

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9703 OF 2016

Diliprao M. Mokashi and Another	...Petitioners
vs.	
State of Maharashtra and Others	...Respondents

Mr. Vineet Naik, Senior Advocate a/w. Mr. Rakesh Reddy, for the Petitioners.

Mr. Vikas Mali, AGP for Respondent Nos. 1, 3 and 4.

Mr. Y.S. Jahagirdar, Senior Advocate a/w. Mr. S.R. Nargolkar a/w. Mr. Lendl Coutinho and Mr. Swapnil Mohite, for Respondent No. 2.

Mr. H.M. Inamdar, for Respondent Nos. 5 and 6.

ORDER RESERVED ON : 28th NOVEMBER, 2016

ORDER PRONOUNCED ON : 8th DECEMBER, 2016

CORAM : SHANTANU KEMKAR &
PRAKASH NAIK, JJ.

ORAL ORDER: (Per Shantanu Kemkar, J.)

. The Petitioners are voters of the Agricultural Produce Market Committee, Tal. Shirur, Dist. Pune (for short "*the Committee*"). They have challenged the order dated 1st August, 2016 passed by the Respondent No. 1- State whereby the term of office of the members of the Committee has been extended by six months with effect from 6th September, 2016 to 5th March, 2017.

2. Briefly stated the Committee had submitted a letter dated 10th May, 2016 to the Director of Marketing, State of Maharashtra, Pune seeking extension of term of the office of the members of the Committee which was expiring on 5th September, 2016. In the application following reasons were stated to seek the extension of term by two years.

(i) There is severe drought situation in the entire state of Maharashtra.

(ii) There is an ongoing dispute with regard to the village Pimpale Jagtap which is pending in the Hon'ble Bombay High Court.

(iii) The Market Committee of the Respondent No. 2 Committee have carried out their duties efficiently and in an appropriate manner in the last 4 years.

(iv) The Respondent No. 2 Committee is endeavoring to initiate onion and Pomogranate markets in the main market Committee area.

(v) There are ongoing elections of Vividh Karyakari Sewa So-Operative Societies in Shirur Taluka, District Pune. As a result the members of the said societies would remain absent from voting in the elections of the Market Committee of the Petitioner No. 1 Committee.

3. The said application was considered by the State Government by the impugned order and the term of the office of the

members of the Committee was extended by six months by directing that during the extended period, the Committee shall hold the election of the Marketing Committee. Since there was a typographical error in the order dated 1st August, 2016, a Corrigendum was issued on 17th September, 2016.

4. The case of the Petitioners is that the Committee had failed to make out that there exists reasons beyond its control for not holding the elections before the expiry of the term of the office of its members. It is also the case of the Petitioners that the State Government has mechanically extended the term without recording the finding that there exists reasons for not holding elections before the expiry of the term of the office of the members which are beyond the control of the Committee. The Petitioner's further case is that their right to have a democratically elected Committee has been affected by the State without there being any justified reason for the same as the impugned order has been passed when there was no fulfillment of the requirement of the second proviso to Section 14(3) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short "*the Act*").

5. On the other hand, the Respondent-State and Respondent No. 2 Committee have supported the impugned order. It is stated by them that the reasons mentioned by the Committee in the application and the reasons assigned by the State in the impugned order justifies the extension of the term and the reasons falls under the category of second proviso of Section 14(3) of the Act. It is further stated that the State Government after having subjective satisfaction of the reasons stated in the application dated 10th May, 2016 has recorded the finding that it would be justified to extend the term of the office of the Committee by six months, which needs no interference in this Petition under Article 226 of the Constitution of India.

6. We have heard learned counsel for the parties and perused the record.

7. The question involved in the Petition is as to whether the State Government has correctly exercised the powers vested in it under second proviso to Section 14 (3) of the Act. For ready reference Section 14(3) is extracted below :

Section 14 : Election and terms of office of members :

Section 14 (1) :

Section 14(2) :(Not relevant)

Section 14(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 expiry 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.

8. A bare reading of second proviso of Section 14(3) of the Act, makes it clear that in order to extend the term of the office, the State Government has to record its satisfaction that the general election of the members of the Committee could not be held by it before expiry of the term for the “*reasons beyond the control of the Committee*”.

9. However, we find that neither in the application nor in the impugned order the reasons assigned for extension of the term could

be said to be the reasons “*beyond the control of the Committee*”. In the impugned order, we do not find that a satisfaction has been recorded by the State Government to the effect that there exists reasons beyond the control of the Committee for not holding the elections before the expiry of terms of the office of the members of the Committee. It is true that this Court cannot sit over the reasons assigned by the State in the impugned order as an Appellate Court but the order do not fall within the purview of second proviso of section 14(3) of the Act, the order can certainly be interfered into in a Writ Petition by invoking powers under Article 226 of the Constitution of India. In order to appreciate the controversy the reasons mentioned in the order are to be seen. So far as reason for inability to hold election on account of elections of Vividh Karyakari Sewa Co-operative Societies being in progress and that there is an ongoing dispute pending with regard to the village Pimpale Jagtap, we find that in view of law laid down by this court in the case of Hanumant Bapurao Bagal and Others vs. The State of Maharashtra and Others¹ these reasons are unsustainable. This court in the case of Hanumant Bapurao Bagal (supra) while dealing with the proviso to Section 14(3A) of the Act

¹ 2012 Vol. 114(4) Bom. L.R. 2073.

had come across the argument about the postponement of the election as in regard to some of the Vividh societies, the election process was sub judice before the Court or in same election process is in progress and it was observed in para 8 of the said judgment, that :

8. *“The second reason mentioned is that the election of two Co-operative sugar factories in Karmala Talukar were likely to be announced. Section 14(3A) refers to only election programme of the State Legislature of Parliament or a Local Authority must coincide with the election programme of the Market Committee. The Co-operative sugar factories, by any standard would not fit into the prescribed category. The 3rd reason is still interesting. It is stated that the elections of Vividh Karyakari Seva Co-operative Societies in Karmala Taluka were already in progress and the election process in respect of some of those Societies was sub judice before the Court. Once again, there is no co-relation between the election of the Marketing Committee of the Market Committee and that of the Vividh Karyakari Seva Co-operative Societies albeit in the same Taluka and that ground is not recognised by Section 14(3A) of the Act.”*

10. As regards the reason of forth-coming rainy season, it is not in dispute that even in the areas adjoining to the area of the Committee, the election of the Marketing Committees were declared and held during the very same period. Thus, this reason also cannot be said to be the reason beyond the control of the Committee for not holding the election.

11. As regards the reason that there was drought like situation, undoubtedly that could not have been made a ground to postpone the election at the time when the decision was taken as by that time the rains were already started and there was no question of drought like situation.

12. The next reason for extending the term as mentioned is that the Committee has to complete the ongoing development work. This reason also cannot be said to be a ground to invoke powers under second proviso of Section 14(3) of the Act. The election which became due cannot be postponed awaiting completion of incomplete development work by the existing Committee much less it can not be said to be a ground available under second proviso of Section 14(3) of the Act.

13. In this view of the matter, we are of the view that none of the reasons assigned in the impugned order for extending the term of the Committee is in conformity with the requirement of the second proviso of Section 14(3) of the Act. Thus, in our considered view there is an error apparent on the face of record and the impugned

order if allowed to stand, would occasion failure of justice and would cause further delay in holding the elections which in democratic setup has to be conducted within the time frame.

14. In the circumstances, the impugned order dated 1st August, 2016 (corrected vide order dated 17th September, 2016) passed by the Respondent No. 1 – State of Maharashtra deserves to be and is hereby quashed.

15. Since the term of the Committee has already expired, we direct the State Government to appoint an Administrator on the Committee within two weeks. The Administrator so appointed shall take all necessary steps as expeditiously as possible to ensure holding of the election of the Committee at the earliest.

16. With these directions, the Petition stands disposed of.

(PRAKASH NAIK, J.)

(SHANTANU KEMKAR, J.)

17. After pronouncing the judgment, a prayer has been made to stay the operation of the order pronounced today. We do not feel it to be a fit case to stay the operation of the order. Request is rejected.

(PRAKASH NAIK, J.)

(SHANTANU KEMKAR, J.)