



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

WRIT PETITION NO.3390/2023

<u>PETITIONERS</u>	1. Nitin Baburao Hiwse Aged 59 Years, President, Tivas Santra Bagayatdar Sahakari Sanstha Sr. No.58, Amravati Division, Amravati. 2. Subhash Tukaram Raghatate, Aged 71 years, President Chandrapur Zilla Krushi Audyogic Sahakari Sanstha, Sr. No.10 (Nagpur Division), Nagpur.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. The State of Maharashtra Through its Secretary of Co-operation and Marketing Department, Mantralaya, Mumbai. 2. The Maharashtra State Co-operative Election Authority, Pune. 3. The Director of Marketing, Pune, Central Building, Pune. 4. District Co-operative Election Officer, cum Divisional Joint Registrar, Co-operative Societies, Malhotra House, 6th Floor, Opp. GPO, Fort, Mumbai. 5. The Returning Officer, for the Elections of Maharashtra State Sahakari Marketing Federation Ltd. Mumbai, Malhotra House, 6th Floor, Opp GPO, Fort, Mumbai.

<u>INTERVENERS</u>	6. Maharashtra State Sahakari Marketing Federation Ltd., Through its Managing Director, Kanmoor House, 281/87, Narsi Nath Street, Masjid Bandar, Mumbai – 400009 7. Sunil s/o Bhauraoji Funde aged about 58 years, Occ. Agriculturist, R/o Sakoli, Tah. Sakoli, District Bhandara. (Amendment as per Court's order Dt. 09/06/2023) (Added respondent No.7/Intervener as per Court's order Dtd. 09/06/23) 8. Rohit s/o Dilip Nikam Aged – 47 years, Occ- Business, Director, Jalgaon District Agro-Indul Multipurpose Service Co-operative Sanstha Maryadit [Nashik Division], Visanji Nagar, Jalgaon, Dist. Jalgaon. (Amendment carried out as per Hon'ble Court's order dated 30/10/2023) (Amended/Added R. No.8 after R.No.7)
Mr. M.V. Samarth, Senior Advocate a/b Mr. V.P. Ingle, Advocate for petitioners Mrs. K.R. Deshpande, AGP for respondent nos.1, 3 and 4 Mr. S.S. Ghate, Advocate for respondent no.2 Mr. P.D. Meghe, Advocate for respondent no.6 Mr. A.M. Ghare and Mr. Onkar Ghare, Advocates for respondent no.7 Mr. D.M. Kale, Advocate for respondent no.8	

WITH**WRIT PETITION NO.3120/2023**

<u>PETITIONERS</u>	1. Shri Sunil s/o Bhauraoji Funde Aged 58 Yrs., Occ. Service, R/o Sakoli, Tahsil Sakoli, District Bhandara.
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	2. Shri Babanrao s/o Ajabrao Bhad, Aged 64 yrs., Occ : Service, R/o Sillewada, Tahsil Saoner, District Nagpur. 3. Shri Shivhari s/o Rumaji Bhad, Aged 58 yrs., Occ : Service, R/o Tamaswadi, Tahsil Parshioni, District Bhandara.
<u>...VERSUS...</u>	
<u>RESPONDENTS</u>	1. The State of Maharashtra, through its Secretary of Co-operation and Marketing Department, Mantralaya, Mumbai. 2. The Director of Marketing, Pune, Central Building, Pune. 3. District Co-operative Election Officer, cum Divisional Joint Registrar Co-operative Societies, Alhotra House, 6th Floor, Opposite GPO, Fort, Mumbai. 4. The Returning Officer, for the Election of Maharashtra State Sahakari Marketing Federation Ltd. Mumbai, Malhotra House, 6th Floor, Opposite GPO, Fort, Mumbai. 5. Maharashtra State Sahakari Marketing Federation Ltd., Mumbai, through its Managing Director, Kanmoor House, 281/87, Narsi Nath Street, Masjid Bandar, Mumbai – 400 009.
<u>INTERVENERS</u>	6. Subhash Sitaram Raghtate Aged 71 years Occ. Agriculturist, President, Chandrapur Zilla Krishi Audyogik Sahakari Sanstha Chandrapur (Sr. No.10) Nagpur Division. (Amendment as per Court's order dated 20.06.2023)

	7. The State Co-operative Election Authority, through its Commissioner, Central Building, Pune. (Amendment as per Court's order dated 20.06.2023) (Amended/Added R. Nos.6 & 7)
Mr. A.M. Ghare and Mr. Onkar Ghare, Advocates for petitioners Mrs. K.R. Deshpande, AGP for respondent nos.1 to 4 Mr. P.D. Meghe, Advocate for respondent no.5 Mr. S.S. Ghate, Advocate for respondent no.7 Mr. D.M.Kale, Mr. S.P Bhandarkar & Mr. Ram Karode, Advocates for Intervenor	

**CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

DATE : 25/01/2024

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ORAL JUDGMENT (PER : AVINASH G. GHAROTE, J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsels for the rival parties. 10

2. Writ Petition No.3390/2023 questions the order dated 17/05/2023 (pg.114) passed by the respondent no.1/State granting stay to the elections to the Board of Director/Managing Committee of the respondent no.6 – Federation, on account of the resolution passed in the special meeting of the respondent no.6 dated 21/02/2023, to amend its bye-law Nos.41(1) and 41 (3), which was submitted to the respondent no.3 for approval. 15
The stay was granted in the purported exercise of the powers

under Section 157 of the of the Maharashtra Co-operative Societies Act, 1960 (“MCS Act” for short hereinafter) and so also the consequent order dated 18/05/2023 passed by the Returning Officer (pg.116), whereby in pursuance to the communication dated 17/05/2023, stay to the elections to the respondent no.6 – 5 Federation has been communicated.

3. Mr. Samarth, learned Senior Counsel for the petitioners in Writ Petition No.3390/2023 contends that the order dated 17/05/2023, which is claimed to be passed in exercise of the power under Section 157 the MCS Act is beyond 10 the scope and ambit of the powers conferred upon the State under that provision and therefore is without jurisdiction. It is further contended that though the reasons, as indicated in the order dated 17/05/2023 for its passing speak about the directions dated 06/10/2015 issued by the respondent no.1 for 15 correction in the bye-laws of the respondent no.6 and the change in the bye-laws No.37 and 41 (1) being necessary, which was proposed, the same cannot be held to be legal and proper, on that count. He further invites our attention to the language of Section 157 of the MCS Act to substantiate his contention. 20

4. Mr. Ghare, learned counsel for the respondent no.7 in Writ Petition No.3390/2023 supports the impugned orders and contends that since a need was felt to amend the bye-laws of the respondent no.6, with an intention that a larger number of persons could participate in the elections to be held for its Board of Directors in a special meeting held on 21/02/2023, the change in respect of bye-law No.41 (1) was resolved to be so made and the proposal was submitted for approval of the respondent no.3 (Director Marketing) on 02/03/2023, which ultimately came to be approved on 19/05/2023 and therefore, since the voters net was widened, it was necessary to conduct the election of the respondent no.6 afresh, which is what is prayed for in Writ Petition No.3120/2023. It is, therefore, submitted by Mr. Ghare, learned counsel for the respondent no.7, that the elections are now required to be directed to be held in terms of the amended bye-laws of the respondent no.6 – Federation, for which, he places reliance upon *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. and another Vs. State of Maharashtra and others (2004) 1 SCC 133*.

5. There was yet another petition, namely, Writ Petition No.3492/2023 challenging the order dated 19/05/2023 by the respondent no.3, accepting the amendment to the bye-laws of the

respondent no.6 -Federation. However, since there is an alternate remedy available under Section 152 (1) of the MCS Act to the petitioners therein, the said petition has been permitted to be withdrawn with liberty to avail of the alternate remedy.

6. The factuality of the matter is as under :

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Since the term of the earlier elected Board of Directors of the respondent no.6 ended in the year 2019, fresh elections to the Board of Directors were required to be held. The respondent no.2, which is the Maharashtra State Co-operative Election Authority with this intent had published election programme in that regard on 08/05/2023 as under (pg.86) :

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Sr. No.	Date and Time	Election programme details
01	09/05/2023 to 15/05/2023	Filing of nomination papers.
02	16/05/2023 at 11:00 a.m.	Scrutiny of the nomination papers.
03	17/05/2023 at 11:00 a.m.	Publication of list of valid nominations.
04	17/05/2023 to 31/05/2023 between 11:00 a.m. to 3:00 p.m.	Withdrawal of nomination papers by the candidates.
05	01/06/2023	Allotment of symbols and publication of final list of candidates.
06	11/06/2023 between 9:00 a.m. to 5:00 p.m.	Polling by the voters.

07	13/06/2023 from 9:00 a.m.	Counting of votes and declaration of poll result immediately.
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7. Needless to say that prior to this, the entire process of publication of the provisional voters list, calling of objections and publication of the final voters list was already over. The election programme was worked out and on 17/05/2023, the 5 final list of the candidates, consequent to the scrutiny was published (pg.104), in which, the petitioner nos.1 and 2 in Writ Petition No.3390/2023 were included in the category of ordinary constituency for Nagpur Division at serial nos.2 and 4. In view of the interim order dated 15/05/2023 passed by this Court in Writ 10 petition No.3120/2023, the name of the respondent no.7 (petitioner in Writ Petition No.3120/2023) also came to be included at serial no.3 in the aforesaid final list of candidates. It is at this juncture that considering the interim order dated 15/05/2023 passed by this Court in Writ Petition No.3120/2023, 15 the respondent no.1 by the order dated 17/05/2023 (pg.114) in exercise of the powers under Section 157 of the MCS Act granted stay to the election process, as a result of which, the respondent no.2 also by the communication dated 18/05/2023 intimated the stay to the concerned.

8. For the purpose of appreciating the challenge to the order dated 17/05/2023 the provisions of Section 157 of the MCS Act are necessary to be considered. For the sake of ready reference, Section 157 of the MCS is reproduced as under :-

“157. Power to exempt societies from provisions of Act.

The State Government may, by general or special order exempt any society or class of societies from any of the provisions of this Act, or of the rules made thereunder, or may direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order.

Provided that, no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent its case”

9. A perusal of the language of Section 157 of the MCS Act, would indicate that it confers powers upon the State to exempt, by general or special order any society or class of societies, from any of the provisions of the MCS Act or the rules made thereunder. It would thus be apparent that Section 157 of the MCS Act, does not confer any power upon the respondent no.1 to postpone the elections of the respondent no.6, in exercise of the powers conferred therein. The order dated 17/05/2023 (pg.114), therefore, will have to be held to be infirm and without jurisdiction, considering the language of Section 157 of the MCS Act.

10. Though Mr. Ghare, learned counsel for the respondent no.7 in Writ Petition No.3390/2023 seeks to place reliance upon the provisions of Section 73 CC of the MCS Act, to contend that the order dated 17/05/2023 (pg.114) has to be related to the powers as conferred upon the respondent no.1 5 under the said provision, however, Section 73 CC of the MCS Act would indicate that the power of the State Government to postpone the elections as contained therein are only on account of (i) scarcity (ii) drought (iii) flood (iv) fire or any other national calamity or (v) rainy season or (vi) due to scarcity, 10 drought, flood, fire, hailstorms or any other natural calamity, farmers, farm labourers, or other persons on large scale have suffered, resulting in reduction in numbers of voters; and (vii) on the implementation of any Government Scheme made for their rehabilitation, there is likelihood of increase of numbers of voters 15 or (viii) due to any election programme of the State, Legislative Assembly, or Council or House of the People or local authority coinciding with the election programme of any society or class of societies; (ix) if the State is of the opinion that it is not in the public interest to hold the elections to any society or class of 20 societies. It is only on the above grounds and then too for the

reasons to be recorded in writing, notwithstanding anything contained in the MCS Act and the rules made thereunder or the bye-laws of the society that the State can postpone the election of any society or class of societies, for a period not exceeding six months at a time, the total period of extension being not more than one year in aggregate. It would thus be apparent that none of the conditions as indicated above in Section 73 CC of the MCS Act, can be said to be in existence so as to consider the plea that the order dated 17/05/2023 could be related to exercise of the powers of the State to postpone the elections under Section 73 CC of the MCS Act. Thus, reliance upon Section 73 CC of the MCS Act, by Mr. Ghare, learned counsel for the respondent no.7 in Writ Petition No.3390/2023 to justify the order dated 17/05/2023, is clearly misplaced.

11. It is also material to note that when the election programme was declared and was being implemented, the bye-laws of the respondent no.6, which were extant then (pg.25) were what were considered for the purpose of preparing the final voters list, which came to be published on 24/04/2023. The special meeting for amendment to the bye-law No.41 (1) though held on 21/02/2023 and the proposal for its approval came to be

submitted to the respondent no.3 on 02/03/2023, no orders were passed thereupon, which continued to be the position till 19/05/2023, when the order dated 19/05/2023 (pg.92-D in WP No.3120/2023) was passed, allowing amendment to the bye-laws which included amendment to bye-law Nos.41(1), 41 (3) and 42 5 (b), bye-law Nos.41 (1) and 41 (3) relating to the eligibility in respect of a person seeking to be elected to the post of Director of the respondent no.6. However, what is material to note is that the order dated 19/05/2023 by which the amendment to the bye-laws of the respondent no.6 was allowed, specifically states, that 10 the amended bye-laws, would come into effect from the date of the order i.e. 19/05/2023. This being the position, the contention, that the entire election programme which already had progressed to the stage of publication of the final list of candidates, in our considered opinion, cannot be scrapped and 15 the position be relegated back to the stage of preparing the preliminary voters list. Though reliance has been placed by Mr. Ghare, learned counsel for the petitioners upon *Ahmednagar Zilla S.D.V. & P. Sangh Ltd.* (supra) but that was a case, in which the amendment to the bye-laws was approved before the 20 publication of the final voters list and consequent to the

amendment, the voters list was prepared for holding election for constituting the Managing Committee of the Society. It was ultimately held that the amendment of the bye-laws was not in conformity with the law applicable and therefore, the electoral roll prepared on its basis would have to fall down, as the 5 conditions precedent for amending the bye-laws had not been complied with. In the instant case, the final electoral roll, has been prepared on the basis of the bye-laws, which were legal and valid on the date of its preparation. Not only this, the election programme in pursuance thereto was published and had 10 progressed to a stage where the final list of candidates, came to be published after scrutiny on 24/04/2023. The amendments to the bye-laws were approved by the respondent no.3 only on 19/05/2023 and it was specifically directed that they would come into effect consequent to the date of the order. 15

12. The learned Division Bench of this Court at Aurangabad in Writ Petition No.7252/2023 and other connected matters decided on 30/06/2023 while considering the powers of the State under Section 73 CC and 157 of the MCS Act has held that exercise of the powers thereunder has to be for reasonable 20 and cogent reasons and even if these are present, the mandate of

the provision, cannot be used to extend the outer limit of one year, considering which, in view of the admitted position that the term of the party stands over in 2019, the reasons given in the impugned order cannot be used to extend it beyond what is permitted by the Statute.

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13. In that view of the matter, the claim for conducting the election in consonance with the amended bye-laws, which were permitted to be amended by the order dated 19/05/2023, by scrapping the entire election process, which had already reached the stage, as indicated above, cannot be entertained, as 10
once the election process is commenced the same has to be concluded to its logical end, apart from which, the respondent no.2 has no such power to cancel the elections on account of subsequent amendments to the bye-laws.

14. In view of the aforesaid discussion, Writ Petition 15
No.3120/2023 seeking holding of elections on the basis of the amended bye-laws fails and is dismissed.

15. So also for the reasons, as stated above, the order dated 17/05/2023 (pg.114) passed by the respondent no.1, in exercise of the power under Section 157 of the MCS Act being 20
without jurisdiction and authority, is hereby quashed and set

aside, as a result of which, the consequent communication dated 18/05/2023 (pg.116) by the respondent no.2 also cannot be sustained and is quashed and set aside. The respondent no.2 is accordingly directed to go ahead with the elections as per the original election programme.

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16. Writ Petition No.3390/2023 is accordingly allowed in the above terms and Writ Petition No.3120/2023 is dismissed. Rule accordingly. No order as to costs.

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(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)

Mr. Onkar Ghare, learned counsel for the petitioners in Writ Petition No.3120/2023, at this stage, seeks continuation of the order dated 15/05/2023 in Writ Petition No.3120/2023 for a period of two weeks. However, since we have already held that the election programme cannot be stalled and has to be continued to its logical end and the position that the elections to the Managing Committee were not held since 2019, we are not inclined to continue the order. The request is, therefore, rejected.

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(SMT. M.S. JAWALKAR, J.)

(AVINASH G. GHAROTE, J.)