

(2015) 07 BOM CK 0111

In the Bombay High Court

Case No : Writ Petition No. 4127 of 2014

Rajeshri Arun Munghate

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

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

Citation : (2016) 1 ABR 659 : (2015) 6 BomCR 323 : (2015) 6 MhLj 785

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : V.N. Morande, for the Appellant; C.N. Adgokar, AGP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J—Rule. Heard finally with consent of learned counsel for the parties.

2. The petitioner herein is aggrieved by the order passed by the respondent no. 2 whereby the name of present petitioner as representative of the Panchayat Samiti on the Market Committee under the provisions of Section 13(1)(d) of the Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963 (for short the said Act) read with Rule 40-A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short the said Rules) has not been accepted.

3. The petitioner is member of Panchayat Samiti, Gadchiroli while the respondent no. 4 is the Sarpanch of the said Gram Panchayat. In terms of provisions of Section 13(1)(d) of the said Act while constituting the market committee, the Panchayat Samiti was called upon to submit the names of its Chairman/ representative. In terms thereof in the meeting of the Panchayat Samiti held on 17.12.2013 Resolution No. 9 came to be passed by which it was resolved to sent the name of petitioner as representative. This Resolution was forwarded to the

District Deputy Registrar and on 02.05.2014 the District Deputy Registrar held that as the Chairman of the Panchayat Samiti was willing to act as representative, the petitioner who was a Member of the Panchayat Samiti could not be permitted to act as the representative. Being aggrieved the petitioner has approached this Court.

4. Shri V.N. Morande, learned counsel appearing for the petitioner submitted that under the provisions of Section 13(1)(d) of the said Act it was for the Panchayat Samiti to elect a representative. Such representative could either be the Chairman or any other member elected by the Panchayat Samiti. According to him the petitioner who was a Member of the Panchayat Samiti had been elected by all other members and hence she was entitled to be nominated as Member of the Marketing Committee. He submitted that provisions of Rule 40-A of the said Rules were not in consonance with provisions of Section 13(1)(d) of the said Act as it prescribed communication of name of the Chairman and only in absence of the Chairman, the representative could be elected. He submitted that provisions of Rule 40-A of the said Rules could not be interpreted in a manner so as to take away the effect of the provisions of Section 13(1)(d) of the Act of 1962 which permitted a representative of the Gram Panchayat to be the member of the market Committee. In support of aforesaid submission he relied upon the decision of the Supreme Court in *Kailash Vs. Nanhku and Others*, AIR 2005 SC 2441 : (2005) 3 CTC 355 : (2005) 4 JT 204 : (2005) 141 PLR 558 : (2005) 4 SCC 480 : (2005) 3 SCR 289 and submitted that in case of conflict between provisions of the Act and Rules, the Act would prevail. It was then submitted that the District Deputy Registrar had no jurisdiction in the matter to pass the impugned order as there was no statutory sanction to exercise such powers.

5. Shri S.G. Joshi, learned counsel for the respondent no. 4 supported the impugned order. According to him the respondent no. 2 had rightly interpreted the provisions of Section 13(1)(d) of the said Act and Rule 40-A of the said Rules. On that basis as the respondent no. 4 who was the Chairman of the Panchayat Samiti was willing to represent the Panchayat Samiti as Member in the Market Committee, the impugned order did not call for any interference.

Shri C.N. Adgokar, learned Assistant Government Pleader appearing for respondent nos. 1 and 2 relied upon the affidavit filed on record and supported the impugned order.

6. Section 13 of the said Act provides the manner in which a market committee is constituted. As per provisions of Section 13(1)(d) of the said Act, the Chairman of the Panchayat Samiti which is in the jurisdiction of the market area or a representative elected by the Panchayat Samiti is eligible to become a member of the market committee. Rule 40-A of the said Rules specified that the Collector or the District Deputy Registrar as the case may be shall call upon the Panchayat Samiti to communicate the name of its Chairman or in the absence of the Chairman the name of a representative for being elected on the market committee. In case there are more than one Panchayat Samitis the names so

received shall be selected after drawing lots.

The aforesaid provisions therefore indicates that initially the Chairman of the Panchayat Samiti is entitled to be considered for membership of the market committee and if same is not possible then a representative elected by the Panchayat Samiti can be so considered.

7. The submission of the learned counsel for the petitioner that as the petitioner who was a member of the Panchayat Samiti was elected as its representative, she alone was the representative of the Panchayat Samiti does not take into account the provisions of Section 13(1)(d) of the said Act in its entirety. It is only if the Chairman is not willing to become a member of a market committee or for any other reason is not available that a representative is required to be elected by the Panchayat Samiti. Rule 40-A specifies the manner in which the names of the Chairman and in absence of the Chairman the names of the representatives have to be determined. The position is thus made clear by provisions of Rule 40A of the said Rules and therefore Rule 40A of the said Rules is not in any manner in conflict with the provisions of Section 13(1)(d) of the said Act. Hence the ratio of the decision in *Kailash* (supra) cannot be applicable to the facts of the present case.

8. As regards the submission that the District Deputy Registrar had no jurisdiction to pass the impugned order, it is to be noted that it is for the District Deputy Registrar to call upon the Panchayat Samiti to communicate the name of its Chairman or representative for being a member of the market committee. If in said process it is found by the District Deputy Registrar that the name as forwarded by the Panchayat Samiti is not in consonance with provisions of Section 13(1)(d) of the said Act or Rule 40A of the Rules then the jurisdiction to examine the exercise conducted by the Panchayat Committee while forwarding such name can surely be examined by the District Deputy Registrar.

9. The impugned order indicates that the District Deputy Registrar has considered the provisions of Section 13(1)(d) of the said Act with Rule 40A of the said Rules and has then found that as the respondent no. 4 who was the Chairman of the Panchayat Committee was willing to represent the Panchayat Samiti on the market committee, there was no question of another representative in the form of the petitioner who could be considered for representing the Panchayat Samiti. The impugned order therefore passed by the District Deputy Registrar refusing to recognise the petitioner as the representative especially when the respondent no. 4 as Chairman was willing to become the member cannot be faulted. The impugned order does not suffer from any jurisdictional error whatsoever. Hence there is no reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. Rule stands discharged with no order as to costs.