

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9996 OF 2022

LAHU KASHINATH PATIL
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND
OTHERS

...

Mr. V. D. Hon, Senior Advocate i/by Mr. A. V. Hon,
Advocate for the Petitioner.

Mr. S. G. Karlekar, AGP for Respondents-State.

Mr. S. K. Kadam, Advocate for Respondent Nos.3 and
4.

...

CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.

DATED : 18th OCTOBER, 2022.

PER COURT:-

1. On 30.09.2022, we had passed the following
order:-

"1. These petitioners are identically placed.
The petitioner in the first petition has put
forth prayer clauses B and C:-

"B) Issue a writ of mandamus or writ in
the nature of mandamus to respondents
nos.3 and 4 to forthwith take necessary
steps for declaring the election
programme for electing the managing
committee members of Dhule Sahakari
Kharedi Vikri va Prakriya Society
Limited.

C) Issue a writ of prohibition or writ
in the nature of prohibition to the
respondents authorities of the State
Government from appointing the

administrator/administrative board for managing the affairs of Dhule Sahakari Kharedi Vikri va Prakriya Society Limited."

2. Issue notice to the respondents, returnable on 17.10.2022. The learned AGP waives service of notice on behalf of respondent Nos.1, 2 and 5.

3. List this petition on 17.10.2022 for "disposal".

2. We have considered the strenuous submissions on behalf of the petitioner, the learned A.G.P. on behalf of the State and Shri. Kadam, learned advocate representing respondent nos.3 and 4.

3. The grievance of the petitioner as regards the suspension of the process of election is redressed by the fact that the election authorities are intending to hold election, phase-wise in accordance with the procedure laid down in law and in the peculiar backdrop of the Covid-19 pandemic. Though a specific date on which the elections would be held cannot be spelt out by the election authorities, it is stated that the path for holding

the elections phase-wise is now clear and the ban imposed by the State Government no longer continues as on date.

4. The learned senior advocate submits that the other grievance put forth in this petition is that Section 73(AAA)(3), second proviso, enables the continuation of the elected body beyond its elected term, if for some reasons, the elections are not held, inclusive of the possibility of the State postponing the elections if the non-holding of elections cannot be attributed to the conduct of the elected committee. He, therefore, submits that unless the elected committee is to be blamed for not holding elections or creating an embargo in the path of the elections, the committee would continue till further elections are held.

5. The learned A.G.P. strenuously opposes the petition on the ground that the 2nd proviso to Section 73(AAA)(3) was introduced by the Notification dated 20.01.2022. The tenure of the petitioner has expired on 01.07.2021. The

Notification gives effect to the proviso with retrospective effect from 02.11.2021. He, therefore, canvasses that the petitioner cannot rely on the said proviso.

6. Though the submissions of the learned A.G.P. could be well placed to the extent of the date of applicability of the proviso, it is an undisputed fact situation that the existing managing committee of the petitioner society, post expiration of their tenure on 01.07.2021, continues to officiate even today. Since it is officiating even today and a decision by the Government is not yet taken though the term expired on 01.07.2021, the balance of convenience would lie in favour of the petitioner. Considering Section 73(AAA)(3), we find that the said proviso would assist the petitioner to continue to officiate the petitioner's society until elections are held.

7. For the sake of brevity, Section 73(AAA) (3) and the second proviso, are reproduced hereunder:

"73AAA.

(3) The term of the office of the elected members of the committee and its office bearers shall be five years from the date of election and the term of the office bearers shall be co-terminus with the term of the committee. ¹[and on the expiry of the term of the committee, the members shall be deemed to have vacated their offices as members of the committee].

²[**Provided** that, if the election to the Committee of the society could not be held for any reason not attributable to the members of the Committee of such Society, the existing members of the Committee shall be deemed to have continued till new committee is duly constituted.]"

8. In view of the above, this petition is disposed off with the observation that the petitioner's elected Managing Committee would continue till the elections are held to the society, in the light of the second proviso below Section 73(AAA)(3) of the Maharashtra Co-operative Societies Act, 1960.

(SANJAY A. DESHMUKH)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE