IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CIVIL APPLICATION (CAW) NO. 2807 OF 2022
IN
WRIT PETITION NO. 6797 OF 2022

(Agriculture Produce Marketing Committee, Georai ..vs.. The State of Maharashtra, through its Secretary Co-operation, Marketing & Textile Department, Mumbai and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. N.B. Khandare, Counsel for the petitioner,
Mr. R.L. Khapre, Senior Counsel assisted by Ms. N.P. Mehta, AGP for the respondents.

CORAM : ROHIT B. DEO &
Y.G. KHOBRAGADE, JJ.
DATED : 05-01-2023

Writ Petition 6797/2022 was instituted at the Aurangabad Bench and registered as Writ Petition 8749/2022, as is transferred to the Nagpur Bench, along with similar petitions filed at the Aurangabad Bench and the Principal Bench, in view of the administrative order dated 17-10-2022 of the Hon’ble The Chief Justice.

2. The substantive relief prayed is that the order dated 10-11-2022 passed by the District Deputy Registrar appointing Mrs. S.S. Kadam, Assistant Registrar, Cooperative Societies, Georai as the Administrator in purported exercise of power under Section 15A(1)(b) of

the Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963 (APMC Act), be quashed and set aside.

3. Vide order dated 23-11-2022 this Court directed that the Administrator appointed shall not take charge of affairs of the petitioner-Market Committee, with the rider that the Market Committee shall not take any major policy decision.

4. Civil Application 2807/2022 is preferred by the State and the prayer is that the interim order be vacated and the period within which the election is to be conducted in view of the order dated 30-9-2022 in Writ Petition 9869/2022 be extended by six months.

5. We have heard present writ petition separately from the bunch of petitions transferred from the Aurangabad Bench and the Principal Seat for two reasons. The first reason is that the petitioner-Market Committee is not seeking a direction that the elections be held and the said issue is raised, in most of the other

petitions transferred, and is considered by us by a common order.

6. The other reason is that the challenge to the appointment of Administrator is predicated on certain factual and legal aspects peculiar to the petitioner-Market Committee .

7. Inasmuch as we are presently restricting the consideration to the entitlement or otherwise of the petitioner-Market Committee to the confirmation of the interim relief, it would suffice to note broad facts to the extent relevant.

8. The elections to the petitioner-Market Committee were held on 29-4-2017 and in the ordinary course the tenure of five year would have expired on 28-4-2022.

9. The State Government was pleased to exercise power under Section 14(3) of the APMC Act and extended the term of the Market Committee till 28-10-2022. The extension was in view of the fact that

the elections to the multipurpose cooperative societies in Tahsil Georai were not held.

10. The petitioner-Market Committee avers that the MLA representing the Georai constituency requested the State Government to appoint seven persons recommended by him as members of the Board of Administrators, and the Deputy Chief Minister asked the Director of Marketing to take an appropriate decision on the said request letter. The learned Counsel for the petitioner-Market Committee Mr. N.B. Khandare fairly states that the intended replacement by the elected members by the nominees of the local MLA did not materialise in view of the order dated 07-9-2022 rendered by the Aurangabad Bench in Writ Petition 8117/2022 and the connected matters.

11. During the pendency of the present petition, which was directed against the proposed action of appointment of Board of Administrators, the District Deputy Registrar passed the order dated 10-11-2022, which is impugned herein by amending the petition.

12. We have heard the learned Counsel Mr. N.B. Khandare on behalf of the petitioner-Market Committee and the learned Senior Counsel Mr. R.L. Khapre on behalf of the State on the aspect of continuation of the interim relief.

13. Mr. R.L. Khapre would submit, placing heavy reliance *inter alia* on the decision in ***Udhav Shalikram Geete v. State of Maharashtra and others, 2014(1) Mh.L.J. 879,*** that the right to continue in an elected office is a statutory right, and the power to extend the term of the Market Committee where the elections could not be held for reasons beyond the control of the Market Committee, is an enabling power which does not create any corresponding right in favour of the Market Committee to such extension.

14. Mr. N.B. Khandare would submit that while an extension may not be a vested right, the Market Committee has the limited right of consideration of the pending application seeking extension, and appointment

of an Administrator pending an application seeking extension of the term of the elected body falls foul of the observations of the Division Bench in ***Babasaheb Apparao Akat and others v. State of Maharashtra and others, 2010(2) Bom.C.r. 578.***

15. The factual edifice of the submission canvassed by Mr. N.B. Khandare on the strength of the observations in ***Babasaheb Apparao Akat*** is the admitted position that vide communication dated 04-10-2022 the petitioner-Market Committee sought further extension of six months, and the said proposal was forwarded by the District Deputy Registrar, Co-operative Societies, Beed to the Director of Marketing vide communication dated 20-11-2022, and the Administrator is appointed without deciding the request seeking extension of the term of the elected body.

16. In ***Babasaheb Apparao Akat,*** this Court considered a similar situation. No decision was taken on the proposal seeking extension of the tenure of the elected body and the order of appointment of Administrator was

passed purportedly invoking power under Section 15A of the APMC Act.

17. The Division Bench considered the issue thus :

> *"7. In the present case, however, we have noticed that respondent No.7 submitted proposal for extension of the term highlighting the fact that the elections could not be held before the expiry of the term for no fault of the present Committee and for that reason, it was just and proper to extend the term which can be extended upto a period of one year as provided by the second proviso under sub-section 3 of Section 14 of the Act. The appropriate authority instead of first considering the said proposals, after lapse of about five months from the submission of the proposals proceeded to straightway appoint Administrator to take over the affairs of the respondent No.7 Committee. Section 14 of the Act is of some relevance for considering the controversy at hand. We are concerned with Section 14(3) which provides that except as otherwise provided in the Act, the members of the Market Committee shall hold office for a period of five years as is applicable to the present case. Second proviso under the said sub-section, however, stipulates that where the general election of members of a Committee could not be held "for the reasons beyond the control of the Committee" before expiry of the term of office of its members, the State Government may, by order in the official Gazette extend the term of the office of any such Committee which can be upto a period of one year in the aggregate. This is obviously an enabling provision. It bestows power in the respondent No. 1 to extend the term of the Committee in specified situation. That power is coupled with duty to act in time and decide justly and reasonably. If the State Government were to consider the proposals*

submitted by the petitioners, to respondent Nos.1 and 2, the period of present Committee could be extended maximum upto 10th July 2010. However, the proposals were kept pending by the appropriate authority for reasons best known to it. Instead, the impugned orders came to be issued to appoint the Administrator to take over the affairs of respondent No.7 Committee. On conjoint and harmonious reading of Second proviso under Section 14(3) and Section 15 of the Act, the appropriate authority had at least two different options to deal with the present situation. For, it is not the case of the authority or for that matter the intervenor that the present members of the Committee were responsible for not holding the election of the Committee before the expiry of their term. On the other hand, the material on record would go to show that respondent No. 7 commenced the exercise of conducting the election well in advance, as back as on 06-01-2009. The fact that the election could not be held due to intervening Parliamentary and Assembly elections, is also not in dispute. There is nothing on record or brought to our notice by the official respondents or the Intervenor, which would remotely suggest that there was any allegation of mal-administration or mis-feasance committed by the members of the present Committee. In such a situation, ordinarily, the appropriate authority ought to favourably consider the proposal for extending the term of the present Committee by invoking the second proviso under Section 14(3) of the Act. Assuming that the appropriate authority was inclined to appoint the Administrator, it was open to it to appoint the present members as the Board of Administrators, instead of appointing the respondent No.6 as the sole Administrator. In other words, more than one option was available to the appropriate authority in the fact situation of the present case. Obviously, none of these options have been considered and the appropriate authority straightway proceeded to appoint the sole Administrator to look after the affairs of the Committee. That cannot be *countenanced more particularly when no reason is stated in the impugned order or for that matter any contemporaneous record to justify one of the particular mode amongst the available modes."*

18. In our considered view, in view of the observations in ***Babasaheb Apparao Akat***, the petitioner-Market Committee has made out a *prima facie* case for grant of interim relief, albeit in a modified form. Notably, ***Udhav Shalikram Geete*** on which Mr. R.L. Khapre has relied, considers ***Babasaheb Apparao Akat*** thus :-

"8. The submission of the learned Advocate for the petitioner relying on the judgment in the case of Babasaheb Apparao Akat (supra) cannot be accepted. The petitioners in the case of Babasaheb had submitted the proposal for extension of the term of the APMC on the ground that the elections could not be held on time and in the petition before the Court, a prayer was made that the State of Maharashtra and the concerned authority be directed to decide the proposals of the petitioners for grant of extension to the petitioners to act as the members of the APMC till the conclusion of election. In the present case, as observed by us, the petitioner has not prayed for such directions to the respondents for extension of the term of the members of the APMC. The Writ Petition proceeds on the assumption that the postponement of the elections by the Notification dated 8th of February, 2013 automatically extends the term of the members of the APMC, which is unacceptable in law."

19. Mr. R.L. Khapre would then submit that in view of the order dated 19-4-2022 which is passed in exercise of power under Section 59 of the APMC Act, the observations in ***Babasaheb Apparao Akat*** do not hold the field.

20. Section 59 of the APMC Act reads thus :

> ***"59. Power to exempt Market Committees, etc., provisions of Act -***
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> *The State Government may, by a general or special order in the Official Gazette, exempt any Market Committee or any class of persons from any of the provisions of this Act or any rules made thereunder, or may direct that such provision shall apply to such Market Committee or to such class of persons with such modifications not affecting the substance thereof as may be specified in that order :*
>
> *Provided that, no order to the prejudice of any Market Committee shall be passed without an opportunity being given to such Market Committee to represent its case".*

21. *Prima facie,* we are of the view that the order dated 19-4-2022 does not dilute the effect and implication of the observations in ***Babasaheb Apparao Akat.*** The said order is issued noting the enunciation in Writ Petition 11669/2021 to the effect that the general

power under Section 59 of the APMC Act cannot be exercised to extend the term of the elected body beyond the period envisaged under Section 14(3) of the APMC Act. In the context of the said enunciation, the State Government issued the direction to appoint Administrator in certain situations with the rider that the APMC whose extended tenure has not expired shall be excluded.

22. *Prima facie,* we are not persuaded to accept the submission of Mr. R.L. Khapre that the observations in ***Babasaheb Apparao Akat*** stand diluted.

23. An arguable case is made out, and the determination of the seminal issue arising in the petition merits in depth consideration.

24. However, we are not inclined to clamp a blanket prohibitory order restraining the State Government from appointing an Administrator to manage the affairs of the petitioner-Market Committee. The limited right which the petitioner-Market Committee has, and this is again a

prima facie observation is that the application or proposal seeking extension be decided by the State Government before a decision on appointment of Administrator is taken by the competent authority.

25. We, therefore, modify the interim orders dated 07-9-2022 and 30-9-2022 as follows :

i) The State Government shall decide the pending proposal for extension of the term of the petitioner-Managing Committee as expeditiously as possible.

ii) The decision to appoint an Administrator shall be taken only after the decision on the extension of the term of the elected managing committee is taken and communicated to the petitioner-Managing Committee.

iii) If the decision is adverse to the petitioner-Managing Committee, the same may not be given effect for seventy-two hours from the date of service thereof on the petitioner-Managing Committee .

iv) In the connected matters, the solemn assurance of the State Government is that no person other than a Government Officer shall be appointed as the Administrator. Needless to observe, if a decision is taken to appoint an Administrator to manage the affairs of the petitioner-Managing Committee, only a Government Officer shall be appointed, as assured and undertaken.

26. The civil application is disposed of in the afore-stated terms.

(Y.G. KHOBRAGADE, J.) **(ROHIT B. DEO, J.)**

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