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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14387 OF 2018

1. Sadashiv Pandurang Patil,]
Age : 43 years, Occ. Agri.]
(at present member of APMC]
Karmala, Dist. Solapur)]
Residing at Alsunde,]
Post-Salase, Taluka-Karmala.]
District – Solapur.]

2. Audumbar Gorakh More]
Age : 43 years, oCc. Agri.]
(at present member of APMC]
Karmala, Dist. Solapur)]
Residing at Post Khatgaon,]
Taluka-Karmala, District – Solapur.]

..Petitioners

vs.

1] The State of Maharashtra]
Through the Department of]
Marketing & Textiles,]
Having office at Mantralaya,]
Mumbai.]

- | | | |
|----|---------------------------------|---|
| 2] | The Director of Marketing |] |
| | Maharashtra State having |] |
| | Office at Pune. |] |
| 3] | The State Co-operative Election |] |
| | Authority, Maharashtra State |] |
| | Having Office at Pune. |] |
| 4] | The Collector, Solapur, |] |
| | Having Office at Solapur. |] |
| 5] | The District Deputy Registrar, |] |
| | Co-operative Societies, Solapur |] |
| | having office at Solapur. |] |
| 6] | The Agricultural Produce |] |
| | Market Committee, Karmala, |] |
| | Having Office at Karmala, |] |
| | District – Solapur. |] |
| | Through its Secretary. |] |
| 7] | Mahaveer Bhairu Talekar |] |
| | Age : Adult, Residing at |] |
| | Mouje Kem, Taluka – Karmala, |] |
| | District – Solapur. |] |
- ..Respondents.

Mr.Sarang S. Aradhya alongwith Mr.Milind Prabhune for the Petitioners.

Mr.R.P. Kadam, AGP for Respondent Nos.1 to 5.

Mr.Abhijit Kulkarni i/by DD & Abhijit Associates, for Respondent No.6.

**CORAM : INDRAJIT MAHANTY &
A.M.BADAR, JJ.**

JUDGMENT RESERVED ON : 14th June, 2019.
JUDGMENT PRONOUNCED ON : 26th June, 2019.

JUDGMENT [Per : INDRAJIT MAHANTY, J.]

1] This Writ Petition has been filed by Sadashiv Pandurang Patil, challenging the co-opting of one Mahaveer Bhairu Talekar as a member of the Karmala Agricultural Produce Market Committee (“Karmala APMC” for short) in its meeting dated 26th October, 2018, without complying with Section 14 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (“MAPM Act” for short) and in particular Rule 66 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (for short “2017 Rules).

2] Shorn of unnecessary details, it is brought to our notice that general elections were held of the Karmala APMC on 9th September, 2018 and results were declared on 11th September, 2018. The elections were held for the posts of 18 directors, out of which 15 were to be elected from the Agricultural constituency, two were to be elected from the Traders constituency and one was to be elected from the Hamal and weighman constituency.

3] The result of the aforesaid election held under 2017 Rules were declared on 11th September, 2018 and one Shri Jaywantrao Jagtap who had contested the said general election as Agriculturist from two villages viz. : Wangi and Kem, Taluka – Karmala, District – Solapur, was declared elected from both these constituencies. Since, in terms of Rule 66 of the 2017 Rules, if a person is elected to more than one seat on the committee then, unless within a period of thirty days from the date of declaration of the result of the election he resigns all but one of the seats by writing under his hand addressed to the State Co-operative Election Authority or as the case may be to the officer authorized by the State Co-operative Election Authority in this regard all the seats shall become vacant. On receipt of such resignation or on the seats becoming so vacant, the District Election Officer, in consultation with the State Co-operative Election Authority in this regard shall cause to hold the election for filling the vacancy”.

4] It is further averred on behalf of the Petitioners that the said Shri Jaywantrao Jagtap resigned from Wangi (Agriculturist seat) by letter dated 26th September, 2018 received by the District Deputy Registrar-Respondent No.5 on 29th September, 2018, copy of which was forwarded to the Assistant Registrar, Co-operative Societies, Karmala, marked as Exhibit A. In response to the said letter, the election authority directed the Authorities concerned to act in terms of the Act and Rules.

5] Learned counsel for the Petitioner submits that Respondent Nos.1 to 6 instead of acting in terms of the mandate of Section 14 of the MAPM Act, 1963 and Rule 66 of the 2017 Rules subverted the requirement of law and illegally resorted to procedure under Section 18 of the MAPM Act and co-opted Respondent NO.7 as a member of the Karmala APMC, instead of holding elections to fill up the said vacant seat.

6] For convenience, Section 14 of the MAPM Act as well as Rule 66 of 2017 rules are quoted hereunder.

14. Election and term of office of members.

(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 for its forfeiture, the determination of election disputes and all matters ancillary thereto including provision regarding election expenses.

Rule 66 of the 2017 Rules,

66. Election to more than one seat -

If a person is elected to more than one seat on the committee then, unless within a period of thirty days from the date of declaration of the result of the election he resigns all but one of the seats by writing under his hand addressed to the State Co-operative Election Authority or as the case may be to the officer authorised by the State

Co-operative Election Authority in this regard, all the seats shall become vacant. On receipt of such resignation or on the seats becoming so vacant, the District Election Officer, in consultation with the State Co-operative Election Authority in this regard shall cause to hold the election for filling the vacancy.

7] It is important to note hereunder that though Respondent Nos.1 to 6 entered appearance and filed reply affidavits and though notice to co-opted member-Respondent No.7 was sufficient, none entered appearance on his behalf nor any affidavit in reply was filed.

8] Learned counsel for Respondent Nos.1 to 6 inter-alia contended that on the resignation of Jaywantrao Jagtap from Wangi constituency seat, the Karmala APMC sought advise from the State Election Authority under covering letter dated 11th October, 2018 (Exhibit C) and claimed that advise was rendered to them by virtue of reply given by the State Election Authority under Exhibit B dated 16th October, 2018.

9] This contention is recorded merely to be rejected. On perusal of Exhibit A - letter dated 26th September, 2018 forwarded to District Deputy Registrar – Respondent No.5, it appears that Jaywantrao Jagtap tendered his resignation from Wangi (Agriculturist constituency) on 26th September, 2018 and response of the State Election Authority under Exhibit B – dated 16th

October, 2018 was in context of the resignation letter forwarded to it. It has no reference to the so called guidelines sought for by the Respondents under Exhibit C which is dated 19th October, 2018. Consequently, we reject the contention of the respondents to the effect that they had acted in terms of advice sought for by the Respondents from the State Election Authority under Exhibit C. We are of the considered view that Exhibit B is merely a response to Exhibit A which is resignation of Jaywantrao Jagtap and not a reply to the Respondents letter under Exhibit C.

10] Learned counsel for the Respondents contended that the Respondents acted in terms of Section 18 of the MAPM Act, which provides for filling up of casual vacancies. For convenience, Section 18 of the MAPM Act is quoted hereunder.

S. 18. Casual Vacancies.

In the event of a vacancy occurring on account of death, resignation or removal of a member, or on account of a member becoming incapable of acting as a member, or otherwise, the Market Committee shall fill up the vacancy by co-opting a person eligible for being elected as a member :

Provided that, the number of such co-opted members shall not exceed two at any time in Market Committee and any vacancy thereafter shall be filled by the election

Provided further that, if the vacancy occurs within six months preceding the date on which the term of office of the member expires, the vacancy shall, unless the State Government directs otherwise, not be filled.]

11] Reliance was also placed by the Respondents on a Judgment rendered by the Bombay High Court in the case of **Raghavendra Vasantrao Deshpande & Ors. vs. Agricultural Produce Market Committee**¹.

12] Learned counsel for the Respondents also pleaded that the present Writ Petition is barred by resjudicata since the Petitioners have approached the Civil Court by filing a suit and thereafter withdrawn the same, without seeking any liberty. Apart from above, it is further contended by the learned counsel for the Respondents that the present Writ Petition should not be entertained since alternative efficacious remedy under the MAPM Act exists.

13] In response to the aforesaid contention, learned counsel for the Petitioners submitted that Section 18 has no role in the facts and circumstances of the present case since the procedure under Section 14 had not been concluded and since Jaywantrao Jagtap had been elected from two constituencies and had resigned from Wangi constituency, hence, it was incumbent for the Authorities to request the State Election Authority to conduct election for that constituency and without doing what was required under law, resort could not have been made to Section 18 of the Act.

¹ 1980 Mh.L.J. 423

14] In this respect, he placed reliance upon a Judgment of the Hon'ble Supreme Court in the case of **Suresh Nanda vs. CBI**². It is well settled that a special law prevails over general law and this principle is expressed in the maxim "*Generalia specialibus non derogant*". Hence, it is submitted that resorting to the power under Section 18 pertaining to filling up of "casual" vacancy could not have been resorted to without complying with requirement of Section 14 read with Section 66 of the 2017 Rules.

15] Learned counsel for the Petitioners submitted that the Petitioners had been wrongly advised to file suit and since the Respondents had no competence to fill up the vacancy caused by resorting to Section 18, the petitioners were advised to withdraw the suit in order to file the present Writ Petition.

16] Learned counsel for the Petitioners further submitted that while alternate remedy in the present case is not efficacious inasmuch as the Respondents have not complied with the directions issued by the State Election Authority and instead resorted to exercise power under Section 18 which otherwise does not apply to the fact situation of the case.

17] In the light of the contentions advanced as noted hereinabove, it becomes imperative to consider the Judgment

² 2008 AIR (SC) 1414

relied upon by the Respondents as referred to in para No.11 hereinabove.

18] At the very outset, it would be necessary to note herein that the said judgment was rendered on 2nd August 1979 and the election Rules of 2017 have been promulgated thereafter. Consequently, the present case has to be adjudicated on the basis of 2017 Rules. Consequently the Judgment relied upon by the respondents is of little assistance in the present matter.

19] Insofar as the contention of alternate remedy is concerned, it is well settled principle that alternate remedy is not a bar for entertaining the writ application especially in a situation where the statutory authorities have sought to exercise their power under Section 18 of the MAPM Act in circumstances which does not warrant such exercise of powers without complying with the process mandated by Section 14 read with Rule 66 of the 2017 Rules.

20] In other words in the case at hand, since Mr.Jaywantrao Jagtap had resigned from Wangi constituency, in terms of Section 14 read with Rule 66 of the 2017 Rules, it was incumbent upon the Authorities to direct the State Election Authority to conduct election for the vacant seat and only a member who was elected at such election could become a member of the Karmala, APMC and not by co-option.

21] As regards the further contention of the Respondent that the present writ was barred by the principle of *res judicata* since the Petitioners have withdrawn the civil suit filed by them without seeking any liberty is concerned, we are of the considered view that the principle of *res judicata* cannot be attracted to the present fact situation of the case especially since it is a fact that the suit had already been withdrawn prior to filing of writ Petition and no order was ever passed in the suit. Consequently, we do not find that the withdrawal of the suit from the Civil Court would act as *res judicata* for filing of a writ application.

22] In the light of the findings arrived at by us and as noted hereinabove, and considering clear mandate of Section 14 of the MAPM Act read with Rule 66 of the 2017 Rules, we pass the following order :

ORDER

1] Appointment of Respondent No.7-Mahaveer Bhairu Talekar as a co-opted member of Karmala APMC is hereby quashed and held to be without jurisdiction.

2] We direct Respondent Nos.1 and 2, to immediately direct Respondent no.3-The State Co-operative Election Authority, Maharashtra State to conduct elections in terms of

Section 14 of the MAPM Act read with Rule 66 of the 2017 Rules, within a period two weeks from today.

3] Respondent No.3-The State Co-operative Election Authority, Maharashtra State shall conduct the election forthwith in accordance with 2017 Rules.

4] No order as to costs.

5] Writ Petition No.14387 of 2018 is allowed in terms of the directions noted hereinabove.

[A.M.BADAR, J]

[INDRAJIT MAHANTY, J]