

(1990) 10 BOM CK 0029
In the Bombay High Court
Case No : Writ Petition No. 2101 of 1990

Chintaman Meshram

APPELLANT

Vs

District Deputy Registrar" Co-operative Societies and Others

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13(1), 19

Citation : (1991) 1 BomCR 465

Hon'ble Judges : V.A. Mohta, J;M.B. Ghodeswar, J

Bench : Division Bench

Advocate : P.C. Madkholkar, for the Appellant; D.N. Kukade, Asstl. Government Pleader for respondent Nos. 1 and 2, Subhash Paliwal and interveners, for the Respondent

Final Decision : Dismissed

Judgement

V.A. Mohta, J.—Against the following factual backdrop, the point is whether respondent No. 3 is qualified to contest the election of Chairman of the Agricultural Committee (APMC), Tumsar District Bhandara u/s 19 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (the Act).

2. Respondent No. 3 is an "agriculturist" as defined under the Act. He is a Chairman of one of the Co-operative Societies doing business of processing/marketing of agricultural produce in the market area of the APMC. Since there are more than one such Societies in the market area, election for the membership of the APMC took place under the proviso to section 13(1) and he was duly elected.

3. Section 19 qualifies only "elected Agriculturist members" for the posts of Chairman and Vice-Chairman of the APMC. The Act defines the words "agriculturist" and "member" separately but not the term "agriculturist member". The word "elected" is also not defined.

4. Section 13 deals with the constitution of the Market Committees. Section 13(1) (a) to (b-1) necessarily deals with categories of elected members. Section 13(1) (d) to (g) deals with other categories. Section 13(1)(c) contemplates election only in case in the market area there are more than one Co-operative Societies referred to in the said sub-section. We reproduce for ready reference material portion of section 13:

"13. (1) Subject to the provisions of sub-section (2), every Market Committee shall consist of the following members, namely:---

(a) ten agriculturists residing in the market area (not being less than twenty-one years of age on the date specified from time to time by the Collector in this behalf); seven of whom shall be elected by members of the managing committees of the agricultural credit societies, and multipurpose Co-operative societies within the meaning of the Maharashtra Co-operative Societies Act, 1960, and the rules made thereunder, functioning in the market area; and three (of whom one shall be a person belonging to Scheduled Castes or Scheduled Tribes) shall be elected by members of village panchayats functioning there in;

(b) two shall be elected by traders and commission agents, holding licences to operate as such in the market area;

(b-1) one member shall be elected by hamals and weighmen operating as such in the market area;

(c) one shall be the Chairman of the Co-operative society doing business of processing or marketing of agricultural produce in market area; or in his absence a representative of the Co-operative society elected by its managing committee;

Provided that, if there be more than one such Co-operative societies in the market area, then the Chairman of any one of such Co-operative societies or in his absence a representative, elected by the managing committees of such societies;

(d) one shall be the Chairman of the Panchayat Samiti within the jurisdiction of which the market area of major portion thereof is situated of the representative elected by such Panchayat Samiti;

(e) one shall be the President or Sarpanch of the local authority (other than a Panchayat Samiti) within the jurisdiction of which the principal market is situated or the representative elected by such local authority;

(f) the Deputy Registrar of Co-operative Societies of the district or his representative, who shall have no right to vote;

(g) the Assistant Cotton Extension Officer or, where there is no such officer, the District Agricultural Officer of the Department of Agriculture, neither of them shall have the right to vote.

(1A)

(2) When a Market Committee is constituted for the first time, whether under sub-section (1) or (1A) all the members thereof and the Chairman and Vice-Chairman shall be nominated by the State Government;

Provided that, the Chairman and Vice-Chairman shall be no nominated from amongst the agriculturists members."

5. Election to categories (a) to (b-1) and (c) in section 13(1) take place under the Maharashtra Agricultural Produce Marketing (Regulation) Rules 1967 (the Rules). Rule 35 deals with preparation of voters list and divide the constituencies covered by categories (a) to (b-1) as under:---

(a) Co-operative Societies Constituency;

(b) Village Panchayat"s Constituency;

(c) Traders Constituency; and

(d) Hamals and Weighmen"s Constituency.

Rule 40 deals with election, if necessary, for category (c) of section 13(1). Rule 41 deals with disqualifications of membership. Rule 41(2) reads thus:

"41(2) A person shall not be chosen as a member-

(i) representing the traders constituency, if he does not ordinarily reside in the market area or if the licence issued to him is cancelled, or suspended or not renewed;

(ii) representing agriculturists constituency, if his main income is not from agriculture or possesses a trader"s commission agent"s or broker"s licence or has interest in a joint family or a firm which has a trader"s or commission agent"s or broker"s licence.

Explanation:--- For the purpose of this sub-rule, a person shall be deemed to be ordinarily residing in the market area, if he resides in such area for not less than 180 days in a calendar year."

6. Prior to Amending Act 27 of 1987 any "elected member" was qualified for holding the two sensitive posts of Chairman and Vice-Chairman. By the said Amending Act, several exhaustive amendments to the Act were made. The term "agriculturist" was amended so as to exclude certain more categories of persons from the said term; section 13(1) was amended so as to carve out, inter alia, an independent category of hamals and weighmen; section 13(2) was amended and a proviso added by which Chairman and Vice-Chairman of the Committee constituted for the first time can be nominated only from amongst "agriculturist members". Section 19 was amended so as to substitute the words "elected members" by the words "elected agriculturist members". Later on corresponding change was brought about in Rule 35 also. But Rules 40 and Rule 41(2) remained unaltered.

7. In the above legislative background it seems clear to us that the only change intended and brought about in the matter of qualification to hold the posts of Chairman or Vice-Chairman is this. Previously any elected member could hold the posts but now he must additionally be an "agriculturist". Undisputedly respondent No. 3 an elected member as well as an agriculturist and in our view this is enough to qualify him. Submission of the petitioner is that only an agriculturist falling section 13(1)(a) and no other agriculturist qualifies. We see no justification either textual or contextual to sub-divide the class of agriculturists for the purpose of section 19 and confine the qualification only to those agriculturists who fall u/s 13(1)(a). Newly added proviso to section 13(20) also provides a clue in support of this view. The terminology used therein and in section 19 is similar. In the constitution of the first committee which is nominated there is no question of any one falling u/s 13(1)(a). Rules of construction of statute do not warrant different meanings for the same terminology used in one enactment. Had the legislative intention in section 19 been to confine the qualification only to agriculturists falling under category 13(1)(a) nothing prevented the legislature from saying so clearly. The exercise was simple. All that was necessary was to specifically mention section 13(1)(a) under which only agriculturists can be elected.

8. No separate constituency for agriculturists is carved out either under the Act or the Rules. Section 13(1)(a) deals with membership from two constituencies (i) certain Co-operative Societies (ii) Village Panchayats. It is a different matter that only agriculturists can represent those two constituencies. In this connection our attention was drawn to Rule 41(20) in which the terminology "agriculturists constituency" is used. Now Rule 41(2) merely lays down as to which "trader" or which "agriculturist" can be chosen as a member in the respective category. It is an old Rule which has not been changed even after Amending Act 27 of 1987. Its backgrounds and purpose is different. Moreover no Rule can be so read as to override the Act.

9. Under the circumstances, conclusion is inevitable that respondent No. 3 is duly qualified to contest the election of the Chairman. In the result the petition is dismissed and rule discharged, but with no order as to costs.

10. The first meeting of the market committee for the purposes of election of Chairman and Vice-Chairman has been held on 31st August 1990 but by ad-interim order this Court withheld the result of the election of the posts. The interim order as regards post of Vice-Chairman was vacated later on. Needless to mention that the interim order operating against the declaration of the result of the post of Chairman stands vacated.