) ...

Provided that where a person is qualified to vote from traders constituency or from Hamals and weighmens constituency his name shall appear in the respective register maintained by the market committee atleast 3 months before the preparation of such lists.

the impugned order is passed disregarding the said Rule.

4. According to petitioners, Section 13(1)(b) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, which reads as follows:

13. Constitution of Market Committees.

(1) ...

(a) ...

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

lays down eligibility to be a candidate and none-else.

5. According to learned Advocate Mr. De, in spite of above referred clear legal position, the impugned order has been passed rejecting the petitioners' request for inclusion in the voters' list. He, therefore, prays for setting aside the same.

6. The petition is opposed by learned Advocate Mr. Mehadia for respondent No. 4, urging as follows:

(a) Rule 36 of the said Rules is procedural and cannot override Section 13(1)(b) of the said Act.

(b) Clause (b) of Sub-section (1) of Section 13 came into book of law by Maharashtra Act No. XI/2006, however, corresponding amendment in Rule 36 has not been made.

(c) Various clauses under Sub-section (1) of Section 13 carve out electoral colleges which means the group or set of voters who shall elect. Thus, eligibility and qualification to vote is as prescribed in those clauses.

(d) If petitioners' contention is accepted, Rule 38(2) shall be rendered redundant.

7. He then relied upon reported Judgment of Hon'ble Supreme Court in case of ITW Signode India Ltd. Vs. Collector of Central Excise, to urge that the provisions contained in the parent legislation will have superior effect and rules cannot override or nullify main statute.

8. This Court has perused the scheme of the Act and the Rules.

The impugned order is based on the foundation that Section 13(1)(b) is the main section which provides the eligibility and collegium. It is seen from the statute book that this eligibility of two years being a trader etc., was introduced by amendment vide Maharashtra Act No. XI/2006, and no corresponding amendment is carried out in Rule 36.

9. Respondent No. 4's contention that no corresponding amendment is made in the Rules is seen to be factually correct.

10. It is clear and needs no support of precedent to hold that rules will never have effect of overriding the statute.

11. In the circumstances, impugned order is seen legally passed and hence petition does not merit any interference. Rule is discharged with costs.