

(1984) 02 BOM CK 0063

Bombay High Court

Case No: Writ Petition No. 661 of 1982

Parshuram Nivrutti Magar and
Another

APPELLANT

Vs

Dinkar Keshav Shinde and
Others

RESPONDENT

Date of Decision: Feb. 15, 1984

Acts Referred:

- Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 - Rule 41(2)
- Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 - Section 6, 7

Citation: AIR 1985 Bom 390

Hon'ble Judges: Kurdukar, J; Jamdar, J

Bench: Division Bench

Advocate: V.D. Hon, for the Appellant; M.B. Mehera, Asst. Govt. Pleader, R.S. Bhosale, V.R. Bhosale, Sujata Mogre, for the Respondent

Judgement

Jamdar, J.

This petition raises a short point about the interpretation of rules relating to disqualifications of membership of a Market Committee constituted under S. 13 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

2. This petition arises out of a common order passed by the Divisional Joint Registrar, Co-operative Societies, Poona Division, Poona in 2 separate appeals preferred by respondents 1 and 2 against the orders dt. 7th Dec.1981 passed by the Collector on the applications preferred by them under R. 89 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 challenging the validity of the election of the petitioners as members of the Agricultural Produce Market Committee, Man district, Satara. Petitioner 1 contested the election from the constituency of members of the managing committees of the agricultural credit

societies and multi-purpose co-operative societies within the meaning of Maharashtra Co-operative Societies Act, 1960 and the rules framed thereunder functioning within the market area of the aforesaid Market Committee while petitioner 2 contested the election from the constituency of members of village panchayats functioning in the said area. Their nomination papers which were scrutinized on 16-9-1981 were duly accepted and no appeal was preferred under R. 51 against the acceptance of the nomination papers either by respondent 1 or by respondent 2 and accordingly the petitioners contested the election which was held on 20th Oct. 1981 and were declared elected from the aforesaid constituencies. But after the results were declared respondents 1 and 2 challenged the election of the petitioners by an application under R. 89 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules 1967.

3. The main ground on which the election of the petitioner was challenged was that both were subject to the disqualification mentioned in R. 41(2)(ii) at the date of their nomination as well as election, because their names were included in the voters list of the traders' constituency and that they were in possession of traders' licences issued in their favour by the Market Committee under the Act.

4. The Collector, Satara rejected the applications on the short ground that respondents did not prefer appeals under R. 51 challenging the nomination of the petitioners. In the appeal, the Division Joint Registrar held that the licences issued in favour of the petitioners continued to be valid, that in fact the petitioners carried on their trading activities and were also running fair price shop within the area of the Market Committee. He therefore held that the disqualification mentioned in sub-cl. (ii) of Cl. 2 of R. 41 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 was attracted and hence the election of the petitioners was liable to be declared invalid under R. 89(1)(a).

5. Section 6(i) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 which empowers the Market Committee to regulate marketing of agricultural produce lays down that no person shall, on and after the date on which the declaration is made under sub-sec. (1) of S. 4, without, or otherwise than in conformity with the terms and conditions of, a licence (granted by the Director when a Market Committee has not yet started functioning; and in any other case, by the Market Committee) in this behalf, - (a) use any place in the market area for the marketing of the declared agricultural produce, or (b) operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouseman or in any other capacity in relation to the marketing of the declared agricultural produce.

Section 7 empowers the Market Committee, subject to the rules made in that behalf, to grant or renew a licence for the use of any place in the market area for the aforesaid purposes and S. 8 empowers the Market Committee to suspend or cancel a licence issued under S. 7 under the circumstances mentioned in Cls. (a) to (e) of

sub-sec. (1) of S. 8.

6. It is an admitted position that both the petitioners were issued licences under S. 7(1) of the Act. It is also a matter of record that licence issued in favour of petitioner 1 had expired on 30th Sept. 1981 as contemplated by sub-rule (7) of R. 6 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 and that he had not applied for renewal of that licence. So far as petitioner 2 is concerned, he did not seek any renewal after his original licence expired and that the Market Committee was required to recover the licence fees with penalty for the period from 1965 to 1981. Admittedly he did not pay any licence fees for the year 1981-82 and obviously did not seek any renewal of his licence the period of which had expired, in view of the aforesaid Rule, on 30th Sept. 1981. Both the petitioners therefore had trader's licence when their nominations were accepted but the licences had expired on the date on which the election was held. As mentioned above, the acceptance of the nomination papers of the petitioners was not challenged by filing appeals contemplated by R. 51 and hence the acceptance of the nomination papers became final as contemplated by sub-rule (2) of R. 51. The question therefore that survives for consideration is whether on the date of the election the petitioner had incurred any disqualification mentioned in R. 41.

7. Rule 89(1)(a) empowers the Collector to declare invalid the election or nomination of a member, if he was subject to any of the disqualifications mentioned in R. 41 at the date of election or nomination. Sub-rule (2) of R. 41 on which reliance is placed by the appellate authority reads as follows:

"(2) A person shall not be chosen as a member -

(i) representing the traders' constituency, if he does not ordinarily reside in the area or if the licence issued to him is cancelled, or suspended or not renewed;

(ii) representing agriculturists' constituency, if his main income is not from agriculture or possesses a trader's, commission agent's or broker's licence or has interest in a joint family or a firm which has a trader's or commission agent's or broker's licence."

It is not the case of respondents 1 and 2 that the main income of the petitioners is not from agriculture though a passing reference is made to this aspect of the matter by the appellate authority. The appellate authority has however held that the licences issued in favour of the petitioners by the Collector under the Essential Commodities Act for running fair price shops within the limits of the Market Committee are licences contemplated by Cl. (ii) of sub-rule (2) of R. 41. It is not disputed that both the petitioners were holding these licences and were conducting fair price shops within the area of the market area. But it is difficult to sustain the finding of the appellate authority that a licence issued by the Collector in favour of a trader under the Essential Commodities Act, will also debar a trader from representing agriculturists' constituency of the market committee. We have already

referred to the provisions contained in Ss. 6 and 7 of the Act which lay down the purposes for which the Market Committee can issue licences. The licences issued for regulation of marketing of agricultural produce are for use of any place in the market area for the marketing of the declared agricultural produce or for operating in the market area or in any market therein as a trader, commission agent, broker, processor, etc. The licence contemplated by R. 41(2) is therefore such a licence which only the Market Committee is competent to issue. Moreover the word "licence" is defined by R. 2(ix) as meaning "licensed to operate as a market functionary in any market or market area under the Act." Hence a licence, possession of which, debars a trader from representing agriculturists' constituency must be a licence issued under Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and the rules framed thereunder. Holding a licence issued under the Essential Commodities Act would not debar a trader, if he is otherwise competent to do so, from representing the agriculturists constituency.

8. Shri Bhosale, appearing for respondent No. 1 advanced an interesting argument while interpreting the word "possesses" appearing in sub-cl. (ii) of sub-rule (2) of R. 41. According to him, the possession of a licence, the period of which, has expired also amounts to possession within the meaning of the said clause. According to him this phrase has to be interpreted in contradistinction with the phraseology used in sub-cl. (i) of cl. (2) of R. 41 which lays down that a person shall not be chosen as a member representing the traders' constituency if he does not ordinarily reside in the market area or if the licence issued to him is cancelled, or suspended or not renewed". According to Shri Bhosale, if the licence is not cancelled or suspended, then the licence which was valid when it was issued, continues to be valid and in existence till its renewal is refused. It is difficult to accept this submission because there is no provision either in the Act or in the Rules which lays down that renewal of a licence automatically operates retrospectively from the date of its expiry. Not only that, but sub-rule (7) of R. 6 specifically lays down that "every licence shall be granted or renewed for a period ending on the 30th September next following the date on which it is granted, or as the case may be, renewed". Hence a licence which is not renewed prior to 30th September expires on that date and in case of renewal, it stands renewed from the date on which it is renewed, unless the order of renewal directs otherwise. This, however, has only academic significance in this case, because admittedly both the petitioners did not apply for renewal of their licences which expired on 30th Sept. 1981 and on the date of the election their licences were not renewed. Shri Bhosale contended that every renewal must operate retrospectively, otherwise a person whose licence as a trader has expired, may seek election through the agriculturists' constituency and then get his licence as a trader renewed after he is declared elected. There is, however, no scope for such a mischief which is taken care of by R. 89 which empowers the Collector to declare invalid the election of a member who has subsequently incurred any disqualification, under R. 41 after his election. Hence, if a person who is elected

when his trader's licence has expired and before it is renewed, can be disqualified subsequently in case his licence as a trader issued under the Act is renewed. It is, therefore, clear that R. 41(2)(ii) contemplates possession of a valid licence and not a licence, the term of which has expired and which has, not been renewed. The licence, the term of which has expired and of which renewal is not sought, is not worth the paper on which it was issued and such a licence would not bar a trader from representing the agriculturists' constituency if his name is validly included in the voters list of that constituency. In the present case, the licences issued in favour of the petitioners had expired on 30th Sept.1981 and neither they had sought renewal thereof nor their licences were renewed on the date on which the election was held.

9. Another circumstance which was pressed into service by respondent 1, and on which undue emphasis is given by the appellate authority, is that both the petitioners are carrying on trading activities in the market area even after their licences stood expired on 30th Sept.1981. Even assuming it to be so, on that account, they would not be deemed to be in possession of valid traders' licences within the meaning of R. 41(2)(ii). At the most, they may expose themselves to prosecution under the relevant provisions of the Act or the Rules for trading without a licence. Merely trading would not debar a trader from representing the agriculturists' constituency. He would be incompetent only if he is in possession of a valid trader's licence issued in his favour by the Market Committee. As both the petitioners were not in possession of such licences on the date of the election their election cannot be declared invalid. The impugned order therefore deserves to be quashed.

ORDER

10. The petition is allowed with costs. The impugned order is quashed It is declared that the petitioners were validly elected as members of the 3rd respondent Market Committee and the rule is made absolute in terms of prayer cls. (b) and (c).

11. Petition allowed.