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

WRIT PETITION NO.6399 OF 2021

Sunil Vanilal Bhavsar & ors.

..PETITIONERS

VERSUS

The State of Maharashtra & ors.

..RESPONDENTS

....

Mr P. V. Barde, Advocate for petitioners;

Mr D. R. Kale, G.P. for respondents/State;

Mr S. V. Dank, Advocate for respondent No.4;

Mr S. R. Patil, Advocate for respondent No.5;

Mr A. B. Kadethankar, Advocate for No.6

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 25th May, 2021

PER COURT:

1. By this petition, the petitioners have put forth prayer clauses (A) and (B), which read as under :-

“A] By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon’ble High Court may be pleased to direct the Respondent Nos.1 to 3 to restrain Respondent Nos.4 to 6 from conducting elections in pursuance to the election programme dated 12.05.2021 (Annexure-E).

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B] By issuing appropriate writ, order, direction or any other appropriate order in the nature of writ, the Hon'ble High Court may be pleased to quash and set aside the order dated 10.05.2021 (Annexure-D) and election programme dated 12.05.2021 (Annexure-E).

2. We have heard the learned Advocate for the petitioners, the learned Government Pleader on behalf of respondent Nos.1, 2 and 3 and the learned Advocates on behalf of respondent Nos.4, 5 and 6.

3. The issue raised before us is as regards the Trade Union elections to be held in accordance with the Indian Trade Unions Act.

4. We find from a communication dated 05/05/2021 by the Deputy Registrar, Trade Unions, Nasik to the President of respondent No.5 – Union, that the Deputy Registrar had informed the President of the Union that as the Maharashtra State Government had issued specific orders dated 13/04/2021 and 29/04/2021 (break the chain), vide which strict lock-down restrictions were imposed, the Union should approach the District Collector, Jalgaon for guidance.

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5. Respondent No.5 – Union then approached the District Collector, Jalgaon, vide its representation dated 07/05/2021, seeking permission to hold elections during the COVID-19 lock-down period. By communication dated 10/05/2021, the District Collector listed out six conditions to be followed if the election is to be held. He, however, has made a mention in the said communication that, if these conditions are followed, he would be according permission to hold the elections. Subsequently, a group of workers who are members of the same Union, moved a representation dated 13/05/2021 to the District Collector, requesting for postponement of the elections as the COVID-19 Pandemic was spreading and the positivity rate was growing. After noticing the said situation, the Additional District Collector, Jalgaon addressed the Deputy Registrar, Trade Unions Act, 1926, Nasik Division, vide his communication dated 18/05/2021 and clarified that the office of the District Collector does not have any authority to monitor Trade Unions elections under the Trade Unions Act. It is the office of the Registrar, Trade Unions, which is competent to take a decision as to whether elections should be held or not. It was further clarified that the office of the District Collector has not granted any permission to enable respondent No.5 to conduct elections which are

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held once in three years. He, therefore, left the decision with the Registrar, Trade Unions.

6. It is, in this backdrop, that the District Collector, though earlier had imposed conditions if elections were to be held, has subsequently clarified vide his communication dated 18/05/2021, addressed to the Deputy Registrar, that the office of the District Collector had not granted any permission for holding elections during the enforceability of the lock-down restrictions, prohibiting people from gathering together, for performing any function or ceremony. It is thus obvious that there is no permission to hold the Union elections.

7. In the light of the above, we called upon the learned Advocate for the Company to state as to whether manufacturing activities being conducted during lock-down restrictions, are likely to be affected if the elections are not held. He submits that this is between the Union and it's members and the management has no role to play, save and except, allotting an area in the factory premises for the polling of the votes. He further submits that the company has unfortunately lost three workers due to COVID-19 infection, who were the member of

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respondent No.5 – Union and there are three more workers who are presently under treatment and two positive patients are under home quarantine treatment.

8. We are called upon the learned Advocate for respondent No.5 – Union to state, whether he could make a statement for consenting to the postponement of the elections so as to ensure that the health of the members of the Union is not put at risk by holding elections. The learned Advocate submits on instructions, that the Union desires an order from this Court.

9. We are aware of the lock-down restrictions clamped by the State of Maharashtra, vide its order dated 13/04/2021 so as to ensure the “break the chain” objective is achieved. We do not find that heavens would fall if the Union elections are not held though the term of the existing elected body is to technically expire on 25/05/2021. These are unprecedented situations and this country is facing a challenge to the health of its citizens. It is the responsibility of the every citizen to take care of his health and safeguard the health of all other citizens as well. If the Union elections are permitted and if, for any reason, a few

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voters report positive post elections, and if this unfortunately leads to loss of life, the entire blame would be on those office bearers of respondent No.5 – Union, who are desirous of holding the elections despite such a challenging situation. In such an unfortunate situation, the blame game may continue, but the loss of human life can never be recovered.

10. We are aware that the provisions of the Indian Trade Unions Act do not mandate the Union from seeking the permission of the District Collector for holding Union elections. However, considering the provisions of the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897, certain restrictions are imposed on the general public and the State Government has issued an order on 13/04/2021, prohibiting all functions, ceremonies, celebrations, gatherings, etc, during the applicability of the lock-down restrictions.

11. In this situation, we are of the considered view that the District Collector as well as the Deputy Registrar, Trade Unions, have rightly taken a stand of not permitting the elections to be held on 26/05/2021. Respondent No.5 is conveniently mis-interpreting the context in which

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the Deputy Registrar, Trade Unions had addressed the Union vide his communication dated 05/05/2021 and the clarificatory letter by the Additional District Collector, Jalgaon, dated 18/05/2021. In the absence of any permission to conduct Trade Union elections in the backdrop of strict COVID-19 lock-down restrictions, we deem it appropriate to restrain respondent No.5 – Union from conducting Trade Union elections. The learned Advocate representing respondent No.6 submits that the Returning Officer would abide by the order of this Court.

12. In view of the above, this petition is allowed. We direct respondent Nos.5 and 6 to refrain from holding Union elections on 26/05/2021. After lock-down restrictions are lifted and no embargo under the Disaster Management Act and the Epidemic Diseases Act is in force, respondent Nos. 4 and 5 would be at liberty to proceed to hold elections, strictly in accordance with the provisions of the Trade Unions Act.

13. Since this order is dictated in open Court and the same has been noted by the learned Advocates representing respondent Nos.4 to 6,

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they shall comply with the above directions without waiting for a copy of this order to be delivered to them or being uploaded on the official website of the Bombay High Court.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)

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