

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 13338 OF 2022

1. Kirandevi Champalal Jain
Age : 63 years, Occu. Business,
R/o. Bhoi Galli Corner, Taloda,
Taluka – Taloda, District – Nandurbar.
2. Dipti Jaikumar Jain
Age : 35 years, Occu. Business,
R/o. Bhoi Galli Corner, Taloda,
Taluka – Taloda, District – Nandurbar.
3. Kanhaiyalal Shamdas Tamboli
Age : 60 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
4. Chandiraj Suresh Tamboli
Age : 28 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
5. Nikhilkumar Kanhaiyalal Tamboli
Age : 28 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
6. Rajendra Raghunath Tamboli
Age : 58 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
7. Sunil Raghunath Tamboli
Age : 56 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
8. Deepak Prakash Dahiya

Age : 26 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)

9. Prakash Bhikamchand Dahiya
Age : 52 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
 10. Gautamchand Babulal Pawar
Age : 38 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
 11. Pankaj Babulal Pawar
Age : 36 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
 12. Arun Dashrath Patil
Age : 38 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
 13. Maqsud Mushir Rashi
Age : 52 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
 14. Anand Vasant Shroff
Age : 43 years, Occu. Business,
R/o. Main Road, Taloda,
Taluka – Taloda, District – Nandurbar.
 15. Sachin Vasant Shroff
Age : 48 years, Occu. Business,
R/o. Main Road, Taloda,
Taluka – Taloda, District – Nandurbar.
- ...PETITIONERS

VERSUS

1. District Cooperative Election Officer
and District Deputy Registrar
Cooperative Societies, Nandurbar.
2. The Taloda Agricultural Produce
Market Committee, Taloda,
Through its Administrator.
3. Kanhaiyalal Ratilal Patel
Age : Major, Occu. Business,
R/o. Plot No. 8, Shriram Nagar,
Taloda, Taluka – Taloda,
District Nandurbar.

... RESPONDENTS

WITH

WRIT PETITION NO. 13356 OF 2022

1. Kalyani Vishal Karnakar
Age : 29 years, Occu. Business,
R/o. Khandeshi Galli, Taloda,
Taluka – Taloda, District – Nandurbar
2. Suchita Pankaj Karnakar
Age : 35 years, Occu. Business,
R/o. Khandeshi Galli, Taloda,
Taluka – Taloda, District – Nandurbar
3. Ramesh Madhukar Kumbhar
Age : 52 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
4. Gopalchand Hardeoram Kumawat
Age : 58 years, Occu. Business,
R/o. Nizar, Taluka – Nizar,
District – Tapi (Gujrat State)
5. Premchand Gopalchand Kumawat
Age : 45 years, Occu. Business,

R/o. Nizar, Taluka – Nizar,
District – Tapi (Gujrat State)

6. Arjun Makkan Chaudhari
Age : 57 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
7. Jayshree Dinesh Chaudhari
Age : 37 years, Occu. Business,
R/o. Bhoi Galli corner, Taloda,
Taluka – Taloda, District – Nandurbar.
8. Jyotiben Pravin Chaudhari
Age : 38 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
9. Dakshaben Pravin Chaudhari
Age : 22 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
10. Magan Uttam Chaudhari
Age : 57 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
11. Mohan Dinkar Chaudhari
Age : 62 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
12. Rajesh Raghunath Chaudhari
Age : 45 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
13. Ramchand Magan Chaudhari
Age : 42 years, Occu. Business,

R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)

14. Latabai Mohan Chaudhari
Age : 60 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State)
15. Shrawan Dinkar Chaudhari
Age : 58 years, Occu. Business,
R/o. Kukarmunda, Taluka – Kukarmunda,
District – Tapi (Gujrat State) ...PETITIONERS

VERSUS

1. District Cooperative Election Officer
and District Deputy Registrar
Cooperative Societies, Nandurbar.
2. The Taloda Agricultural Produce
Market Committee, Taloda,
Through its Administrator.
3. Sagar Prakash Marathe
Age : Major, Occu. Business,
R/o. Chinoda, Taluka – Taloda,
District Nandurbar. ... RESPONDENTS

Mr. Subodh P. Shah, Advocate for the petitioners
Mr. S. K. Kadam, Advocate for respondent No. 1
Mr. A. R. Sayyed, Advocate h/f Mr. Sushil P. Pandit, Advocate for
respondent No. 3.
Mr. S. D. Marathe is present on behalf of respondent No. 2.

**CORAM : R. M. JOSHI, J.
(Vacation Court)**

DATED : 28th DECEMBER, 2022

JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent of both the sides, these petitions are finally heard at the stage of admission.

2. In both petitions being aggrieved by the impugned order dated 21st December, 2022 passed by District Co-operative Election Officer-District Deputy Registrar, Co-operative Society, Nandurbar, deleting their names from the voters lists in the election of APMC for year 2022-2023, challenge is made thereto on grounds detailed in the petitions. The main contention of the petitioners is that the Election Officer has exceeded the jurisdiction and expanded scope of the enquiry under Rule 7 of the Election Rules, 2017 and that Election Officer only could have gone into the issue of correctness as regards particulars of voters like name, age, address etc. and ought not to have deleted names of petitioners from voters list.

3. Respondents objected to the maintainability of the petition by relying upon judgments of Division Bench of this

Court in the case of ***Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar, Cooperative Societies, Pune Division and others in Writ Petition No. 5878 of 2021 decided on 26th November, 2021*** and ***Digambar Sadashiv Ghorpade and Ors. Vs. Election Registration Officer and ors. in W.P. Nos. 1176 and 1868 of 2022 decided on 01/11/2022***. It is canvassed by learned advocates for respondents that since alternate remedy is available for the petitioners to challenge the election and since the present stage of the election process being intermediate, these petitions are not maintainable. They also relied upon following judgments.

(a) *Sarjerao Dattatraya Pachpute Vs. The State of Maharashtra and others in Writ Petition No. 2783 of 2022 decided on 24th February, 2022.*

(b) *Balasaheb s/o Digambar Gholap Vs. The State of Maharashtra and others in Writ Petition No. 5 of 2022 decided on 3rd January, 2022.*

(c) *Popat s/o Sambhaji Mane Vs. The State of Maharashtra and others in Writ Petition No. 6 of 2022 decided on 3rd January, 2022.*

(d) *Sandip s/o Balbhim Nagawade Vs. The State of Maharashtra and others in Writ Petition No. 10 of 2022 decided on 3rd January, 2022.*

(e) Machindra Dada More Vs. The State of Maharashtra and others in Writ Petition No. 22 of 2022 decided on 4th January, 2022.

4. These submissions are countered by learned Advocate for the petitioner by stating that there is no complete bar to maintain petition like one in hand even at this stage of election process. While taking his arguments further it is submitted that in the present cases Election Officer has expanded the scope of the enquiry as contemplated by Rule 12 of The Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (for short 'Rules'), and in view of Section 13(1)(b) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (For short 'Act'), the traders and commission agents holding licenses for not less than two years are eligible to be voters for the election of committee and it is not permitted to read the same as license held for period prior to two years of cut off date, as done by election Officer. According to him Election Officer while deciding the objection has exercised the powers not vested in him under Rule 7, and hence present case is the one wherein the impugned order is patently illegal which comes

in the exception to the law laid down by the Division Bench and hence petition be entertained and the issue raised by the petitioners be decided. To buttress these submissions reliance is placed on ***Usha Bhaginath Bhagat and Others Vs. State of Maharashtra and others*** reported in ***(2021) 2 AIR Bom R 718***, where this Court had granted relief on the basis of similar provisions.

5. Before going into merit of petition, at the outset issue regarding maintainability needs to be addressed and only thereafter contentions of petitioners raising challenge to impugned order can be considered. Division Benches of this Court in the cases of ***Dattatray Genaba Lole and others Vs. The Divisional Joint Registrar*** (cited supra) and ***Digambar Sadashiv Ghorpade and Ors. Vs. Election Registration Officer*** (cited supra) have held that the writ petition challenging order which is part of intermediate stage of election process is not maintainable for availability of alternative efficacious remedy to challenge the election after its result. However, there is no absolute bar for entertaining of petition at

intermediate stage of election, as observed in para 8.4 in the case of ***Dattatray Genaba Lole and others***,

“8.4 The only circumstance in which the Courts would be inclined to interfere in a challenge to an election process at an intermediate stage would be when the order or action under challenge is patently and demonstrably illegal, such as, for example, by applying a non-existent rule or provision to the election process or failing to adhere to a mandatory provision. The intervention in such cases has been explained as enabling or assisting the process of the election rather than thwarting or stalling it. Also, one of the important aspects to consider is the precise stage of the election process and the delay, if any, in the filing of the petition.”

6. Thus, where Court finds that there is patent and demonstrable illegality in order impugned such as non application of rule to the election process or failure to adhere to a the mandatory provision petition can certainly be entertained.

7. There is no dispute about the fact that election programme is published though in part but the election process has commenced and the stage of declaration of the final list of voter's is intermediate stage of the entire election process. It is not case of petitioners that impugned order is passed without

according any opportunity of hearing to them. There is also no dispute about power of Election Officer to publish final voter's list after deciding objections raised to the provisional voter's list. *Prima facie* consideration of relevant rules indicate that it is within power of Election Officer to entertain objections to provisional voter's list and to publish final list of voters, and the power to remove the name of any person from final voter's list is incidental and denial thereof would make relevant rule otiose. Apparently, there is no justification to say that there would be only power to correct clerical/typographical error in provisional voter's list, as it is responsibility of Election Officer to ensure that only eligible voter casts vote during election, more particularly in view of provision of Section 13(1)(b) of the Act, which provides election by not all traders but those who fulfill condition stipulated therein. It appears from judgment in case of ***Usha Bhaginath Bhagat*** (cited supra) that as per relevant provisions of Societies Act the register of member shall be *prima facie* evidence of date on which any person was admitted as member and the petitioners therein where denied right to vote for reason of not being active member, which was not

criteria for a valid voter. Therein voters were held to be deleted from list for no substantial reason. In the instant case having regard to the criteria of eligibility of a voter, impugned order is passed. Hence judgment in case of ***Usha Bhaginath Bhagat*** referred above has no application to present case.

8. The exception to the Rule about the non maintainability of petition at this stage is that there should be patent and demonstrable illegality committed by the respondent. Mere, making out arguable case cannot be equated the patent illegality or arbitrariness on the part of the authority. The correctness of interpretation of Section 13(b) which may become subject matter of petition after declaration of result of election would be not sufficient ground to entertain present petitions at this stage.

9. Since no patent illegality is demonstrated in the impugned order passed by Election Officer, this Court is not inclined to entertain these petitions at this stage. It is clarified that observations made herein above are for limited purpose for

deciding maintainability of petitions and the same are not to be considered as opinion expressed on merit of case. In view of above discussion, the petitions are held to be not maintainable and stand dismissed. However, alternate remedy would remain open for the petitioners. Rule discharged.

(R. M. JOSHI, J.)

ssp