

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
WRIT PETITION NO.6382 OF 2021**

1. Radhakisan S/o. Deorao Pathade,  
Age 45 years, Occ. Agri. and Chairman  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
2. Damodhar Harichandra Navpute,  
Age 66 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
3. Devidas Balaji Kirtishahi,  
Age 57 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
4. Bhagchand S/o Rustum Thombre,  
Age 60 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
5. Babasaheb S/o Punjaram Mugdal,  
Age 40 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
6. Shriram S/o Bhausahab Shelke,  
Age 48 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
7. Ganesh S/o Sandu Dahihande,  
Age 53 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad.
8. Shivaji S/o Uttamrao Wagh,  
Age 41 years, Occ. Agri. and Director  
of the Super APMC, Aurangabad,  
Dist. Aurangabad. ..Petitioners

VERSUS

1. The State of Maharashtra,  
Through its Principal Secretary,  
Co-operation, Marketing and  
Textile, Department, Mantralaya,  
Mumbai-32.
2. The Hon'ble Minister,  
Co-operation, Marketing and  
Textile, Department, Maharashtra State  
Mantralaya, Mumbai-32.
3. The Director of Marketing,  
Maharashtra State, Pune.
4. The District Deputy Registrar,  
Co-operative Societies, Aurangabad.
5. Super Agricultural Produce Market  
Committee, Aurangabad,  
Through its Secretary.
6. The Administrator,  
Super Agricultural Produce Market  
Committee, Aurangabad. ..Respondents

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Mr. S. S. Thombre, Advocate for the Petitioners.  
Mr. S. G. Karlekar, AGP for Respondent Nos.1 to 4.  
Mr. K. J. Suryawanshi, Advocate for Respondent  
No.5.

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

**Closed for Orders on : 17.08.2021.  
Order Pronounced on : 29.10.2021**

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

1. The application filed by petitioners for extension of the term of the board of directors of respondent no.5-Super Agricultural Produce Market Committee (hereinafter referred to as 'A.P.M.C.') is rejected, so also under order dated 07.05.2021

administrator is appointed. The said orders are assailed in the present writ petition.

2. The petitioners claim to be elected directors of respondent no.5-Super Agricultural Produce Market Committee, Aurangabad. The term of the elected directors came to an end on 04.08.2020.

3. The election could not be held prior to 04.08.2020 that is before the expiry of the term of board of directors. The board of directors passed resolution for extension of one year purportedly under Section 14(3) of the Maharashtra Agricultural Produce Marketing (Development and Regulations) Act, 1963 (hereinafter referred to as 'Act, 1963') and is amended from time to time. The said resolution was forwarded to the District Deputy Registrar alongwith proposal for extension. Under order dated 23.07.2020, the proposal for extension was refused by respondent no.1 and administrator was appointed. The petitioners assailed the same by filing writ petition before this Court. This Court vide order dated 01.03.2021, the order appointing administrator and rejecting the proposal of petitioners for extension of their term was set aside and respondents-Authorities were directed to take decision afresh. Pursuant thereto, respondent no.2 issued notices for hearing on the proposal for extension of the term. The petitioners had filed detailed say. The respondent no.2 after hearing the parties rejected the proposal of the petitioners for extension of the term of the board

of directors and respondent no.4 is appointed as administrator. The said orders are assailed in the present Writ Petition.

4. Mr. Thombre, learned counsel for petitioners submits that, non-holding of the election before the expiry of the term of board of directors was not on account of default of the petitioners, but because of the Covid-19 pandemic situation. The State Government had postponed the election and in way prohibited the conduct of election because of Covid-19 pandemic. In such circumstance the extension ought to have been granted. The learned counsel refers to Section 14(3) of the Act, 1963. The learned counsel further contends that, only because false and frivolous complaint is filed against the board of directors that would not be a ground to deny the extension of the terms. The Act, 1963 does not discriminate grant of extension on the ground that enquiry is pending. The petitioners are not at all held guilty of any charges. The respondents have issued circular extending the term of the board of directors on account of prohibition imposed by the State in holding the election of the A.P.M.C. to all the Board of Directors of A.P.M.C. except where enquiries are pending. The said circular does not stand reason.

5. The learned counsel further submits that, on 10.07.2020 the State Government issued resolution thereby resolving that, due to Covid-19

pandemic the elections are not possible and for six months the elections are postponed and extension was granted to the Managing Committee. Subsequently, fresh policy decision is taken extending the elections further. The learned counsel further submits that, the charges framed against petitioners in an enquiry are frivolous. No allegations and misappropriation appear. Some allegations of irregularities are made, which also are inconsequential and does not lead to the guilt of petitioners.

6. The administrative action of respondent is discriminatory. The equals are treated unequally. The Court will apply the principles of proportionality. The learned counsel relies on the judgment of the Apex Court in a case of **Om Kumar Vs. Union of India** reported in 2001 (2) SCC 386 and another judgment of the Apex Court in a case of **U. P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra & Anr.** reported in 2008 (10) SCC 139.

7. The learned counsel relying upon the judgment of the Division Bench of this Court in the case of **Babasaheb Apparao Akat and Others Vs. State of Maharashtra and Others** reported in 2010 (2) Bom. C.R. 578 submits that Section 15(A) of the Act, 1963 does not contemplate automatic cessation of office of the members of the Committee whose term has expired. In the said case, the Court extended the term as the elections could not be held before the expiry of the term for no fault of the present

Committee. The State Government is obliged to extend the term upto one year in aggregate. He also relies on the another judgment of this Court in the case of **Shaikh Burhan Shaikh Mannu Vs. State of Maharashtra and Others** reported in 2003 (2) **Mh.L.J. 861**. The learned counsel also relies on the judgment of the Division Bench of this Court in the case of **Bhagwan Sampatrao Ghodmare and Another Vs. State of Maharashtra and Others** reported in 2017 (4) **AIR Bom R 688** and the judgment of the Division Bench of this Court in **Writ Petition No. 7513/2016** dated 09.08.2016.

8. The learned A.G.P. submits that, the term of the board of directors expired on 04.08.2020 and the administrator was appointed on 05.08.2020. The petitioners challenged the said order by filing Writ Petition No.5164/2020 rejecting the application for extension of the term of the board of directors. This Court set aside the orders, as reasons were not given. The authority thereafter granted opportunity of hearing to petitioners and considering that, there are complaints against the members of the board of directors of the petitioners, so also the enquiry report. The respondent no.2 passed reasoned order on 04.05.2021 rejecting the proposal for extension of the board of directors. There are serious complaints about the mis-utilization of funds of more than Rs.88 crores by petitioners in the affairs of Market Committee. The enquiry was directed to be made by

respondent no.4 and submit the report. The respondent no.4 under order dated 21.09.2020 ordered enquiry under Section 40(A) and (B) of the Act, 1963. Three members committee headed by the Deputy Registrar Co-operative Societies, Taluka Aurangabad was appointed. The three members committee made an enquiry and final report is submitted on 19.03.2021 observing that petitioners have committed irregularities in the affairs of respondent no.5-Market Committee. Considering the serious allegations made against petitioners and irregularities found in the enquiry report the proposal for extension was rejected and thereafter, the respondent no.4 is appointed as Administrator. The discretion has been properly exercised by the Government. To get the extension is not vested right of petitioners nor is fundamental right. The learned A.G.P. relying upon the judgment of the Apex Court in the case of **Narayan Govind Gavate and Others Vs. State of Maharashtra and Others** reported in (1977) 1 SCC 133 submits that formation of opinion is subjective matter. The authority was acting within the scope of its powers and had some material, however meager, on which it could reasonably base its opinion, the Courts may not interfere. In the present case the enquiry was before the authority, wherein petitioners are indicted of committing irregularities.

9. Mr. Suryawanshi, learned counsel for respondent no.5 submits that, it is not obligatory

on the part of the Government to extend the term of the A.P.M.C. further period of five years. The learned counsel relies on the judgment of the Division Bench of this Court in the case of **Udhav Shalikram Geete Vs. State of Maharashtra and Others** reported in 2014 (1) Mh.L.J. 879. He also relies on the judgment of Division Bench of this Court at Nagpur Bench in **Writ Petition No.4488/2017** with connected writ petitions dated **January 16, 2018**.

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

11. The factual matrix is not disputed. The petitioners are some of the members of board of directors of respondent no.5-Market Committee. The term of the board of directors came to an end on 04.08.2020. On or about 10.07.2020, the State Government issued resolution thereby postponing the elections for six months. The petitioners sought extension of their term. The said request was initially rejected by respondents on 23.07.2020. The petitioners approached this Court by filing Writ Petition No.5164/2020 and praying to quash and set aside the letter dated 23.07.2020. The petitioners also sought extension of their term on 05.08.2020. The respondent no.4 was appointed as administrator. The said order was also challenged. This Court under judgment and order dated 01.03.2020 allowed the Writ Petition bearing Writ Petition No.5164/2020 filed by petitioners thereby set aside the order rejecting the application for

extension predominantly on the ground that, no reasons are given by the authority while rejecting the application of petitioners and authority was directed to reconsider the proposal for extension of time and the grounds set out by petitioners. It appears that, thereafter opportunity of hearing was given to petitioners and under impugned order dated 04.05.2021 rejected the proposal for extension of the term of board of directors of respondent no.5 and under order dated 07.05.2021 appointed respondent no.4 as administrator. During the pendency of the present writ petition in place of Administrator, the authority appointed the board of administrators of private persons under order dated 22.07.2021 and permission was sought to amend the petition by filing Civil Application No.6036/2021. The Court observed that, all further process would be subject to the decision in the present Writ Petition.

12. It further appears that, the State Government has taken a policy decision to postpone the election up to 23.10.2021 of the A.P.M.C. on account of prevailing Covid-19 pandemic and further extended the term of the Managing Committee of the board of directors of A.P.M.C. against whom enquiries are not pending. The said policy decision it appears is taken under its general order dated 22.04.2021.

13. The State and its Authorities have power and discretion to grant extension to the term of

the board of directors of A.P.M.C. under circumstances detailed under Section 14 of the Act, 1963. For ready reference provisions are reproduced 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, disqualification for being chosen as, and for being a member, the right to vote, the payment of deposit and its forfeiture, the determination of election disputes and all matters ancillary thereto including provision regarding election expenses.

[(2)-----.]

- (3) Except as otherwise provided in this Act, the members of a Market Committee (not being a Committee constituted for the first time) shall hold office for a period of [five years], and the members of a Committee constituted for the first time shall hold office for a period of two years:  
[Provided that, the Market Committee constituted for the first time, may be replaced by the Government and the new Committee so replaced shall hold office for the remainder of the period:]  
[[Provided further that], where the general election of members of a Committee could not be held for reasons beyond the control of the Committee before expire of the term of office of its members as aforesaid, the State Government may, by order in the *Official Gazette*, extend from time to time, the term of office of any such Committee, so however, that the period for which the

term of office is so extended shall not exceed the period of one year in the aggregate.]

[.....]

[(3A)Where due to scarcity, draught, flood, fire or any other natural calamity or rainy season or any election programme of the State legislature or the Parliament or a local authority, coinciding with the election programme of any market Committee or such other special reasons, in the opinion of the State Government, it is not the public interest to hold elections to any Market Committee, the State Government may, notwithstanding anything contained in this Act or in any rules, or bye-law made thereunder, or any other law for the time being in force, for the reasons to be recorded in writing, by general or special order, postpone the election of any Market Committee for a period not exceeding six months at a time which period may further be extended, so, however, that the total period shall not exceed one year in the aggregate.]

[(4)(a)As soon as possible, after the result of any by-election or, subject to the provisions of sub-clause (b), all the results of the general election, are available, [the State Co-operative Election Authority] shall publish or caused to be published the name or names of, elected member or members of a Committee in the *Official Gazette* and also in a newspaper in the Marathi language circulating in the market area. The publication of the name or names in a newspaper as aforesaid shall, for the purposes of this section, be deemed to be sufficient publication of the name or names of the elected member or members of the Market Committee.

(b) If a a general election the names of any persons to be elected under sub-

section (1) or (1A) of Section 13 cannot for any reasons be published as aforesaid, and if with the available election results, the Committee will consist of not less than twelve members, then [the State Co-operative Election Authority] shall publish the names of these members in the *Official Gazette* and also in a newspaper as aforesaid.

- (c) As regards the remaining elections, [the State Co-operative Election Authority] shall subsequently publish the names of members in the like manner as and when the results of such elections are available, or as the case may be, on failure to elect, the names of persons duly appointed under sub-section (2), if any.
- (d) After every general election, upon the publication of the names of all the members of the Committee under clause (a), or as the case may be, the publication of such names as would render the Committee to consist of not less than twelve members as aforesaid, in a news paper under this sub-section the Market Committee shall be deemed to be duly constituted.]

14. Proviso to Sub-section 3 of Section 14 of the Act, 1963 provides that, the members of the Market Committee shall hold the office for a period of five years. It further provides that, where the general election of members of a committee could not be held for reasons beyond the control of the Committee before expiry of the term of office of its members as aforesaid, the State Government may, by order in the *Official Gazette*, extend from time to time, the term of office of any such Committee,

so however, that the period for which the term of office is so extended shall not exceed the period of one year in the aggregate.

15. Section 3(A) of Section 14 provides that, where due to scarcity, drought, flood, fire or any other natural calamity or rainy season or any election programme of the State Legislature or the Parliament or a local authority, coinciding with the election programme of any Market Committee or such other special reason, in the opinion of the State Government, it is not in the public interest to hold elections to any Market Committee, the State Government may, notwithstanding anything contained in this Act or in any rules, or bye-law made thereunder, or any other law for the time being in force, for reasons to be recorded in writing, by general or special order, postpone the election of any Market Committee for a period not exceeding six months at a time which period may further be extended, so, however, that the total period shall not exceed one year in the aggregate.

16. There cannot be any debate that, since 24.03.2020 the entire nation is undergoing through torrid time because of Covid 19 pandemic. For many months the majority of the work in the nation was at standstill. The cause for not holding the election or postponing the election of the Market Committee can be one construed under Sub-section 3(A) of Section 14 of the Act, 1963. Under Section 15(A) of the Act, 1963 powers are given to appoint

the Administrator or the Board of Administrators after the term of the Market Committee has expired and that further upon the expiry of term or extended period of term they shall cease to hold and vacate their offices as members or otherwise. The power has been given to the State to extend the term in certain exigencies and contingencies. Embargo is placed on the length of the period of extension viz. it shall not be more than one year in aggregate.

17. The term of petitioners came to an end on 04.08.2020. One year from 04.08.2020 has also come to an end. The maximum period for which the extension could have been granted under the proviso to Sub-section 3(A) of Section 14 of the Act, 1963 has also expired. The present situation arisen due to the Covid-19 pandemic is an extraordinary situation. It can be construed as the supervening circumstances/situation beyond control of the normal human being, thereby making impossible to hold the election in this period. The State Government was also conscious of this fact and so under policy decision from time to time extended the period for holding the elections. At present the said period is extended upto 23.10.2021. Under the said policy decision the State has ordered that, the Managing Committee against whom the enquiries are pending would not get the extensions of their term.

18. Right to hold the office as a member of board of directors is not fundamental right, but is

merely a statutory right. Dehors the statute, the petitioners do not have a right to hold the office and to continue in the office. Once the term of Managing Committee has come to an end, it is discretion of the State/Authority to grant extension. No doubt, the said discretion is not a ordinary or unregulated discretion, but discretion to be exercised judiciously, reasonably and the same should not smack of arbitrariness. In this case, the Administrator was appointed immediately after rejecting the application of the petitioners for extension of the term and subsequently Administrative Committee is appointed.

19. The reasons for not extending the term of the Managing Committee of respondent no.5-A.P.M.C (The petitioners are some of the members of the board of directors) is that, the complaint was received from the agriculturist that, the board of directors have committed illegalities in expending Rs.88.33 crores. The Enquiry Committee is constituted as per Section 15(3) and 40 (A and B) of the Act, 1963 under order dated 21.09.2020. On 19.03.2021 the enquiry report is submitted by the Enquiry Committee and the report indicates that the irregularities are committed by the board of directors and they have also transgressed the by-laws. The extravagant expenses have been made as per the enquiry report and for said reason the extension has been refused. In the present case, this Court would not sit in an appeal over the

enquiry report, nor this Court would consider the extent of the sufficiency of material nor it would be appropriate to give any findings in respect of the enquiry report, as same may prejudice either of the parties. The Apex Court in the case of **Narayan Govind Gavate and Others Vs. The State of Maharashtra and Others** (supra) has observed that once the Court comes to the conclusion that the authority concerned was acting within the scope of its powers and had some material, however meager, on which it could reasonably base its opinion, the Courts should not and will not interfere.

20. In the present case, this Court would interfere, if, the discretion exercised by the respondent is arbitrary and/or administrative action is discriminatory and/or equals are treated unequally, thereby invoking Article 14 of the Constitution of India as is held by the Apex Court in the case of **Om Kumar Vs. Union of India** (supra) and **U. P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra & Anr.** (supra) referred to by the learned counsel for petitioners. In a case of **Babasaheb Apparao Akat and Others Vs. State of Maharashtra and Others** (supra) the Authority sat over the proposal for extension of the term instead of first considering the said proposals, after lapse of about five months from the submission of the proposals proceeded to straightway appoint Administrator to take over the affairs. In the present case after rejecting the application of

petitioners for extension, the Administrator is appointed. In a case of **Shaikh Burhan Shaikh Mannu Vs. State of Maharashtra and Others** (supra) the Division Bench of this Court held that, for failure of the Collector to hold the elections, the elected body should not suffer and the Market Committee was directed to hold the election. In a case of **Shivaji Krishnaji Bhalerao Vs. State of Maharashtra & Others** reported in 2008 (6) AIR Bom R 291 this Court directed respondent no.3 therein to act as Administrator, as it could not be shown that the Committee took steps to hold the election during the extended term also. In a case of **Bhagwan Sampatrao Ghodmare and Another Vs. State of Maharashtra and Others** (supra) the Division Bench of this Court observed that, public interest is the sine-qua-non to take recourse to power under section 14(3-A) of the Act, 1963.

21. In the present case, the enquiry report indicts the petitioners for irregularities committed during their term. The policy decision is taken by the State that, the board of directors against whom no enquiry is pending shall not be granted extension. The board of directors against whom no allegations are made of any erroneous conduct cannot be said to be on par with those board of directors against whom allegation are made and who are indicted for the irregularities. It cannot be said that, equals are treated unequally. The board of directors of A.P.M.C. conducting affairs

adhering to the rules, regulations cannot be treated on par with those who did not conduct the affairs of the A.P.M.C. in accordance with the statute, rules and/or committed affairs in flagrant violation of rules and the statute and/or bye-laws. The ground of discrimination as such cannot be raised nor it can be said that such a decision is arbitrary or unreasonable and/or disproportionate with the object to be achieved. The impugned order as such cannot be faulted with.

22. The respondent had initially appointed the Administrator and during the pendency of the writ petition has substituted the Administrator with the Board of Administrators and/or the Administrative Committee. The Administrative Committee consists of private persons. The same is also assailed. We had observed that, the said appointment is subject to the decision in the present writ petition. The necessity to replace the Administrator with the Board of Administrative Committee of private person is not specified in the order. The appointment of Board of Administrators cannot be for the purpose of political rehabilitation. The Administrator was already functioning. The order appointing the Administrative Committee does not spell out that, the Administrator was not functioning properly. The State Government had already exercised its discretion in appointing the Administrator. No reason appears in the order appointing Administrative Committee of private persons for

dislodging the Administrator. In normal course the Administrator ought to have been allowed to function. Of course, unless there are some allegations against him, the replacement by Administrative Committee of private person in place of the Government personnel as Administrator ought not to be for political rehabilitation. The Administrative Committee is also constituted of twelve persons. The order also further states that, the persons who are members of the Administrative Board/Committee against whom criminal cases are pending, their appointments would be subject to the decision of the Court. We fail to understand the rational for the same. On one hand board of directors are not granted extension against whom enquiries are pending and on the other hand members against whom criminal cases are pending there appointments are made subject to the decision of the Court. Such decision lacks rational and creates doubt about the intentions rather fortifies that appointing persons against whom cases are pending to the Administrative Committee is for political rehabilitation. The said aspects also needs to be considered by the Government in right perspective. As we have not interfered with the order rejecting application for extension of the term of the Managing Committee, the subsequent orders of appointment of Administrator or Administrative Committee is not required to be dealt with.

23. Writ Petition, as such stands dismissed,  
however, with no orders as to costs.

**(R. N. LADDHA)**  
**JUDGE**

**(S. V. GANGAPURWALA)**  
**JUDGE**

Devendra/September-2021