

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8943 OF 2021

LAXMIBAI VISHWANATH GAWARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Mr. A.S. Deshpande
AGP for Respondent Nos. 1 to 4 : Mr. A.S. Shinde
Advocate for Respondent No. 5 : Mr. S.K. Kadam
Advocate for Respondent Nos. 7 to 10 : Mr. P.D. Bachate
Advocate for Respondent Nos. 11, 13, 14, 16 : Mr. Nitin Jagadale
a/w. Mr. V.D. Salunke

CORAM : C.V. BHADANG &
SANDIPKUMAR C. MORE, JJ.

DATE : 30 JUNE, 2022.

ORDER :

By this petition, the petitioner is challenging the order dated 24 February, 2021, passed by respondent No. 3 – District Deputy Registrar of Co-operative Societies, Vasmat, Dist. Hingoli, thereby, appointing three member Board of Government Administrators on the Agriculture Produce Market Committee (APMC), Vasmat, District Hingoli. The petitioner is also challenging the subsequent order dated 10 August, 2021, by which, the District Deputy Registrar, in modification of the earlier order passed has appointed a Board of Administrators consisting of ten individuals as set out in the said order who are the private respondents herein. Incidentally, the petitioner is

also seeking extension of the existing Board of Directors of the Market Committee, till regular elections are held.

2. We have heard the learned counsel for the parties and perused record.

3. Learned counsel for the petitioner submits that in view of the pandemic initially the elections to the said Market Committee were postponed and by a subsequent order dated 22 April, 2021, there was a further extension granted. In the meantime by the impugned order dated 24 February, 2021, the Board of Administrators consisting of three Government Officers came to be appointed for Management of the said Market Committee and by the second order dated 10 August, 2021, the same has been modified to include the private respondents on the Board of Administrators.

4. The first contention on behalf of the petitioner is that there was an application sent for extension of the period / tenure of the existing elected Market Committee, of which, the petitioner was one of the members and the said proposal was forwarded by the Director of Marketing to the State Government. It is submitted that pending consideration of the said proposal, the Board of Administrators, could not have been appointed. For this purpose, reliance is placed on Section 14 (3) and 14 (3A) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ('the Act' for short).

5. Secondly, it is submitted that the District Deputy Registrar was not justified in further modifying the order dated 24 February, 2021, so as to include the private respondents on the Board of Administrators. This, according to the petitioner, has been done for political reasons.

6. Lastly, it is submitted that the Board of Administrators is not expected to take policy decisions and certain policy decisions are being taken by the Board of Administrators, for which purpose the learned counsel has tendered a copy of the advertisement dated 11 November, 2021, inviting tenders for certain construction in the main Market Committee yard. Except these there are no other contentions raised.

7. Learned AGP has submitted that all the members of the Market Committee have not joined as petitioners and petitioner was only one of the members of the Market committee. It is, further, submitted that there is no right which inheres in the petitioner or the Board of Directors to claim extension or to challenge the appointment of the Board of Administrators as the State Government is competent to appoint such Board in view of the provisions of Section 15-A of the said Act. It is next submitted that admittedly, the tenure of the members of the Market Committee expired on 21 February, 2021, after which the petitioner or any other members of the Market Committee have no right to question the appointment of the Board of Directors. Learned AGP has pointed out the order passed by this Court in a batch of Writ Petition Nos. 11669/2021 and others on 18

November, 2021, directing respondent No. 5 in the present petition to conduct the elections of the Primary Agricultural Societies and thereafter, all the APMCs in the state expeditiously and in a time bound manner.

8. Learned counsel appearing for respondent No. 5 has filed an affidavit stating that in so far as the APMC, Vasmath, is concerned there are in all 59 Primary Agricultural Credit Co-operative Societies in Market area whose elected Directors are eligible to be voters for APMC elections. It is pointed out that out of the 59 Primary Agricultural Credit Societies, election to 56 Societies has been completed. The election of two societies was scheduled on 3 July, 2022, and the remaining one society is scheduled on 7 August, 2022. It is pointed out that it is only after the completion of election to the Primary Agricultural Credit Co-operative Societies, the voters list for election of APMC can be finalized, after which, the elections will be held in accordance with the time frame as provided under the Act and the rules framed thereunder.

9. We have carefully considered the rival circumstances and the submissions made and we do not find that a case for interference is made out.

10. At the outset it is necessary to note that out of the 18 members of the Market Committee, it is only the petitioner who has approached this Court questioning the appointment of the Board of

Administrators. Be that as it may, in so far as the first contention about the extension is concerned, it is undisputed that the tenure / period of the then elected body, of which, the petitioner was one of the members, has expired on 21 February, 2021. The record discloses that there was a proposal for extension which was forwarded by the Director of Marketing to the State Government.

11. However, Section 14 of the Act of 1963, which is relevant for the purpose reads thus :

“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 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, 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 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.]

It can thus be seen that it is in the discretion of the Government to grant such extension, Sub-Section 3 A of Section 14 would indicate that total period of such extension cannot exceed one year in the aggregate. Thus, even assuming that the extension could have been granted, considering the fact that the tenure of the existing body expired on 21 February, 2021, the maximum extension which is permissible under Sub-Section 3 -A of Section 14 could be upto February, 2022. Thus, the prayer for grant of any extension cannot be considered in view of the specific statutory provisions, as for the present it is beyond the maximum permissible period.

12. This takes us to Section 15 – A of the Act, which reads thus :

“15A. Provision for appointment of Administrator after normal or extended term of office of members expires.

(1) Notwithstanding anything contained in sub-section (3) of section 15 or any other provisions of this Act, where

the term of office of two years, five years, or as the case may be, the extended term of office, if any, under the proviso to sub-section (3) of section 14 of the members of any Market Committee, has expired, the Director or any officer not below the rank of the District Deputy Registrar of Co-operative Societies, authorised by him shall, by order in writing, direct that –

(a) all members of the Committee shall, as from the date specified in the order ceased to hold and vacate their offices as members or otherwise; and

(b) [the Administrator or the Board of Administrators of not more than seven members appointed by the Director or such authorised officer shall manage the affairs of the Committee], during the period from the date specified in the order upto the day on which the first meeting of the reconstituted Committee after the election is held, where there is a quorum (hereinafter in this section referred to as “the said period”). Such election shall be held within a period of six months from the date the Administrator or the Board of Administrators assumes office :

[Provided that, this period of six months may be extended, from time to time by the State Government, in

exceptional circumstances, to a period not exceeding one year in the aggregate, by notification in the Official Gazette, for reasons, which shall be stated in the notification.]

[(1A) Notwithstanding anything contained in clauses (b) of sub-section (1) as it stood before the commencement of the Maharashtra Agricultural Produce Marketing (Regulation)(Amendment and Validation) Act, 1985, where the Administrator has been to manage the affairs of any Committee but election to such Committee has not been held within a period of one year as required under clause (b) of sub-section (1), the period of holding election to such Committee shall be extended and shall be deemed always to have been extended upto, and inclusive of, the 31st day of March, 1986.]

(2) During the said period, all the powers and duties of the Committee and its various authorities under this Act and the rules and bye-laws made thereunder or any other law for the time being in force shall be exercised and performed by the Administrator or the Board of Administrators.

(3) The Administrator or the Board of Administrators may delegate any of his powers and duties to any officer

for the time being serving under him or under the Committee.

(4) The Administrator or the members of the Board of Administrators shall receive such remuneration from the Market Fund as the director or authorised officer may, from time to time, by general or special order, determine.”

It can thus be seen that under Section 15 – A, the State Government has power to appoint an Administrator after the normal or extended term of the office of the members expires. The District Deputy Registrar in exercise of the powers under Section 15 – A and the communication dated 27 April, 1995, from the Director of Marketing had appointed a three member Board of Administrators of Government Officers which has subsequently, been modified to the Board of Administrators of the private respondents by order dated 10 August, 2021. The contention that it was not open to the District Deputy Registrar to modify the earlier order also cannot be accepted as the perusal of the order dated 10 August, 2021, shows that it was in pursuance of a letter dated 1 June, 2021, initially by the Director of Marketing and a letter from the State Government in the Co-operative Marketing and Textile Department dated 1 June, 2021.

13. The record also discloses that the election process as has been directed by this Court in Writ Petition No. 11669/2021 is in final stage in so far as the APMC, Vasmath, with which, we are presently

concerned. Only election to three out of the 59 Primary Agricultural Credit Co-operative Societies, remains to be held which is also scheduled to be held in July / August, 2022.

14. In that view of the matter, we do not find that in case for inference is made out. It is appropriate and advisable that the elected body takes over the Management of the APMC at the earliest. In such circumstances, we decline to entertain the petition, which is, accordingly dismissed, with no order as to costs.

SANDIPKUMAR C. MORE, J.

C.V. BHADANG, J.