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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 44 OF 2022
IN
WRIT PETITION NO. 4545 OF 2018**

Popatrao Kautik Sonawane & Ors ...Applicants
Versus
Dilip Gopichand Pande & Anr ...Respondents

Mr Kishore Patil, *with Abhijit Patil, for the Applicants.*
Mr Amol B Jagtap, *i/b Abhijit Desai, for the Petitioners.*
Mr Dilip Bodke, *for Respondents Nos. 2 & 4.*
Mr SS Panchpor, AGP, *for the Respondent-State.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 15th March 2022

PC:-

1. This Interim Application is filed in a disposed of Writ Petition. In our view, what is sought is really in the nature of a clarification regarding an interim order that was obtained on 20th March 2018 from the Supreme Court.

2. We will briefly advert to the Affidavit in Reply filed by the State Government and the various orders for completeness. The 3rd Respondent is the Maharashtra State Bazar Samiti Sahakari Sangh

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Ltd, a Cooperative Society governed by the Maharashtra Cooperative Societies Act, 1960. The 1st Respondent is the State of Maharashtra. The 2nd Respondent is the Election Officer of the 3rd Respondent Society and the 4th Respondent is the State Cooperative Election Authority. The original Petitioners are two, one Dilip Pande and one Vijay Nathaji Khawas. The Applicants are candidates at the elections to the Managing Committee of the 3rd Respondent Society.

3. The Applicants contested the election. The previous Managing Committee's term ended on 13th February 2016. Pande and Khawas were members of the previous committee. They, too, contested the elections. Elections to the new committee were not immediately held because one of the committee members raised certain objections. This Court in Writ Petition No.12158 of 2015 passed an order on 8th August 2017 directing the 4th Respondent, the State Cooperative Election Authority, to conduct the elections to the Managing Committee of the 3rd Respondent. The State Cooperative Election authority declared the election programme on 12th February 2018. That election programme was published. The date for elections was fixed on 21st March 2018 and results were scheduled to be declared two days later on 23rd March 2018. It is at this point that Pande and Khawas, the original Petitioners, approached the Nagpur Bench of this Court in Writ Petition No.1500 of 2018. They challenged the constitutional validity of Section 73B and Section 73AAA of the Maharashtra Cooperative Societies Act on account of the deletion of the earlier reservations provided under Section 73B(1)(B) for economically backward category and also because the newly introduced Section 73A

provided that the Executive Committee of any Cooperative Society could not elect more than 21 members. Pande and Khawas sought a stay on the election process until the Writ Petition was finally decided. On 14th March 2018, a Division Bench of this Court, admitted Writ Petition No.1500 of 2018 but specifically declined interim relief. Pande and Khawas carried the matter to the Supreme Court in SLP (C) No.7280 of 2018. On this, the Supreme Court made an order on 20th March 2018 disposing of the SLP with a direction that the elections to the 3rd Respondent's Managing Committee scheduled for 21st March 2018 would be held—

“but the result shall not be declared and be kept in a sealed cover until all the Writ Petitions are decided finally by the High Court.”

4. The Supreme Court requested the High Court to decide that Writ Petition and all five other Writ Petitions together expeditiously or preferably within three months. Writ Petition No.1500 of 2018 by Pande and Khawas was the only one that pertains to the 3rd Respondent Society. The other Petitions, though they raised similar vires challenges, pertain to other societies. It so happens that the Writ Petition filed in Nagpur as Writ Petition No.1500 of 2018 came to be transferred to this Court on its Appellate Side, where it was renumbered as Writ Petition No.4545 of 2018, i.e. the present Writ Petition. On 27th September 2021, this Court disposed of Writ Petition No. 4545 of 2018 along with an accompanying Civil Application in the following manner:

“1. Perused the Application dated 14th September, 2021 filed by the Petitioners inter alia seeking permission of this Court to withdraw the above Writ Petition. Prayer clause

(ii) of the Application is not pressed. The Petitioner is allowed to withdraw the above Writ Petition and is disposed of as such. Interim order if any, stands vacated. Civil Application No.1450 of 2008 taken out by the Respondents also disposed of.”

5. Evidently, on its own this would have vacated any and every interim order that had come to be passed in the Writ Petition filed by Pande and Khawas, including, in our view, the interim order passed by the Supreme Court. We say this because the Supreme Court had disposed of the SLP and sent the Petition back to the Bombay High Court for an expeditious disposal. Accordingly the confirmation or vacating of the interim order was in the hands of this Court which alone then had seisin of any pending litigation.

6. Some of the candidates wrote to the 4th Respondent pointing out the withdrawal by Pande and Khawas of their Writ Petition and the order of 27th September 2021. The direction to them from the 4th Respondent was to obtain a clarification from the Supreme Court. This led to an order of the Supreme Court on 3rd December 2021 in Miscellaneous Application No. 1881 of 2021 filed in Pande and Khawas’s disposed of SLP No. 7280 of 2018. The Supreme Court requested the High Court to dispose of the application and not merely on the ground that the applicant was not a party or that the Writ Petition was withdrawn. The application before the Supreme Court was disposed of in these terms.

7. Civil Application No. 1450 of 2018 was one filed by the Applicants for intervention in the present transferred Writ Petition No. 4545 of 2018.

8. It is with this background that the Applicants, candidates at the election of the 3rd Respondent society, but the results of which are yet in sealed cover, have approached us seeking the following reliefs:

“(a) Allow the Interim Application seeking direction do declaration of the result of election of Maharashtra State Bazar Samiti Sahakari Sangh Ltd, Pune that was held on 23.03.2018;

(b) Direct Respondent No.4 State co-operative election authority to complete the counting of a votes for the election held on 23.03.2018 and declare the result.”

9. The grounds taken in paragraph 15 at pages 8 to 10 from sub-clause (a) to (f) read thus:

“a) that originally the aforesaid Writ Petition 1500 of 2018 which was renumbered as 545 of 2018 after getting transferred to Bombay Bench, was filed challenging the election program of Respondent no.3 society. The same was heard and admitted on 14.03.2018 but while doing so Hon’ble High Court did not grant any interim relief.

b) The Petitioner thereafter challenged the said order before Hon’ble Supreme Court. As there were some earlier petitions wherein similar reliefs were granted, the hon’ble Court granted similar relief and stayed the declaration of result of subject election and requested this Hon’ble Court to decide the same.

- c) That now the same writ petition is been withdrawn and hence accordingly disposed of by way of its order dated 27.09.2021, the prayers of petitioner do not survive.
- d) That rest of the petitions that are filed are for different Co-operative societies and none is for the subject Maharashtra Bazar Samiti Sahakari Sangh Ltd Pune.
- e) That hence currently no petition is pending challenging the election of said subject Maharashtra Bazar Samiti Sahakari Sangh Ltd Pune.
- f) That the order dated 14.03.2018 passed by Hon'ble Supreme Court was passed in Writ Petition 4545 of 2018 which is now withdrawn."

10. For completeness we now turn to paragraph 7 of the Affidavit in Reply filed by the Respondent No.4, the State Cooperative Election Authority. This contains what we believe is a fair statement having regard to the facts and circumstances of the case. The relevant paragraph 7 reads thus:

"7. I say that in view of the above said directions is issued by the Hon'ble Apex Court the returning officer i.e. Respondent No.2 did not conduct the counting and he did not declare the results of the Respondent No.3 society. However if this court issues such directions the returning officer will proceed further with the counting and declare the result as per the scheduled election program."

11. We are, however mindful of the Supreme Court order of 3rd December 2021 which specifically directs that the Interim Application is not to be decided merely on the basis that the parent Writ Petition was withdrawn. It is therefore not sufficient for us to merely say, even though we have observed so in passing, that with

the withdrawal of the Petition all interim orders stood vacated. The order on withdrawal made on 27th September 2021 specifically says so.

12. As regards the merits of the case, it may simply be stated that there is no opposition from any quarter to the elections of the 3rd Respondent Society at any level any longer. The challenge to the vires of certain sections of the amended Cooperative Societies Act may survive for decision in other Writ Petitions but it is not pressed in the present Writ Petition. The consequence is that even according to Pande and Khawas, the original Writ Petitioners, there is no ground to continue to oppose the long-delayed elections to the 3rd Respondent society.

13. The Interim Application correctly points out that the other Petitions relate to different cooperative societies (paragraph 15(d)) and none pertain to the 3rd Respondent society.

14. On any reading of the Maharashtra Cooperative Societies Act, two things are plain. *First*, that periodic elections are mandated by the statute itself; and, *second*, that the term of every Managing Committee is strictly limited by the statute. There may be emergent situations in which a Managing Committee may by an order of Government or the competent authority continue a Managing Committee for a brief period of time. We have known this to be done particularly in the pandemic situation when elections could not be held at all. There are also cases where on account of delay in elections, for whatever reason, an administrator is appointed until

the elections are declared. These are all what we may call caretaker provisions. But the constitution of a managing committee through properly conducted and statutorily mandated elections is an essential facets of cooperative law. Unless this is followed, the working of cooperative societies gets completely compromised and crippled. This is sum and substance of the submissions that are made before us today.

15. It is also pointed out that these elections were scheduled in 2018. In fact they were held almost exactly four years ago in March 2018. Even if we exclude the two years lost to the pandemic, this means that at a minimum elections have been delayed for two whole years. In a given situation, and but for interim orders of the Supreme Court, this might have adversely affected the tenure or term of an elected Cooperative Society.

16. The last point is now of some concern. If this Interim Application is allowed and elections are declared, a question is bound to arise as to the length of the term of the Managing Committee. Does the term of the Managing Committee commence from 23rd March 2018 or from the date of this order or from the date when the sealed cover is opened and results are formally declared after counting is done? We believe that it cannot be from 23rd March 2018. The reason is that the votes were not counted then. Successful candidates were not known. Indeed, the composition of the Managing Committee was not known because the uncounted results were kept in a sealed cover. Further, if, after counting of votes, successful candidates elected to the Managing

Committee are to be told that four-fifths of their tenure has gone because of a continuance of a court stay or the pandemic or a combination of the two, this would be grossly unfair to the successful candidates. It means that they would be penalised because of the stay brought at the instance of the Petitioners and for no fault of the other contestants to the election. Curiously, we find that the two Petitioners also contested. We do not know if they are successful or not in these elections. We do know that they served on the previous Managing Committee. Consequently, dating the term of the new Managing Committee to March 2018 serves the purpose of absolutely nobody.

17. Accordingly, and for these reasons we make the Interim Application absolute in terms of the prayer clauses (a) and (b) set out above.

18. We clarify that the term of the Managing Committee will commence from the date of declaration of the election results after all votes are counted.

19. The IA is disposed of in these terms. There will be no order as to costs.

20. All concerned will act on production of an authenticated or digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)