

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8305 OF 2017

Rajasaheb s/o. Sahebrao Patil & Ors. .. Petitioners

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.V.D. Salunke h/f. Mr. R.D. Raut, Advocate for the petitioners.

Mr.S.G. Karlekar, A.G.P. for respondent/State.

Mr.S.K. Kadam, Advocate for respondent No.3.

Mr.B.B. Kulkarni, Advocate for respondent No.6

Mr.K.B. Choudhari, Advocate for respondent No.7.

**CORAM : R.M. BORDE &
 S.M.GAVHANE, JJ.**

DATED : 31.08.2017

P.C. :-

1. The petitioners are praying for issuance of writ of mandamus or any other writ or direction in the nature of mandamus to direct the respondents to hold and complete the process of election of Terna Shetkari Sahakari Karkhana Ltd., within a period of four months from today. It is noticed that during the continuance of the instant petition, an interim order under section 102

of the Maharashtra Co-operative Societies Act, 1960 [for short "the Act"] appointing a Liquidator has been issued by the Regional Joint Director of Sugar on 02.08.2017. As such on 24.08.2017, the petitioners by way of amendment have prayed to quash and set aside the said order. The petitioners contend that the term of the elected managing committee commenced in 2007 came to an end in the year 2012. The appointed Administrator did not take steps for holding elections. It is contended that, in-fact, it was statutory duty of the Administrator to hold election within a period of six months from the date of assumption of office. It is further contended that in May, 2014 one Mr.S.P.Bade, the then D.D.R., Osmanabad was appointed as an Administrator under Section 78 of the Act by order dated 04.02.2015. The order of appointment of Administrator on 04.02.2015 was a matter of challenge by Board of Directors before the Minister for Co-operation. However, the appeal came to be dismissed and the order of appointing Administrator was confirmed. It is contended that even after lapse of the

period statutorily prescribed, the steps to hold election have not been taken. The petitioners have also made representation to declare the program of election. There is failure on the part of the respondents under some pretext or other. Hence, the petitioners have approached for issuance of the directions as above.

2. It is contended on behalf of the State Election Authorities that there are several impediments in holding elections including unavailability of record. This Court by issuing directions on 24.07.2017 permitted the Registrar to take out the record from the premises of Karkhana, which is under control of the Regional Provident Fund Commissioner, Solapur, since said office has put seal to the premises of Karkhana. Noticing this aspect, this Court permitted the Registrar to take out the record with a view to facilitate holding of elections and issued necessary directions to the Provident Fund Commissioner. The petitioners contended that pursuant to the directions issued by this Court, record has been

collected by the Registrar and as such there is no impediment in holding the elections. Our attention is invited to section 73 (CB) (13) of the Act to contend that it is responsibility of the State Co-operative Election Authority to hold elections and non-availability of funds cannot be put-forth as an excuse. It is the contention of the State Election Authority that Karkhana has failed to deposit necessary funds with the State Election Authority for facilitating to conduct elections. It is further contended that election expenses in respect of last election held in 2007 were also not paid by the Karkhana. The learned Counsel appearing for the petitioner contends that necessary expenses of the elections shall be drawn from the election fund maintained at the level of State Co-operative Election Authority and in the event of failure of the society to pay the amount, the election expenses can be recovered under recovery certificate that shall be issued by the Registrar and the recovery shall be effected as arrears of land revenue.

3. The matter has been complicated as a result of issuance of provisional order of liquidation and appointment of liquidator by the Regional Joint Director of Sugar and the Joint Registrar, Co-operative Societies. It is the contention of the petitioners that the order has been issued by the respondents to defeat the petition and it amounts to interference in the process of administration of justice. It appears that the order has been issued on 02.08.2017 after entertaining the writ petition by this Court. It, however, needs to be noted that District Deputy Registrar and the Administrator of the Society had already tendered report on 05.01.2017 to the Divisional Joint Registrar, Co-operative Societies requesting to take steps for appointment of Liquidator. It was reported by the Administrator that the premises of the Karkhana are put under seal by the Commissioner of Provident Fund, Solapur and as such the Administrator could not assume charge of the Karkhana after his appointment. It was further reported that, the property

of the Karkhana has been stolen to a large extent and report in that regard has been made at Police Station, Dhoki. The District Central Co-operative Bank, Osmanabad has taken steps for recovery of its dues and the matter is pending at the appellate stage, wherein order of status-quo has been issued. It was further reported that the amount recoverable by Osmanabad District Central Co-operative Bank is to the extent of Rs.127.37 Crores and as such there is remote possibility of making the Karkhana functional. It was reported that except directing liquidation of Karkhana, there does not appear to be other alternative available. It is recorded in the interim order passed by the Regional Joint Director of Sugar, that the affairs of the Karkhana are at standstill since 2012-13 and the Karkhana has ceased to operate. There are Revenue Recovery Certificates issued against the Karkhana for enforcing recovery amounting to Rs.153 lakhs towards dues payable to cane growers. An Revenue Recovery Certificate for enforcing of amount of Rs.108.84 lakhs has been issued and the aforesaid amount is also

yet to be recovered. The financial liability of the Karkhana towards State Government is to the extent of Rs.5963.50 lakhs as on 31.03.2010. The dues payable to the District Central Co-operative Bank are to the tune of Rs.26670.40 lakhs. The amount recoverable by the Provident Fund Department is also more than Rs.10 Crores. The total recovery against the Karkhana is to the extent of Rs.29029.72 lakhs. The net worth of Karkhana is Rs.25965.33 lakhs. The respondents, as such, had no other alternative except to take steps for winding up of Karkhana under section 102 of the Maharashtra Co-operative Societies Act. Section 102 of the Maharashtra Co-operative Societies Act reads thus :-

"102. Winding up.-

(1) If the Registrar,-

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 [or 89A] or on the report of the auditor auditing the accounts of the society, or

(b) on receipt of an application made upon a resolution carried by three-fourths of the members of a society present at a special general meeting called for the purpose, or

(c) of his own motion, in the case of a society which--

(i) has not commenced working, or

(ii) has ceased working, or

(iii) possesses shares or members' deposits not exceeding five hundred rupees, or

(iv) has ceased to comply with any conditions as to registration and management in this Act or the rules or the by laws.

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up."

(2) A copy of such order made under sub-section (1) shall be communicated, in the prescribed manner, to the society calling upon it to submit its explanation to the Registrar within a month from the date of the issue of such order, and the Registrar, on giving an opportunity to the society and to the creditors of the society, if any of being heard, may issue a final order, vacating or confirming the interim order."

4. In the instant matter, the functioning of the karkhana is at standstill and the Karkhana has seized to function. The total liability loans of the Karkahna is more than Rs.29,000/- lakhs. The financial condition of the Karkhana does not permit payment of charges for holding the election. Even otherwise looking to the financial position of karkhana, there is no other alternative for respondents available except directing liquidation and such action taken cannot be said to be mala-fide.

5. For the reasons aforesaid, the challenge raised by the petitioners in the instant petition does not deserve to be entertained. The writ petition being devoid of substance, stands rejected.

[S.M.GAVHANE, J.]

[R.M.BORDE, J.]