

(1986) 02 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3156 of 1985

Rambilas Gour and others

APPELLANT

Vs

Tahsildar, Hoshangabad

RESPONDENT

Date of Decision : 26-02-1986

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi (Adhisuchana Prakashan Riti, Bharsadhak Samiti
Tatha Mandi Samiti Gathan) Niyam, 1974 — Rule 13(3)

Citation : (1987) ILR (MP) 612 : (1986) JLJ 689 : (1986) MPLJ 396

Hon'ble Judges : P.C. Pathak, J;C.P. Sen, J

Bench : Division Bench

**Advocate : A.D. Deoras, for the Appellant; M.V. Tamaskar, Additional A.G. for
State, for the Respondent**

Final Decision : Allowed

Judgement

C.P. Sen, J.

In this writ petition, the petitioners, who are traders of Krishi Upaj Mandi Samiti, Itarsi, are challenging the voters list of the traders constituencies to the Krishi Upaj Mandi Samiti and also the election from those constituencies held in October, 1983.

The term of the market committee of the Krishi Upaj Mandi expired on 17-9-1985. No voters list was prepared as required under the M.P. Krishi Upaj Mandi (Adhi-Suchana, Prakashan, Riti Bhar Sadhak Samiti Tatha Mandi Samiti Gathani Niyam, 1974. The election programme was announced on 20-9-1985. The preliminary voters list was published on 30-9-1985. Objections were invited upto 3-10-1985. On that day on an objection being raised by the Secretary of the Samiti that 309 traders shown in the voters list have (sic) yet filed their applications for renewal, the Reluming Officer, i.e. respondent-Tahsildar, deleted the names of 309 traders, including the names of the petitioners, from the voters list. On 4-10-1985 final voters list was published. The present petition was filed on 16-10-1985 and on 24-10-1985 this Court stayed the declaration of the result

of the election but by subsequent order dated 16-12-1985 it was clarified that declaration of the result from the traders constituency alone is being staved. The election was held on 28-10-1985.

The petitioners' contentions are: (1) that no voters list was published or prepared prior to the expiry of the term of previous committee, i.e. before 17-9-1985 in accordance with Rule (sic) under Rule 13(3) claims and objections have to be invited and order passed thereon in the preliminary voters list published on 30-9-1985 names of 510 persons were included in the voters list from the traders constituencies, including the names of the petitioners, but without affording an opportunity to the petitioners and other 309 names have been deleted at the instance of the Secretary of the Samiti who had no right or jurisdiction to raise any objection nor the Returning Officer could suo motu delete the names; (iii) by way of amendment the petitioners further submitted that Rule 12(vi) of the Rules is vague and contrary to section (i) of the (sic) and as such is ultra vires. By way of rejoinder, the petitioners further submitted that the Secretary of the Krishi Upaj Mandi Samiti was the authority to receive claims and objections regarding the voters list and as such he could not have been an objector, moreover the Director. Krishi Upaj Mandi had no jurisdiction to direct deletion of the names of the traders whose licences were not renewed.

The respondents in their return submitted that the preliminary voters list was published and objections were invited and in view of the objection raised by the Secretary that 309 traders had not renewed their licences, their names were deleted from the list in terms of Rule 12(vi); the Director had only drawn the attention of the authorities about this Rule; all the objections were duly considered and order passed on them; the final voters list was published on 4-10-1985; since no appeal is provided against that decision it has become final; the traders who had not got their licences renewed would not be permitted to continue as voters: since the election has already been held, it is not now open to set aside the election simply because a mistake in the electoral roll; there is no vagueness in Rule 12(vi) nor there is any conflict with section 11-B; the condition contained in Rule 12(vi) only applied to Mandi Samiti which has been recently constituted, otherwise there could be no election to the traders constituencies in terms of section 11-(i)(b) because there can be no traders holding licence continuously for two years in the Krishi Upaj Mandi; and the Secretary can raise an objection.

Section 11(1)(b) provides that not more than two members should be elected from the traders constituency possessing such qualifications as may be prescribed and elected in the prescribed manner from amongst the persons continuously holding licence from the market committee for a period of two successive years as traders or owners or occupiers of processing factories under this Act. provided that in case of market committee established for the first time and having an officer-in-charge or a committee-in-charge for a period of less than two years, the qualifying period for continuously holding licence from such

market shall be six months. Rule 12(vi) provides that no person who is continuously holding licence from the market committee as trader or owner or occupier of processing factories under this Act for a period of less than six successive months shall be entitled to vote as such at an election if on the date on which the poll is taken his licence has ceased to be in force and who has not attained the age of eighteen years. This Rule is said to be vague and contrary to section 11(b) by the learned counsel for the petitioners. According to him, this Rule provides that a person can be a voter if he continuously held licence for six months, while section 11(b) provides that he must be a trader continuously for a period of two years. There is no apparent conflict because the proviso to section 11(b) clearly mentions that in case market committee is established for the first time and is less than two years, the qualifying period will be six months. There is also no vagueness if we read the Hindi version which is official version of Rule 12(vi). In fact come has been omitted after the words shall be entitled to vote as such in an election, as is in the Hindi version. Three conditions have to be fulfilled under this Rule: (i) the licence shall not be for a period of less than six months; (ii) the licence should be in force on the date of vote and (iii) he should be over 18 years of age. Therefore, this rule is intra vires of section 11(1)(b). However, we have no option but to cancel the election from the traders constituency in view of invalid voters list prepared. In the preliminary voters list, which was published, names of 510 traders, including the names of the petitioners, were included. The Secretary of the Krishi Upaj Mandi, who was to receive objections regarding the voters list, himself raised an objection, perhaps at the instance of the Director, Krishi Upaj Mandi, that 309 traders have not yet applied for renewal of their licence and their names should be deleted. This was raised at about 10 p.m. in the night, i.e. after the time for receiving objections was over. The objection ought to have been raised during working hours. The Secretary could not have been an objector, since he was authorised to receive objections. The objection could have been raised by any voter or by a candidate contesting the election. It is also surprising that the Secretary himself had extended the date upto 7-10-1985 for getting the traders licence renewed. So it is not understood how on 3-10-1985 he could say that the traders have not renewed their licences. Under Rule 13(3) the election authority is required to decide any claim or objection or before the date fixed. The Returning Officer deleted the names of 309 traders without noticing and hearing them. So clearly there was breach of principle of natural justice. Names of 309 voters could not have been deleted without hearing them. Earlier, under sub-rule (5), the Returning Officer could suo motu amend the voters list but this sub-rule has been omitted and. therefore, the Returning Officer had now no suo motu power to amend the voters list. If the elections are held on the basis of invalid voters list by deleting names of 309 voters out of 500, obviously the result would be materially affected.

Accordingly the petition is allowed with costs. The voters list published on 4-10-1985 and the election held on 28-10-1985 are quashed. The respondent is directed to publish preliminary voters list, invite objections and after noticing the

concerned parties, to finalise the voters list and then hold election from the traders constituencies. Counsel"s fee Rs. 200/- if certified.