

(2022) 11 BOM CK 0088
In the Bombay High Court
Case No : Writ Petition No.11402 Of 2022

Shamrao Narhari Pavale

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 24-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Agricultural Produce Marketing [Development And Regulation] Act, 1963
— Section 13, 13(1)(b)

Citation : (2022) 11 BOM CK 0088

Hon'ble Judges : Arun R. Pedneker, J

Bench : Single Bench

Advocate : V.D.Hon, P.D.Bachate, K.B.Jadhavar, S.K.Kadam, K.J.Suryawanshi,
M.S.Deshmukh, S.S.Bora, U.B.Bilolikar

Final Decision : Dismissed

Judgement

Arun R. Pedneker, J

1] By way of the present Writ Petition, the petitioner is challenging the legality and validity of the supplementary final voters list of the traders constituency of APMC, Vasmat, published by respondent no.4 – District Co-operative Election Authority / District Deputy Registrar, Co-operative Societies, Hingoli, being contrary to the APMC Act and Rules. The challenge is primarily to the addition of 108 voters to the purported final voters list by the supplementary final voters list, on the submission that there cannot be a multiple final voters list. The Writ Petition also challenges the addition of 108 voters to the provisional voters list, although they were not eligible on the cut off date i.e. 01.09.2022.

2] Brief facts leading to filing of the Writ Petition can be summarized as under :

(i) Respondent no.3 - State Cooperative Election Commission declared the election programme for preparation of the electoral roll and election of the Agriculture Produce Market Committee, Vasmat, District Hingoli on 05.09.2022.

As per the said programme, the provisional voters list was to be published on 12.10.2022. The objections were invited between 12.10.2022 to 21.10.2022. The objections were required to be decided by the District Co-operative Election Authority between 21.10.2022 to 31.10.2022. The final voters list was scheduled to be published on 04.11.2022.

(ii) As per the election programme, nominations were required to be filed between 14.11.2022 to 18.11.2022. The scrutiny of the nominations scheduled on 21.11.2022. The list of the contesting candidates is to be published on 22.11.2022. The election programme is as under :

APPENDIX-I

Prospective voters list and election programme of Agricultural Produce Marketing Committee.

Voters list programme

Sr.No.

Details

Date

1

Calling the list of members from District Deputy Registrar, Cooperative Societies and Block Development Officer

Upto 19.09.2022

2

Submission of list of members to the Secretary, Market Committee for preparation of draft voters list

21.09.2022

3

Preparation of draft voters list by Secretary of Market Committee in sample 4

21.09.2022 to 06.10.2022

4

Submission of Draft Voters list prepared by Secretary, Market Committee in Sample 4 to the District Election Officer [APMC]

07.10.2022

5

Publication of Draft Voters list by District Election Officer [APMC]

12.10.2022

6

Objections to be called by the District Election Officer [APMC] on the Draft voters list.

12.10.2022 to 21.10.2022

7

Decision to be taken by the District Election Officer [APMC] on the objections.

21.10.2022 to 31.10.2022

8

Final voters list to be published by the District Election Officer [APMC]

04.11.2022

ELECTION PROGRAMME

Sr.No.

Details

Date

1

Announcing the election programme by the Election Returning Officer

14.11.2022

2

Last date for filing nomination papers

14.11.2022 to 18.11.2022

3

Date of publication of list of received nomination papers

As received till the last date fixed for filing nomination.

4

Date of scrutiny of nomination papers

21.11.2022

5

Date of publication of valid nomination papers after scrutiny

22.11.2022

6

The date by which nomination will be withdrawn

22.11.2022 to 06.12.2022

7

Date of publication of final list of candidates contesting election and allotment of symbol / logo

07.12.2022

8

Voting

18.12.2022

9

Counting votes

19.12.2022

10

Declaring result

Immediately after counting votes.

(iii) As per the election programme the nominations are required to be filed between 14.11.2022 to 18.11.2022. The scrutiny of the nominations scheduled on 21.11.2022. The list of contesting candidates is to be published on 22.11.2022. The date of withdrawal is scheduled between 22.11.2022 to 06.12.2022. The allotment of symbol scheduled on 07.12.2022. The voting is scheduled on 18.12.2022. The counting and result of the election is scheduled on 19.12.2022. It appears from the affidavit of respondent no. 4 that there is modification to election programme by one day.

(iv) In pursuance of the election programme, provisional voters list was published on 12.10.2022 by the District Cooperative Election Authority. In the said provisional voters list, published under Rule 6 (6) of the Election Rules, provisional voters consisted of 454 voters. The provisional voters list was of the voters eligible on the cut off date i.e. on 01.09.2022.

(v) The objections were received by respondent no.4 from various members of the APMC. As per the objector, their licences were not renewed although they were earlier eligible voters of the said APMC and that although they had made attempts to make payment of the licence fees, they were not permitted to make payment and as such on the cut off date their names were not reflected in the provisional voters list. The objectors also submitted that the Board of Administrator of Private Individuals were responsible to accept the licence fees.

The Board acted in the interest of some of the opposition members and as such the Board had not permitted the objectors to make payment of the licence fees.

(vi) Respondent no.4, by order dated 31.10.2022 had directed the agricultural market committee which was at the relevant time under the Government Administrator to include the names in the final voters list who were earlier holding the licence for two years and were eligible but whose payment for renewal of licence fees was not accepted by the APMC and that the licences are not cancelled under Rule 6 (6) of the Maharashtra Agricultural Produce Marketing [Development and Regulation] Rules, 1967 [for short 'Rules of 1967'].

(vii) Thereafter the APMC forwarded the list of 108 members to the District Election Commission. APMC accepted renewal fees on 01.11.2022 and submitted the list of 108 members on 02.11.2022 to the District Election Officer by the letter dated 02.11.2022. The final voters list published on 04.11.2022 contains the names of the provisional voters of 454 and supplementary names of 108 members published on the same day. The final voters list is reflected in two parts which is inclusive of the supplementary additional list of 108 voters and total of 562 voters, published on the same day.

3] The learned counsel for the petitioner, Mr.V.D.Hon, Senior Advocate submits that course adopted by respondent no.4 is dehors the provisions of law and respondent no.4 – The District Cooperative Election Authority has completely overstepped his jurisdiction by including 108 names in the supplementary final voters list. The learned counsel relies on Rule 4 of the Maharashtra Agricultural Produce Market Committee [Election to Committee] Rules, 2017 [for short 'Rules of 2017'] to submit that the elections has to be conducted in accordance with the provisions of the APMC Act and Rules. Rule 6 of the Rules of 2017 deals with the preparation of the voters list. As per the proviso to Rule 6 of Rules of 2017, provisional voters list shall be prepared on the basis of the date fixed by the State Co-operative Election Authority i.e. the provisional voters shall contain the list for eligible voters on the cut off date fixed by the State Co-operative Election Authority. In the instant case, the cut off date was 01.09.2022 under the proviso to Rule 6 of the Rules of 2017. The objections are called for under Rule 7 of the Rules of 2017. Rule 7 (1) provides for inviting claims and objections, any omission or error in respect of name or address or other particulars in the list may be brought to the notice of the concerned District Election Officer in writing by any person whose name appears in provisional voters list of the Market Committee during office hours, within ten days from the date of publication of the provisional voters list. As per Rule 7 (2) of Rules of 2017, every claim and objection has to be in writing and state the grounds on which the claim has to be specifically raised with any proof thereof. As per Rule 7 (3) of Rules of 2017, the District Election Officer shall, or as directed by the State Cooperative Election Authority, after making such enquiries as deem necessary in this behalf, consider each claim or objection, and give his decision thereon in writing to the persons concerned within ten days from the last date prescribed for receiving the claims

and objections. Thereafter final voters list shall be published within the period of fifteen days from the last date prescribed for receiving the claims and objections.

4] Learned counsel for the petitioner submits that respondent no.4 having directed APMC to accept renewal fees and to submit a list of the eligible voters, who were not eligible on the cut off date, is contrary to the provisions of law and he has overstepped his jurisdiction. The learned counsel for the petitioner submits that the Returning Officer has no power to extend the cut off date. He further submits that there can be only one final voters list and addition supplementary final voters is not contemplated under the election laws. The learned counsel thus submits that this Court should exercise writ jurisdiction under Article 226 of the Constitution of India and set aside the addition of the supplementary list of 108 members, who were not eligible on the cut off date and accordingly modify the final voters list.

5] The learned counsel for the petitioner relies upon the cases of Ahmednagar Zilla S.D.V. and P. Sang Ltd., and another Vs. State of Maharashtra and others reported in (2004) 1 SCC 133, Pundlik Maruti Agwan and others Vs. State of Maharashtra and others reported in (2005) 7 SCC 181, Karbhari Maruti Agwan and others Vs. State of Maharashtra and others reported in 1994 (2) Mh.L.J. 1527 and Ankushbhau Juglal Baghele and others Vs. State of Maharashtra and others reported in 2004 (4) Mh.L.J. 539 to contend that this court would ordinarily not interfere in the election programme and would relegate the parties to the alternate remedy of election disputed after election programme is declared. However, that is not absolute rule and in circumstances this court had interfered specially where absolute fraud is brought to the notice of the court with respect of inclusion or exclusion in the voters list. He further submits that the entire exercise of powers of inclusion of 108 members is beyond the Rules and their inclusion would ordinarily effect the election outcome. He further submits that interference in the present case will not effect the election process and that declaration of the additional voters list being void would not effect the election process in any way.

6] Mr.M.S.Deshmukh, the learned counsel appearing for large number of added voters submits that the Returning Officer was perfectly within his jurisdiction to call for additional names. As during the course of enquiry he noticed that the eligible voters fees were not accepted for renewal of licence and thus although they were eligible in absence of renewal fees, they were not holding licence on the cut off date. He further submitted that their licences have not been terminated under Rule 6 (6) of the Rules of 1967 and thus direction issued by Returning Officer to accept licence fees and send fresh list of eligible voters after accepting licence fees. He further submits that the APMC which is authority to provide provisional voters list having accepted the licence fees belatedly after payment of the late fee charges, the members have become eligible after renewal of the licence from prior to the cut off date as the acceptance of licence fees with late fees charges relates back to the financial year, prior to the cut off

date. He further submits that purity of the election process has to be maintained and that deliberate attempt was made by the Administration Board of Private individuals who were manning APMC at the relevant time had not accepted the objectors renewal fees and thus deprived them from voting rights. He further submits that the petition involves disputed question of fact and this Court should not invoke its extra ordinary jurisdiction and relegate the parties to election petition under the Election Rules.

7] The respondents relies upon the case of Shri Sant Sandguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another Vs. State of Maharashtra and others reported in (2001) 8 SCC 509 and submits that preparation of an electoral role is an intermittent stage in the process of election and the High Court should not stay the continuation of the election process. Even though there may be some alleged illegality while preparing the electoral role.

8] Mr.S.K.Kadam, learned counsel for the respondent nos.3 to 5 submits that any interference at this stage would disturb the election process and this Court should be slow in interfering in the election process. He further submits that the final voters which is at Page 49 of the writ petition does not mention the total number of eligible voters whereas the final voters list which is shown to be the supplementary final voters list shows the total number of eligible voters as 562. Thus he submits that the supplementary final voters list is the actual final voters list which includes 454 names of the provisional voters list and 108 voters added subsequently by the order of respondent no.4 – the District Cooperative Election Authority and published on 04.11.2022.

9] Having considered the rival submissions, in the case of Dattatraya Genaba Lole and others Vs. The Divisional Joint Registrar and others decided by this Court in Writ Petition No. 5878 of 2021 on 26.11.2021 at the Principal seat, it has been held that there is limited scope of interference at the stage of elections and the parties have to be relegated to the alternate remedy and the High Court should not ordinarily exercise the jurisdiction under Article 226 of the Constitution of India. This court at paragraph no.8.42 has clearly explained the situation under which this court can interfere in the election process as under:-

"8.42 The judgments in the case of Pundlik and Ahmednagar Zilla S.D.V. & P. Sangh Ltd., supra, are a clear indication and guide to when the normal rule of non-interference at an intermediate stage can be varied. That would usually be in cases where a binding provision is ignored such that its existence itself is rendered nugatory; or when a part of the election process is carried out on the basis of non-existent rules. We are not suggesting that this is the entirety of circumstances to justify a departure from the well settled and normal approach of non-interference. However, the nature of the challenge must be analogous to the circumstances that warranted interference in these two judgments. In other words, every alleged illegality or irregularity and minor deviation in the election process cannot justify intervention of this Court at an intermediate stage under Article 226 of the Constitution of India. As noted above, in Narsing Ganpatrao

Nikam, supra, a learned Single Judge of this Court considered Ahmednagar Zilla S.D.V. & P. Sangh Ltd., but held that on facts the case before him was governed by the ratio in Shri Sant Sadguru.”

10] In the above case, this court has referred to cases of Pundlik and Ahmednagar Zilla S.D.V.&P. Sangh Ltd., where clear indications are laid down under what circumstances this court can interfere. This court has primarily interfered when a large body of voters has been included or excluded dehors the rules and has not interfered with fact specific individual cases of inclusion in voters list unless there is gross illegality effecting the purity of election process.

11] This court in the case of Tirupati Motiram Mohite and others Vs. The State of Maharashtra, Through Secretary and others passed in Writ Petition 3323 of 2022 on 10.03.2022 at para 11 observed as under:-

“11. It is consistently held in catena of decisions by this Court as well as by the Apex Court that in the cases, wherein challenge is raised to an order, which is entirely without jurisdiction, when an alternative remedy is ineffectual and where the petition asserts a clear violation of principles of natural justice, alternate remedy is not a bar to interfere in writ jurisdiction under Article 226 of the Constitution of India.”

12] Coming to the facts of the present case, respondent no.4 – The District Cooperative Election Authority received objections from 108 voters from the trader constituency, who were eligible to vote for the last two elections, but their name did not find place in the provisional voters list. It is the contention of the objectors that before the cut off date their licence renewal fees was not accepted although they were otherwise eligible. Respondent no.4 - The District Cooperative Election Authority on considering objections passed the order dated 31.10.2022. In the said order, he noticed that (i) the objectors were eligible for the last two years, (ii) that their licences renewal fees were not accepted and in view of the non-acceptance of the licence fees, their licences were not renewed and (iii) in terms of Rule 6 (6) of the Rules of 1967, their membership was not cancelled and therefore he directed that their names be included in the final voters list.

13] Respondent no. 6 – The Agricultural Produce Market Committee thus accordingly made the list of 108 members, whose licences were not cancelled under Rule 6 (6) of the Rules of 1967 and forwarded the same to respondent no.4 - The District Cooperative Election Authority on 02.11.2022.

14] It may be relevant to notice that the constitution of the Market Committee which includes the members of the traders community is provided in Section 13 (1) (b) of the Maharashtra Agricultural Produce Marketing [Development and Regulation] Act, 1963, reads as under:

“13. Constitution of Market Committees

(1) Subject to the provisions of sub-section

(2) every Market Committee shall consist of the following members], namely:-

(a)

(i)

(ii)

(b) two shall be elected by traders and commission agents, holding licences for not less than two years to operate as such in the market area];”

Thus, respondent no.4 - The District Cooperative Election Authority held that the objectors were eligible for last the two years and their licences were not cancelled under Rule 6 (6) of the Rules of 1967 and were eligible even to contest elections under Section 13 (1) (b) of the APMC Act, 1963. The fact that their licences were not renewed, was not relevant consideration and as per the order of respondent no.4 the 108 voters were having subsisting licences on the cut off date, which were not cancelled.

Thus, according to respondent no.4 - The District Cooperative Election Authority 108 voters were eligible prior to the cut off date. Their membership was not cancelled under Rule 6 (6) of the Rules of 1967.

15] The APMC in view of the directions issued by respondent no.4 and whose licences were not cancelled under Rule 6(6) of the 1967 Rules who were eligible for the last more than 2 years made a list of 108 eligible voters / objectors after accepting their licence fees with late charges and forwarded the same to respondent no.4 for inclusion in the final voters list on 02.11.2022. Accordingly final voters list was published on 04.11.2022 which included voters from the provisional voters list and the supplementary additional 108 voters who were directed to be added. The election programme is declared on 17.11.2022 and the last date for nomination is 23.11.2022. The scrutiny of the nomination to start from 24.11.2022.

16] In view of on going election process and specific finding of respondent no.4 - The District Cooperative Election Authority that the voters were eligible for last two years and that under Rule 6 (6) of the Rules of 1967, their licences were not cancelled and depriving them from voting rights on account of their licences being not renewed, would defeat the object of fair elections and thus interfering with the finding of respondent no.4 at this stage of election process may defeat the rights of 108 voters if they are eligible. The 108 eligible voters on interpretation of the Rules may finally be held to be valid voters or invalid voters but at this moment it would be difficult to set aside the order of respondent no.4 - The District Cooperative Election Authority by invoking jurisdiction under Article 226 of the Constitution of India.

17] The entire gambit of the issue raised by the petitioner that their can be no extension to the cut off date and that the power exercised by respondent no.4 - The District Cooperative Election Authority is de hors the Rules and that in any

event their can never be addition to a provisional voters list, that the objections should only be limited to parameters contemplated under Rule 7 can all be considered at the stage of a challenge properly instituted and all aspects can be decided at a later stage in an Election Petition. Interference at this stage would hamper the process of election. It has to be noted that added voters 108 in numbers are also having a valid argument that in terms of Section 13 of the Act of 1963 as their membership has not been cancelled under Rule 6 (6) of the Rules of 1967, they are valid voters on the cut off date. All these issues and controversy could be settled in a properly instituted election petition and depriving the 108 voters from the voting rights, by setting aside order of respondent no.4 - The District Cooperative Election Authority would not be conducive to the election process at this stage.

18] Thus, the Writ Petition is dismissed, with liberty to the petitioner to approach alternate forum under Rule 72-A of the Election Rules of 2017 at appropriate stage seeking to set aside the order of respondent no.4 for inclusive of 108 votes and for any relief as petitioner consider and fit.