

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

MISCELLANEOUS CIVIL APPLICATION (REVIEW) NO. 1102 OF 2019
IN WRIT PETITION NO.6004 OF 2017

Ahmadbhai Karimbhai Sheikh

Vs.

State of Maharashtra, through its Secretary, Ministry of Co-operation and
Marketing, Mantralaya, Mumbai and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. A.M. Ghare, Advocate for review-petitioner.
Mr. S.Y. Deopujari, Government Pleader for
respondent Nos.1 to 3.

**CORAM : R.K. DESHPANDE AND
MRS. SWAPNA JOSHI, JJ.**

DATED : AUGUST 10, 2020.

Hearing was conducted through video
conferencing and the learned Counsel for the parties agreed
that the audio and visual quality was proper.

2) This Miscellaneous Civil Application claims
relief as under:

*“(A) Allow the present application and be further
pleased to set aside the judgment Dt.16/01/2018 in W.P
No.6004/2017 and be pleased to allow the writ petition
by setting aside the order Dt.08/09/2017 passed by
Respondent No.2 Director of Marketing, State of
Maharashtra, Pune, and be further pleased to restore the
then elected executive committee of the A.P.M.C. Nagpur
in office till the fresh elections are held and new elected
executive committee resumes its charge;”*

3) Review is sought of the common judgment and order dated 16/1/2018 delivered in Writ Petition No.6004/2017 and other connected matters. By the said decision, this Court has rejected the challenge to the order dated 8/9/2017 passed by the Director of Marketing, State of Maharashtra, Pune appointing an Administrator over the Agricultural Produce Market Committee, Nagpur. This Court also rejected the prayer of the petitioners in the said writ petitions to restore the elected Body of the Agricultural Produce Market Committee after removing the Administrator. However, a direction was issued to the Collector, Nagpur to conduct elections of the Agricultural Produce Market Committee as per law by drawing fresh voters' list by treating 31/8/2017 as the cut-off date and to complete the same at the earliest and in any case by 31/3/2018. The review petitioner claims that the elected Body, the tenure of which has already expired, should be continued in the Office and the order dated 8/9/2017 passed for appointment of an Administrator be quashed and set aside.

4) Shri Ghare, learned Counsel appearing for the review petitioner, invites our attention to Section 15A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, "said Act") dealing with the restrictions to extend the period of Administrator over the Market Committee and also to the second proviso below sub-section (3) of Section 14 of the said Act. It is urged that the elected Body has right to continue in the

Office, particularly when the respondent Authorities are not competent to extend the period of appointment of an Administrator beyond the particular limit prescribed under Section 15A of the said Act and the said period having been expired, the elected Body be directed to be continued in the Office.

5) The grounds of challenge raised in the application for review are considered in the judgment delivered in Writ Petition No.6004/2017 on 16/1/2018. The State Government had filed an application for review of the said judgment and it was dismissed on 8/6/2018 in the presence of the present petitioner. This Court has specifically held in the decision that the elected representatives, who are the petitioners in Writ Petition No.6004/2017, have no right to continue after expiry of their tenure. This view is based upon the earlier view taken by the Division Bench presided over by Hon'ble Shri B.P. Dharmadhikari, J., who also delivered the judgment, of which review is sought. Apart from this, in the decision in the case of ***Udhav Shalikram Geete vs. State of Maharashtra and others*** reported in ***2014 (1) Mh.L.J. 879***, the provisions of Section 14(3) of the said Act have been considered in paragraph 7, which is reproduced below :

“7. We have considered the submissions made on behalf of the respective parties. The right to continue in an elected office is neither a constitutional nor a common law right but it is a statutory right. The petitioner does not has vested right to continue in the office except as provided under the Act of 1963 and the Rules framed

thereunder. Section 14(3) of the Act of 1963 prescribes the tenure of the APMC as five years. The second proviso to Section 14(3) of the Act of 1963 gives the discretion to the State Government to extend the term of the APMC where the general elections of members of the Committee could not be held for reasons beyond the control of the Committee before expiry of the term of office of its members. The petitioner cannot claim, as of right, that the State Government should extend the term, inasmuch as, the proviso to Section 14(3) of the Act of 1963 does not cast an obligation on the State Government to extend the term of the APMC after the period of five years. The notification issued on 8th of February, 2013 postponing the elections of the APMC for the period of six months from the date of Notification is not challenged by the petitioner. The order issued by the District Deputy Registrar on 12th of August, 2013 appointing the Administrator is in consonance with the requirements of the provisions of Section 15A of the Act of 1963.”

6) The view taken by this Court is covered and concluded by the decision rendered inter parties. We are not sitting in appeal over the view taken by this Court that the elected representatives have no right to continue in the position after expiry of their tenure. Our attention was also invited to other decisions of the Division Bench, wherein it is stated that the contrary view has been taken by the Division Bench, which was presided over by Hon’ble Shri B.P. Dharmadhikari, J. These decisions are subsequent to the judgment under review. We, therefore, do not find any error apparent on the face of record, which can be corrected by invoking review jurisdiction of this Court.

7) So far as direction given by this Court to conduct the elections and conclude the same on or before 31/3/2018 is concerned, this Court has from time to time extended the period to conduct and conclude the elections of the Agricultural Produce Market Committee, Nagpur and the extended period is to expire on 23/8/2020. By order dated 10/7/2020 issued in exercise of the power conferred by Section 14(3A) of the said Act, the State Government has extended the period for holding elections for a further period of six months with effect from 24/7/2020 keeping in view the scarcity position occurring due to COVID-19 pandemic. The order dated 10/7/2020 is not the subject matter of challenge before us and obviously it cannot be by filing application for review. The exercise of statutory power under Section 14(3A) of the said Act has eclipsed the direction of this Court to conduct the elections within the extended period also and unless validity of the said order is judged by this Court in appropriate proceedings, it is not possible for us to direct holding of elections prior to the expiry of the period stipulated in the order dated 10/7/2020.

8) Our attention is invited to various orders passed by this Court, *prima facie*, observing that if the elections are not held within stipulated period, this Court shall be constrained to restore the elected body to the position. Our attention was not invited to a clear cut finding recorded by this Court in paragraph 102 of the decision wherein the Court has specifically held that the elected body has no right

to continue after expiry of the tenure. We cannot look at the matter from different angle so as to exercise the appellate jurisdiction over the decision rendered by this Court. It was merely *prima facie* opinion expressed by this Court without having any assistance and we are sorry to note that the finding recorded by this Court rejecting the claim for the right to continue the office was not brought to the notice of this Court. It was a duty of the learned Counsel for the petitioner to have brought this to our notice, particularly when he argued the matter before this Court.

9) In view of above, the Miscellaneous Civil Application is dismissed.

JUDGE

JUDGE

srwagh