

(2002) 11 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No's. 1176 and 1868 of 2002

Digambar Sadashiv Ghorpade and Others

APPELLANT

Vs

Election Registration Officer and Others

RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 — Rule 36(12), 88

Citation : (2003) 1 ALLMR 906 : (2003) 2 BomCR 532 : (2003) 1 BOMLR 379 : (2003) 1 MhLj 669

Hon'ble Judges : Nishita Mhatre, J;H.L. Gokhale, J

Bench : Division Bench

Advocate : Ramesh Soni, for the Appellant; S.R. Nargolkar, A.G.P. for Respondent Nos. 1, 2 and 6, P.K. Dhakephalkar and A.Y. Sakhare, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Gokhale, J.—These two writ petitions invoking Articles 226 and 227 of the Constitution of India raise questions concerning the legality and validity of the final voters list published by the respondent No. 1 in respect of elections to two seats from the traders constituency to the respondent No. 3 Agriculture Produce Market Committee, Kolhapur (hereinafter referred to as "APMC, Kolhapur" or as "the Market Committee"). Both these petitions seek to challenge the speaking order passed by him in his capacity as the Election Registration Officer for the APMC, Kolhapur on 27th February 2002, whereby the objections to the inclusion of the names of the 284 Petitioners in the voters list came to be accepted, disentitling them to vote in the election to the traders constituency to the APMC, Kolhapur. These Petitioners principally contend that they were not given a personal hearing while arriving at the above decision and thus there is a violation of principles of natural justice and therefore the exclusion of the Petitioners from the voters list is illegal and bad in law. Both these petitions therefore seek a writ of certiorari to quash and set aside the order dated 27th February 2002 passed

by respondent No. 1 (at Exhibit-J to the petition) directing deletion of these 284 names from the final list of voters.

2. As against these submissions, it is the defence of the contesting respondents that the Petitioners had no right to be included in the voters list since they did not qualify as traders eligible to vote, that they were sought to be inserted at the last moment at the instance of one interested candidate one Nandakumar Valanju, that the procedure followed while excluding their names was in compliance with the principles of natural justice and in fact it is the Petitioners themselves who did not co-operate with the deciding authority. It is submitted that the Petitioners have nowhere pointed out as to how on facts the order was bad or unjustified and as to how the Petitioners were eligible voters. The impugned order is therefore stated to be correct on facts as well as on procedure. Alternatively, it is submitted that if necessary, once again a hearing be directed, but the Petitioners themselves are not agreeable to this suggestion. As a second alternative submission, the contesting respondents submit that in any case, the writ court is not the proper forum to raise these grievances and the Petitioners have an alternate remedy to challenge the election by filing an election petition wherein they may raise the disputes that they have sought to raise in these petitions. On the other hand, the Petitioners contend that the dispute with respect to the wrongful exclusion from the voters list cannot be raised in an election petition and the present writ petition is therefore a necessary remedy.

3. The first petition, i.e. Writ Petition No. 1868 of 2002, is filed by 275 such voters who claim to have been illegally removed from the voters list. The second petition, i.e. Writ Petition No. 1176 of 2002, is filed by similarly excluded 9 more voters taking the number to 284. These 9 voters in the second petition contend that apart from being voters for the disputed election, they had a right to contest and wanted to contest the election which opportunity has been denied to them.

4. The respondent No. 1 to both these petitions is the Election Registration Officer for APMC, Kolhapur who otherwise holds the post of the Sub-Divisional Officer of the Karveer Taluka of Kolhapur. The respondent No. 2 is the Collector of Kolhapur. The respondent No. 3 is the APMC, Kolhapur. The respondents Nos. 4 and 5 are the complainants on whose complaints the Petitioners in both the petitions got excluded from the voters list. Hereinafter at times they are referred to as the contesting respondents. The respondent No. 6 is the State of Maharashtra.

5. Since both the petitions involve common questions of fact and law, they are being heard and decided together. Mr. Ramesh Soni has appeared for the Petitioners in both the petitions. Mr. Nargolkar, A.G.P. has appeared for respondents Nos. 1, 2 and 6. Mr. Dhakephalkar has appeared for respondent No. 3 and Mr. Sakhare has appeared for respondents Nos. 4 and 5.

6. The facts leading to the present petition are as follows :--

(a) The respondent No. 3--APMC, Kolhapur is constituted under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as "the said Act"). The terms of office of a Market Committee is for a period of 5 years. The last elections to the respondent No. 3 Committee were held in December 1996 and the first meeting was held on 28th January 1997. The next elections were to be held on 28th January 2002.

(b) The voters list for this election was prepared by the then Committee and submitted to the respondent No. 2 Collector on 31st July 2001 for finalisation. The Returning Officer for these elections issued a public notice on 17th August 2001 to lodge claims and objections to the provisional voters list. The respondents Nos. 4 and 5 raised objections to the provisional list and filed written representation on 7th September 2001 pointing out that a large number of persons shown as voters in the "B" category as traders were in fact not traders and did not carry on any business whatsoever in the market area. The inclusion of some 450 such members was objected principally on this ground. An allegation was made against the then Chairman of the APMC that he was instrumental in including these bogus voters.

(c) The respondent No. 1 issued notices to the parties for hearing on these representations. They were published in the newspapers also sometimes around 7th September 2001. The Market Committee however took a stand that he had no jurisdiction to go into these complaints. The Market Committee refused to cooperate with him and in fact filed a written submission on 20th September 2001 raising such objections.

(d) The respondent No. 1 suffered from a handicap in view of this non-cooperation. He deleted names of a few persons who were prima facie non-eligible such as those who were granted licenses after the cut off date for being on the electoral roll i.e. after 24th April 2001, but retained many objected names including those of the 284 petitioners. The final list of voters was published on 5th October 2001 which included these 284 names.

(e) Eight Directors of the then Market Committee represented to the Chief Minister of Maharashtra on 23rd October 2001 pointing out the high handedness on the part of the then Chairman and Secretary of the Market Committee leading to the tampering with the record. The government forwarded the complaint to the Director of Marketing, who in turn asked the District Deputy Registrar, Cooperative Societies, Kolhapur to look into the complaint pertaining to the enrolment of bogus members by tampering with the record. In view of these serious allegations, the respondent No. 6 - Government of Maharashtra stayed the election to the Market Committee by its order dated 31st October 2001 and on 1st November 2001 the District Deputy Registrar, Co-operative Societies, Kolhapur initiated an inquiry u/s 40 of the said Act and appointed the Deputy Registrar of Radhanagri one Shri Arun Kakade to hold an inquiry into the preparation of this bogus voters list.

(f) One Shri Nandakumar Valanju, the then Director of the Market Committee and close supporter of the then Chairman filed Writ Petition No. 5541 of 2001 on 9th November 2001 to challenge the initiation of the inquiry u/s 40 of the Act and also the order of stay of election. By its order dated 9th November 2001, the High Court stayed the order of the State Government postponing the election. The court however refused to stay the inquiry initiated u/s 40 of the said Act. As far as the respondents objecting to the bogus enrolment are concerned, the court made it clear that the order of the High Court did not prevent any of them from moving the Collector and to invoke his powers to look into those objections under Rule 36(12) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 ("the said Rules" for short) framed under the said Act. Those objectors had filed their writ petitions bearing Writ Petition Nos. 5044, 5054, 5068, 5159 and 5183 of 2001. All those petitions were disposed of by the same Division Bench by observing that the Petitioners may move the Collector to have the objection decided under Rule 36(12) of the said Rules.

(g) In the meanwhile, the Inquiry Officer appointed u/s 40 of the said Act by the State Government proceeded with his inquiry. The Inquiry Officer issued notices and sent letters to the Market Committee calling for information pertaining to several persons against whom the objections were raised. The Market Committee wrote to the Inquiry Officer on 23rd November 2001 stating that the inquiry initiated by him was illegal and contrary to the High Court order. The Inquiry Officer however insisted upon the Market Committee to produce the relevant record. Since the Inquiry Officer u/s 40 was inquiring into the malpractices including bogus enrolment, the respondent No. 1 forwarded the objections filed before him under Rule 36(12) to the Inquiry Officer since both the complaints were by and large. The Market Committee however refused to co-operate and took a clear stand in their reply dated 16th December 2001 that the Inquiry Officer had no jurisdiction at all and it refused to produce the record. Ultimately the Inquiry Officer issued summons and finally a warrant of arrest u/s 41(2) of the said Act to remain present to produce the record. After the record was seized and produced, the Inquiry Officer went through the same and submitted a detailed report.

(h) This report was forwarded to the respondent No. 1. The respondent No. 1 once again issued notice to the Market Committee, considered their replies, heard the representations of the parties and thereafter passed his order on 27th February 2002 deleting 284 names from the voters list. What is material to note is that the respondent No. 1 in his order found that these 284 persons could not be said to be holding the valid licenses and their enrollment was unjustified. He came to this conclusion since he found, as disclosed in his impugned order, that (i) their addresses on the applications for enrollment were different from those in the register while granting the licenses, (ii) the character certificates for all the 284 persons were issued by one person in his capacity as Special Executive Magistrate, i.e. by Shri Nandakumar Valanju, (iii) the licence fee to become members was not received in the names of individual persons, but the same was

received in one figure as a collective contribution. Besides this amount of licence fee, i.e. an amount of Rs. 29,700/-, is admittedly paid on 21st September 2000, but large number of those receipts were shown to have been issued on 31st August 2000, i.e. the last date for making the payment. These receipts are issued from a receipt book which was not at all issued on 31st August 2000, (iv) the solvency certificates were not enclosed with the applications. It was stated in those applications that they were only for renewals. However, the necessary bonds on adequate stamp papers were not furnished. It is for these reasons that the respondent No. 1 deleted these 284 names by his order dated 27th February 2002 which has come to be challenged in the present petition.

7. Now, what is material to note is that as observed in the above referred order of the Division Bench of this Court, the objections were filed under the relevant Rule 36(12) of the said Rules and they came to be considered and decided well in time on 27th February 2002. This is because the last date for filing of nominations was 7th March 2002. The scrutiny of the nominations was to be done thereafter, the date for publishing the valid list was 11th March 2002, the date for withdrawal was 13th March 2002, the final list was to be published on 14th March 2002 and the voting was to take place initially on 7th April 2002, but it was finally postponed to 22nd April 2002. It is after this order of 27th February 2002 and after the election process started that the present petitions were filed.

8. Writ Petition No. 1176 of 2002 came up for consideration before a Division Bench on 7th March 2002. As stated above, this is a petition which is filed by 9 voters who wanted to contest the election. The Division Bench, which heard the matter, took the view that there was no reason to interfere with the election process. The court observed that the Rules provided for an appeal against rejection of nomination papers and election petition under Rule 88 of the above referred Rules was a comprehensive remedy in the event their nominations were rejected. Hence the interim relief seeking a stay on the implementation of the order dated 27th February 2002 was rejected. With respect to the suspension of licenses of the petitioners as traders, the Division Bench observed that a remedy was available to them under Sections 8 and 9 of the said Act.

9. Thereafter Writ Petition No. 1868 of 2002 was filed. This petition also came up before the same Division Bench. This petition is filed by the other 275 voters. The Division Bench by its order dated 17th April 2002 directed that these persons be allowed to vote, but their votes be kept in a sealed cover which should not be opened without prior orders of the court. The court postponed the counting of the traders constituency. That interim relief has continued since then. Both the petitions were however admitted.

Relevant provisions of the Act and the Rules

10. Before we deal with the rival submissions, it would be proper to refer to the relevant provisions of the said Act and the Rules framed thereunder. As far as the Act is concerned, it is seen that the Market Committee is defined u/s 2(j) of the

Act to mean a Committee constituted for a market area u/s 11 of the said Act. The market area is defined u/s 2(i) of the Act to mean an area specified in a declaration made u/s 4 of the Act by the State Government by a notification in official gazette. This Market Committee is a body corporate as provided u/s 12 of the Act. Section 13 provides for constitution of the Market Committees. u/s 13(1) (b), two of the members of the Market Committee are to be elected from the traders constituency with which we are concerned in the present matter. Section 14 provides for the election and term of office of members. As far as the present matter is concerned, the relevant Section is 14(1) which reads as follows :--

"14. (1) Subject to the provisions of Sub-section (2), the members shall be elected in the manner prescribed by rules. Such rules may provide also for the determination of constituencies, the preparation and maintenance of the list of voters, persons qualified to be elected, disqualifications for being chosen as, and for being a member, the right to vote, the payment of deposit and its forfeiture, the determination of election disputes and all matters ancillary thereto including provision regarding election expenses."

Under Section 14A, there is a provision for creating an election fund to conduct all elections to the Market Committee. Sub-section (1) of this section however declares that the superintendence, direction and control of the preparation of the list of voters for and conduct of all elections to Market Committees shall be vested in the Collector. Section 60 of the Act provides for framing of the Rules which are to be made by the State Government by notification in the official gazette. Section 60(1) states that these rules are to be made for carrying into effect the purposes of this Act. Section 60(2) of the Act provides that in particular but without prejudice to the generality of the foregoing provisions, the State Government may make rules and Sub-section (d) thereof provides for making rules u/s 14 for prescribing the manner in which the members may be elected including all matters referred to in that section.

11. Section 40 of the Act provides for inspection, inquiry and submission of statements, etc. Section 40(b) provides that the Director or any officer authorised, by him by general or special order in this behalf, may hold inquiry into the affairs of a Market Committee. Section 40 reads as follows :--

"40. The Director or any officer authorised by him by general or special order in this behalf, may--

(a) inspect or cause to be inspected the accounts and offices of a Market Committee;

(b) hold inquiry into the affairs of a Market Committee;

(c) call for any return statement, accounts or report which he may think fit to require such Committee to furnish;

(d) require a Committee to take into consideration--

(i) any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such Committee; or

(ii) any information he is able to furnish and which appears to him to necessitate the doing of a certain thing by such Committee, and to make a written reply to him within a reasonable time stating its reasons for doing, or not doing such thing;

(e) direct that anything which is about to be done or is being done should not be done, pending consideration of the reply and anything which should be done but is not being done within such time as he may direct."

Thereafter u/s 41(1) a duty is cast on the officers and members of the Market Committee to furnish information to the Director when the affairs of the Committee are being investigated u/s 40. Section 42 empowers the Director to seize the account books and other documents of the Committee when he has reason to believe that the books and records of the Market Committee are likely to be tampered.

12. As noted above, Section 60(2)(d) empowers the State Government to make the rules for prescribing the manner in which the members may be elected including all matters referred to in Section 14.

13. The provisions with respect to constitution of the Market Committee are seen in Chapter III of the above referred Rules. Rules 35 thereof provides for preparation of the list of voters and the division of the market area into various constituencies. Rule 36 provides for preparation of the voters list. Rule 37 makes the list finally published under Rule 36 to be conclusive. Rule 39 provides that no person who is not and every person who is for the time being entered in the voters list of the constituency shall be entitled to vote. Rules 41A to 71A provide the administration machinery for the conduct of the election. In Rule 43, various stages of election and the time gap between various stages right after the display of final list of voters until declaration of results are laid down. Rule 51 provides for an appeal to the Collector by any candidate aggrieved by a decision of the Returning Officer accepting or rejecting a nomination paper. Rule 71A gives power to the Collector to direct fresh poll in certain situations. Rule 80 provides for declaration of results and finally Rule 88 provides for determination of validity of election. For our purposes, Rules 36, 37 and 88 are the relevant Rules. For ready reference, they are incorporated herein as below :--

"36. Voter's list.--(1) The Collector 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 Panchayats showing distinctly the members belonging to the Scheduled Caste and Scheduled Tribes functioning in the market area and the market committee to prepare and furnish to him the list of traders and hamals and weighmen licenced by the committee within such time

as may be specified by him. Thereafter, the Collector shall cause to be prepared separately for each of the constituencies a voters list for holding the elections to the market committees ;

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

(2) Every such list shall be revised before each general election at least six months before the date on which the term of the market committee is due to expire :

Provided that the Collector may direct the revision of such list also at any other time before any general election is due.

(3) The voters list for co-operative societies constituency shall be prepared society wise. The voters list for village panchayats constituency shall be prepared panchayatwise, indicating the details regarding members belonging to the Scheduled Castes and Scheduled Tribes, etc. Every list of voters for all the constituencies mentioned in Sub-rule (1) of Rule 35 shall provide in alphabetical order the name, age, residence and the category of the voters to which he belongs.

(4) Deleted

(5) Deleted

(6) Every such list shall be published in Marathi provisionally within a period of one month from its receipt by the Collector in such manner as the Collector may deem fit.

(7) At the time of publishing the list of voters a notice shall be published in like manner calling upon persons entered in the list to lodge in the manner herein prescribed any objection that they have to make to the list as published, and upon persons claiming to be entered in the list, to lodge their claim in the manner herein prescribed.

(8) Such claim or objection shall be made in writing and shall specify the constituency in question, the grounds on which the right of any person to be entered in the list is asserted or denied, the evidence, which the claimant or objector intends to lead, the address of the claimant or objector, his number, if any, in the list and in the case of an objection, the number in the list of the person to whose entry objection is taken and the constituency in the list for which he is entered.

(9) Every claim or objection shall be delivered or sent by post so as to reach the office of the Collector before the date fixed by the Collector in that behalf being a date not later than one month from the date of publication of the list.

(10) The Collector, after hearing the evidence, if any, adduced on behalf of the parties and after further inquiry, if any, shall pass order on the claim or objection, and the order of the Collector relating to such claim or objection shall be final,

(11) The Collector shall cause the lists to be amended in accordance with the orders passed under Sub-rule (10) and shall cause them to be published finally in Marathi in such manner as he may deem fit.

(12) If, after the final publication of the list of voters, under Sub-rule (11), the Collector on application or otherwise, is satisfied after such inquiry as he deems fit that any entry or entries in the list is or are erroneous or defective in any particular respect, the Collector may cause a list of amendments to be prepared; and thereupon the provisions of Sub-rule (3) to (11) shall apply in the case of such list in the like manner as they apply in the case of the list of voters.

(13) Copies of such final lists including the final list of amendments and additions shall be made available for inspection and sale in whole or part in the offices of the Collector, the Market Committee and the Village Panchayat concerned or at any other place as the Collector may specify in this behalf.

(14) The final list as also the final list of amendments shall be republished under Sub-rule (11) and shall remain in force and continue in operation as the list of voters for the purpose of any bye-election, until it is revised as provided by this rule.

(15) Any person whose name is not entered in the final list of voters as republished under Sub-rule (14) may at any time but not later than 3 days before the last date for nomination apply to the Collector for inclusion of his name in the list,

(16) On receipt of the application under Sub-rule (15) the Collector shall if satisfied that the applicant is entitled to have his name entered in the list, direct his name to be entered in the list and cause an amendment to the list to be prepared; and thereupon the provisions of Sub-rules (13) and (14) shall mutatis mutandis apply to such amendments.

37. Voters list to be conclusive.--Subject to any disqualification incurred by a person, the voters lists published finally under Rule 36 shall be conclusive evidence for the purpose of determining whether any person is qualified to vote, or as the case may be or is not qualified to be elected at any election.

88. Determination of validity of election.--(1) If the validity of any election, including bye-election of a member of a Market Committee is brought in question to any person qualified either to be elected or to vote at the election to which such election refers, such person may, within seven days after the date of the declaration of the result of the election, apply in writing to the Collector.

(2) On receipt of an application under Sub-rule (1), the Collector shall, after

giving an opportunity to the applicant to be heard and after making such inquiry as he deems fit, pass an order confirming or amending the declared result of election or setting the election aside. If the Collector sets aside the election, he shall fix a date as soon as conveniently may be, for holding a fresh election.

(3) Any person aggrieved by the decision of the Collector may within seven days from the date on which the decision is communicated to him, appeal to the Commissioner appointed u/s 6 of the Maharashtra Land Revenue Code, 1966 against such decision of the Collector subject to the decision of the Commissioner appointed u/s 6 of the Maharashtra Land Revenue Code, 1966 in appeal shall be final."

14. Since we are concerned with the traders constituency, we may refer to the relevant provisions of the Act in that behalf. Section 2(t) defines a "trader" as a person who buys or sells agricultural produce as a principal or as a duly authorised agent of one or more persons. Section 6 declares that no person shall, without or otherwise than in conformity with the terms and conditions of a licence, use any place in the market area for the marketing of the declared agricultural produce or operate in that area as a trader, commission agent, etc. Section 7 provides for grant of licences. Section 8 provides for the cancellation or suspension of licences. Section 9 provides for an appeal against an order either refusing to grant or renew a licence passed by the Market Committee or an order granting or cancelling or suspending a licence passed by a Director.

15. As far as the Rules concerning the traders, Rule 6 provides for the requirements to be complied with by a licensed trader amongst others for obtaining a licence or for the renewal thereof. Rule 6(1) speaks of an application to be made for a grant or renewal of licence, whereas Rule 6(2) provides for the requirements of grant or renewal of licence. Rule 6(5A) provides that an application for renewal of a licence has to be made before 31st August every year. The relevant Sub-rules (2) and (5A) of Rule 6 are quoted hereinbelow and they read as under :--

"6. Licensed trader, broker and commission agent.--(1)

(2) On receipt of any application together with the proper amount of the fees if any, and information referred to in Sub-rule (1), the Director, or as the case may be, Market Committee may, subject to the provisions of Rule 5 and this rule, after, satisfying himself or itself on the following points, grant the applicant a licence in Form I, or, as the case may be, renew it in that Form (such licence being issued or renewed, except, in a case where it is granted by the Director, under the signature of the Chairman), namely :--

(a) (i) solvency certificate;

(ii) cash security or bank's or third person's guarantee, (if a solvency certificate is not produced);

(iii) capacity for providing adequate equipment for smooth conduct of the

business; (iv) conduct of the applicant;

(b) in the case of renewal of a licence, also whether on the basis of a statement to be furnished by the licensee showing the business transacted and the amount of dues paid or payable to the Market Committee in the last preceding market year the applicable has traded or not in the market area or whether the person has overtraded;

Provided that, no licence shall be issued to any applicant unless he executes an agreement in the form approved by the Director agreeing to abide by the provisions of the Act, these rules and the bye-laws."

"(5A). An application for renewal of a licence shall be made before 31st August every year. It shall be competent for the Market Committee to accept an application made after the aforesaid date on payment of a late fee at the rate of 10 per cent of the licence fee per day of default."

Submissions on behalf of the petitioners

16. Mr. Soni, learned counsel appearing for the petitioners, submitted that the order passed by a Division Bench of this Court in Writ Petition No. 5541 of 2001 on 9th September 2001 permitted the contesting respondents to move the Collector and to invoke his powers to look into their objections under Rule 36(12) of the above referred Rules. Thereafter when the respondent No. 1 did that exercise leading to the impugned order dated 27th February 2002 directing the deletion of 284 names, the least that was expected was that the petitioners, whose names were being objected, were provided with a personal hearing. He submitted that admittedly no personal hearing was afforded to these petitioners by the respondent No. 1 and yet their names came to be deleted from the electoral roll. Mr. Soni submitted that Rule 36(12) referred to the procedure which was to be followed before the decision was arrived at. Rule 36(12) specifically provided that when these amendments were to be effected to the final list of voters, the provisions of Sub-rules (3) to (11) shall apply in the case of such list as they apply in the case of initial list of voters. Rule 36(8) required that when any claims or objections were lodged, the grounds on which the right of any person to be entered in the list was denied, and the evidence which the objector wanted to lead, had to be specified in the objections in writing. Thereafter Rule 36(10) provided that after hearing the evidence, if any, adduced on behalf of the parties and after further inquiry, if any, the Collector shall pass the order on the claim or objection. He submitted that it implied a personal hearing particularly when a valuable right to vote was being taken away after the same having been conferred earlier on the voter concerned. Mr. Soni then submitted that it was not permissible for the respondent No. 1 to rely upon the report made by the Inquiry Officer u/s 40 of the Act to remove the names of the petitioners from the list of voters, and this decision based on another inquiry was bad in law.

17. On the merits of the impugned order, Mr. Soni submitted that the inquiry

contemplated under Rule 36 on the objections such as above was a summary inquiry confined only to the aspects set out in the particular rule and nothing else. In his submission, further inquiry leading to the examination as to whether the petitioners were traders or not was outside the scope of the respondent No. 1. Mr. Soni relied upon the judgment of a Division Bench of this Court in the case of *Dhondiba Lakde v. Someshwar Sahakari Sakhar Karkhana* reported in 1979 MhLJ 311 in this behalf. The Division Bench of this Court was concerned with Rules 4, 5 and 6 of the Maharashtra Specified Co-operative Societies (Election to the Committees) Rules in that matter. The Division Bench held that Rule 6(1) of those Rules did not empower the Collector to hold the detailed inquiry whether the person is held to be qualified to be on the register of members and if not, to delete his name from the provisional list of voters. u/s 38(2) of the MCS Act, the register of members was a prima facie evidence of membership. All that the Collector was entitled to do was to ensure the identity of the voters under Rule 6(1) and if it is not established, to take steps within the ambit of Rule 6(1). The Division Bench had held that the powers of the Collector were mechanical in nature and all that the Collector had to do was to ensure only the identity of the voter whose name appears from the provisional list of voters. Mr. Soni submitted that there is likely to be misuse if a detailed inquiry is permitted. As an example as to what the court can do if rightful voters are denied right to vote, Mr. Soni referred to an order of a single Judge of this Court in the case of *Raj an Dinkarrao v. State of Maharashtra* reported in 1997 (1) Mh.L.J. 543. That was a case where names of more than 97% of a specified co-operative society were excluded from the voters list and a learned single Judge of this Court directed the names of such persons to be included in the voters list. This order was passed while exercising writ jurisdiction of this Court. He relied upon another Division Bench judgment of this Court in the case of *Karbhari Maruti v. State of Maharashtra* reported in 1994 Mh.LJ 1527. In that matter, the Court had held that where sufficient material is placed before the court prima facie establishing that qualified voters had been excluded and unqualified voters had been included in the voters list of a specified co-operative society, then an inquiry as contemplated under the Act can be completed within the shortest possible time so that the elections can be held on the scheduled date with a corrected list of voters. In a situation like this, the Court can entertain a challenge to voters list under Article 226 of the Constitution.

18. The last submission of Mr. Soni was that whereas the electoral roll was finalised by the Collector under Rule 36(12), he was himself required to decide the election petition under Rule 88, which was incongruous. For that reason also when it comes to any deficiencies in the electoral roll, that ought to be permitted to be examined in writ jurisdiction.

Submissions of the respondents

19. Mr. Sakhare, learned counsel appearing for the contesting respondents, on the other hand, drew our attention to the conduct of the petitioners and one Mr.

Valanju, in whose favour this disputed enrolment was being sought. Mr. Sakhare pointed out that the provision of the present Rule 36 was wide enough. Under Rule 36(10) while finalising the voters list, the Collector was permitted to make "further inquiry" and under Rule 36(12) "such inquiry as he deemed fit". Similarly under Rule 36(12), the Collector can bring about an "amendment on application or otherwise". This is to be done after an inquiry as he deemed fit. In the instant case a parallel inquiry was being conducted u/s 40 of the Act by a competent officer. The issue involved in both the proceedings was identical, namely with respect to the legality or otherwise of the membership of the petitioners. The Inquiry Officer holding inquiry u/s 40 had given a notice to the APMC and all concerned. The APMC obstructed the proceedings all throughout. The APMC was in fact defending the cause of these petitioners at that time. Mr. Sakhare drew our attention to the affidavit of Mr. Valanju made in this matter earlier. Even after the inquiry before the respondent No. 1 started, he gave a notice to the APMC, Kolhapur. That the respondent No. 1 was holding an inquiry on the objections of the contesting respondents was known to the petitioners. Nothing prevented them from participating in the proceedings before the respondent No. 1. In any case, they did participate in the proceedings before the Inquiry Officer u/s 40 of the Act. The issue involved and the evidence on the particular issue was the same in both the proceedings. Mr. Sakhare therefore submitted that as far as the principles of natural justice are concerned, there was a substantial compliance with the requirement and the order could not be vitiated on that ground. In any case, he offered to go back to respondent No. 1 for correction of the electoral roll which could be done after hearing all the petitioners. Surprisingly enough, it was Mr. Soni, learned counsel appearing for the petitioners, who declined this suggestion after taking instructions from the petitioners. Thus if the petitioners are really keen on having a personal hearing before the respondent No. 1 himself, the contesting respondents were ready for that, but it is the petitioners themselves who have declined that offer. Mr. Sakhare therefore submitted that it is not permissible for such petitioners to contend that in spite of the order passed by the respondent No. 1 on this background removing their names from the voters list, the list which existed earlier ought to be construed as a valid list and the votes of the petitioners be counted. In the submission of Mr. Sakhare, such a plea was not tenable either on facts or on procedure.

20. That apart, Mr. Sakhare drew our attention to the material on record and pointed out as to how a block payment was made for these 284 petitioners by an interested person. Since the last date for making the payment for renewal of licenses was 31st August 2000, receipts with the help of the former chairman of the APMC were back-dated to show that the licenses of the petitioners stood renewed and they were eligible voters. He submitted that this method however cannot be carried further inasmuch as the amount is entered into the daily cash register only on 21st September 2000 and the receipt book wherefrom the particular receipt is torn was not issued on 31st August 2000 at all. It was issued

much subsequently in September 2000. Mr. Sakhare submitted that under Rule 36(10), such further inquiry was permissible and under Rule 36(12) after such inquiry as he deemed fit, the Collector was entitled to decide the objections. In the instant case, he has relied upon the report of the competent officer u/s 40 of the Act which inquiry was being held on those very charges and wherein there was a complete hearing provided to the persons concerned.

21. Mr. Sakhare then submitted that Rule 6 of the relevant Rules required the traders to have a solvency certificate. In the present case, that was not forthcoming from any of these petitioners. They could not therefore be considered to be traders within the definition of the concept to be eligible to vote. In the submission of Mr. Sakhare, the judgment of the Division Bench in the case of Dhondiba (supra) would not apply to the present case. Here the provisions of the Rules are different and the kind of inquiry conducted into the voter's eligibility was very much permissible. Mr. Sakhare then referred to and relied upon the judgment of the Apex Court recently rendered in the case of S.S.S.J.S.S.D.U. Sanstha v. State of Maharashtra reported in 2002 (1) Mh.L.J. 659 wherein the Supreme Court has considered the provisions of the Maharashtra Specified Cooperative Societies (Election to the Committees) Rules. The court had examined the scheme of those Rules. The question, namely as to whether illegality in the preparation of electoral roll could be raised in the writ jurisdiction, was specifically raised before the Apex Court. The Apex Court held in para 12 thereof that preparation of the electoral roll is an intermediate stage in the holding of these elections and the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of Rules while preparing the electoral roll. He submitted that the same approach is reflected in a judgment of a single Judge of this Court in Someshwar Sahakari Sakhar Karkhana v. Shrinivas Patil reported in 1992 MH.L.J. 883.

22. Mr. Dhakephalkar, learned counsel appearing for the APMC, did accept that the then Managing Committee of the APMC did not co-operate either in the inquiry u/s 40 of the Act or with the respondent No. 1 in the inquiry before him. It has however so happened that whereas the dominant group in the APMC prior to the election was supporting the petitioners herein, the group which has now been elected is opposed to them. That apart, Mr. Dhakephalkar drew our attention to the reply filed on behalf of APMC subsequently and pointed out that from the record the position was clear, namely that the petitioners could not be considered as traders. The payments for the renewal of their licenses were not received in the APMC within the time stipulated. They could not therefore have right to vote. Mr. Dhakephalkar then pointed out that there was a serious problem with respect to the identity of the petitioners. They had not appeared before the respondent No. 1, and the signatures on the petition filed in their name appear to be doubtful. Thus he pointed out that as far as even the 1st petitioner is concerned, whereas he has signed his application for renewal of licence to the APMC in English, his vakalatnama in this court is signed in Marathi.

According to him also, there was much substance in the submission of Mr. Sakhare that the petitioners were put up by one person, i.e. Mr. Valanju, who wanted them to be on electoral roll to vote in his favour.

23. Mr. Nargolkar, A.G.P. appearing for the State Government, submitted that the inquiry contemplated under Rule 36(12) had been conducted in substantial compliance with the principles of natural justice. He pointed out that it is the petitioners themselves who did not co-operate when the inquiry was held u/s 40 of the Act. Their cause was espoused by the APMC even before the respondent No. 1. If they were keen on personal hearing, they were aware of the order passed by this Court on 9th September 2001 and nothing prevented them from seeking personal hearing. He submitted that in any case the respondent No. 1 was prepared to hear them once over, but they themselves were not ready to go for a further hearing. In his submission, the petitioners did not deserve any leniency.

Conclusions

24. Having considered the submissions of rival counsel, we have got to note that the said Act is a composite Act. It is an Act essentially enacted to regulate the marketing of agricultural and certain other produce in market areas and to confer powers upon the Market Committees and purposes connected therewith. Chapter III of the Act deals with constitution of the Market Committees and in that context, Section 14(1) provides the mechanism for elections to the Market Committee. It specifically states that the members to the Market Committee are to be elected in accordance with the Rules and the Rules may provide for the preparation and maintenance of the list of voters and also for the determination of the election disputes and all matters ancillary thereto as provided therein. Following upon this mandate, under the Rules the preparation of the voters list is provided under Rule 36 and the determination of validity of election is dealt with under Rule 88. Rule 88(1) deals with challenge to the validity of any election by any person qualified either to be elected or to vote at the election to which such election refers. In the above referred case of S. S. J. Sanstha (supra), while examining the question as to whether there was a breach of Rule or certain mandatory provisions while preparing the electoral roll in the context of Maharashtra Specified Co-operative Societies (Election to the Committees) Rules, the Apex Court held that the same could be challenged under Rule 81(d)(iv) of those Rules by means of an election petition. In para 9 of the judgment, the Court held that "preparation of electoral roll is part of the election process and if there is any breach of the rules in preparing the electoral roll, the same can be called in question after declaration of the results of the election by means of an election petition before the Tribunal."

25. In Rule 28 of the Gujarat Agricultural Produce Market Committee Rules, 1965 framed under the Gujarat Agricultural Produce Market Committee Act, 1963, a provision similar to Rule 88 of the present Rules has been made. The said provision reads as follows :--

"28. Determination of validity of election.--(1) If the validity of any election of a member of the Market Committee is brought in question by any person qualified either to be elected or to vote at the election to which such question refers such person may, within seven days after the date of the declaration of the result of the election, apply in writing :

(a) to the Director, if the election has been conducted by a person authorised by the Director, to perform the function of an Election Officer and

(b) to the State Government if the election has been conducted by the Director as an Election Officer.

(2) On receipt of an application under Sub-rule (1), the Director, or the State Government, as the case may be, shall, after giving an opportunity to the applicant to be heard and after making such inquiry as be or it, as the case may be, deems fit, pass an order confirming or amending the declared result of election or setting the election aside and such order shall be final. If the Director or the State Government as the case may be sets aside the election, a date shall be forthwith fixed, and the necessary steps be taken for holding a fresh election for filling up the vacancy of such member."

This provision came up for consideration before a Division Bench of the Gujarat High Court in the case of Mehsana District Co-Operative Sales and Purchase Union Ltd. and Another Vs. State of Gujarat and Others, In the judgment rendered for the Division Bench in that matter, Ahmadi J. (as he then was in that High Court) held that Rule 28 empowered the competent authority to decide about the validity or invalidity of an election. The grievance that names of some persons have been wrongly omitted from the voters list can be made under Rule 28 after the result of the election is declared in an election petition and not earlier.

26. In the above referred matter of S. S. S. J. Sanstha (supra), in para 11 of the judgment the Apex Court has noted that there is a distinction between the scheme of the provision of the Representation of People Act, 1950 and the Representation of People Act, 1951. Whereas the Representation of People Act, 1950 provides for delimitation of constituencies and allocation of seats for purposes of election to the House of People and the Legislatures of State and the preparation of electoral roll, the Representation of People Act, 1951 provides for conduction of election. u/s 100 of the Representation of People Act, 1951 one of the grounds amongst others is that an election can be challenged where there is non-compliance with the provisions of the Constitution or of the State Act and the Rules or orders made thereunder - meaning thereby that the breach of the Representation of People Act, 1950 cannot be called in question in an election petition filed under the Representation of People Act, 1951. Thus when it comes to the electoral rolls, they are final when made in accordance with the Representation of People Act, 1950 and deficiencies therein cannot be a ground for challenge in an election petition filed under the Representation of People Act,

1951. They are two separate Acts to deal with two different stages of election process. As against that, under the provisions under the Gujarat Agricultural Produce Market Committee Act, 1963 and Rules thereunder, preparation of list of voters as well as for determination of election disputes are provided under same Act and Rules. Similar is the provision under the present Act. Similar is the provision under the Maharashtra Specified Co-operative Societies (Election to the Committees) Rules, 1971, The Gujarat Rules have been interpreted by a Division Bench of that High Court and the provisions under the Maharashtra Specified Co-operative Societies (Election to the Committees) Rules have been interpreted by the Apex Court in the case of S. S. S. J. Sanstha (supra). In our view, the interpretation laid down by the Apex Court binds this Court as far as the interpretation of the present provisions are concerned. The decision of the Gujarat High Court in the above matter on an almost identical provision requires an acceptance.

27. The dicta of the Apex Court with respect to the challenges to elections and the right to elect in the case of Jyoti Basu and Others Vs. Debi Ghosal and Others, although in the context of Representation of People Act, 1951 is quite instructive for our purpose. In para 8 of the note, the Apex Court observed--

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down."

28. With respect to the issue of alleged violation of principles of natural justice raised by the petitioners, what the Apex Court has observed in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, is also quite instructive. That was a matter concerning the general elections to the Parliament in the year 1977. The Election Commission cancelled the whole poll as a result of mob violence at the time of counting of votes and ordered a repoll for the whole constituency. The Supreme Court held that such an order under compulsion of circumstances can be saved under Article 324 of the Constitution. As it observed in the last sub-para of para 69, if hearing was given to the candidates before taking the decision, it was sufficient to meet the ends of natural justice as their interest and claims are not indifferent but immediate, and

it was not necessary that hearing should be given to the whole constituency, if the Commission was of the view that the procedure adopted had gone astray on a wholesale basis. "It all depends on the circumstances and is incapable of generalisation."

29. On the question of comparison between Rule 28 of the Gujarat Agricultural Produce Market Committee Rules with Rule 88 of our Rules, Mr. Soni submitted that under the Gujarat Rules there was an appeal to a higher authority. If the election was conducted by a particular authority, the election petition would lie to a higher authority. As far as our Rules are concerned, the provision was not that way as it was the Collector who was authorised to finalise the electoral roll and under Rule 88 the election petition would also lie to the Collector. As against this submission of Mr. Soni, Mr. Dhakephalkar pointed out that even when a nomination of a candidate was rejected, an appeal against the decision of a Returning Officer was provided to the Collector under Rule 51. He however pointed out that under Rule 36 the Collector had to cause the voters list to be finalised and, in the instant case, that work had been assigned to the Sub-Divisional Officer. In any case, in our view this is not the first time that such a situation has arisen. There are many other statutes whereunder there is overlapping of responsibilities. Mr. Dhakephalkar submitted that at times the decision of the High Court on the administrative side is challenged on the judicial side, but care is taken to see to it that the judges who decide the matters on the administrative side do not hear and decide it on the judicial side. In our view, the problem can be resolved by a similar method, namely that the officer who has discharged the responsibility of finalising the electoral roll will not hear and decide the election petition. If the Collector himself has finalised the electoral roll, the election petition can be heard by another officer of the same rank such as an Additional Collector or the other way round. This however should not distract our attention from the fact that this Act is a composite Act providing for framing of the electoral roll and dealing with the questions arising with respect to deficiencies or illegalities in finalising the voters list on the one hand and the election petitions arising out of the elections on the other hand. This being the principle differentiating factor between the provisions of the two Representation of People Act and this Act, the dicta of the Supreme Court in the case of *S. S. S. J. Sanstha* (supra) on the elections to the specified co-operative societies and the one of Gujarat High Court on the Gujarat Agricultural Produce Market Committee will hold the field.

30. With respect to the submission of Mr. Soni that the licenses of the traders have come to be cancelled, that is an aspect with which we are not concerned in the present petitions. The petitions make a grievance with respect to the order dated 27th February 2002 passed by the respondent No. 1 deleting the names of the two sets of petitioners from the voters list and seek a direction to permit them to vote- As far as the cancellation of the traders licenses etc. are concerned, an independent appeal is provided under the Act and the Rules as pointed out above and it would be open to the petitioners to resort to that

remedy.

31. As far as the prayers in the present petitions are concerned, in our view, they cannot be entertained through these writ petitions. The names of the petitioners already stood deleted from the electoral roll well within the time and by following the due process of law. The grievance that the names have been wrongly omitted from the voters list can be made under Rule 88 in an election-petition after the result is declared and not earlier and the authority is expected to deal with it on merits. Both the petitions are therefore dismissed. The Collector will declare the result of the two seats to the traders constituencies after excluding the votes cast by 284 petitioners in both these petitions, which were directed to be kept in a sealed cover. The Collector will declare the result accordingly after counting the votes as above within two weeks of receiving an authenticated copy of this judgment and order. The interim order dated 17th April 2002 passed in Writ Petition No. 1868 of 2002 stands vacated accordingly. In the facts of the present case, we do not make any order as to costs.

32. Authenticated copy of the order be provided to the parties. Certified copy expedited.