

(1998) 08 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No. 4469 of 1998

Jalandar Jayaram Patil

APPELLANT

Vs

Collector, Thane and others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

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

Citation : (1998) 4 ALLMR 453 : (1999) 1 BomCR 530 : (1998) 3 MhLj 577

Hon'ble Judges : S.S. Nijjar, J; Ashok Agarwal, J

Bench : Division Bench

Advocate : Anilkumar Patil, for the Appellant; U.G. Kerkar, A.G.P. for Respondents Nos. 1, 4 and 5 and Abhay S. Oka, for the Respondent

Final Decision : Dismissed

Judgement

1. By the present petition, the petitioner challenges the judgment and order passed by Additional Commissioner, Konkan Division, by which his appeal under Rule 88(3) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as "the Rules" has been dismissed. The grievance of the petitioner is that the Commissioner has not gone into the merits of the appeal but has dismissed the same on technical grounds namely non-joinder of necessary parties. Facts leading to the filing of the present petition are as follows :-

2. Elections to the 2nd Respondent, Agricultural Produce Marketing Committee were held on 5th April, 1998. The result of the elections were declared on 16th April, 1998. Petitioner and respondent No. 3 were amongst the several candidates, who contested from the Co-operative Societies Constituency in which seven seats were reserved. 5 candidates who had secured more than 48 votes were declared elected. Petitioner, Respondent No. 3 and one Shelar Damodar Chau, all secured equal votes each having secured 48 votes. Therefore, a draw was held under Rule 80 of the Rules and the petitioner and the said Shelar were declared elected. Taking exception to the declaration of the results of election,

Respondent No. 3 preferred an appeal, being Appeal No. 2 of 1998, before the Collector, challenging election of the petitioner. Although Respondent No. 3 had impleaded all the contesting candidates the appeal was pressed only against the petitioner. By an order passed on 15th July, 1998 the appeal of Respondent No. 3 was allowed and the petitioner was held ineligible to contest for one amongst the seven posts from the Co-operative Societies Constituency and Respondent No. 3 was held to have been duly elected.

3. Taking exception to the aforesaid decision of the Collector, the petitioner on 10th August, 1998 preferred an appeal being Appeal No. 19 of 1998 under Rule 88(3) of the said Rules to the Commissioner. In this appeal, the petitioner had impleaded only Respondent No. 3. By the impugned order passed on 8th August, 1998 the petitioner's appeal has been dismissed on the ground of non joinder of the remaining contesting candidates to the appeal. Taking exception to the aforesaid order the petitioner has preferred the present petition.

4. We have heard the learned Counsel appearing for the contesting parties at considerable length and we find that the present petition does not merit consideration, on the ground that the petitioner, we find, is ineligible to contest the present elections. Petitioner, it is undisputed, is a trader. He holds a traders licence, which has been issued in his favour by the Marketing Committee. Constituencies at the said elections are as under :-

Constituency No. of members to be elected.

1. Sahakari Sanstha (Co-op. Society) 7
2. Grampanchayat 3
3. Vyapari and Adate (Traders) 2
4. Hamal and Tolai Kamgar 1

Total 13

5. Petitioner and Respondent No. 3 had contested from the Sahakari Sanstha Constituency. Constitution of the Market Committees is provided u/s 13 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, hereinafter referred to as "the Act". The same in so far as is relevant provides as under :-

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 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 therein;

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

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

(c)

6. u/s 13(1)(a) ten agriculturists are required to be elected. Seven out of them are to be elected by the Managing Committees of the agricultural credit societies, and multipurpose co-operative societies and three are to be elected by members of village Panchayats functioning therein. The petitioner and respondent No. 3 have contested from the constituency of seven members to be elected by members of the Managing Committees of the Agricultural credit societies, and multipurpose co-operative societies. As far as petitioner is concerned, he is a trader engaged in the trade of sale of agricultural produce. 'Agriculturist' has been defined u/s 2(b) of the Act as follows :-

(b) "agriculturist" means a person who ordinarily by himself or by hired labour or otherwise is engaged in the production or growth of agricultural produce which has not been processed, but does not include a trader, commission agent, processor or broker, an employee of Government or of any Co-operative Society or of a Market Committee, or a partner in trading firm or an industrial concern in or in relation to agricultural produce although such trader, commission agent, processor, broker, an employee of Government or of any Market Committee or a partner in trading firm or an industrial concern; may also be engaged in the production or growth of agricultural produce.

7. The aforesaid definition makes it clear that an agriculturist is one who is not a trader, commission agent etc. Hence a person who is a trader is excluded from the definition of "agriculturist" u/s 2(b) of the Act.

8. "Trader" has been defined u/s 2(t) of the Act as under :-

"trader" means a person who buys or sells agricultural produce, as a principal or as duty authorised agent of one or more persons;

Hence the petitioner who is a trader is excluded from the definition of "agriculturist" u/s 2(b) of the Act and is, therefore, outside the constituency of Agriculturist u/s 13(1)(a) of the Act. As far as the petitioner is concerned he has been issued a licence by the Market Committee for carrying on trade of sale of agricultural produce u/s 7(1) of the Act.

9. Rule 35 of the Rules deals with the division of market area into constituencies. The same provides as under :

(A) Co-operative Societies' Constituency;

(B) Village Panchayats Constituency;

(C) Traders' Constituency; and

(D) Hamals' and Weighmen's Constituency.

The above constituencies shows that Co-operative Constituency is distinct from Traders Constituency.

10. Rule 38 of the Rules deals with the qualifications of members for the elections. The same provides as under :

38. Persons to be qualified to be elected. - (1) Every person who is an agriculturist, and who is residing in the market area and is not less than twenty-one years of age on such date as the Collector may for the purposes of any election or bye-election specify in this behalf shall, unless disqualified under these rules, be qualified to be elected."

(2) Every person whose name is in the list of voters of the Traders Constituency shall unless disqualified under these rules, be qualified to be elected by the Trader's Constituency.

These provisions make distinction between agriculturist and traders and their qualifications for being elected from the respective constituencies is separately provided.

11. Rule 41(2) of the Rules provides as under :-

(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.

This rule again provides for distinct constituencies for traders and agriculturists. Rule 41(2)(ii) provides that for a member to be eligible for being elected in the agriculturists' constituency his main source of income will be from agriculture. The said rule further provides that if he possesses a trader's or commission agent's or broker's licence he will not be eligible to contest from the Agriculturists' constituency.

12. If one has regard to the aforesaid provisions it will be clear that the petitioner, who is a trader and holds a trader's licence will not be eligible to contest from the Agriculturists' constituency.

13. Reliance, however, is placed on Rule 46 of the Rules which provides for right to be nominated in two or more constituencies in a market area. The same provides as under:-

46. Right to be nominated in two or more constituencies in a market area-when elections for two or more constituencies in a market area are to be held one, and the same person may, if he is otherwise duly qualified, be nominated as a candidate for each of such constituencies.

In our view, the aforesaid rules will not entitle a trader to contest from the agriculturists' constituency. This is clear from the aforesaid provisions. The said Rule can permit members who may be Agriculturists, Hamals and Weighmen, to contest from the aforesaid constituencies at one and at the same time. The same will not permit traders to contest from the agriculturists' constituency.

14. It is next contended on behalf of the petitioner that the Commissioner by the impugned order has set aside the elections of the petitioner. He has further proceeded to hold that Respondent No. 3 has been duly elected. This, according to the petitioner, is not permissible under Rule 88 of the Rules. Rule 88 provides as under :-

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 by 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) The Collector shall incur such expenditure for conduct of the elections or bye-elections of the Market Committees in accordance with the guidelines which may be issued by the State Government from time to time.

(3) The Collector shall within three months of the completion of the general election or bye-election, as the case may be, or the Market Committee concerned, forward to the Market Committee a statement of receipts of money and the expenditure for conducting the election or bye-election and vouchers thereof. The Collector shall refund the amount of unspent balance, if any, to the Market Committee along with the statement of receipts and expenditure.

15. We have examined the order of the Commissioner. The Commissioner in the final order has clearly stated that he is amending the declared results of the election. As far as the present elections are concerned, petitioner and Respondent No. 3, had both secured the same number of votes namely 48 votes each. It was on taking out a draw that the petitioner had been elected and Respondent No. 3 was declared not elected. Since, we have found that the petitioner is ineligible to contest from the agriculturists' constituency, we do not find that the order of the Collector declaring Respondent No. 3 as elected calls for interference in our writ jurisdiction. Since we have held that the petitioner is ineligible to contest and get elected we do not find that it is necessary to consider the contentions raised by the petitioner that the Commissioner was not justified in dismissing his appeal on the ground of non joinder of all the contesting candidates.

16. In the circumstances, we find that the petition is devoid of merit and the same is summarily rejected.

Parties to be furnished with a copy of this order authenticated by the Shirestedar of this Court.