
(2016) 08 BOM CK 0183

In the Bombay High Court

Case No : Writ Petition No. 9197 of 2015 with Civil Application No. 10095 of 2016

Subhash s/o. Rabhaji Barde

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 20-08-2016

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 — Rule 36(2), Section 13

Citation : (2017) 1 MhLJ 246

Hon'ble Judges : T.V. Nalawade, J.

Bench : Single Bench

Advocate : G.B. Rajale, Advocate, for the Respondent No. 6; A.V. Hon, Advocate, for the Respondent No. 7; J.R. Patil, Advocate, for the Petitioner W.P No. 9198 of 2015; P.R. Katneshwarkar h/f. Ambetkar, A.G, for the Intervenors; S.K. Tambe, AGP, for the Respondent N

Final Decision : Dismissed

Judgement

T.V. Nalawade, J. - The petitions are filed under Article 227 of the Constitution of India by ex-members of 9 Village Panchayats to challenge the orders made by Returning Officer appointed by Collector to hold elections to Agricultural Produce Marketing Committee of Pathardi. The names of petitioners are deleted from final voters list by the Returning Officer and the names of newly elected candidates are entered in the final voters list and so, the orders are challenged. This Court had allowed both ex-members and newly returned members of Village Panchayats to vote in the elections. The voting is over, but the results of four constituencies to which the petitioners and newly elected members were entitled to vote are withheld. The State has supported the orders made by the Returning Officer. Heard both the sides.

2. By the notification dated 17.6.2015 issued by respondent No. 3, the elections to A.P.M.C. Pathardi was declared. On 18.6.2015 provisional voters list was published. The objections taken to the entries made in the provisional voters list

were decided on 13.7.2015 and the final voters list was published on 17.7.2015. The election programme was declared on 13.8.2015 by the respondent No. 3. As per the programme, the last date for filing nomination was 28.8.2015. The scrutiny was done on 31.8.2015 and the voting took place on 4.10.2015.

3. As against the aforesaid facts, the election programmes of Village Panchayats were published in the month of August 2015 and the results were declared on 26.8.2015. One Vaibhav Khalate made application to Returning Officer on behalf of all the members of nine Village Panchayats for inclusion of the names of newly elected members of Village Panchayats in voters list prepared for elections to A.P.M.C. Pathardi. On the same day, the Returning Officer made the order under challenge.

4. The terms of the previous members of the Village Panchayats were to expire between 28.8.2015 and 8.9.2015. As already mentioned, the voting for electing members of Marketing Committee was to take place on 4.10.2015.

5. It is the case of petitioners that as per the procedure laid down by the Rules of Maharashtra Agricultural Produce Marketing (Regulation) Rules 1967 (hereinafter referred to as "the Rules" for short) framed under the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulations) Act, 1963 (hereinafter referred to as "the Act" for short), there was no scope to amend the voters list after its finalization. It is the contention of petitioners that even if their turn as members of Village Panchayat had expired prior to the date of voting, as their names were there in voters list, they were entitled to vote in the election and their names could not have been deleted much less without giving opportunity to them by the Returning Officer.

6. Both the sides placed reliance on some reported cases when they took this Court through various provisions of the Act and the Rules. It appears that there are some conflicting decisions of this Court and recently one Hon'ble Judge has requested the Hon'ble Chief Justice to refer the relevant point to Larger Bench. As there are specific provisions, which are not considered in some cases by this Court and as there is Division Bench case on the basis of which present matters can be decided, this Court has heard both the sides for deciding the matters.

7. The provision of section 13 of the Act provides for the constitution of Marketing Committee. The relevant portion of provision of section 13 of the Act and Rule 35 of the Rules show that there are four constituencies from which members of the Marketing Committee are elected. The present case is from the category of "Village Panchayats Constituency". As per the provision of section 13, the members of the Village Panchayat, who are agriculturists, can contest the election from this constituency [section 13(1)(a)]. However, the provision of section 13 (1) (a) (ii) shows that all the sitting members of Village Panchayat, over which the A.P.M.C. has jurisdiction are entitled to vote in the election. This provision runs as under :-

"13. Constitution of Market Committees.- (1) Subject to the provisions of Sub-

section (2), every Market Committee consists of the following members namely :-

(a) fifteen agriculturists residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty one years of age on the date specified, from time to time, by the Collector or the District Deputy Registrar, as the case may be, in this behalf) as specified below :-

(i)

(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 the Economically Weaker Section), shall be elected by members of village Panchayats functioning therein;"

8. The wording of aforesaid provision is plain and clear and it leads to only one inference that members of Village Panchayat, who are functioning on the date of election, can be the voters. If the provision is considered without referring the rules, it can be said that if the term of members of Village Panchayat has expired prior to the date of voting in A.P.M.C. Election, such ex-members cannot vote in the election and similarly, it can be said that the sitting members, whose term has commenced are entitled to vote in this election if their term has commenced prior to the date of voting.

9. The provision of section 14 of the Act provides for the election of members of Marketing Committee and for term of their office. In the present matters as only right of members of Village Panchayat to vote is involved, the provision of section 14 need not be considered in detail. Section 60 (2) (d) of the Act shows that the Rules for election to Marketing Committee need to be framed and the manner of election of such members also needs to be given in the Rules. The Rules under consideration are framed under this provision and the relevant Rules are 35, 36, 37 and 39 of Chapter III of the Rules.

10. Rule 35 (i) of the Rules shows that Village Panchayat Constituency is treated as separate constituency and for that, entire market area needs to be considered and all the Village Panchayats attached to Marketing Committee become part of this constituency.

11. Rule 36 of the Rules is about preparation of the voters list. This Rule needs to be considered in different parts first and then as a whole. Rule 36 (1) runs as under :-

"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."

12. The word "shall" used in the aforesaid portion shows that it is the "duty" of the Collector to see that Block Development Officer prepares and furnishes to the Collector a list of members of Village Panchayat functioning in the market area. This provision again shows that separate list for each constituency of voters is required to be prepared. The provision of section 28 (1) of the Bombay Village Panchayat Act, 1958 shows that it is the Collector who is expected to fix the date of first meeting of Village Panchayat after General Election is over. The term of such members commences on the date of first meeting. The provision shows that the date of such meeting shall not in the case of first meeting after General Election, be later than the day immediately following the day of expiry of the term of outgoing members. In the present case, all the petitioners were outgoing members at the relevant time and so, it needs to be inferred that the term of the newly elected members started on the next day of the expiry of the term of present petitioners.

13. The provision of Rule 36(2) of the Rules runs as under :-

"(2) Every such list shall be revised before general election at least six months before the date on which the term of the market committee is due to expire.

Provided that the Collector may direct the revision of such list also at any other time before any general election is due".

This provision shows that the Collector is expected to start the process of preparation of voters list before six months of the last date of the term of sitting members of Marketing Committee. The wording used in this Rule also shows that it is mandatory in nature. The proviso of this sub-rule shows that at any other time also, the Collector can direct to revise all voters lists.

14. While preparing and revising the voters list, the authority cannot ignore the eligibility conditions mentioned in provision of section 13 of the Act in respect of the voters and in the present matter, specific provision is section 13(1)(a)(ii) of the Act. In view of this position of law and when in the cases like present one, it is always certain that before the election of members of Marketing Committee, the term of the voters of a particular Village Panchayat will be over, the names of such voters need to be deleted from the voters list. This deletion will, however, be subject to exceptional circumstances. The lists are to be prepared for general election and so, such steps need to be taken. To cope with the exceptional

circumstances, there is procedure laid down in other sub-rules of Rule 36 like 36 (2), 36(6) to 36 (11). The provisions of Rule 36 (6) and (7) of the Rules read as under :-

"(6) Every such list shall be published in Marathi provisionally within a period of one month from its receipt by the Collector in such manner as the Collector may deem fit.

(7) At the time of publishing the list of voters a notice shall be published in like manner calling upon persons entered in the list to lodge in the manner herein prescribed any objection that they have to make to the list as published, and upon persons claiming to be entered in the list, to lodge their claim in the manner herein prescribed"

The reading of Rule 36 as a whole shows that aforesaid two sub-rules are applicable to both the original list and revised list mentioned in Rule 36 (1) and 36 (2). In view of the nature of duty of the authority mentioned in Rule 36, ordinarily for this constituency, there should not be need to use provisions of section 36 (3) to (16) relating to objections, claims and amendments. They will be required to be used in exceptional circumstances in view of the certainty about the tenure of the members of Village Panchayat and about the certainty about the commencement of the term of newly elected members. Thus, due to the duty imposed on the authority in Rule 36 of the Rules, the newly elected members can presume that they are voters in the elections of their Marketing Committee provided that their term had commenced prior to the date of election to Marketing Committee. In this regard, the provision of Rule 36 (12) is also important and it runs as under :-

"(12) If, after the final publication of the list of voters, under sub-rule (11), the Collector on application or otherwise, is satisfied after such inquiry as he deems fit that any entry or entries in the list is or are erroneous or defective in any particular respect, the Collector may cause a list of amendments to be prepared; and thereupon the provisions of sub-rule (3) to (11) shall apply in the like manner as they apply in the case of the list of voters."

This provision shows that the word "otherwise" is used and it indicates that application of the concerned is not required and if otherwise also, the information reaches to the authority, the steps are required to be taken for inclusion of the newly elected members of Village Panchayat in voters list. In view of this provision, it can be said that there is no force in the contention made for the petitioners that only one person viz. Vaibhav Khalate had given applications for newly elected members of 9 Village Panchayats and so, this application ought not to have entertained.

15. The provisions of Rule 36 (6) to (16) of the Rules are in respect of making amendments in voters list due to objections to the voters list and claims of persons for inclusion of their names in the voters list. The learned counsel for petitioners laid emphasis on Rule 36 (15) which runs as under :-

"(15) Any persons 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. It is already observed that the members of Village Panchayat are not expected to apply for inclusion of their names in the voters list. Thus, they are not expected to apply under Rule 36 (15) of the Rules and such situation should never arise for them in view of the discussion already made. If such situation arises, it can be said that the situation was created due to lapse on the part of the authority mentioned in Rule 36. If the Village Panchayat was already attached to Marketing Committee, then in such case the members of the Village Panchayat are entitled to vote in the elections if their term has commenced prior to the date of election and the term has not come to an end. For the same reason, the ex-members of such Village Panchayat, who are in voters list cannot be allowed to vote in the election as their term had expired prior to the date of election to Marketing Committee. The provision of Rule 36 (15) of the Rules cannot override the provision of section 13(1)(a)(ii) of the Act. For the same reason, the provision of Rule 37 mentioning that the final voters list is conclusive and the provision of Rule 39 mentioning the right of persons appearing on the voters list to vote cannot be used by the ex-members of Village Panchayat whose term was over prior to the date of election. Conversely, these provisions cannot be used against the newly elected members of the Village Panchayat.

17. When the Rules are made in any Act giving substantive right like right to vote, the Courts needs to go with presumption that the Rules are their to enable the enforcement of such right and the Rule is not there to prevent the use of such right. The institutions like Agricultural Produce Marketing Committee are created to give power in the hands of citizens to manage own affairs with regard to marketing of agricultural produce and the other purpose behind such institutions is to inculcate culture of democracy by making the agriculturists and others aware of their rights in democracy. So, the interpretation of the Rules always needs to be in support of such right.

18. Due to circumstances like different due dates for elections of various Village Panchayats, various societies and also A.P.M.C., every member of every Village Panchayat may not be able to contest the election to A.P.M.C., but if his term has commenced, he will be definitely entitled to vote in the elections. Due to the difference in programmes of elections, the members of Village Panchayat in some case may lose their right to contest the election from the constituency, but in that regard nothing can be done. Such approach needs to be taken to remove the ambiguity, if any, felt in the aforesaid provisions.

19. The learned counsel for petitioners placed reliance on the observations made in some reported and unreported cases of this Court. Copy of the decision given in Writ Petition No. 5799/2008 [Eknath s/o. Vithalrao Kadam v. The State of Maharashtra & Ors.] decided by the Division Bench of this Court on 22nd October

2008 is produced. The decision shows that inclusion and non inclusion of some of Village Panchayats, its members as voters in voters list of one Marketing Committee was under challenge. Election of Manwat A.P.M.C. was declared. In the past, some Village Panchayats were attached to different Marketing Committees like Sailu and Jintur. The term of members of Marketing Committee Manwat was to expire on 27.7.2008 and the final list of voters was published on 24.9.2008. The Writ Petition was decided on 22.10.2008. As per the record, these Village Panchayats were attached to Manwat Marketing Committee after 28.1.2008 and it was held that the period of six months given in Rule 36 of the Rules is mandatory and due to that Rule, the Village Panchayats ought to have been attached to Manwat Marketing Committee prior to 28.1.2008 and then their members could have been included. The remaining portion of Rule 36 providing for amendment was not brought to the notice of this Court and further, provision of section 13 was also not referred for consideration of the right of the members of these Village Panchayats.

20. In the case reported as 2012 (2) Mh.L.J. 274 [Shri. Vivid Karyakari Seva Sahkari Sanstha Maryadit and Ors. v. State of Maharashtra and Ors.], this Court (other Hon''ble Judge) referred the procedure given in Rule 36 of the Rules. In that matter, rights of one co-operative society claiming right to vote in co-operative societies constituency's was under consideration. Thus, the constituency was different and facts of the reported case were also different. In this case also, the provision of section 13(1)(a)(i) was not referred and the implication of Rule 36 (1) of the Rules was not considered.

21. Reliance was placed on the decision given in Writ Petition No. 8065/2015 and other connected matters decided on 28.9.2015 [The Grampanchayat, Nadiwadi v. The State of Maharashtra and Ors.]. The facts of this case show that the date of nomination was 8.7.2015 and the members of various Village Panchayats who were before the Court had assumed the charge between 22.7.2015 and 28.7.2015. This Court (other Hon''ble Judge) had held that since members of these Village Panchayats whose term had expired even before the date of nomination were entitled to vote in the election which was to take place on 9.8.2015 as they were on final voters list. In this case also, the provision of section 13(1) (a)(ii) was not referred.

22. It appears that in Writ Petition No. 8472/2015 and other connected matters [Rajkumar Venkatrao Kalme and Ors. v. The State of Maharashtra and Ors.] decided on 29th October 2015, this Court (other Hon''ble Judge) has requested the Hon''ble Chief Justice to refer these points to Larger Bench. This Hon''ble Judge apparently disagreed with the proposition made in aforesaid three cases in the past and referred the observations made by the Division Bench of this Court in the case reported as 2013 (6) Mh.L.J. 688 [Purshottam s/o. Pandharinath Tonpe v. Agriculture Produce Market Committee, Wardha and Ors.]. By referring the provision of section 13(1)(a)(ii) of the Act in this case Division Bench of this Court has laid down that the entitlement of a member of Village Panchayat to

hold office as member of Marketing Committee continues only till the time the member is representing the Village Panchayat. This Court has expressed that in view of the interpretation of the relevant provisions done by the Division Bench, the interpretation done in the aforesaid case on which reliance is placed in the present matter by the learned counsel for petitioner cannot be accepted. The Hon''ble Judge has referred following points for constitution of larger bench.

"I. Whether the erstwhile/former (past) members of gram panchayat be allowed to contest elections to membership of APMC when they are not members of gram panchayat on the date of polling, taking into account provisions of section 13 (1) (a) (ii) and proviso to section 15 of the Agriculture Produce Market Committee (Development and Regulation) Act, 1963?

II. Whether despite extinguishment of membership of gram panchayat on the date of polling for elections to APMC, erstwhile/former (past) members be deemed to be voters only for the reason, them being in voter's list prepared pursuant to Rule 36 of the Agriculture Produce Market Committee Rules, 1967, and should they be allowed to vote ?

III. Whether the persons constituting gram panchayat on the date of polling of elections to APMC would not be entitled to vote in said elections in their capacity as gram panchayat members forming village panchayat constituency for four members to be elected from that constituency to APMC in given/present situation and whether in such a case, procedural rules should not be required to be flexed and interpreted by harmonious, reconciliatory approach and adaptation of the same to the present/given situation, having regard to object, intention and purpose underlying main provisions of Agriculture Produce Market Committee (Development and Regulation) Act, 1963 ?

IV. Whether in the present/given situation village panchayat constituency can be by-passed and kept away from having its representatives elected to the posts of Chairman and/or Vice Chairman ?"

23. Before this Court, there is decision of Division Bench of this Court given in case of Purshottam Tonpe cited supra. This Court has already quoted the relevant provisions of both the Act and the Rules. This Court took matters for decision as they are election matters and in election matters when specific provisions of law are available for decision, the election matters cannot be kept pending only because there is difference of opinion expressed in few decisions given by some Hon''ble Judges. This Court can use the interpretation done by this Court in Division Bench case of Purshottam Tonpe in support of view taken by this Court in the present matters.

24. In view of the discussion made above, this Court holds that there is no possibility of interference in the decision given by Returning Officer in favour of the sitting members by which the sitting members are allowed to vote in the elections.

25. In the result, all the petitions are dismissed. Civil Application filed for intervenor is allowed and disposed of. The votes of the newly elected candidates of Village Panchayats are to be counted and the results of the four Village Panchayat constituencies are to be declared. The votes given by previous members of Village Panchayats are not to be counted and they stand discarded. Other civil applications, if any, stand disposed of.