

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.946 OF 2016

- 1) Ashok s/o Annasaheb Kakde,
Age-40 years, Occu:Agriculture
& Director of A.P.M.C., Sailu,
R/o-Kawad Dhan, Tq-Sailu,
Dist-Parbhani,
- 2) Rajkishor s/o Shivprasad Jaiswal,
Age-38 years, Occu:Agriculture
and Chairman of V.K.S.S.
Society Ltd., Rajwadi,
Tq-Sailu, Dist-Parbhani.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Secretary, Cooperation,
Marketing and Textile
Department, Mantralaya,
Mumbai,
- 2) The Director of Marketing,
Central Building, Pune-1,
- 3) The District Deputy Registrar,
Co-operative Societies,
Parbhani, Tq. & Dist-Parbhani,
- 4) The Chairman,
Agricultural Produce Market
Committee, Sailu,
Tq-Sailu, Dist-Parbhani,

- 5) Agriculture Produce Market
Committee, Sailu,
Tq-Sailu, Dist-Parbhani,
Through its Secretary.

...RESPONDENTS

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Mr.V.D. Salunke Advocate for Petitioners.
Mr.V.M. Kagne, A.G.P. for Respondent Nos.
1 to 3.
Mr.S.J. Salunke Advocate for Respondent
Nos. 4 and 5.

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**CORAM: S.V. GANGAPURWALA AND
A.I.S. CHEEMA, JJ.**

DATE OF RESERVING JUDGMENT : 14TH MARCH, 2016.

DATE OF PRONOUNCING JUDGMENT: 29TH MARCH, 2016.

JUDGMENT [PER A.I.S. CHEEMA, J.] :

1. Heard. Rule. Rule made returnable
forthwith. With the consent of learned counsel for
the parties, the Petition is taken up for final
disposal at admission stage.

2. This Petition is filed seeking directions
to quash the order dated 8th January 2016 passed

by the State extending term of the Board of Directors of Agricultural Produce Market Committee ('A.P.M.C.' in brief), Sailu, for six months with effect from 6th January 2016.

3. The Petition claims and it is argued on behalf of the Petitioners that the elections of A.P.M.C., Sailu were held on 6th January 2011 and the Committee got constituted on that day. The term of the Managing Committee was for five years and was to expire on 5th January 2016. As per the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ("Act" in brief) and Rules of 1967 ("Rules" in brief), it is duty of the District Deputy Registrar of Co-operative Societies and the Collector to hold elections of A.P.M.C. before expiry of the term. The District Deputy Registrar (Respondent No.3) sent letter dated 21st November 2015 (Exhibit A) to the A.P.M.C., informing about the term which was to expire and asking deposit of Rupees Two

Lakhs for holding elections. The letter required preparation of sets of voters list also. The District Deputy Registrar sent reminders dated 4th December 2015 and 28th December 2015. The A.P.M.C., vide letter dated 29th December 2015, informed District Deputy Registrar regarding Assistant Registrar forwarding sets of voters list to it and that the A.P.M.C. was depositing Rupees Fifty Thousand as an advance towards expenses of elections.

4. It is stated by the Petitioners that on 6th October 2015, A.P.M.C. passed resolution to request Government for extension for a period of six months and the District Deputy Registrar sent report dated 28th December 2015, that he had no objection to extend the term. It is stated that one M.L.A. from Pathri Taluka, wrote letter to the Minister for Co-operation and Marketing, requesting for extension of the term of the Managing Committee on the basis that there was

drought in the area. It is argued that under political pressure, the State has extended the period of the body of A.P.M.C., Sailu. The learned counsel submitted that the Chairman of A.P.M.C. is interested in filling up 5 vacant posts in A.P.M.C. and is interested in construction of 28 shops which were earlier found to be irregular and thus wanted extension of the term so as to gain profit out of such shops. It is argued that the term of the Committee expired on 5th January 2016 and the impugned order has been issued on 8th January 2016 giving continuity to the Committee with effect from 6th January 2016. It is stated that this is not permissible and once the term had expired, only elections could have been held and giving back dated revival, period could not have been extended. Learned counsel for the Petitioners relied on the case of **Anandrao Yashwantrao Nalawade and others vs. State of Maharashtra and others, reported in 2005 (6) Bom.C.R. 174**, to claim that such an order could not have been

passed. Relying on the said Judgment, it is stated that as per said Judgment it was found in the context of Section 73-G of the Maharashtra Co-operative Societies Act, 1960, that the Section provided that the Committee shall cease to function on expiry of its term and the members thereof shall cease to hold office and the term cannot be extended and the Government should have appointed administrator. Learned counsel relied on Section 14(3) of the Act of 1963 to submit that the term of the Market Committee was only of five years and the office could be held only for such period. It is stated that the impugned order should be quashed and administrator should be appointed and the process of elections should be completed under the supervision of administrator.

5. On behalf of Respondent No.3 - District Deputy Registrar, Assistant Registrar, Co-operative Societies has filed affidavit in reply dated 25th February 2016. According to this

deponent, A.P.M.C. sought extension for the period of six months due to drought conditions, vide resolution dated 6th October 2015 (Exhibit R-1) and proposal dated 4th December 2015 (Exhibit R-2) was sent to the Director, through District Deputy Registrar. District Deputy Registrar forwarded the proposal to State Government on 22nd December 2015 (Exhibit R-3). The Director of Marketing, Pune called opinion of District Deputy Registrar and the extension was recommended by District Deputy Registrar vide letter dated 28th December 2015 (Exhibit R-4). Thereafter the Director of Marketing recommended to the State Government consideration of the proposal as per Section 14(3A) of the Act of 1963. The State Government considered drought situation and the fact that this was first extension sought by the A.P.M.C. and in view of the legal provisions, extension was granted.

6. Respondent No.3 has referred to the

allegations regarding attempt to fill up posts by the A.P.M.C., and given particulars which show that vacancies were necessary to be filled up. Even regarding the allegations made about construction of 28 shops, it is stated that due to complaint of M.L.A. from Jintur, Respondent No.3 - District Deputy Registrar reported to the Director of Marketing (Respondent No.2) to cancel permission which had been given and the construction has been stayed by Respondent No.2. This Respondent has referred to the financial condition of the A.P.M.C. to be in surplus in earlier periods but that for the period 1st April 2015 to 31st December 2015 the A.P.M.C. was in deficit.

7. The Petitioners have, in the Petition, claimed that the Government cannot avoid holding of elections on the plea of drought like conditions without there being declaration of drought, and when in same area elections for

A.P.M.C. Palam are being held. Regarding such averments of the Petition, Respondent No.3 has pointed out that with regard to A.P.M.C. Palam, there were earlier two extensions already given and thus Administrator had been appointed and elections have become unavoidable as per Rules.

8. Chairman of A.P.M.C. - Respondent No.4 has also filed affidavit. It has been argued on his behalf that the allegations of *mala fides* with regard to interest in filling up of vacant posts and construction of 28 shops, are false. It is stated that for reasons recorded in the resolution of the Committee, extension of period was sought which has been supported by the Director of Marketing and Government has issued orders of extension. It is stated that there are no political considerations for extension of the period. In the last three years, there has been short fall of rain and due to drought and scarcity

of water, the income of the Committee has decreased.

9. We have heard learned counsel for both sides and gone through the matter. The Judgment relied on by the Petitioners in the matter of **Anandrao Yashwantrao Nalawade**, cited supra, was relating to different provisions under the Maharashtra Co-operative Societies Act, 1960. We are concerned here with the provisions of Maharashtra Agricultural Produce Marketing (Development and Regulation) Act of 1963. This Court has already dealt with provisions of Section 14 of the Act, which relates to election and term of office of members, Section 15 relates to commencement of term of office of members. Section 15A of the Act deals with provision for appointment of administrator after normal or extended term of office of members expires. These provisions are dealt with in **Writ Petition No.2364 of 2016 (Arun Babasaheb Dake and others vs. the**

State of Maharashtra and others), decided on 10th March 2016. After referring to the concerned Sections, this Court has observed, in Para 7 of that Judgment, as under:-

"7. The term of the Managing Committee of A.P.M.C. is of five years from the date of first meeting. The scheme of the Act of 1963 does not provide for axiomatic cessation of the membership on expiry of the term. Section 15A (1) (a) of the Act of 1963 specifically provides that all members of the Committee shall, as from the date specified in the order, cease to hold and vacate their offices as members or otherwise. As such the members of the Committee continue to hold the office even after expiry of the term till an order is passed by the appropriate authority about cessation of their office."

10. It is quite clear that at the end of period of five years, there is no automatic cessation of the membership. The members would

cease to hold and would vacate their office when the Director or any officer not below the rank of District Deputy Registrar of Co-operative Societies so passes an order under sub-Section (1) of Section 15A of the Act. Thus, there is no substance in the arguments raised by the learned counsel for the Petitioners that the term expired on 5th January 2016 and the order dated 8th January 2016 could not have granted continuity to the Committee with effect from 6th January 2016. There were no orders under Section 15A(1)(a) of the Act passed, as yet.

11. We do not find any force in the submissions of learned counsel for Petitioners regarding the allegations of malfeasance or misfeasance. The extension of period recorded in the impugned order, is due to drought like conditions.

12. Considering the affidavit in reply filed

by Respondent No.3, we do not find any force in the submissions made by the learned counsel for the Petitioners. Apart from this, Respondent No.3 has filed additional affidavit dated 7th March 2016 mentioning that the elections of the Managing Committee of A.P.M.C. would be completed before the expiry of the extended period i.e. 5th July 2016 and the extension to the election of the said A.P.M.C. would not be given for the second time.

13. We accept the statement made by Respondent No.3 in the affidavit dated 7th March 2016 that present extension of six months would not be further extended and within this period, the process of elections would be completed. The Respondents shall be bound by this statement.

14. For the reasons afore stated, we pass the following order:-

O R D E R

(I) Writ Petition is rejected.

(II) The Respondents shall ensure and complete the process of elections of A.P.M.C., Sailu before the expiry of present period of Managing Committee, which is up to 5th July 2016.

(III) Till the process of elections is completed and new Managing Committee takes over, the present Managing Committee shall not take any policy decisions.

(IV) Rule stands discharged accordingly.

No costs.

[A.I.S. CHEEMA, J.]

[S.V. GANGAPURWALA, J.]

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