

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

901 WRIT PETITION NO.12106 OF 2022

**BHOSALE DATTARAM MADHAVRAO AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH SECRETARY AND OTHERS**

...

Advocate for Petitioners : Mr. Suryawanshi Kamlakar J.
GP for Respondents/State : Mr. D.R. Kale
Advocate for R/2 & 3 : Mr. S.K. Kadam

...

AND

902 WRIT PETITION NO.12211 OF 2022

**MACHINDRA PANDURANG DHUMAL
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS**

...

Advocate for Petitioners : Mr. Kale Ajeet B.
GP for Respondents/State : Mr. D.R. Kale
Advocate for R/3 to 5 : Mr. S.K. Kadam
Advocate for R/6: Mr. Darshan Pokharkar

...

AND

922 WRIT PETITION NO.12509 OF 2022

**LEHENEWADI VIVIDH KARYAKARI SEVA SAHAKARI SOCIETY LTD.
THROUGH CHAIRMAN SUDHIR JAGANNATH RALEBHAT
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE SECRETARY AND OTHERS**

...

Advocate for Petitioner : Mr. Deshmukh Himmatsinh D
GP for Respondents/State : Mr. D.R. Kale
Advocate for R/2 & 3 : Mr. V.H. Dighe

...

**CORAM : MANGESH S. PATIL &
Y.G. KHOBRAGADE, JJ.
DATE : 13-12-2022**

PC. :-

Heard the learned advocates for the petitioners, the learned GP as also the learned advocate Mr. Kadam who appears for the State Cooperative Election Authority.

2. The petitioners in all these petitions have been challenging the order of the State Government dated 29.11.2022 thereby postponing the elections of the Cooperative Societies of Class 'A' and Class 'B' till 20.12.2022 in purported exercise of the powers under Section 73-CC of the Maharashtra Cooperative Societies Act, 1960 on the ground that the elections for the Gram Panchayat are being simultaneously conducted across the State.

3. We had heard the learned advocates on 09.12.2022 and had passed the following order:

“ The learned Government Pleader tenders across the bar the affidavit-in-reply.

2. Heard the learned advocates for the petitioners in all the three petitions as also the learned Government Pleader.

3. The petitioners are primarily aggrieved by the government decision notified on 29.11.2022, whereby in purported exercise of the powers under Section 73-CC of the

Maharashtra Cooperative Societies Act, 1960, the elections of Class 'A' and 'B' societies have been postponed at the stage at which they have reached till 20.12.2022. Ex-facie, the order is blanket one. The only exception made out is the Class 'C', 'D' and 'E' societies and the societies in respect of which, there are the directions of the High Court or the Supreme Court to hold the elections.

4. *An affidavit-in-reply has been filed on behalf of the State, which even does not try to objectively respond to the circumstances, which made the Government to take the decision to postpone the elections.*

5. *In the midst of the arguments, the learned advocate Mr. Kale, who appears for the petitioner in one of these petitions has tendered across the bar another government decision dated 02.12.2022, whereby, by referring to the self-same government decision which is under challenge in these petitions dated 29.11.2022 and by observing that the number of voters for a particular society is 441, the date for casting vote in respect of the elections to that society is 10.12.2022 and in the district in which that society is to conduct the election, the voting for the Grampanchayat elections is to take place on 18.12.2022 and further observing that none of the voters who would be casting vote for the society, would be deprived of their rights to participate in the Grampanchayat election, a relaxation has been granted from applicability of the government decision dated 29.11.2022 in respect of that individual society.*

6. *The order dated 02.12.2022 does not even refer to as to what reasons have prompted the Government to make out an*

exception for an individual society. We are concerned as to why on the similar lines the Government is not taking decision in respect of the very many other societies affected by the order dated 29.11.2022. If the decision in respect of this individual society could be taken objectively on certain parameters, the same exercise could have been done with equal promptitude even in respect of all the other societies.

7. *Since the Government Pleader submits that the order dated 02.12.2022 has been placed on record across the bar, he has no information and will have to take instructions, we adjourn these matters to 13.12.2022 to be placed in urgent category.*

8. *We expect the State to come out with a detailed affidavit addressing all the above observations.”*

4. Pursuant to the order the learned GP has tendered across the bar an affidavit to the effect *inter alia* that the elections of the Jalgaon Dudh Sangh were made an exception because on the very date of the impugned order i.e. 29.11.2022 the local MLA and representatives from Jalgaon district had put up a request with the Government pointing out the circumstances as indicated in our earlier order dated 09.12.2022 and in that view, by the subsequent order dated 02.12.2022 that Society-Jalgaon Dudh Sangh was permitted to go ahead with the scheduled election programme.

5. Pertinently, in spite of our specific directions as to why the Government was not applying the same parameters and taking decisions in respect of other societies across the State, the affidavit is conspicuously silent.

6. Assuming that the State Government does have a power in the peculiar facts and circumstances to invoke Section 73-CC to postpone the elections, if it could take a decision in respect of an individual Society on certain parameters, it was imperative that a similar decision could have been taken in respect of the other Societies as well. The conspicuous silence to address this issue in spite of our direction clearly brings the cat out of the bag. We have no hesitation in observing that the decision of the State Government and the promptitude shown in respect of an individual society on a request of a MLA is clearly indicative of the arbitrary manner in which the State Government has exercised the power.

7. Be that as it may, by the impugned order the State Government has taken a decision to postpone the elections by invoking the powers under Section 73-CC for the reason that the elections of the Gram Panchayats were coinciding with the elections of the Cooperative Societies. Going by the wording of the section, the word 'coincide' will have to be understood pragmatically to mean that the election programmes to some extent are over

lapping. It may not be understood with mathematical precision. The whole purpose of conferring the powers with the State Government to postpone the election in the circumstances is indicative of the legislative intent that depending upon the contingency there should be some leeway left with the State Government to exercise the power and postpone the election.

8. The submissions of the learned advocate for the petitioners that under the self same provision the State Government has been postponing the elections for last more than two and half years is certainly acceptable at the first blush. However, it is to be borne in mind that at this stage there is nothing before us and we have not been called upon to examine the legality or otherwise of the power exercised by the State for the reasons mentioned in those individual orders.

9. There is no dispute so far as facts are concerned that the elections of the Cooperative Societies of Group-A and B as well as the elections of the Gram Panchayats are being held during the same period may not be on exactly the same dates. If the State Government has reached a conclusion before passing the impugned order that happening of such elections simultaneously may create a law and order problem as is indicated in the impugned order as also would deprive the individuals from participating in

both the elections, in our opinion without there being a concrete statistics before us, is difficult to scrutinize.

10. Even otherwise the elections have been postponed till 20.12.2022. It implies that the State Cooperative Election Authority would be able to proceed and conduct the elections of the Societies from the stage at which they have reached, immediately after 20.12.2022. Mr. Kadam who appears for the authority on instructions submits that it is bound by the programme and would commence the elections of the Societies from the stage they have reached on 29.11.2022 from 21.12.2022 onwards depending upon the stage and the duration for completing each stage.

11. Considering all the aforementioned facts and circumstances, we deem it appropriate to dispose of the writ petitions by directing the State Cooperative Election Authority to resume the election process from the stage it has reached in respect of each of such Societies from 21.12.2022 onwards. The State Cooperative Election Authority shall publish the revised programme in respect of each of the Societies by 16.12.2022.

[Y.G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]