

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1384/2016

Shrikrushana Haribhau Ghuikar and others

...Versus...

**The State of Maharashtra, through its Secretary, Agriculture and Co-operation
Department, Mantralaya, Mumbai-32 and others**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri A.M. Ghare, Adv. with Shri P.S. Kshirsagar, Adv. for petitioners
Shri Rohit Deo, Associate Advocate General for respondent nos.1 to 4
Shri S.P. Bhandarkar, Advocate for intervenors

**CORAM : SMT. VASANTI A. NAIK AND
V.M. DESHPANDE, JJ.**

DATE : 21.03.2016

By this petition, the petitioners challenge the order of the respondent no.3 – District Deputy Registrar, Buldana appointing an Administrator on the Agriculture Produce Market Committee, Shegaon. The petitioners have sought a declaration that the petitioners are entitled to continue in the office of the Managing Committee of Agriculture Produce Market Committee, Shegaon till the elections are conducted and a newly elected body takes charge. By seeking an amendment to the writ petition, the petitioners have sought a direction to the respondent no.1 – Secretary, Agriculture and Co-operation Department to issue an order of extending the

term of the petitioners – Managing Committee, in view of the proviso to Section 14 (3) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred as 'the Act' for the sake of brevity) as the petitioners are not at fault in not holding the elections before the expiry of the term.

The petitioners were elected on the Board of Directors of the Agriculture Produce Market Committee, Shegaon and the first meeting of the Board of Directors of the Agriculture Produce Market Committee, Shegaon was held on 16.2.2011. Since the term of office of the Members of the Market Committee is five years in view of the provisions of Section 14 (3) of the Act, the term of the office of the petitioners was to expire on 15.2.2016. According to the petitioners, several months before the expiry of the term, the petitioners had applied to the District Deputy Registrar for conducting the elections to the Market Committee. It is the case of the petitioners that the petitioners had applied to the District Deputy Registrar on 27.7.2015 for initiating the election process. It is stated that it was informed to the petitioners by the reply, dated 31.7.2015 that the State Government had postponed the elections. It is stated that the list of voters was prepared and submitted to the District Deputy Registrar on 2.12.2015, however, no steps were taken by the District Deputy Registrar to conduct the elections and it is falsely stated in the reply filed on behalf of the respondent - authorities that the respondent no.3 was not at fault in not conducting the elections. It is stated that since sincere efforts were taken by the petitioners for ensuring that the elections are conducted and since the elections to the Market Committee, Shegaon could not be held due to reasons beyond the control of

the petitioners before expiry of the term, according to the petitioners, the State Government ought to have extended the term of office of the petitioners for a period of six months and/or till the elections to the Agriculture Produce Market Committee, Shegaon were conducted and the newly elected body took charge. It is stated that false complaints were lodged by the intervenor against the functioning of the petitioners as the Board of Directors of the Agriculture Produce Market Committee and an action is initiated against the petitioners under Section 45 of the Act. It is stated that the petitioners have filed a writ petition challenging the order initiating action under Section 45 of the Act and the order is stayed on 7.1.2016. It is stated that one of the Members of the Market Committee had approached this Court in Writ Petition No.6741/2015 for a direction to the State Government to conduct the elections to the Market Committee and by an order, dated 22.12.2015, the writ petition is disposed of by accepting the statement made on behalf of the State Government that the elections to the Market Committee would be concluded on or before 30.6.2016. It is stated that the respondent no.3 could not have appointed an Administrator on the Market Committee by invoking the powers under Section 15 A of the Act, in the circumstances of the case. It is submitted that the order of appointment of the Administrator is made due to political pressure. It is submitted that when sincere efforts were made by the petitioners to ensure the conduct of the elections before the expiry of their term of office, a declaration that the petitioners are entitled to continue in office, in view of the provisions of Section 14 (3) of the Act, is necessary.

Shri Deo, the learned Associate Advocate General appearing on behalf of the respondent nos.1 to 4 supported the order of the District Deputy Registrar appointing the Administrator. It is submitted that the petitioners had never applied to the Government for extension of their term of office before the expiry of the said term. It is stated that no such application is made by the petitioners to the State Government. It is submitted that it was necessary for the petitioners to have made an application, if the petitioners desired that the term of office of the petitioners should be extended as the general elections to the Committee could not be held for the reasons beyond the control of the Committee. It is stated that the petitioners cannot seek a direction to the State Government to extend the term in view of the provisions of Section 14 (3) of the Act by seeking an amendment to the prayer clause as an application seeking the extension of the term was never made.

It is submitted that the provisions of Section 15 A of the Act relating to the appointment of the Administrator after the expiry of the normal term of office of the Market Committee are mandatory in nature and the petitioners cannot challenge the order appointing the Administrator, more so, when the petitioners do not have a right to continue on the Committee after the expiry of the term. The learned Associate Advocate General relied on the judgment reported in **1988 Mh.L.J. 228** to substantiate his submission that the provisions of Section 15 A of the Act are held to be mandatory in character. A reliance is placed on the judgment, reported in **2011 (5) ALL MR 110** and specially paragraph 12 thereof to canvass that it would be necessary for the

Committee to approach the State Government for extension of the term of office under Section 14 (3) of the Act. Lastly, reliance is placed on the judgment, reported in **2014 (1) Mh.L.J. 879** to submit that the petitioners would not have a right to continue in the office except as provided under Section 14 (3) of the Act. It is stated that it is held in the said judgment that the petitioners cannot claim as of a right that the State Government should extend the term as the proviso to Section 14 (3) of the Act does not cast an obligation on the State Government to extend the term of the Committee after the period of five years. It is submitted that it is reiterated in the said judgment that the provisions of Section 15 A of the Act are mandatory and the Registrar would have the power to appoint the Administrator notwithstanding anything contained in any other provisions of the Act. The learned Associate Advocate General sought for the dismissal of the writ petition.

On hearing the learned Counsel for the parties, it appears that the relief sought by the petitioners cannot be granted in view of the settled position of law. It is held by this Court in the judgments, reported in **1988 Mh.L.J. 228** and **2014 (1) Mh.L.J. 879** that the provisions of Section 15 A of the Act are mandatory in nature. The District Deputy Registrar was therefore well within his powers in appointing the Administrator by invoking the provisions of Section 15 A of the Act. Admittedly, the petitioners had never made an application to the State Government for extension of their term of office under Section 14 (3) of the Act. The petitioners have by the proposed amendment sought to amend the writ petition seeking a declaration that their

term of office would stand extended, in the circumstances of the case. In the absence of any application or any request by the petitioners to extend the term of their office, the petitioners cannot seek a direction to the aforesaid effect. A writ of mandamus could be sought only when the petitioner has a right to seek the relief claimed and a duty is cast upon the respondent – State to perform the obligation. It is observed by this Court in the judgment, reported in **2014 (1) Mh.L.J. 879** that the petitioners cannot claim as of a right that the State Government should extend the term of office under Section 14 (3) of the Act and an obligation is also not cast upon the State Government to extend the term of the Committee after the expiry of the period of 5 years. Apart from the fact that the petitioners are not entitled to claim as of a right that the State Government should extend the term, it is clear from the admitted facts that the petitioners had never requested the State Government that the term of office of the petitioners should be extended, in view of the provisions of Section 14 (3) of the Act. In the circumstances of the case, it is rightly submitted on behalf of the respondent – authorities that the petitioners cannot seek a declaration that the petitioners are entitled to continue in office till the elections to the Market Committee are conducted and the newly elected body takes charge. The fact that an enquiry is initiated against the petitioners under Section 45 of the Act and that the said proceedings are stayed by an *ad interim* order passed by this Court in a writ petition filed by the petitioners does not have a bearing on the issue involved in this writ petition. Also, it would not be necessary to decide whether the petitioners were at fault or the

District Deputy Registrar was at fault in not conducting the elections as the said facts are also not relevant, for deciding the questions involved in this writ petition. Since the petitioners cannot claim the extension of their term of office under Section 14 (3) of the Act as of a right and since the District Deputy Registrar was empowered to appoint the Administrator by invoking the provisions of Section 15 A of the Act that are held to be mandatory, we do not find any reason to interfere with the impugned order in exercise of the writ jurisdiction. The writ petition is, therefore, dismissed with no order as to costs.

At this stage, the learned Counsel for the petitioners makes a prayer for continuing the *ad interim* relief granted by this Court on 25.2.2016 for a period of four weeks.

The prayer made by the Counsel for the petitioners is strongly opposed by the learned Associate Advocate General for the respondent nos.1 to 4.

Since the relief granted on 25.2.2016 is an *ad interim* relief and since we find that the petitioners do not have any right to continue in office after the expiry of their term, we reject the prayer made on behalf of the petitioners.

The learned Counsel for the petitioners then states that if this Court is not inclined to continue the *ad interim* relief, this Court may at least direct the Administrator to conduct the elections as early as possible.

The request made by the learned Counsel for the petitioners is just and reasonable. Hence, we direct the Administrator to conduct the elections as early as possible. It would be necessary to make a reference at this stage to the

order passed by this Court in Writ Petition No.6741/2015, that directs the State Government to conduct the elections by 30.06.2016.

Order accordingly.

JUDGE

JUDGE

Wadkar