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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7077 OF 2015

Malegaon Agricultural Produce
Market Committee Malegaon and ors. .. Petitioners

Vs.

The State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION NO. 5844 OF 2014**

Shri Prashant Vishvasrao Deore .. Petitioner

Vs.

1. The District Deputy Registrar and ors. .. Respondents

**WITH
WRIT PETITION NO. 6031 OF 2015**

Malegaon Agricultural Produce and ors. .. Petitioners

Vs.

The State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION NO. 7714 OF 2014**

Shri Shivman Ramrao Dore .. Petitioner

Vs.

The District Deputy Registrar and ors. .. Respondents

**WITH
WRIT PETITION NO. 7741 OF 2014**

Shri Abhiman Amber Shewale .. Petitioner

Vs.

The District Deputy Registrar and ors. .. Respondents

**WITH
WRIT PETITION NO. 10224 OF 2014**

Mr. Nanaji Karbhari Deore and anr. .. Petitioners

Vs.

State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION NO. 10369 OF 2014**

Shri Nana Motiram Ahire and anr. .. Petitioners

Vs.

The State of Maharashtra and ors. .. Respondents

**WITH
CIVIL APPLICATION NO. 2568 OF 2015
IN
WRIT PETITION NO. 10369 OF 2014**

Malegaon Agricultural Produce Market
Committee, Malegao, through Board of
Administration.

i. Shri Prashad Baliram Hire & ors. .. Applicant/
Org. Respondent No.3

In the matter between

1. Shri Nana Motiram Ahire and anr. .. Petitioners

Vs,

1. The State of Maharashtra and ors. .. Respondents

**WITH
WRIT PETITION NO. 7895 OF 2015**

1. Smt. Minakashi Nivrutti Deore & ors. .. Petitioners

Vs.

1. The District Deputy Registrar
Co-operative Societies and ors. .. Respondents

Mr. G. S. Godbole, Sr. Counsel i/by Mr. D. S. Patil for petitioners in WP No. 7077 of 2015 and WP No. 6031 of 2015 and for applicant in CAW No. 2568 of 2015.

Mr. G. S. Godbole, Sr. Counsel i/by Mr. Neelesh Kalantri for petitioners in WP No. 10224 of 2014.

Mr. G. S. Godbole, Sr. Counsel i/by Mr. B. G. Ligade for petitioners in WP No. 10369 of 2014.

Mr. K. S. Patil for petitioner in WP No. 5844 of 2014.

Mr. A. S. Patil for petitioner in WP No. 7714 of 2014.

Mr. Amitkumar D. Sale for petitioner in WP No. 7741 of 2014 and for respondent nos.6, 11, 12, 14 to 17, 19 to 23 in WP No.7895 of 2015.

Mr. S. P. Kadam i/by Mr. P. D. Jadhav for petitioners in WP No. 7895 of 2015.

Mr. A. Y. Sakhare, Special Counsel a/w Mr. A. B. Vagyani, Govt. Pleader a/w Mr. Vikas Mali, AGP for State.

Mr. P. S. Dani, Sr. Counsel i/by Mr. J. G. Reddy (Aradwad) for respondent nos.6, 17 and 20 in WP No. 7077 of 2015.

Mr. Uday P. Warunjikar i/by Mr. B. U. Deshmukh for respondent no.3 in WP No. 7895 of 2015.

Mr. R. S. Datar for respondent nos.7, 8, 10, 13 and 18 in WP No. 7895 of 2015.

**CORAM: NARESH H. PATIL &
S. B. SHUKRE, JJ.**

RESERVED ON : SEPTEMBER 07, 2015.

PRONOUNCED ON : OCTOBER 09, 2015

ORDER [Per Naresh H. Patil, J.]:

1. In all eight writ petitions are filed in connection with the bifurcation of Malegaon APMC, appointment of administrator, administrative Board and for holding elections to constitute APMC for Malegaon and APMC Umrane. By consent, we proceed to dispose of these petitions by this common order.

2. In Writ Petition No. 7077 of 2015, petitioners challenge the

order dated 24/6/2015 purportedly passed by respondent no.1 under Section 14(3) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short “the Act of 1963”]. Writ Petition No. 5844 of 2014 was filed raising challenge to a communication dated 17/6/2014 passed by the District Deputy Registrar, Co-operative Societies, Nashik. In Writ Petition No. 6031 of 2015, petitioners seek direction to Collector, Nashik to forthwith comply with its statutory obligations under Rules 35 and 36 of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Rules 1967 and to hold elections to Managing Committee of APMC – Malegaon. In Writ Petition No. 7714 of 2014, petitioner challenges the communication dated 14/8/2014 issued by the Desk Officer, Department of Co-operation, Marketing & Textile, Government of Maharashtra giving approval for appointment of new Board of directors of APMC – Umrane. In Writ Petition No. 7741 of 2014, petitioner challenges the order dated 20/8/2014 passed by the District Deputy Registrar, Co-operative Societies, Nashik and communication/letter dated 14/8/2014 issued by the State. In Writ Petition No. 10224 of 2014, petitioners seek direction to Collector, Nashik to prepare the list of voters and conduct the elections of the Managing Committee of APMC – Umrane. In Writ Petition No. 10369 of 2014,

petitioners challenge the order dated 14/11/2014 purportedly passed under Section 15A of the Act of 1963. By an order dated 19/11/2014, the Division Bench of this court admitted the said writ petition and granted interim relief staying the execution and operation of the impugned order. In Writ Petition No. 7895 of 2015, petitioners challenge the order dated 27/7/015 passed by the State and seek direction to the District Deputy Registrar, Co-operative Societies, Nashik and State to hold elections of APMC – Umrane.

3. In brief, the history of the litigation is that, by an order dated 21/5/2012, APMC – Malegaon was bifurcated into APMC – Malegaon, District - Nashik and APMC – Umrane, Taluka – Deola, District – Nashik. The said bifurcation was done subject to orders passed in a Writ Petition No. 10576 of 2011 by this Court. In view of the provisions of Sections 44 and 45 (2)(c) and (3) of the Act of 1963, the respondent – State appointed respective administrators to govern the affairs of these two Market Committees, who were Assistant Registrars, Co-operative Societies, namely, Mr. Ashok Laxmanrao Avhad and Mr. Digvijay Hemnath Rathod. The order of division of APMC – Malegaon was subject matter of challenge in various petitions. By an order dated 27/8/2014, the respondent-authority

appointed a Board, consisting of 15 persons, who were agriculturists residing in the market area of APMC – Malegaon. By subsequent orders dated 2/9/2014 and 5/9/2014, three additional members were appointed as members of the Board. It is the contention of the petitioners herein that the term of the elected members of APMC – Malegaon had expired on 19/5/2011. The said term was extended for one year i.e. upto 22/5/2012. By a communication dated 14/11/20014, the District Deputy Registrar, Co-operative Society, Nashik appointed Mr. Ajay Gujarathi, Assistant Registrar as administrator replacing the administrative Board to govern the affairs of the APMC – Malegaon.

4. By an order dated 24/6/2015, the State Government again appointed an administrative Board on the APMC-Malegaon. The said order is subject matter of challenge in Writ Petition No. 7077 of 2015.

5. By a communication dated 17/6/2014, the District Deputy Registrar, Cooperative Society appointed an administrative Board on APMC – Umrane. Said order is subject matter of challenge in Writ Petition No. 5844 of 2014.

6. In respect of APMC – Umrane, the District Deputy Registrar proposed to respondent-State for appointment of 17 members administrative Board by communication dated 17/6/2014 in place of administrator appointed by the State. The State by an order dated 20/8/2014 nominated 17 members Board of Administrators. It is contended that on 24/6/2015, the respondent – State by communication sought opinion from District Deputy Registrar, Cooperative Societies about nomination of Administrative Body on APMC – Umrane. The petitioners in Writ Petition No. 7895 of 2015 apprehending that the existing administrative Board would be replaced by another Board, filed a Writ Petition No. 6104 of 2015. This court by an order dated 9/7/2015 granted order of status-quo.

7. In substance, the issue is as to whether the respondent-authorities could appoint / replace administrator/administrative Board contrary to the provisions of the Act of 1963. It was submitted that in view of the order appointing administrative Board by an order dated 27/8/2014, the respondent – authorities were not entitled in law to replace the Board of Administrators by appointing a new Board before its term of two years expires. In other words, the Board of Administrators appointed on 27/8/2014 shall continue to work for a period of two years i.e. till

27/8/2016. Any order of supersession of the Board during the said period is contrary to the provisions of the Act of 1963, according to the learned Senior Counsel appearing for the petitioners. It was also submitted that fresh elections to constitute Committee for Malegaon and Umrane are required to be held and it is overdue. Since bifurcation, no elections have been held to constitute APMC of these two Market Committees. Therefore certain directions are sought for preparation of voters' list and for holding of elections. It was submitted on behalf of the petitioners that till the elections are held, the position earlier to passing of the impugned order of appointment of administrative Board shall be maintained. The petitioners have denied allegations of misconduct on their part for replacing them with another administrative Board. According to the learned counsel appearing for the petitioners, the administrative Board is functioning in the interest of the APMCs and has taken many good decisions in the larger interest of agriculturists.

8. On behalf of the newly appointed members of the administrative Board, it was alleged against the members of the administrative Board of APMC – Umrane that they had purchased land and appointed 50 persons as employees of the APMC against the settled norms.

Mr. Warunjikar, learned counsel submitted that the adhocism in which the administration of these two APMCs is being carried out shall come to an end.

9. Mr. Sakhare, learned Special Counsel appearing for the State submitted that the State Government is entitled to replace a nominated committee before expiry of its term. It was mainly urged that the administrative Board appointed on 27/8/2014 be treated as first committee. In the submissions of the learned Special Counsel, the State has power to replace the committee appointed by the State and such committees, administrative Boards, nominated Boards do not have vested right to continue till expiry of particular period. Learned Special Counsel appearing for the State submits that administrative committee appointed on 27/8/2014 had taken advantage of the said order and, therefore, they are estopped now to claim any benefits by advancing arguments contrary to their stand reflected in the earlier petitions. In the submissions of the learned Special Counsel no writ could be issued to revive a wrong order.

10. Mr. Dani, learned Senior Counsel appearing for respondent nos.6, 17 and 20 in Writ Petition No.7077 of 2015 submitted that the

petitioners do not have a legal right for invoking jurisdiction of this court contrary to their stand as reflected in two different petitions filed earlier before this court. The petitioners cannot seek such a relief, even in equitable jurisdiction of this court. Learned Senior Counsel submitted that petitioners are not elected representative but were nominated members by the State.

11. Learned Senior Counsel and learned counsel for the petitioners, in support of their submissions, placed reliance on the following judgments:

- (a) B.P. Singhal vs. Union of India and anr. [(2010) 6 SCC 331].
- (b) Shivamrut Dudh Utpadak Sahakari Sangh Maryadit and ors. vs. State of Maharashtra and ors. [2004 (5) Bom. C. R. 165].
- (c) Shekhar Ramchandra Badade vs. State of Maharashtra and ors. [2012 (4) Bom. C. R. 649].
- (d) Mr. Jeevanrao Vishwanathrao Gore vs. State of Maharashtra and ors. [Writ Petition No. 326 of 2015 decided on 8/5/2015 by the Division Bench of this Court].
- (e) Babasaheb Apparao Akat and ors. vs. State of Maharashtra and ors. [2010 (2) Bom. C.R.578].

Learned Special Counsel appearing for the State, in support of his submissions, relied on the following judgments:

- (a) Udhav Shalikram Geete vs. State of Maharashtra and ors. **[2014 (1) Mh.L.J.]**.
- (b) Shradhanand Navrang Tyagi vs. Collector, Pune and anr. **[2003 (2) Mh.L.J.]**.

Mr. Dani, learned Senior Counsel, in support of his submissions, relied on the judgment of the Supreme Court in the case of Chandra Singh and ors. vs. State of Rajasthan and anr. **[(2003) 6 SCC 545]**.

12. We have perused the record placed before us. On behalf of the State, the affidavit-in-reply was filed in Writ Petition No. 7077 of 2015 by Mr. Sadashiv M. Shivdas, Joint Secretary, Co-operation, Marketing & Textile Department, Mantralaya, Mumbai. We have also perused the judgments cited before us by the learned Senior Counsel and learned counsel for the parties.

13. Some of the provisions of the Act of 1963 are relevant for the

purposes of reference. Section 13 refers to Constitution of Market Committees. Section 14 refers to election and term of office of members. Section 15A refers to provision for appointment of Administrator after normal or extended term of office of members expires. Section 13 (2) reads as under :-

13. Constitution of Market Committees.

(1)

(2) When a Market Committee is constituted for the first time, whether under sub-section (1), (1A) or (1B) all the members thereof and the Chairman and Vice-Chairman shall be nominated by the State Government:

Provided that, the Chairman and Vice-Chairman shall be so nominated from amongst the agriculturists members.

Provided further that, the State Government may, if it considers expedient, instead of nominating the members of the Market Committee constituted for the first time, appoint an Administrator or the Board of Administrators, and the Administrator or the Board of Administrators, so appointed, shall, for all purposes, be considered to be the committee constituted for the first time.

Section 14(3) reads as under :

14. Election and term of office of members.

(1)

(2)

(3) Except as otherwise provided in this Act, the members of a Market Committee (not being a Committee constituted for the first time) shall hold office for a period of five years, and the members of a Committee constituted for the first time shall hold office for a period of two years:

Provided that, the Market Committee constituted for the first time, may be replaced by the Government and the new Committee so replaced shall hold office for the remainder of the period:

Provided further that where the general election of members of a Committee could not be held for reasons beyond the control of the Committee before expire of the term of office of its members as aforesaid, the State Government may, by order in the Official Gazette, extend from time to time, the term of office of any such Committee, so however, that the period for which the term of office is so extended shall not exceed the period of one year in the aggregate.

In view of the provisions of the Act of 1963, after bifurcation of APMC-Malegaon into Malegaon and Umrane APMCs, the provision of Section 13(2) would come into operation. In view of the said provisions, the State is entitled to appoint an administrator or Board of Administrators instead of nominated Board. Provision of Section 14(3) states that the members of Market Committee, not being Committee constituted for the first time, shall hold office for five years and the members of the Committee constituted for the first time shall hold office for a period of two years. The Market Committee constituted for the first time can be replaced by the Government and such a replaced Committee could serve for the remainder period of two years. The term of such a Committee could be extended for a period of one year in aggregate and under the provision of Section 14 (3A) the term may be further extended for not more than one year in aggregate. In other words, the term of the Committee constituted for the first time could continue for initial period of two years, extended by one year and under Section 14(3A) again for a period of one year in aggregate.

14. Section 44 refers the amalgamation or division of Market

Committees and Section 45 refers to supersession of Market Committee. In the light of these provisions, the issue needs to be considered.

15. The initial term of the elected members of Market Committee of APMC – Malegaon came to an end on 19/5/2011. The State granted extension to the members of the Malegaon Committee by a period of one year. On 19/5/2012, the State appointed administrator purporting to be under provisions of Section 15A(1) of the Act of 1963. On 21/5/2012, APMC – Malegaon was bifurcated in two Committees i.e. APMC – Malegaon and APMC – Umrane. The bifurcation order was issued under Section 44 of the Act of 1963.

16. The Assistant Registrars were appointed as single Administrator on the APMC – Malegaon and APMC – Umrane by an order dated 21/5/2012 by giving reference to provision of Section 15A(1) of the Act of 1963. These administrators continued till the State appointed Administrative Board of agriculturists by an order dated 27/8/2014 and now the State passed orders replacing this Board with another Board, which orders are impugned herein.

17. We do not find any satisfactory explanation on behalf of the State and its authorities in appointing single administrators on both these Committees i.e. APMC - Malegaon and APMC - Umrane for a period of two years from their date of appointment i.e. 21/5/2012. If the State considered appointment of Board of Administrators as the first constituted Committee under order dated 27/8/2014, then there is no reply as to under what authority the single administrators continued for a period of two years looking after administration of APMC – Malegaon and APMC – Umrane. If under order passed on 27/8/2014 the administrative committee appointed on Malegaon APMC is considered to be the newly constituted committee nominated by the Board under provisions of Section 13(2), then their tenure under Section 15A of the Act of 1963 would be for a period of two years. On behalf of the State, it was submitted that the Board appointed under order dated 27/8/2014 be considered as the committee constituted for the first time nominated by the State and in this view of the matter, the State is entitled to replace such a nominated committee in view of provision of Section 14(3) first proviso. The learned Senior Counsel Mr. Sakhare submitted that the petitioners had argued contrary to their present stand in the earlier petitions filed before this court and considering the situation, in

any case the petitioners would not get any right to continue in the committee constituted by the State authorities. It was submitted that the State and its authorities are not averse to holding of elections to the APMC- Malegaon and APMC-Umrane.

18. After considering the record of the petitions filed earlier and the orders passed by this court and in view of the provisions of the Act of 1963, we find that the case of the petitioners is required to be considered strictly in accordance with the provisions of the Act of 1963.

19. In view of the provisions of the Act of 1963, we are of the opinion that the appointment of the single administrators i.e. Assistant Registrars on Malegaon and Umrane APMCs made under Section 15A(1) was contrary to the provisions of the Act of 1963. The State and its authorities were entitled to resort to provision of Section 13(2) after the Market Committee was constituted for the first time after bifurcation. The State and its authorities failed to act in accordance with law. Presuming that the State appointed the Assistant Registrars after bifurcation to govern the affairs of APMC-Malegaon and APMC- Umrane under Section 13(2),

then their term was restricted for a prescribed period. Instead, the State resorted to appointment of administrative Board by an order dated 27/8/2014 without giving any specific reference to particular provision of the Act of 1963.

20. We are of the view that the State and its authorities ought to have been careful and cautious since beginning in appointing nominated committee, administrator or administrative Board. The failure on the part of the State and its authorities to adhere to letter and spirit of the provisions of the Act of 1963 in this regard has created present situation. The nominated members, administrators, administrative Board had enjoyed substantial period of their respective terms. We are not entering into allegations made in respect of some of the members of the committees regarding misconducting themselves. It is for the State to look into the specific grievances and allegations and enquire into the same in accordance with law.

21. The ultimate question now is as to how APMC-Malegaon and APMC-Umrane could be properly constituted. In the above mentioned

complex situation emerging now, the only option available is to hold elections to APMC-Malegaon and APMC-Umrane and constitute the bodies of elected representatives and hand over the affairs of administration to elected committee.

22. In view of the peculiar facts of the case, we find it necessary to observe that till Market Committees of Malegao and Umrane properly constituted in accordance with law by holding elections, some alternate arrangement is required to be made. The fact situation is that an Administrative Board was already functioning on both the APMCs and a new Board was appointed to replace them. Frequent changes brought into administrative set up of the Committees would ultimately affect the administration of the Market Committee itself. These Committees are supposed to function in the larger interest of agriculturists/traders. We, therefore, propose to issue certain directions so as to put an end to this unending litigation.

23. For the reasons stated above, we proceed to pass following orders:

ORDER

- (a) Respondent-State/its authorities are directed to appoint Assistant Registrars, Cooperative Society to govern the affairs of APMC – Malegaon and APMC – Umrane, till elected bodies take over the charge, by issuing appropriate orders. The Assistant Registrars shall not take any major policy decision.
- (b) The orders issued by the State and its authorities appointing Administrative Board shall not be operative. The existing/in-charge Administrative Boards appointed by the respondent-authorities on APMC – Malegaon and APMC – Umrane shall function till the Assistant Registrars take over the charge. Such Boards shall not take any major policy decision.
- (c) The State and its authorities are directed to hold elections to APMC-Malegaon and APMC-Umrane within four months from today.

In view of the above directions, all the petitions stand disposed
of.

Civil Application No. 2568 of 2015 does not survive and shall stand disposed of.

(S. B. SHUKRE, J.)

(NARESH H. PATIL,J.)