

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 2364 OF 2016

- 1) Arun Babasaheb Dake,
Age-46 Years, Occu:Agri.,
R/o-Kathoda, Tq. & Dist-Beed,
- 2) Sadashiv Bhagwanrao Prabhale,
Age-50 Years, Occu:Agri.,
R/o-Kulshi, Tq. & Dist. Beed
- 3) Ankush Hariram Raut,
Age-48 Years, Occu:Agri.,
R/o-Masapur Devala,
Tq. & Dist-Beed
- 4) Kalpana Dilip Shirke,
Age-40 Years, Occu:Agri.,
R/o-Samnapur, Tq. & Dist. Beed
- 5) Arun Dashrath Gore,
Age-43 Years, Occu:Agri.,
R/o. Beed, Tq. & Dist-Beed
- 6) Sakharam Abaji Mhaske,
Age-47 Years, Occu:Agri.,
R/o-Palwan, Tq. & Dist-Beed
- 7) Rajabhau Balnath Ghumre,
Age-45 Years, Occu:Agri.,
R/o-Mainda, Tq. & Dist-Beed
- 8) Dinkar Prabhakar Thorat,
Age-46 Years, Occu:Agri.,
R/o-Kathoda, Tq. & Dist-Beed.

...PETITIONERS

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Cooperation Marketing and
Textile Department,
Mantralaya, Mumbai-32,
- 2) The Director,
Agricultural Marketing, Pune,
Central Building, Pune-1,
- 3) The District Collector, Beed,
- 4) The District Deputy Registrar,
Co-operative Societies, Beed,
- 5) The Assistant Registrar,
Co-operative Societies, Beed,
- 6) Agricultural Produce Market
Committee, Beed,
Through its Secretary.

...RESPONDENTS

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Mr. Ajit B. Kale Advocate with Mr. G.K.
Thigale (Naik) Advocate for Petitioners.
Mr. V.H. Dighe, A.G.P. for Respondent
Nos.1 to 5.
Mr. D.D. Pokharkar Advocate for Respondent
No.6.
Mr. Kishor D. Khade Advocate for Intervenors.

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

DATE : 10TH MARCH, 2016

ORAL JUDGMENT [PER S.V. GANGAPURWALA, J.] :

1. Rule. Rule made returnable forthwith. With the consent of the parties, the Petition is taken up for final hearing.

2. The Petitioners herein are the elected members of Respondent No. 6- Agricultural Produce Market Committee (A.P.M.C.), having been elected in the general elections held in the year 2011. The First meeting was held on 15th February, 2011. The term of the members is of five years from the date of first meeting i.e. upto 14th February, 2016. The Petitioners filed an application on 11th February, 2016 seeking extension of their term, as elections have not taken place. The said application is pending decision with the State Government. However, on 26th February, 2016 the District Deputy Registrar, Co-operative Societies, Beed, passed an order appointing an administrator and stated that the members of the committee shall

cease to hold the office. The same is assailed in the present Writ Petition.

3. Mr. Kale, the learned counsel for the Petitioners submits that the Petitioners are not at fault in not holding the elections before the expiry of the term of the members. On 5th June 2015, the Petitioners have intimated the District Deputy Registrar regarding preparation of provisional voters list, calling of objections and the final voters list, so as to hold the elections within the prescribed period. According to the learned counsel, as per the letter dated 11th December, 2015 of the Respondent authority, Petitioners deposited Rupees Two Lakhs as expenses for the election on 25th January, 2016. As per the letter dated 11th December, 2015 of the authorities, the Petitioners gave the provisional voters list of two constituencies. According to the learned counsel, the Petitioners on 28th January, 2016 passed resolution that

because of the official delay on the part of authorities in completing the election process, the extension of the term be sought. The Petitioners, as such, made an application seeking extension of the term of the Managing Committee. The said application is pending with the Respondent Authorities. No decision has been taken by the Respondent Authorities on the said application and abruptly an order is passed by the District Deputy Registrar appointing the administrator, so also stating that the term of the present Managing Committee has come to an end. The learned counsel submits that the said order is arbitrary and not in consonance with the Proviso to sub-section (3) of Section 14 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (herein after referred to as "the Act of 1963"). The learned counsel submits that even if the term has come to an end, the automatic cessation of the membership does not take place, more particularly

in view of Section 15A (1) (a) of the Act of 1963. The learned counsel submits that the order nowhere states about misfeasance or malfeasance on the part of the Petitioners. Only on the ground that, term has expired, impugned order has been passed without taking into consideration pending application of the Petitioners for extension of the term. The Respondents have not applied their mind with regard to the application of the Petitioners for extension of term. Learned counsel for the Petitioners relies on the Judgment of the Division Bench of this Court in the case of **Babasaheb Apparao Akat & Ors. Vs. State of Maharashtra & Ors., Reported in 2010 (2) Bom. C.R. 578.**

4. The learned A.G.P., on instructions, accepts that order on an application of the Petitioners for extension of time has not been passed by the State Government. The District Deputy Registrar upon completion of the term of

the Managing Committee, has passed the order invoking its power under Section 15A of the Act of 1963. The learned A.G.P. submits that it is not the right of the Petitioners to continue in office even after the lapse of the term. The District Deputy Registrar is empowered with the authority to pass appropriate orders on the expiry of the term of the Petitioners. No error has been committed by the authority while passing the impugned order.

5. Mr. Khade, the learned counsel represents Intervenors who have filed Intervention Application, and submits that, the Intervenor-Applicant No. 2 is the Vice-Chairman of the A.P.M.C. There are large scale defalcations on the part of the Chairman. The audited accounts of the A.P.M.C. would make the position clear. The learned counsel submits that the term of the Managing Committee has expired. Right to continue in the office is not the constitutional right but

the statutory right and the Petitioners can not seek continuation in the office as of right. The learned counsel relies on the Judgment of the Division Bench of this Court in the case of **Udhav Shalikram Geete Vs. State of Maharashtra and Others reported in 2014 (1) Mh.L.J. 879**, so also another Judgment of this Court at Nagpur in **Writ Petition No. 4480 of 2013, dated 17th October, 2013.**

6. We have considered the submissions. Before we proceed to deal with contentions advanced by learned counsel for respective parties, it would be appropriate to refer to relevant provisions.

. Section 14(1) of the Maharashtra Agricultural Produce marketing (Development and Regulation) Act, 1963 reads as under:

"14. Election and term of office of members.

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(1) Subject to the provisions of sub-section (2), the members shall be elected in the manner prescribed by rules. Such rules may provide also for the determination of constituencies, the preparation and maintenance of the list of voters, persons qualified to be elected, disqualifications for being chosen as, and for being a member, the right to vote, the payment of deposit and its forfeiture, the determination of election disputes and all matters ancillary thereto including provision regarding election expenses."

. Section 14(3) with Proviso and Section 14(3-A) of the Act of 1963 reads as under:

"(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.

(3A) Where due to scarcity, draught, flood, fire or any other natural calamity or rainy season or any election programme of the State legislature or the Parliament or a local authority, coinciding with the election programme of any Market Committee or such other special reason, in the opinion of the State Government, it is not in the public interest to hold elections to any Market Committee, the State Government may, notwithstanding anything contained in this Act or in any rules, or bye-law made thereunder, or any other law for the time being in force, for the reasons to be

recorded in writing, by general or special order, postpone the election of any Market Committee for a period not exceeding six months at a time which period may further be extended, so, however, that the total period shall not exceed one year in the aggregate."

. Section 15A (1) (a) of the Act of 1963
reads as under:

"15A. Provision for appointment of
Administrator after normal or extended term
of office of members expires.

(1) Notwithstanding anything contained in sub-section (3) of section 15 or any other provisions of this Act, where the term of office of two years, five years, or as the case may be, the extended term of office, if any, under the proviso to sub-section (3) of section 14[-----] of the members of any Market Committee, has expired, the Director or any officer not below the rank of the District Deputy Registrar of Co-operative Societies, authorised by him shall, by order in writing, direct that -

(a) 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;"

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.

8. The factual matrix as narrated above along with the dates, are admitted and are not disputed by any of the parties. The conspectus of

the facts would show that the Petitioners being members of the Managing Committee had taken steps to hold the election. The amount for expenses of the election was also deposited by them. Even the affidavit in reply filed by the State through Assistant Registrar Co-operative Societies, does not dispute that the Petitioners have taken steps. Relevant portion of the affidavit in a reply reads as under :-

"3. I say and submit that, the office of the Respondent No. 4 received letter dated 5-6-2015 from the office of the Respondent No. 6- APMC for conducting election. I say and submit that, accordingly the Respondent No. 4 has informed to submit holders list vide letter dated 11-12-2015 of different constituencies and accordingly the Respondent No. 6 has submitted voters list on 25-1-2016.

4. I say and submit that, in the mean while the Respondent authorities have also received cheque dated 25-1-2016 of Rs. 2 Lakhs towards election expenditure.

5. I say and submit that, as the term of the present managing committee of the Respondent No. 6- APMC was till 14-2-2016, therefore, the Respondent No. 4 has exercised the powers under section 14 of the said Act and issued letter dated 26-2-2016 appointing the Respondent No. 5 as an Administrator on the Respondent No. 6- APMC. I say and submit that, the office of the Respondents have received letter/ proposal dated 11-2-2016 for extension of time."

9. The aforesaid facts would make it abundantly clear that the Petitioners can not be faulted for elections not being held before the expiry of their term. It is also accepted by the Respondents that they had received the proposal dated 11th February, 2016 from the Petitioners for extension of time. It is also accepted by the Respondents that the said proposal was not forwarded by the District Deputy Registrar to the Government and District Deputy Registrar does not have authority to decide the said proposal. As submitted by the State the District Deputy

Registrar has to forward the said proposal for extension of time to the State. It was for the District Deputy Registrar to forward the same.

10. The District Deputy Registrar, in the impugned order, has observed that as the term of the members of the Managing Committee has come to an end and they have ceased to hold the office, the office has fallen vacant and that is why the administrator is being appointed. Apart from the said cause, no other reason is given while appointing the administrator. The District Deputy Registrar, on the premise that on expiry of the term the post of the members become vacant, has passed the impugned order. The same is not in consonance with the statute. As stated above the cessation of the membership is not axiomatic on completion of term. The members ceased to hold office upon the order being passed by the authority. The same is also held by the Division Bench of this Court in the case of **Babasaheb**

Apparao Akat & Ors. Vs. State of Maharashtra & Ors., referred supra.

11. The contention of the Respondent that the Petitioners do not have any constitutional right to hold the post, need not be debated. The same is settled proposition of law. Right to hold post is statutory right governed by the provisions of the statute. Right to be appointed, elected, nominated, is right flowing from the statute and the members are entitled to hold the office as laid down by the statute.

12. There also can not be any dispute with the proposition that the District Deputy Registrar has the powers to order cessation of the office of the members. We could have appreciated the arguments of the Respondents in this regard, had the appropriate authority rejected the application of the Petitioners for extension of time on the grounds permissible. In the present case, the

application of the Petitioners for extension of time was not decided at all. No decision was taken on the same. In fact the same was not even forwarded to the State Government by the District Deputy Registrar and after lapse of about fifteen days, has passed the impugned order.

13. According to the learned A.G.P., the District Deputy Registrar had negatived the request of the Petitioners. We had asked the A.G.P. whether the powers are delegated to the District Deputy Registrar for entertaining the application for extension of term as laid down under Proviso to sub-section (3) of Section 14 of the Act of 1963. The learned A.G.P. candidly accepts that no such powers are delegated to the District Deputy Registrar. It is trite that when the statute requires particular thing to be done in a particular manner, it has to be done in that manner only, otherwise not to be done at all. The order has not been passed by the State Government

on an application of the Petitioners for extension of the term of the Managing Committee. On the contrary, the District Deputy Registrar himself negatives the claim of the Petitioners. The same is not permissible, being without authority.

14. The impugned order nowhere shows that the District Deputy Registrar has exercised his powers on account of malfeasance or misfeasance on the part of the Petitioners, and only on the ground that the term of the present Managing Committee has come to an end, appointed an administrator. The application of the Petitioners has not been considered by the appropriate authority.

15. Considering the aforesaid conspectus of the matter, we are inclined to set aside the impugned order and pass following order :-

O R D E R

(I) The impugned order is quashed and set aside.

(II) The District Deputy Registrar shall forward the application / proposal of the Petitioners for extension of term to the appropriate authority.

(III) The appropriate authority shall take decision on the said application / proposal for extension of the term of the Managing Committee, on its own merits, in accordance with law, preferably within four weeks.

(IV) Till the application / proposal of the Petitioners for extension of the term is decided by the appropriate authority, the Petitioners i.e. Managing Committee shall not take any policy decision.

(V) Pendency of the application / proposal

of the Petitioners for extension of term will not be an impediment for proceeding ahead with the elections of the Respondent No. 6 - A.P.M.C. The same shall be held as per programme which is being declared for preparation of the voters list etc. (Exhibit - R-1, Page 43).

(VI) Rule made absolute in above terms. No Costs.

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

asb/MAR16

[S.V. GANGAPURWALA, J.]