

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

WRIT PETITION NO. 4248 OF 2021

Maruti s/o Hanmanta Khede
Age : 57 years, Occu : Agriculture,
R/o. Pimpalgaon (Ku), Tq. Biloli,
District Nanded

.. Petitioner

Versus

1. The State of Maharashtra,
Through the Secretary,
In the Department of Agricultural
Marketing, Mantralaya, Fort Mumbai.
2. The Director of Marketing,
Maharashtra State, Pune.
3. The District Deputy Registrar,
Co-operative Societies, Nanded
Tq. And Dist. Nanded.
4. The Administrator,
Agriculture Produce Market
Committee, Kundalwadi,
Dist. Nanded.
5. The State Co-operative Election
Authority, Maharashtra State,
Central Building, Pune.

6. The District Collector &
District Election Officer, Nanded.

.. Respondents

Mr. A. N. Irpatgire, Advocate for the Petitioner.
Mr. S. G. Karlekar, A. G. P. for Respondent Nos. 1 to 4, & 6.
Mr. S. K. Kadam, Advocate for Respondent No. 5.
Mr. Sushant V. Dixit, Advocate for Intervener.

**WITH
CIVIL APPLICATION NO. 5103 OF 2021
IN WRIT PETITION NO. 4248 OF 2021**

Gangadhar Ramchandra Bhinge and others

.. Applicants

Versus

Maruti Hanmanta Khede and others

.. Respondents

**CORAM : S. V. GANGAPURWALA &
R. N. Laddha, JJ.**

Date on which reserved for judgment : 07th October, 2021.

Date on which judgment pronounced : 29th October, 2021.

JUDGMENT (*Per S. V. Gangapurwala, J.*) :

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner challenges the order dated 07.01.2020 issued by the respondent No. 3 appointing administrator over the respondent No. 4/APMC. The petitioner further seeks directions not to appoint the administrative committee over the said APMC.

3. During the course of arguments, Mr. Irpatgire, learned counsel for the petitioner did not agitate the order appointing administrator over the APMC and restricted his arguments to the extent that the administrator shall not be replaced by the administrative committee. It

appears that, under communication dated 17.03.2021 issued by the State to the District Deputy Registrar, Co-operative Societies, Nanded informed that the persons named in the said letter are approved for including their names in the list of administrative committee of non Government persons.

4. Mr. Irpatgire, learned counsel submits that there is no reason to replace the administrator by the non Government persons in the administrative committee. The Administrative committee is of political persons. They cannot replace the administrator viz. a Government officer.

5. The learned A.G.P. submits that the petitioner has no reason to challenge the appointment of the administrator and /or the administrative committee. The term of the managing committee was over. The respondent No. 3 in exercising its power under Section 15A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as 'Act of 1963') has the authority to appoint the administrator upon completion of the term.

6. Mr. Dixit, learned counsel for the intervener i.e. the persons whose names are approved for appointment as members of the administrative committee over the said APMC submits that on

26.02.2021, the respondent No. 4 submitted the proposal to respondent No. 3 with names of eligible persons for appointment as members of the administrative committee. The respondent No. 4 has approved the list of members i.e. present applicants in the civil application to be included in the administrative committee and further directed respondent No. 4 to issue necessary orders appointing the applicants as members of the administrative committee. The petitioner has no statutory right to seek such directions. The rights of the petitioner are not affected. The original writ petitioner was member of the administrative committee and no steps were taken to hold the election. No funds were deposited and no steps were taken to prepare draft electoral rolls. Considering all the relevant aspects of the matter, the decision is taken to appoint the applicants as members of the administrative committee. In view of that, no such relief as claimed by the petitioner can be granted.

7. The learned counsel for the petitioner relies on the judgment of the Division Bench of this Court in Writ Petition No. 10162 of 2017 dated 28.08.2017 to submit that in order to ensure transparency and fairness in the process of election, it is desirable that affairs of the APMC shall be administered by the officer of the State Government so that the democratic process of installing elected representative in the

office can be undertaken and completed.

8. Mr. Dixit, learned counsel for the intervener relies on the judgment of the Apex Court in a case of ***Oriental Bank of Commerce Vs. Sunder Lal Jain & Anr.*** reported in ***2008 (2) SCC 280*** to submit that writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of the officer to discharge the statutory obligation. In the present case, no statutory duty has been infringed, nor there is any statutory duty to appoint the administrator and not the administrative committee. Mandamus cannot be issued. The learned counsel also relies on the judgment of the Apex Court in a case of ***State of Kerala Vs. A. Lakshmikutty*** reported in ***1986 (4) SCC 632*** to submit that for issuing a writ of mandamus there must be a judicially enforceable right for the enforcement of which a mandamus will lie.

9. We have considered the submissions canvassed by the learned counsel for respective parties.

10. The Government under Section 15A of the Act of 1963 has the powers to appoint the administrator and/or the administrative committee after the period of term of the managing committee is over. The discretion vests with the authorities either to appoint the

administrator and/or the administrative committee.

11. The discretion that vests with the authority is not merely an ordinary, unregulated or a capricious discretion, but a discretion that has to be exercised in a reasonable manner and the exercise of discretion should not smack of arbitrariness. Arbitrariness has no role in the society governed by rule of law. Arbitrariness is antithesis to the rule of law, justice, equity, fair play and good conscious.

12. In the present case, the authority had already exercised the discretion and appointed Assistant Registrar, Co-operative Societies, Biloli as the administrator. The said administrator replaced the then administrative committee. In the order dated 07.01.2020 appointing administrator in place of administrative committee, the District Deputy Registrar observed that the administrative committee did not undertook the process of election, nor even deposited the funds for conduct of elections with the election authority, nor even took steps to prepare the voters list. The members of the administrative committee of whom the petitioner was also member derelicted their duties and in view of that appointed the Assistant Registrar, Co-operative Societies, Biloli as an administrator in place of the then administrative committee. Now, the Government is trying to replace the said administrator by a new members of the administrative committee.

13. For replacing the administrator with the new members of the administrative committee strong reasons would be required. It is not that at the whims and pleasure of the authorities the administrator and/or the administrative committee would be substituted. We can understand if there are some allegations against the administrator of non performance of the duty, then certainly in its place, the authority can replace the administrator by another administrator or by a administrative committee may be of Government officers or otherwise, but the administrative committee cannot be appointed only as a tool for political rehabilitation. The directions issued by the office of the Co-operative Marketing and Textile Department to appoint the applicants of the civil application as administrative members carries a rider that the appointment of members of the administrative committee against whom offences are registered would be subject to the decision of the Court.

14. We fail to understand as to how the members of the administrative committee against whom criminal cases are pending can be appointed to replace the existing administrator. This would demonstrate that the discretion exercised is arbitrary and without application of mind. The authority had already exercised its discretion while replacing the then administrative committee by the Assistant

Registrar Co-operative Societies as an administrator for the incapability, incompetency of the members of the administrative committee. Now, while issuing directions for replacing a Government officer officiating as an administrator by a administrative committee the department has nowhere observed that the administrator's functioning and working is improper or is not performing his duties. When the administrator is sought to be replaced by a administrative committee consisting of private persons strong reasons would be required to be recorded by the authority. The reasons depict the application of mind of the authority passing the order. Reasons are now considered to be one of the pillars of the principles of natural justice. By arbitrarily replacing a Government officer officiating as an administrator against whom there is no complaint nor any allegations of incompetency by private persons as members of administrative committee without assigning any reasons is arbitrary. It raises a doubt about the intentions of appointing the private persons for the purpose of political rehabilitation. The same cannot be the object of appointing the administrative committee of non Government persons.

15. In view of the aforesaid, we direct the authorities not to appoint the administrative committee in place of administrator. The respondent No. 5 may consider starting process for election of the members of the

managing committee on the APMC. Of course, considering the ground realities, the circumstances prevailing and the orders of the State Government for conducting the elections.

16. We have directed the respondents not to replace the administrator by the administrative committee as is referred to in the communication dated 26.02.2021 and 17.03.2021 annexed with the Civil Application No. 5103 of 2021 as the reasons are not forthcoming to replace the administrator.

17. Rule is made absolute accordingly. No costs.

18. In view of disposal of the writ petition, civil application does not survive, as such civil application is disposed of.

(R. N. Laddha)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

PS.B.