

(2016) 07 BOM CK 0081

In the Bombay High Court

Case No : Writ Petition No. 2420 of 2016

Rajendra Tikaram Bagmare

APPELLANT

Vs

The District Deputy Registrar

RESPONDENT

Date of Decision : 21-07-2016

Acts Referred:

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

Citation : (2016) 5 ALLMR 751

Hon'ble Judges : Z.A. Haq, J.

Bench : Single Bench

Advocate : Shri Abhay Sambre, Advocate, for the Petitioner; Shri K.R. Lule, A.G.P, for the Respondent Nos. 1 and 2; Shri T.S. Kene, Advocate, for the Respondent No. 3; Shri A.M. Ghare, Advocate along with Shri S.K. Tambde, Advocate, for the Respondent Nos. 4 to 50;

Final Decision : Dismissed

Judgement

Z.A. Haq, J.(Oral)—Civil Application No.1359 Of 2016.

For the reasons stated in the application and as the application is not opposed inasmuch as reply is not filed to the civil application, the applicant in civil application is permitted to participate in the proceedings as intervenor.

The civil application is allowed.

Heard Shri Abhay Sambre, Advocate for the petitioner, Shri K.R. Lule, Assistant Government Pleader for the respondent Nos.1 and 2, Shri T.S. Kene, Advocate for the respondent No.3, Shri A.M. Ghare, Advocate along with Shri S.K. Tambde, Advocate for the respondent Nos.4 to 50 and Shri K.S. Narwade, Advocate for the intervenor.

2. The District Deputy Registrar issued the order dated 01-03-2016 directing the preparation of voters" list for the election of committee of respondent No.3-Agricultural Produce Marketing Committee. In this communication, it was stated

that the names of the persons who were eligible to vote on 23-01-2015 should be included in the voters' list. The names of the respondent Nos.4 to 50 are included in the voters' list and being aggrieved by it, the petitioner has filed this petition.

3. The submission on behalf of the petitioner is that the District Deputy Registrar fixed 23-01-2015 as the cut-off date and only names of those persons whose names appeared in the register maintained by the market committee on 23-01-2015 can be included in the voters' list and the names of the respondent Nos.4 to 50 were not in the register maintained by the market committee on 23-01-2015, therefore, their names cannot be included in the voters' list. The respondent No.3-Agricultural Produce Marketing Committee passed resolution on 10-03-2015 accepting the request of the respondent Nos.4 to 50 for grant of licence as Hamals.

4. Rule 36 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (hereinafter referred to as "the Rules of 1967") deals with the procedure for preparation of voters' list. The First proviso below sub-rule (1) of Rule 36 of the Rules of 1967 is relevant.

"36 Voters" 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 Panchayat's 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 weighmens constituency his name shall appear in the respective register maintained by the market committee at least 3 months before the preparation of such lists."

As per the above provision, a person from Hamals constituency whose name appears in the register maintained by the market committee at least three months before preparation of voters' list, is entitled to be included as voter in the list. In the present case, the voters' list is prepared on 02-03-2016 as per the order issued by the District Deputy Registrar on 01-03-2016. The respondent Nos.4 to 50 are entitled to be included in the voters' list as the market committee has passed resolution on 10-03-2015 accepting them as members from the Hamals' constituency. The learned Advocate for the petitioner and the Assistant Government Pleader have not been able to point out any provision which enables the District Deputy Registrar to fix the cut-off date for considering

the eligibility of the voter. According to the proviso below sub-rule (1) of Rule 36 of the Rules of 1967, the eligibility of the voter is to be considered on the basis of the date of inclusion of his name in the register maintained by the market committee.

5. The learned Advocate for the petitioner has submitted that the order issued by the District Deputy Registrar on 01-03-2016, fixing 23-01-2015 as the cut-off date for eligibility is not challenged by the respondent Nos.4 to 50 and it has attained finality and the market committee could not have acted contrary to the above order dated 01-03-2016. This submission cannot be accepted. The learned Advocate for the petitioner as well as the Assistant Government Pleader has not been able to point out any provision which enables the District Deputy Registrar to fix the cut-off date for eligibility. The First proviso below sub-rule (1) of Rule 36 of the Rules of 1967 confers right on persons whose names appear in the register maintained by the market committee for three months before the preparation of voters' list, to be included in the voters' list. The District Deputy Registrar cannot frustrate the statutory right of the persons whose names appear in the register maintained by the market committee to vote at the election, by fixing the cut-off date arbitrarily and contrary to the first proviso below sub-rule (1) of Rule 36 of the Rules of 1967. Even otherwise, there is no justification for fixing 23-01-2015 as the cut-off date when the order is issued on 01-03-2016. The cut-off date fixed by the District Deputy Registrar by the order issued on 01-03-2016 is illegal and void ab-initio.

6. In view of the above, it has to be held that the respondent Nos.4 to 50 are entitled to be the voters and their names are rightly included in the voters' list. I do not find any substance in the challenge raised by the petitioner. The petition is dismissed. In the circumstances, the parties to bear their own costs.