

(2019) 12 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 9457 Of 2019

Radhakishan Deorao Pathade

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963
— Section 3(26), 2(1)(g), 12(2), 13, 29, 31, 32
Representation Of The People Act, 1951 — Section 15A, 15, 16, 18, 22, 27, 27(1),
27(2), 27(2)(a)
Right To Information Act, 2005 — Section 2(h)
Income Tax Act, 1961 — Section 10(20)
Constitution Of India, 1950 — Article 171, 171(3), 171(3)(a), 171(3)(c)
Maharashtra General Clauses Act, 1904 — Section 3(26)

Citation : (2019) 12 BOM CK 0066

Hon'ble Judges : S.V. Gangapurwala, J;Avinash G. Gharote, J

Bench : Division Bench

Advocate : S.S. Thombre, P.G. Borade, Alok Sharma

Final Decision : Dismissed

Judgement

Avinash G. Gharote, J

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the parties finally with their consent.

2. The present petition is filed seeking directions to hold and declare that the elected representatives of APMC are eligible and entitled to cast votes for the Maharashtra Legislative Council for the Aurangabad-cum-Jalna Local Authorities Constituency. It is submitted, that the elected representatives of the APMC's are voters for the election of Aurangabad cum Jalna Local Authorities Constituency on the ground that the APMC is the Local Authority as per Section 12 (2) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act 1963 and therefore, are required to be permitted to cast their vote as representatives of the Local Authority for the Maharashtra Legislative Council

Election.

Reliance is placed upon Article 171 of the Constitution of India, Section 15-A of the Representation of Peoples Act and Section 12 (2) of the A.P.M.C. Act and the judgment of this Court in Writ Petition No.2551 of 2011 (A.P.M.C Vs. Meghraj and others).

3. The petition has been opposed by the respondent No.3 by filing reply, contending that the provisions of Article 171 of the Constitution of India relied upon by the petitioner, are clearly not attracted in the present matter and therefore the petition being misconceived, needs to be dismissed.

4. We have heard learned Counsel Shri S.S. Thombre for the petitioner, learned A.G.P. Shri Borade for respondent No.1 and Shri Alok Sharma, learned Counsel for respondents No.2 & 3.

5. Mr. Thombre, learned Counsel for the petitioner has invited our attention to the provisions of Section 12 (2) of the A.P.M.C. Act, 1963 and contends that by virtue of this provision, the Market Committee of an A.P.M.C., has been accorded the deemed status of a Local Authority. He therefore submits, that in light of the mandate of Section 15-A of the Representation of People Act, 1950 as the programme for the biennial election to the Maharashtra Legislative Council from Aurangabad-cum-Jalna Local Authorities Constituency was published by the respondent No.2 on 19 July 2019, in light of the provisions of Article 171 (3) (a) of the Constitution of India, it was necessary for inclusion of the names of the Market Committee of the A.P.M.C.s in the electoral rolls, as it was a Local Authority under Section 12 (2) of the A.P.M.C. Act, 1963, and was thus entitled to vote in the elections.

6. Mr. Alok Sharma, learned Counsel for respondent Nos.2 and 3 has vehemently opposed this submission and contended that the same was clearly fallacious, as the Market Committee of an A.P.M.C., though being a deemed 'Local Authority' under Section 12 (2) of the A.P.M.C. Act, 1963, was not one, which was specified by the Parliament as being entitled to be included in the electoral rolls for the electorate of the Legislative Council.

7. For the purpose of properly appreciating the arguments of the learned Counsel for the parties, it is necessary to refer to the Preamble of the A.P.M.C. Act, 1963, which reads as under:

" An Act to develop and regulate the marketing of agricultural and certain other produce in market areas and markets including private markets and farmer consumer markets to be establish therefor in the State to confer powers upon Market Committees to be constituted in connection with or acting for purposes connected with such markets; to establish Market Fund for purposes of the Market Committee and to provide for purposes connected with the matters aforesaid."

Section 2 (1) (g) then defines a "local authority" as under:

" local authority" includes a Panchayat Samiti "

Section 12 (2) of the A.P.M.C. Act, 1963 reads as under:

"12. Incorporation of Market Committees.

(1)

(2) Notwithstanding anything contained in any law for the time being in force, every Market Committee shall, for all purposes, be deemed to be a local authority. "

Article 171 of the Constitution of India reads as under:

" 171, Composition of the Legislative Councils -

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State: Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative council of a State-

(a) as nearly as may be, one third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify; " (emphasis supplied)

8. A bare perusal of the provisions of Article 171 (3) (a) of the Constitution of India would demonstrate the fallacy of the arguments being advanced by Mr. Thombre, learned Counsel for the petitioner. The very use of the expression "as parliament may by law specify", necessarily mandates, that the specifying of any Municipality, Board and Local authority for the purpose of being entitled to be included in the electoral roll of the Legislative Councils, has to be done by the Parliament by following due procedure for enacting a law as mandated by the Constitution. In the instant case, no law as enacted by the Parliament has been placed on record, specifying, the Market Committee of an A.P.M.C. to be a local authority, as contemplated by the expression as contained in Article 171 (3) (a) of the Constitution, to enable it to claim, inclusion in the electoral roll for the election to the Legislative Council of a State.

9. The mere granting a deemed status of a local authority to the Market Committee of APMCs, under the provisions of Section 12 (2) of the A.P.M.C. Act, 1963, would not entitle, the petitioner to claim its axiomatic inclusion in the electoral roll to be prepared for the election of the Legislative Council, as contemplated by the provisions of Article 171 (3) of the Constitution of India. Such inclusion, can only be done by the Parliament by law and not otherwise. No other view of the matter is possible, for doing otherwise, would lead to negating the expression "Parliament may by law specify", as contained in Article 171 (3)

(a) of the Constitution of India.

10. The deemed sanction of Market Committee of an A.P.M.C. under Section 12 (2) of the A.P.M.C. Act, 1963, as a 'Local Authority', can only be for the purpose of the enforcement of the provisions of the A.P.M.C. Act, 1963 by the Market Committee and not otherwise. Under section 13 of the A.P.M.C. Act, 1963 a Market Committee is constituted, which has the powers as provided for under Section 29 of the A.P.M.C. Act 1963, as under:

"29. Powers and duties of Market Committee, (1) It shall be the duty of a Market Committee to implement the provisions of this Act, the rules and bye-laws made thereunder in the market area; to provide such facilities for marketing of agriculture produce therein as the Director'[the State Marketing Board or the State Government, as the case may be,] may, from time to time, direct; do such other acts as may be required in relation to the superintendence, direction and control of market or for regulating marketing of agriculture produce in any place in the market area, and for purposes connected with the matters aforesaid, and for that purpose may exercise such powers and perform such duties and discharges such functions as may be provided by or under this Act."

A conjoint reading of the provisions of Sections 13 and 29 of the A.P.M.C. Act, 1963, demonstrates that the conferment of a deemed status of a "local authority" upon the Market Committee, is for the purpose of performing the duties and exercise of the powers as contained in Section 29 and other provisions of the A.P.M.C. Act, 1963 and not otherwise.

11. As the definition of a 'local authority', as given in Sec.2(1)(g) of the A.P.M.C. Act, 1963, is only an inclusive one, resort has to be taken to the definition of a 'local authority', as contained in Sec.3(26) of the Maharashtra General Clauses Act, 1904, which reads as under:

"Section 3 (26) - "local authority" shall mean a municipal corporation, municipality, local board, body of port trustees or commissioners or other authority legally entitled to, or entrusted by the government with, the control or management of municipal or local fund."

It is trite that under the provisions of Section 29 read with Sections 31, 32 of the A.P.M.C. Act, 1963 the Market Committee, is entrusted with the control and management of the funds generated in exercise of the powers as conferred upon it under the various provisions of the A.P.M.C. Act for the purpose of implementing the duties and obligations as imposed upon it. Thus, the conferment of the deemed status of a 'local authority' upon the Market Committee, under Section 12 (2) of the A.P.M.C. Act, 1963, is only to the extent and purpose of enforcement of the rights, obligations, powers, functions and duties as imposed and entrusted in the Market Committee, constituted under Section 13 of the A.P.M.C. Act, 1963 within the area for which it is constituted and not otherwise. The deemed status of 'local authority' of the market committee as contained in Section 12 (2) of the A.P.M.C. Act, cannot be equated

with the expression 'local authorities', as contained in Article 171 (3)(a) of the Constitution of India.

12. It is further material to note that the expression "as Parliament may by law specify", would necessarily mean an enactment by the Parliament in the mode and manner as prescribed in the Constitution. The provisions of Section 12 (2) of the A.P.M.C. Act, 1963 is a piece of legislation passed by the State Legislature and therefore can in no circumstances be construed to be falling within the expression "as Parliament may by law specify". Thus, the deemed conferment on the Market Committee of the status of a local authority by virtue of the provisions of Section 12 (2) of A.P.M.C. Act, 1963 which is a State Legislation, cannot be of any assistance to the argument as canvassed by the learned Counsel for the petitioner.

13. The issue can be considered in another angle. Though the Representation of the People Act 1950 (R.P. Act, 1950 for short) does not define a local authority, however, Part-IV, Section 27 of the R.P. Act, 1950, requires the preparation of electoral rolls for Council Constituencies. Sub-section (1) of Section 27 of the R.P. Act, 1950, contemplates preparation of electoral rolls for "local authorities constituency" amongst others. Section 27 (2) then provides the preparation of electoral roll for the purpose of elections to the Legislative Council of a State in any local authorities constituency. The said provision being material is reproduced as under :

"27. Preparation of electoral roll for Council constituencies -

(1) In this section, "local authorities' constituency", "graduates' constituency" and "teachers' constituency" mean a constituency for the purpose of elections to a Legislative Council under sub-clause (a), sub-clause (b) and sub-clause (c) respectively, of clause (3) of article 171.

(2) For the purpose of elections to the Legislative Council of a State in any local authorities' constituency -

(a) the electorate shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that State in the Fourth Schedule;

(b) every member of each such local authority within a local authorities' constituency shall be entitled to be registered in the electoral roll for that constituency;

(c) the electoral registration officer for every local authorities' constituency shall maintain in his office in the prescribed manner and form the electoral for that constituency corrected up-to- date;

(d) in order to enable the electoral registration officer to maintain the electoral roll corrected up- to-date, the chief executive officer of every local authority (by whatever designation such officer may be known) shall immediately inform the

electoral registration officer about every change in the membership of that local authority; and the electoral registration officer shall, on receipt of the information, strike off from the electoral roll the names of persons who have ceased to be, and include therein the names of persons who have become, members of that local authority; and

(e) the provisions of sections 15, 16, 18, 22 and 23 shall apply in relation to local authorities' constituencies as they apply in relation to Assembly constituencies."

It would thus be apparent, that under Section 27 (2) (a) of the R.P. Act, 1950 the electorate for the purposes of elections to the Legislative Council of a State in any local authorities constituency shall consist of members of such local authorities exercising jurisdiction in any place or area within the limits of that constituency as are specified in relation to that state in the Fourth Schedule. The Fourth Schedule in the R.P. Act, 1950 in so far as the State of Maharashtra is concerned, reads as under:

" THE FOURTH SCHEDULE

[See Section 27 (2)]

LOCAL AUTHORITIES FOR PURPOSES OF ELECTIONS TO LEGISLATIVE COUNCILS. MAHARASHTRA

1. Municipalities
2. Cantonment Boards.
3. deleted.
4. Zilla Parishad. "

It is, thus, apparent that the market committee of an A.P.M.C. , though deemed a local authority for the purpose of the A.P.M.C. Act, is not included in the Fourth Schedule of the R.P. Act, 1950, as an electorate for the purpose of elections to the Legislative Council of a State in any local authorities constituency. Since the market committee of the A.P.M.C. has not been so specified, the petitioner cannot claim any right to be included in the electoral roll to be prepared for the purpose of elections to the Legislative Council of a State in any local authorities constituency.

14. The judgment in the case of A.P.M.C. Vs Meghraj Pundlikrao Dongre and others, 2011 (5) BCR 128 relied upon by the learned Counsel for the petitioner does not advance the case as canvassed by him. The learned Court therein, was considering an issue as to whether the A.P.M.C. Arvi was a 'public authority', within the meaning of Section 2 (h) of the Right to Information Act, 2005, and had went on to hold, that the Market Committee was established and constituted as an Institution of self - Government and was local authority and by law made by the State Legislature, consequently the provisions of the Right to Information Act, applied to the A.P.M.C. However, the Court in para 12 therein had rightly

considered that the judgment in the case of A.P.M.C., Narela Vs. CIT, 2008 (305) ITR 1 (SC), in which it was held that in light of the explanation to Section 10 (20) of the Income Tax Act, 1961, as amended by the Finance Act, 2002 did not cover A.P.M.C. and hence was not entitled to exemption. This clearly indicates that merely being declared as a "Local Authority" under any State Statute, would not entitle it to be included in the electoral roll for the elections to the State Legislative Council as such declaration was limited for the purpose of that Statute, which so declared it, and such declaration was not under the powers as contained in Article 171 (3) (a) of the Constitution, which alone would entitle it to be included in the electoral roll for election to the legislative Council of the State.

15. For the reasons stated above, it is clearly apparent, that the status of deemed local authority, conferred upon the market committee under Section 12 (2) of the A.P.M.C. Act, 1963 does not entitle it to be included in the electoral roll for the elections to the Legislative Council of the State.

16. The petition therefore is not only fallacious, but misconceived and is accordingly dismissed. In the circumstances there will be no order as to cost.

17. Rule is discharged.