

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13670 OF 2024

Vijaysingh Babasaheb Shinde & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

**Mr Surel Shah, Senior Advocate, with Drupad Patil, S Relekar &
Jitendra Sawant, i/b Shailesh Chavan, for the Petitioners.**
Mr Dilip Bodake, for Respondents Nos. 2 & 5.
Ms Rupali Shinde, AGP, for Respondent No. 3-State.
Mr Ritvik Joshi, for Respondent No. 4.
Mr Tapan Thatle, for Respondent No. 7.

CORAM. M.S. Sonak &
Kamal Khata, JJ
DATED. 3rd October 2024

PC:-

1. Heard learned counsel for the parties.

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2. The Petitioner seeks the following substantive reliefs in this Petition.

“a. That this Hon’ble Court may be pleased to call for record and proceeding from the office of respondent no. 1 pertaining to impugned order and after going through the legality and propriety of the same be pleased to quash and set side order dated 27.9.2024 passed by Minister for Marketing, State of Maharashtra in Appeal no. APP-2025/P.K. 230/11-S and also consequential communications dated 27/09/2024 issued by the Respondent no. 4 be also be quashed and set-aside;

d. Pending hearing and final disposal of this writ petition be pleased to stay, the execution, implementation and or operation of letter 27.9.2024 issued by Respondent no. 4 thereby directing that the election to be held on 28.9.2024 for filling up post of Chairman and Vice Chairman of Agricultural Produce Marketing Committee, Khed, Dist. Pune;”

3. The 7th Respondent was the chairperson of APMC Khed (Respondent No. 4). He allegedly resigned from this position on 26 August 2024 by addressing the resignation to the District Deputy Registrar Co-operative Society (DDR), who accepted it on 4 September 2024.

4. The election schedule was announced on 18 September 2024 to fill the position of chairperson, which had become vacant

due to the resignation of the 7th Respondent. The elections were scheduled for 28 September 2024.

5. The 7th Respondent filed a Writ Petition No. 13478 of 2024 before this Court, which was moved for urgent circulation on the same date since the elections were scheduled on 28 September 2024.

6. Upon hearing the learned counsel for the 7th Respondent and the learned AGP for the State, by our order dated 27 September 2024, we declined the stay on the election scheduled on 28 September 2024. However, we clarified that the election results would be subject to further orders in this Petition. Leave was also granted to implead the parties in anticipation, and we clarified that subject to time constraints, the Petition would be disposed of finally at the admission stage (See Exhibit H on pages 79-80).

7. On 27 September 2024, the 7th Respondent, who had already drafted and prepared an Appeal on 24 September 2024, filed such an Appeal before the State Government (Hon'ble Minister for Marketing) purporting to impugn the DDR's action of accepting the 7th Respondent's resignation. The main ground was that the resignation was a forgery and should not have been acted upon.

8. Hon'ble Minister, by impugned order made on 27 September 2024, has now stayed the election, which was

scheduled on 28 September 2024, on the ground that the DDR accepted the 7th Respondent's resignation without hearing the 7th Respondent and further, the papers submitted by the 7th Respondent need to be examined elaborately. (pages 111 and 112 of the paper book).

9. Mr Thatte, learned counsel for the 7th Respondent, has repeatedly urged that the order of this Court dated 27 September 2024 declining a stay on the election process was shown to the Hon'ble Minister, and still, the Hon'ble Minister made the impugned order dated 27 September 2024 staying the election process. He tried to refer to some documents to support this assertion. However, the documents nowhere support this statement made by Mr Thatte based on express instructions from the 7th Respondent.

10. At the outset, we find it extremely difficult to believe that the Hon'ble Minister, even after he was shown this Court's order dated 27 September 2024, made the impugned order and stayed the election schedule. The 7th Respondent was at least prima facie not very candid with this Court when instituting Writ Petition No. 13478 of 2024. No disclosure was made that an Appeal Memo was already prepared on 24 September 2024 and kept ready to be filed before the Hon'ble Minister should this Court not be inclined to grant any interim reliefs. The Counsel for the 7th respondent did not refer to the alternate remedy of appeal if available. The formal averment in this regard was intentionally vague and contrary to the Court's practice.

11. Similarly, even in this Appeal Memo filed before the Hon'ble Minister there was no disclosure about Writ Petition No. 13478 of 2024 and the order made on 27 September 2024 declining interim relief. Mr Shah learned Senior Advocate for the Petitioner referred to the affidavit accompanying the Appeal Memo filed before the Hon'ble Minister. Paragraph 2 of the affidavit accompanying the Appeal read as follows:

“2. I have not moved or intend to move any Court/High Court/ Supreme Court or any other authority for similar relief. I have no knowledge that any person has moved or intends to move any Court/ Supreme Court or any other authority for similar relief.”

12. Therefore, at least prima facie, the 7th Respondent has suppressed material particulars from this Court and the Hon'ble Minister to secure the impugned order.

13. However, considering the repeated assertion of Mr Thatte made, based on the express instructions from the 7th Respondent, if the impugned order has been made after this Court's order dated 27 September 2024 made a few hours earlier was shown to the Hon'ble Minister, then, we think that the very strong case has been made out to stay the impugned order dated 27 September 2024.

14. After this Court, which has the power to judicial review the orders of the Appellate Authority, had declined a stay, we fail to understand how the Appellate Authority could have, despite being allegedly shown this Court's order dated 27 September 2024,

granted such stay and derail the election process which was scheduled on 28 September 2024. This almost amounts to the appellate authority sitting in appeal over this Court's order. Considering prima facie how the Petitioner has not been candid, we have serious doubts about our order being shown to the Hon'ble Minister. The impugned order does not reflect any consideration of our order if it was really shown.

15. Therefore, either this Court's order dated 27 September 2024 was never shown to the Hon'ble Minister, which is good ground for the impugned order to be vitiated, or the order was shown but virtually in defiance of the same, the impugned order has been made which is, again, a better ground to prima facie vitiate the impugned order.

16. Mr Shah has questioned the maintainability of the Appeal before the State Government by referring to the provision of Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (the said Act) read with GR dated 5 September 1981, issued by the State Government.

17. Section 52B of the said act provides that save as otherwise provided elsewhere in this Act, any person aggrieved by a decision taken or order passed under any of the provisions of this Act may prefer an appeal–

(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman, Vice-Chairman, Secretary

or any other officer empowered to exercise the powers of the Director.

(b) to the State Government, where such decision is taken or order is passed by the Director.

18. The GR dated 5 September 1981 inter alia provides that a District Deputy Registrar of Cooperative Societies has been delegated the powers of a director under Sub-section 1 of Section 23 of the said Act. Section 23 deals with the resignation of the chairperson and vice-chairperson. Section 23 (1) provides that the chairman may resign from his office by writing under his hand and addressed to the Director, and the resignation shall take effect from the date it is accepted.

19. At least prima facie, therefore, an Appeal would not lie to the State Government where a decision is of any officer empowered to exercise the powers of the Director. In this case, at least prima facie, the District Deputy Registrar of Cooperative Societies was authorised to exercise the powers of the director. Therefore, an Appeal at least prima facie lay to the Director under Section 52B(1)(a) of the said Act and not to the state Government. This is likely the reason why the 7th Respondent moved this court at the last moment and tried to get a stay on the elections. After the stay was refused, the 7th Respondent indulged in the prima facie misadventure of appealing to the Hon'ble Minister and secured the impugned order.

20. Mr Thatte did try to argue that in 1981, when the GR dated 5 September 1981 was issued, Section 58 of the said Act empowered the delegation of powers of the State Government to any other officer but not the delegation of powers of a Director to any other officer. That point may have to be examined. However, it is essential to note that there is no challenge to the GR of 5 September 1981. At least prima facie, we believe the Appeal before the State Government was incompetent.

21. However, even assuming that the Appeal was competent, the impugned order must be stayed. Firstly, it hardly contains any reasons, and secondly, the so-called reasons are by no means reasons for staying on an election schedule. In matters of elections, it is only in exceptional circumstances that a stay can be granted. The reliance placed by Mr Thatte on the decision of this Court in **Sajid and Another vs. State Election Commission, Maharashtra State, Mumbai, through the Commissioner/Asstt. Commissioner and Others**¹ is entirely misplaced. The facts in the said case are not even remotely comparable to the facts situation in the present case.

22. In any event, after this Court had already declined the stay and made the elections subject to the result of the Petition. After that, there was no question that the Appellate Authority granting a similar stay derailing the election process. This stay was either because the 7th respondent suppressed this Court's order or despite noticing this Court's order but ignoring the same altogether. In either eventuality, the impugned order is highly vulnerable. Thus,

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a very strong prima facie case is made out for staying the impugned order and allowing the election process to continue from the stage when it was halted by the impugned order.

23. Accordingly, we stay the impugned order dated 27 September 2024 made by the Hon'ble Minister until further orders. Consequently, we direct the 5th Respondent to proceed with the election process from the stage when it was halted. This is not a case of any fresh election requiring fresh notices. This is only a continuance of the election process, which was halted due to the impugned order.

24. Mr Bodake, learned counsel for the 5th Respondent, states that the election will now be held on 10 October 2024 from 11.15 a.m. as per the schedule already declared on 18 September 2024. This means that the date of 28 September 2024 shall now be substituted with the date of 10 October 2024.

25. Mr Bodake states that the Board of APMC, Khed, comprises 18 members. Ten of those are the Petitioners in this Petition. Mr Shah states that these ten members will not seek separate notice. Learned counsel for the 7th Respondent quite surprisingly says that he has no instructions to waive the notice. This is unfortunate. Though Mr Thatte is right in submitting that he cannot go beyond his instructions, as an officer of the Court, we request him to inform the 7th Respondent about the election being scheduled on 10 October 2024. Mr Thatte has agreed to do this.

26. In any event, the 4th and 5th Respondents must immediately serve notices on the 7th Respondent and the remaining seven members by all possible modes, such as personal service, email, WhatsApp, etc. The Secretary of the 4th Respondent must also make all arrangements for the elections and serve notices on the eight members, including the 7th Respondent, immediately by the above modes. The 4th and 5th Respondent must issue such notices by tomorrow and maintain proper service records.

27. If any of the Respondents in the present Petition wish to file affidavits, they should be filed and served by 8 October 2024. However, we direct the 7th Respondent to file an affidavit in this matter and to disclose whether and how the order made by this Court on 27 September 2024 in Writ Petition No. 13478 of 2024 was disclosed by him to the Hon'ble Minister. The 7th Respondent must also file an affidavit stating the precise date on which the Appeal was filed and numbered before the State Government. This is because the Appeal Memo and the affidavit bear the date 24 September 2024. Still, the contention is that the appeal was lodged only on 27 September 2024 after this court declined interim relief.

28. Such affidavit must be filed and served by 7 October 2024. A copy of this affidavit must be given to the learned AGP and the learned counsel for the Petitioner.

29. Learned AGP should obtain instructions in the matter by 11 October 2024.

30. We list this matter on 11 October 2024. Writ Petition No. 13478 of 2024 should also be listed along with this Petition on 11 October 2024. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)