
(2005) 12 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 2701 of 2004

Rajkumar Kesarwani

APPELLANT

Vs

Returning Officer and Tahsildar and Others

RESPONDENT

Date of Decision : 21-12-2005

Acts Referred:

Constitution of India, 1950 — Article 58
Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules,
1967 — Rule 35, 35(1), 35(4), 35A, 36
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13(1),
13(2), 14(1), 19(1), 2(1)

Citation : (2006) 1 ALLMR 682 : (2006) 2 BomCR 32 : (2006) 1 MhLj 445

Hon'ble Judges : S.T. Kharche, J;J.N. Patel, J;A.P. Lavande, J

Bench : Full Bench

Advocate : Subhash Paliwal, for the Appellant; J.B. Jaiswal, A.G.P. for respondent Nos. 1 to 3 and A.M. Ghare, for respondents Nos. 8 to 14, for the Respondent

Judgement

J.N. Patel, J.—Heard the learned Counsel for the parties.

This matter arises from a reference made by a two Judge Bench of this Court in the case of Rajkumar s/o Laxmanprasad Kesarwani v. Returning Officer and Tahsildar, Tirora and Ors. respondents (Writ Petition No. 2701/04) for determination of the following question by a Larger Bench :-

Whether it is necessary for a candidate contesting election from the Constituency as provided u/s 13(1)(a)(i) and (ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, to be a voter from that Constituency, apart from he being an agriculturist?

2. The controversy has arisen in the context of the interpretation of the eligibility of a person to be a candidate for contesting an election from the constituency prescribed u/s 13(1)(a)(i) and (ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter referred to as "the said Act") and

the Rules governing the said elections as provided under Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as "the said Rules").

3. The petitioner Rajkumar s/o Laxmanprasad Kesarwani challenged the order dated 24-6-2005 passed by respondent No. 3 the Deputy Collector (Election), Gondia, District Gondia in the appeal which was presented to the Collector under Rule 51 of the said Rules under which the decision of the Election Officer came to be upheld rejecting the nomination form of the petitioner from the constituency u/s 13(1)(a)(i) and (ii) of the said Act, i.e. Seva Sahakari Society and sought declaration that the petitioner being qualified as an agriculturist u/s 2(1)(b) of the said Act, rejection of his nomination form from the constituency u/s 13(1)(a)(i) of the said Act by the respondent is illegal and, therefore, the same should be quashed and set aside.

4. It is the case of the petitioner that he is eligible to contest the said election from the aforesaid constituency being an agriculturist within the meaning of Section 2(1)(b) of the said Act and further he fulfils all the requirements prescribed by the Rules to contest the said election from the said constituency.

5. We are informed at the Bar that a group of petitions raising an identical issue came to be dealt by Division Bench of this Court which disposed of the said petitions by a common judgment and order dated 26-8-2004 wherein it was held that to be eligible to contest election to the Market Committee from the constituency as provided u/s 13(1)(a)(i) and (ii) a person has to be (1) a member of the Managing Committee of the Agricultural Credit Societies and Multipurpose Co-operative Societies within the meaning of the said Act and functioning in the market area or (2) he should be a member of the Village Panchayats functioning therein and the Division Bench which disposed of this petition arrived at such a finding after discussing the scheme of election as provided under the said Act and Rules by particularly placing emphasis on Section 13(1)(a)(i) and (ii) read with Rules 35, 36, 37, along with Rules 44 and 45 and the requirements mentioned in Form No. 9 which is provided by Rule 44 of the said Rules. It, therefore, held that "the Returning Officer has rejected the nomination form of the petitioners candidature on the ground that the required information as expected to be furnished in Form No. 9 was not furnished, such as, name of the constituency and the serial number of the candidate in a given voter's list. We do not find that the Returning Officer has committed any error in insisting upon compliance with the requirement of Form 9. Rights under the election law are creature of statute and there cannot be any other right, such as, right under common law or any other law. If the law dealing with election mandates compliance of the particular condition, the same has to be complied with. In the absence of compliance of Form No. 9, no fault can be found with the order of the Returning Officer and the appellate order passed by the Collector. The petitions as such, are devoid of any merit and substance and the same deserves to be dismissed."

6. It is submitted that out of this group of petitions, as the present petition, i.e. Writ Petition No. 2701/04 filed by the petitioner Rajkumar s/o Laxmanprasad Kesarwani was not listed, it came to be listed before the other Bench which did not agree with the findings of the earlier Division Bench and, therefore, the matter came to be referred to the Hon"ble Chief Justice for deciding the question by a Larger Bench.

7. The learned Judges of the Division Bench who have referred the issue to the Larger Bench also examined the scheme of election to the different constituencies which go to constitute market committees of Agriculture Produce Marketing Committees in the State of Maharashtra, but found themselves in disagreement with the findings of the earlier Bench primarily on the ground that perusal of Section 13(1)(a)(i) and (ii) would show that 9 members who are agriculturists are required to be elected from Co-operative Societies constituency and 4 from Village Panchayat constituency. What is meant by an "agriculturist" is clearly defined by Section 2(1)(b) of the said Act. Section 13(1)(a) of the said Act provides for 2 constituencies (1) members of the Co-operative Societies and (2) members of the Village Panchayat. However, for being elected from these constituencies, what is required is that a person has to be an agriculturist residing in the market area not being less than 21 years of age on the dates specified by the Collector. It further examined Rule 35 as to spell out the constitution of 4 constituencies for the purposes of holding election to the Market Committee and held that Sub-rule (1) of Rule 38 provides that any person who is an agriculturist and who is residing in the market area and is not less than 21 years of age on the specified date, unless disqualified under these Rules, shall be qualified to be elected. In contrast, Sub-rule (2) and Sub-rule (4) which deal with traders' constituency and Harnals' and Weighmen's constituencies, specified that a person to be entitled to contest from these constituencies has to be a voter in the list of voters of these constituencies. Sub-rule (3) further provides that if any question arises whether any person is or is not an agriculturist residing in the market area for the purpose of this Rule, the matter shall be decided by the Collector. Sub-rule (3) of Rule 44 would also show that the nomination paper can be supplied to the voter or to any agriculturist. Sub-rule (3) of Rule 45 requires that Returning Officer should satisfy himself that the candidate is an agriculturist or as the case may be a trader and that the name and number in the list of voters of the proposers as entered in the nomination paper are the same as entered in the list of voters. Explanation (1) to the said sub-rule provides that for the purpose of satisfying the Returning Officer that the candidate is an agriculturist, a candidate is required to produce either certificate of the Sarpanch or the Talathi of the village or the Secretary of the Primary Co-operative Credit Society in the village where the candidate resides, to the effect that the person is an agriculturist as defined in Clause (b) of Sub-section (1) of Section 2 of the Act and that he resides in the market area. The said certificate is required to be submitted along with the nomination paper. It is further provided that the certificate shall be conclusive proof that the candidate is an agriculturist.

The learned Judges further observed that a conjoint reading of these provisions would show that what is necessary qualification to contest from the aforesaid two constituencies is that a person has to be an agriculturist as defined under the Act. For the purpose of satisfying the Returning Officer as to whether a person is an agriculturist and residing in that area, a certificate from the Sarpanch or Talathi of the village or Secretary of the Primary Co-operative Credit Society in the village should be produced as a conclusive proof. It is further provided that when a question arises that a person is an agriculturist residing in the market area, the matter shall be decided by the Collector. Therefore, they held : "We are unable to find the requirement in the said Rules that to contest from these two constituencies it is necessary for an agriculturist to be also a voter in these constituencies. We find that if that was to be so, then the provisions could have been very well made to that effect in the Rules specifically insofar as traders' constituency and Hamals' and Weighmen's constituencies are concerned, such a provision is made. Sub-rule (2) and Sub-rule (4) of Rule 38 specify that to contest from these constituencies, it is necessary to be a voter from these constituencies. We are of the view that since a specific provision has been made insofar as the traders' constituency and Hamals' and Weighmen's constituencies are concerned, to that effect that it is necessary to be a voter for contesting the election and that insofar as agriculturist is concerned, no such specific provision is made, it will be difficult to read such a requirement into the Rules. The reliance placed by the learned Member of the Division Bench on Rule 37, in our view, is also not of much assistance, firstly, a particular Rule cannot be read in isolation and secondly, a Rule also cannot be read in the manner which will be inconsistent with the statutory provisions. " Their Lordships further observed "that a conjoint reading of Section 2(1)(b) and Section 13(1)(a) and Rules 35, 38, 44 and 45 would reveal that to contest from these two constituencies what is necessary is that firstly a person has to be an agriculturist, secondly, he has to be the resident of the market area and thirdly, he should not be less than 21 years of age on the specified date".

(emphasis supplied).

8. It is on the basis of aforesaid reasoning, the Division Bench has sought reference in the matter, which is placed before us. In order to examine the question posed in the reference, let us refer to the relevant provisions under the said Act and Rules which spell out the scheme of election of members to the Market Committees of the Agricultural Produce Market Committees. Section 13(1) (a)(i) and (ii) reads as under:-

13. Constitution of Market Committees. - (1) Subject to the provisions of Sub-section (2), every Market Committee consist of the following [(--) members], namely:-

[(a) thirteen 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); as specified below,-

(i) nine (of which two shall be women members), shall be elected by members of the managing committee of the agricultural credit societies and multi-purpose co-operative societies (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder), functioning in the market area; and

(ii) four (of which one shall be a person belonging to the Scheduled Castes or Scheduled Tribes and one shall be a person belonging to economically weaker section), shall be elected by members of village Panchayats functioning therein;]

(Note :- Reproduction of the remaining provision of the section being not relevant to the issue is, therefore, not elaborated).

14. Election and term of office of members. - (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.

Section 13 provides for constitution of market committees which consist of 2 categories of members who are eligible to be elected/nominated to the market committees in order to constitute a market committee. These are elected members and nominated members. The constitution of the committee consists of 13(9 + 4) members to be elected from the constituencies provided u/s 13(1)(a) (i) and (ii), 2 members from constituency u/s 13(1)(b) and one member from the constituency u/s 13(1)(b)(i), i.e. in all 16 and u/s 13(1)(c) one shall be the Chairman of the Co-operative Society doing business of processing or marketing of agricultural produce in the market area or in his absence the representative of co-operative society elected by its managing committee and if there is more than one co-operative society operating in the area, then the Chairman of any one of such co-operative societies or in his absence representative elected by the managing committees of such societies. Then one u/s 13(1)(d) being Chairman of the Panchayat Samities within the jurisdiction, of the market area or major portion thereof, irrespective of the representative elected by such Panchayat Samiti, then one each from category specified in Section 13(1)(e),(f) and (g), i.e. in all 21 out of which persons elected uptill category u/s 13(1)(c) are only given a right to vote and rest of them, namely, being members of the market committee under Clauses (c), (d) and (e) only have a right to take part in the discussions of the committee but shall have no right to vote at the meeting thereof and insofar as category (f) and (g) are concerned, being ex officio members are not given any right to vote.

9. Section 14(1) of the said Act provides for Rules to provide for the manner in which the members shall be elected, determination of constituencies, the preparation and maintenance of list of voters, persons qualified to be elected,

disqualifications for being chosen as and for being a member, right to vote, the payment of deposit and its forfeiture, the determination of election deputed and all matters ancillary thereto excluding provision regarding election expenses and also their respective term.

10. At this juncture, we may also mention that we are not referring to the provisions which govern the constitution of market committee for the area comprising greater Bombay and Turbhe village in Thane taluka of Thane district and such other area or areas as may be specified by the State Government by notification in the official gazette from time to time which has been referred to as "the Bombay market area" being not relevant for our purpose.

11. Therefore, it is clear that the constitution of market committee is governed by election of its members which scheme is regulated by the Rules framed for the said purpose.

12. There can be no quarrel over the issue insofar as it relates to the definition of term "agriculturist", which is defined in Section 2(1)(b) of the said Act. We may further hasten to add that there is no constituency provided under the said Act and Rules known as agriculturist's constituency as the Act and Rules stand today after the same came to be amended by substituting the term agriculturists' constituency as defined in Rule 41(2)(ii) of the said Rules vide Government Notification No. APM/1088/6524/11-C dated 7-6-1990. It is further made clear in the decision of the Full Bench of this Court rendered in the case of Ashok Yeshvantrao Kharade and Others Vs. Keshavrao Santoshrao Dehankar and Another, which was constituted to consider following questions by way of reference by the Division Bench of this Court for resolution of conflict between the decision of the two sets of Co-ordinate Benches on the following questions:-

1. Whether separate and distinct constituency of agriculturist is carved out either under the Act or the Rules?

2. Whether the Chairman of the Agriculture Produce Marketing Committee elected u/s 19(1) of the said Act must be an agriculturist member elected u/s 13(1)(a) thereof?

The Full Bench in Ashok's case answered the two questions referred to them as under:-

(1) No separate constituency of agriculturist is carved out under the Act. The Rules are unamended and have failed to keep the pace with the amendments to the Act;

(2) No, he need not be. It is sufficient if he is an elected member and an "agriculturist" by occupation.

13. Therefore, there can be no controversy over the issue left to be decided as to whether in the election of Agriculture Produce Marketing, there exists an electoral area or constituency which can be referred to as constituency of

agriculturists. Now let us further proceed to examine the Rules to search for the answer posed to us in the reference.

14. Insofar as the Rules of 1967 are concerned, it is Chapter III of the Rules which provides for constitution of market committee. The relevant Rules which require our consideration are Rules 35, 36, 37, 38, 39, 41, 44, 45 and 50. While considering Rule 44, we will also be referring to Form 9 which is form of nomination paper as the Division Bench which disposed of bunch of matters with Writ Petition No. 4529/03 : Najuk Mukunda Kumbhare v. The Collector, Gondia and Ors. has taken it into consideration as a decisive factor for drawing conclusion and for arriving at the finding which has laid to the present controversy.

15. Rule 35 provides for preparation of list of voters, division of market area into constituencies and reads as under:-

Rule 35. Preparation of list of voters. Division of market area into Constituencies.
- [(1) For the purpose of electing 13 agriculturists 2 members to be elected by traders and commission agents and 1 member to be elected by Hamals and weighmen, as provided by Clauses (a), (b) and (b-1) of subsection (1) of Section 13, every market area shall consist of,-

(A) Co-operative Societies' Constituency;

(B) Village Panchayat's Constituency;

(C) Trader's Constituency; and

(D) Hamals' and Weighmen's Constituency]

(2) Each such Constituency shall consist of the whole of the Market area.

Therefore, in so far as electing 13 agriculturists and 2 members to be elected by traders and commission agents and one member to be elected by Hamals and Weighmen as provided by Clauses (a)(i) and (ii), (b) and (b-1) of Sub-section (1) of Section 13 is concerned, it has been clearly specified that it would be from 4 constituencies, i.e. (A) Co-operative Societies' Constituency; out of which 9 members are to be elected,

This Rule does not provide for any constituency for agriculturists though it restricts the election of members from co-operative societies' constituency and village panchayats' constituencies to "agriculturists" only and, therefore, it can be safely concluded that persons who want to contest for the post of members from these constituencies should be 13 agriculturists residing in the market area out of which 9 shall be from constituency specified in Rule 35(1)(a) and 4 out of constituency specified in Rule 35(1)(b).

16. The next Rule is Rule 36(1) which provides for voter's list and reads as under:-

Rule 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 weighmen"s constituency his name shall appear in the respective register maintained by the market committee at least 3 months before the preparation of such lists.

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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) ...

Rule 36 provides for the manner and procedure for preparing the voters" list by

the respective authorities who are nominated in the Rules for various constituencies. It also lays down and contemplates the procedure for finalising the list and vests with the Collector to decide claims or objections of persons who claim any right to be entered in the list or objects to the inclusion of the name of any person in the list. Further, it also contemplates and provides for a remedy to any person whose name is not entered in the final list of voters as republished under Sub-rule (14) to apply to the Collector for inclusion of his name in the list.

17. Rule 37 clearly lays down that subject to any disqualification incurred by a person, voters' list 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. Therefore, it can be seen that Rule 37 encompasses two categories of persons, i.e. person who is qualified to vote and not qualified to be elected in the election and both these categories of persons should find place in the final list of voters of the respective constituency.

Rule 38 reads as under:-

Rule 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 be for the purpose 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 Traders' Constituency. [....]

Explanation : A person shall be deemed to reside ordinarily within the market area, if he -

(a) has actually resided therein for an aggregate period of not less than 180 days during the calendar year preceding that in which the list of voters for the time being under preparation for Co-operative Societies or Village Panchayats' Constituency is provisionally published under Sub-rule (6) of Rule 36 or

(b) has maintained within the market area for an aggregate period of not less than 180 days during the calendar year preceding that in which the lists of voters for the time being under preparation for such area is provisionally published under Sub-rule (6) of Rule 36, a dwelling for himself incharge of his departments or servants and has listed such dwelling during the year first mentioned in connection with his business, in the constituency.

(3) If any question arises whether any person is or is not an agriculturist residing in the market area for the purpose of this rule, the matter shall be decided by the Collector as provided by Sub-section (2) of Section 2.

(4) Every person whose name is included in the list of voters prepared under

Rule 35-A shall unless disqualified under these rules, be qualified to be elected to the Bombay Agricultural Produce Market Committee.] [(4) Every person whose name is in the list of voters of the hamals and weighmen's Constituency shall unless disqualified under these rules, be qualified to be elected from that constituency.]

18. Rule 38 provides for qualification of the candidate to be elected as member of the Market Committee. Insofar as Sub-rule (1) of Rule 38 is concerned, which is relevant for our purpose, provides that every person who is an agriculturist and who is residing in the market area and is not less than 21 years of age on such date as the Collector may for the purpose of any election or bye-election specify in this behalf, shall unless disqualified under these Rules be qualified to be elected. Therefore, it specifically provides the qualification for persons who want to be elected from constituency specified as co-operative societies' constituency and village panchayat's constituency under Rule 35(1)(a) and (b). It also clarifies that "unless disqualified under these rules, be qualified to be elected." It is true that Sub-rule (1) of Rule 38 does not expressly make it clear that to contest from these 2 constituencies it is necessary for an agriculturist to be also a voter in these constituencies as specifically provided under Sub-rule (2) and Sub-rule (4) of Rule 38. Similarly, there is no such embargo placed on a candidate contesting from these two constituencies in Rules 44 and 45 for the simple reason that Rule 44 relates to nomination of candidates and does not specify the qualifications of the candidate but for that purpose makes a reference to the provisions of the Act, these rules and bye-laws. Sub-rule (2) of Rule 44 refers to the nomination paper which is required to be presented under Rule 45 and that it should be completed in Form 9 whereas Rule 45 relates to the procedure for presentation of nomination paper and requirements for valid nomination and does not refer to qualification of the candidates who is eligible for contesting election from various constituencies but rather provides for qualification of the proposer and seconder. Therefore, it does not mean that a candidate who wants to contest an election for membership of the market committee from co-operative societies' constituency and village panchayat's constituency need not be a voter in the list of voters of these constituencies.

19. If we revert back to Rule 39, it only provides for right to vote which is only available to a person whose name for the time being is entered in the list of voters of any constituency and also provides for contingencies when a person can be denied to exercise his right to vote.

20. In our view, the most important provision under the said rules which forecloses the issue and is required to be considered to answer the question referred to us is Rule 50 which provides for scrutiny of nominations i.e. Sub-rule (7) of Rule 50 which reads as under:-

Rule 50(7). For the purpose of this rule, the production of a certified copy of an entry made in the list of voters of the relevant constituency shall be conclusive evidence of the right of any voter named in that entry to stand for election,

unless it is proved that the candidate is disqualified.

21. For the purpose of this rule, the production of a certified copy of an entry made in the list of voters of the relevant constituency shall be conclusive evidence of the right of any voter named in that entry to stand for election, unless it is proved that the candidate is disqualified. Therefore, if Section 13(1)(a) (i) and (ii) is read along with the Rules 35, 36(1) and 50(7) conjointly, the only conclusion which can be drawn is that a person who wants to contest election from the constituency as provided u/s 13(1)(a)(i) and (ii) of the said Act has to be a voter from that constituency apart from he being an agriculturist. Sub-rule (7) of Rule 50 cannot be read in isolation so as to exclude candidates who are contesting election from the constituency (a) Co-operative societies" constituency and (b) Village Panchayats" constituency as provided under Sub-rule (1) of Rule 35. Otherwise, the Legislature would have provided for an exclusion clause insofar as entitlement of a candidate from these categories to stand for election was concerned and there would have been specific mention of such category in Form 9.

22. Both the Benches, i.e. the Division Bench who dealt with bunch of petitions and disposed of by a common judgment and order dated 26-8-2004 (Writ Petition No. 4529/03 : Najuk Mukunda Kumbhare v. The Collector, Gondia and Ors.) and the Division Bench which has referred the issue to the Larger Bench did not at all consider Sub-rule (7) of Rule 50 which provides for scrutiny of nominations. The earlier Division Bench (A.P. Deshpande and K.J. Rohee, JJ.) resorted to Form No. 9, i.e. form of nomination paper to support their conclusion that unless and until the candidate's name is entered in the list of voters in the given constituency, his candidature cannot be proposed by the proposer and, therefore, having regard to Rules 37, 44 and Form No. 9, it is crystal clear that only a person whose name is entered in the voters' list alone would be eligible and qualified to contest the election from the said constituency. We do accept this proposition as Rule 44 clearly provides that in respect of nomination of candidates every nomination paper presented under Rule 45 shall be completed in Form No. 9 and Column No. 1 in Form 9 provides that the proposer should nominate a person as a candidate for election from a specified constituency and, therefore, should furnish name of the constituency, name of the candidate who has been nominated, his age, full postal address of the candidate, then column 5 requires further particulars in respect of the constituency for which the candidate is nominated, i.e. if the candidate is contesting from a reserved seat, then particulars of the caste and tribes to which the candidate belongs. It further requires to give particulars about the name of the constituency in which the name of the candidate is entered in the list of voters and the serial number of the candidate in the list of voters of the constituency aforementioned in which his name is entered as a voter and thereafter particulars of the proposer, his signature, then particulars of the seconder and his signature followed by declaration by the candidate that he hereby signifies his willingness to serve as a member of the market committee if he is elected and in case he is a candidate

belonging to Scheduled Caste and Scheduled Tribes, then further declaration to that effect. Thereafter, there is another declaration as regards choice of symbol in order of preference, the acknowledgment of its receipt by the Returning Officer followed by his decision accepting or rejecting the nomination paper.

23. Insofar as law relating to elections are concerned, it is not only well-accepted but also settled that elections are governed by statutory law. The right to vote at an election, the conduct of election and the question of election are, therefore, governed not only by statute law but also by supporting legislation. Parliamentary elections are conducted in accordance with the parliamentary election rules which are set out in the Representation of People Act. Local Government elections are conducted in accordance with the rules made by the State and the procedure and the manner in which the elections are to be conducted are generally contained in the regulations as in the present case. We are required to observe this as the Division Bench in Writ Petition No. 4529/03 : *Najuk Mukunda Kumbhare v. The Collector, Gondia* and Ors. in para 7 of the judgment have quoted:-

We have not come across any election law wherein the person whose name is not entered in the voters' list is permitted to contest the election.

We find it difficult to approve this proposition as there are elections for various posts which do not necessarily require that a person whose name is not entered in the voters' list cannot be permitted to contest the election, for instance, the qualifications for election as President of, India, provided in Article 58 of the Constitution of India do not require that the name of the person who wants to contest for the post of President of India, Should be entered in the voters' list of the electoral college which elects him.

24. In our opinion, the Division Bench was swayed by the fact that insofar as the constitution of market committee is concerned, the 13 agriculturists residing in the market area can be any person who fulfils the definition of agriculturist given in Section 2(1)(b) and would be eligible to contest the election from the two constituencies, i.e. the co-operative societies' constituency and village panchayat's constituency which is only an electoral college for electing such members and such member need not be registered as a voter in these two constituencies.

25. To sum up, in our view, this inference has been drawn by the learned members of the Division Bench on the premise that in case of other constituencies, namely, the Traders' constituency and the Hamals and Weighmen's constituency, it is necessary that the person should be qualified to vote from these constituencies which is expressly provided in Section 13(1)(b) and (b-1). If we examine Rule 36, it provides for preparation of voters' list and particularly Sub-rule (1), it clearly indicates that the whole purpose of preparation of voters' list is not only to prepare the list so as to create a right to vote in the election but also to provide for electoral areas and qualification of

candidates who can contest from their respective constituencies. It is not necessary that persons who are elected to co-operative societies and village panchayats may necessarily be agriculturists and, therefore, Section 13(1)(a) has laid emphasis on the word "agriculturist" and provides for election of 13 agriculturists residing in the market area from these two constituencies. So primacy is given to agriculturists out of the co-operative societies" constituencies and village panchayats" constituencies. Section 13(1)(a)(i) does not provide for any reservation for persons belonging to the Scheduled Castes or Scheduled Tribes and economically weaker sections from amongst the members to be elected by members of the managing committee of the agricultural credit societies and multipurpose co-operative societies functioning in the market area but it is only restricted to 9 such persons of which 2 shall be women whereas in the second category 4 members who are to be elected by members of village panchayats functioning therein reservation is provided for Scheduled Castes or Scheduled Tribes and for one person belonging to economically weaker section and that is how it makes up for 13 agriculturists residing in the market area. In respect of other categories given in Section 13(1)(b) and (b-1) they are reserved for traders and commission agents and Hamals and Weighmen operating in the market area who need not be agriculturists. Therefore, the scheme to constitute market committee consisting of elected members give maximum representation to agriculturist but it does not provide for constituency for agriculturists and for this reason if the view taken by the learned Judges of the Division Bench which has referred the issue to the Larger Bench is to be accepted, that to contest from these two constituencies, i.e. co-operative societies" constituency and village panchayat"s constituency, what is necessary is that firstly a person has to be agriculturist and secondly, he has to be the resident of the market area and thirdly, he should not be less than 21 years of age on the specified date would only carve out a constituency for agriculturist which is not at all part of the scheme and, therefore, one will have to read that the 13 agriculturists who are required to be elected as members of the market area can be only amongst the members of co-operative societies" constituency and village panchayats" constituency as they are the only persons who can propose and second one of their members from their respective constituency who finds place in their voters" list for being nominated for election as member of the market committee u/s 13(1)(a)(i) and (ii).

26. Therefore, after considering the relevant provisions as aforesaid, our answer to the question posed in the reference is as under:-

It is necessary for a candidate contesting election from the constituency as provided u/s 13(1)(a)(i) and (ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 to be a voter from the respective constituency from which he is seeking election apart from he being an agriculturist.

The reference having been answered, the petition be listed before the appropriate Bench for disposal in accordance with the law.