



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Writ Petition No. 7440 Of 2024

Shri. Bharat s/o Shivaji Perne
Age : 58 years, Occu. : Agri.,
R/o. Tandurwadi,
Tq. Rahuri, Dist. Ahmednagar.

Shri Sanjay s/o Sayaram Pote
Age : 56 years, Occu. : Agri.,
R/o. Manori, Tq. Rahuri,
Dist. Ahmednagar.

...Petitioner

Versus

1. The State of Maharashtra,
Through Secretary, Cooperation Department,
Maharashtra State, Mantralaya,
Mumbai.
2. Regional Joint Director (Sugar)
And Joint Registrar Cooperative
Societies, Ahmednagar
Office at Trilok Chamber,
Lal Taki Road, Ahmednagar.
3. Maharashtra State Cooperative Election
Authority, through DDR, Ahmednagar,
Dist. Ahmednagar,
4. Dr. Baburao Bapuji Tanpure
Sahakari Sakhar Karkhana Limited,
Shivaji Nagar, Rahuri, Tq. Rahuri,
Dist. Ahmednagar.

...Respondents

Shri V. D. Salunke, Advocate for the Petitioners
Shri A. S. Shinde, Addl. G.P. for Respondent Nos. 1 and 2
Shri S. K. Kadam, Advocate for Respondent No. 3
Shri S. S. Thombre, Advocate for Respondent No. 4

**With
Writ Petition No. 10332 Of 2022**

Shri. Amrut Annasaheb Dhumal
Age : 51 years, Occu. : Agri.,
R/o. At Post. Musalwadi, Tq. Rahuri,
Dist. Ahmednagar.

... Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Corporation & Textile Department,
Maharashtra State,
Mantralaya, Mumbai-32.
2. The Commissioner for Co-operation,
Maharashtra State, Pune.
Central Building-411 001.
3. The State Co-operative Election Authority
Maharashtra State, Pune,
Old Central Building
Ground Floor, Pune-411 003.
4. Dr. Baburao Bapuji Tanpure Co-Operative Sugar
Factory,
Through its Administrator
Shri shivaji nagar, Tq. Rahuri,
Dist. Ahmednagar
5. The Regional Joint Director (Sugar),
Ahmednagar, Dist. Ahmednagar

... Respondents

Shri A. B. Kale, Advocate for the Petitioner

Shri A. S. Shinde, Addl. G.P. for Respondent Nos. 1, 2 and 5

Shri S. K. Kadam, Advocate for Respondent No. 3

Shri A. D. Sonkawade, Advocate h/f Shri A. V. Hon, Advocate for Respondent No. 4

**CORAM : S. G. MEHARE AND
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 22nd JANUARY, 2025

PRONOUNCED ON : 5th FEBRUARY, 2025

J U D G M E N T [Per Shailesh P. Brahme, J.] :-

1. Rule. Rule is made returnable forthwith. Heard both sides finally at the admission stage, considering the exigency in the matter.

2. Both the petitions pertain to election of the Managing Committee of respondent No.4/Sugar Factory, the appointment and continuation of an administrator over it. The facts and circumstances are common. We, therefore, propose to decide both petitions by common judgment by referring to the paperbook of Writ Petition No. 7440 of 2024.

3. The predominant relief claimed in both petitions is a direction to conduct election of the Managing Committee of respondent No. 4 and quashing of orders dated 26.07.2024 passed by Regional Joint

Director (Sugar), Ahmednagar, 23.07.2024 passed by Under Secretary Government of Maharashtra and communication dated 01.08.2024 issued by Regional Joint Director (Sugar), Ahmednagar. The gravamen of the petitioners' contentions is that the term of last-elected Managing Committee was from 24.06.2016 to 23.06.2021. Instead of conducting the election before or immediately after the expiration of the term, the respondents engaged in dilatory and perfunctory tactics by appointing Administrative Committee and thereafter appointment of Administrator. They further perpetuated the illegalities by extending the term of Administrator. The unprecedented action of the respondents is against the provisions of the Maharashtra Cooperative Societies Act, 1960 (for the sake of brevity and convenience hereinafter referred to as "**the Act**"). Further grievance is that, today also, no steps are taken for proceeding with the election despite the petitioners' persuasions.

4. The term of the earlier Managing Committee expired on 23.06.2021. A committee of three authorized officers was appointed by respondent No. 2 under Section 77A of the Act, vide order dated 20.03.2023, for a period of twelve months. The charge was taken by

the said committee on 21.03.2023. No steps were taken for conducting the election during the stipulated period. The respondent No. 2 appointed Assistant Registrar as Administrator by superseding the committee vide order dated 26.07.2023. His term was extended for one year vide order dated 14.03.2024. Thereafter, his term was further extended by the respondent No. 1 vide order dated 23.07.2024, upto 31.12.2024. A letter to that effect was addressed by learned Commissioner (Sugar) on 01.08.2024.

5. The lawyers appearing on both sides are *ad idem* that the election of the Managing Committee needs to be conducted. The matters were heard on 29.08.2024, and it was expressed by learned counsel appearing for the respondent No.3/State Co-operative Election Authority that, for want of funds, the election could not be conducted. An amount of Rs. 10,00,000/- was only deposited with respondent No.3. Therefore, time was granted to the respondents to convey as to when it would be possible to hold the election. Thereafter, on 11.10.2024, learned counsel for respondent No.3 informed this Court that remaining balance amount had been deposited and it was now possible to conduct the election. In the interregnum period, elections

could not be conducted due to the Parliamentary and Assembly elections.

6. Both sides are unanimous that there is no hurdle in conducting the elections. Respondent No.3 has requisite funds for the same. Learned counsel, Mr. Kadam, for respondent No.3 has tendered on record the proposed programme of election as well as public notice issued on 22.01.2025 to indicate that the authority is set out to hold the election. On instructions, learned counsel, Mr. Kadam, for respondent No.3 submits that the election process will be concluded by the end of May 2025. The proposed programme for finalising the voter list, as well as concluding the election process, has been tendered on record and marked as Exhibit Nos. X and Y, respectively. We accept the statement and trust that the election process will conclude without any hindrance by the end of May 2025.

7. There has been an inordinate delay in conducting the elections. We need not go into fixing the liability for the delay, but, the fact remains that for more than three and half years, respondent No.4/ Sugar Factory has been without properly elected Managing Committee. This situation is not only unconstitutional but also against the rule of

law. It should not be perpetuated further. Therefore, we are inclined to issue even prohibitory orders to the respondents as well as stakeholders, for not stalling or postponing the elections any further and in any contingency.

8. Learned counsel for the petitioners relied on the judgment dated 24.01.2008 in the matter of **Ramesh Bhairoba Mane Vs. State of Maharashtra** in **Writ Petition No. 8040 of 2006**. In that case, the elections were not held after the constitution of cooperative society, and a provisional board of directors was appointed over it. The tenure of the said board was directed to be extended and the board was reconstituted by giving an extension as the period of previous board was coming to an end. A direction was solicited for the appointment of Administrator until the completion of election process and further extension of the provisional board was also challenged in the petition. In that context, the provisions of Section 73(1A) and Section 157 of the Act were examined, and the findings were recorded in paragraph Nos. 10, 11, 13, 14 and 15.

9. The ratio laid down in paragraph No. 15 of the said judgment would be of no assistance in these petitions. In the case at hand,

although directions are solicited to conduct elections, simultaneously, orders appointing the administrator and his extension of tenure are also challenged. In the present case, the term of the lastly elected body expired on 23.06.2021 and thereafter, instead of conducting election, an administrative committee of authorized officers was appointed. Thereafter, the administrator was appointed. In the present case, we are concerned with the powers under Section 77A(3), 77A(1)(b)(ii) and 73(1A) read with 157 of the Act. Such was not the situation in the cited judgment.

10. Further reliance is placed on the judgment of **Bhaskar Eknathrao Shinde Vs. State of Maharashtra** reported in **2008 (3) AIR Bom R 116.**

In that case writ of certiorari or the directions were solicited in respect of challenging order dated 31.08.2007 and final voter list. A direction to publish fresh voter list was also solicited. The Division Bench was not dealing with the matter of appointing the administrative committee comprised of authorized officers after expiry of tenure of outgoing committee. Rather the issue of extension of tenure of the Administrator was under consideration. Therefore, on facts, the case is distinguishable and its ratio would not assist the

present matter for addressing the issues.

11. Learned Counsel Mr. A. B. Kale, placed reliance on the judgment of Vishnupant Eknath Khandale & ors. Vs. The State of Maharashtra & ors. in Writ Petition No. 5656 of 2020. In that case, the interpretation of Sub-Section (3) of Section 73AAA of the Act was under consideration. The core issue was as to whether the members are deemed to have vacated the office on the expiry of the term of the Society after five years. The members whose term was over were still continued in the office unofficially, and they were alleged to have squandered the funds, which was the cause of action in that case. The said judgment also does not assist us in addressing the issues. The case in hand is distinguishable.

12. Learned counsel Mr. V. D. Salunke for the petitioner submits that orders dated 26.07.2023 and 23.07.2024 are against Section 73AAA(3) as well as proviso to Section 77(3) of the Act. Those orders are arbitrary and there is usurpation of powers. It is further submitted that powers under Section 157 of the Act should not have been invoked for granting extension to the administrator upto 31.12.2024. He would further submit that the Administrative

Committee appointed vide order dated 20.03.2024 failed to conduct the election during 12 months and there was no reason to appoint sole administrator. It is further submitted that there is gross misuse of powers in granting extension. The Administrator and the respondent No.2 acted in collusion so as to avoid re-election.

13. Learned counsel Mr. A. B. Kale for another petitioner adopts the submission of Advocate Mr. V. D. Salunke. In addition to that, he submits that elections ought to have been conducted immediately after the term is over. As per Section 73CC read with 77A(3) of the Act maximum period of one year was permissible for postponing the elections. He would further submit that it is gross dereliction of the duties of the Administrative Committee and thereafter administrator in not conducting the elections in time. They are liable for action. It is further submitted that deliberately elections were postponed and an attempt is made to liquidate the sugar factory. The interim order dated 07.10.2024 passed by the respondent No.5/Regional Joint Director indicates the conduct of the authorities.

14. Learned counsel placed reliance on judgments of this Court and the Hon'ble Supreme Court in the matter of **Vishnu Panth Eknath**

Khandagale Vs. State of Maharashtra in *Writ Petition No. 5656 of 2020* and *Bharat Sanchar Nigam Vs. M/s Tata Communications* reported in *2022 LiveLaw (SC) 792*.

15. Per contra, learned AGP Mr. A. S. Shinde, repels the submissions by referring to its paragraph Nos. 4 to 6 of the affidavits-in-reply. The sequence of events is disclosed in those paragraphs, which led the authorities to appoint Administrator and thereafter to resort to liquidation proceedings. He would submit that impugned orders are issued in accordance with law and under the compelling circumstances. It was not possible to meet out the expenses of election and therefore, arrangement was required to be made to look after the co-operative society. It is further submitted that impugned orders are appealable as per Section 152 of the Act as well as revisable. Hence, the petitioners cannot be entertained.

16. We have also heard Mr. S. S. Thombre, appearing for Administrator. He submitted that the judgments cited at bar cannot be made applicable, as those were the cases wherein continuation of the private body or the individual members or Board of Directors comprising of private persons was under challenge. In the present

case, public servants were appointed in Administrative Committee and thereafter as an Administrator. He further submitted that continuation of Administrator is permissible and that Section 157 of the Act is applicable to the fact situation.

17. We are testing the validity of the order dated 26.07.2023 passed under Section 77A(1)(b)(ii) and 77A(3) of the Act, and the order dated 23.07.2024 passed under Section 157 read with 77A of the Act. There is no dispute that the term of elected body expired on 23.06.2021. The Administrative Committee of the Authorized officers was appointed vide order dated 20.03.2023, after about two years. The said committee comprised of public servants of the Co-operative Department. Thereafter, Mr. Deepak Paraye, was appointed as Administrator, who was Assistant Registrar at Taluka Rahuri. His appointment was continued upto 31.12.2024. The covering letter dated 14.03.2024 issued by respondent No.2 discloses that the proposal for the extension of the Administrator's tenure by one year was forwarded due to the Parliamentary and Assembly elections.

18. The respondent No.2 issued an interim order on 07.10.2024 under Section 102 of the Act, appointing a liquidator. The

Administrator, who was already in office, wrote letter on 08.10.2024 to respondent No.2, stating that there was no need to appoint a liquidator.

19. Both petitions were filed with multiple prayers. The directions to conduct the election were solicited besides challenge to the orders dated 26.07.2023 and 23.07.2024. There is no dispute regarding the relevant facts. We are directing the respondent No.3/Election Authority to conduct the elections. Under these circumstances, we think it proper to examine the validity of the orders under challenge without relegating the parties to the Appellate or Revisional Authority. We overrule objection regarding alternate remedy of the petitioner. Once the term of five years is over, it is expected of the respondents to proceed with the election. Respondent No.4/Co-operative Society has been without a duly elected Managing Committee for more than three years. We have noticed that the outgoing Managing Committee was holding over from 23.06.2021 to 21.03.2023, as rightly pointed out by learned counsel Mr. A. B. Kale. The Administrative Committee came to be appointed on 20.03.2023. No steps were taken to muster the funds for conducting the elections.

20. It is pertinent to note that Administrative Committee, which took charge on 21.03.2023 was for only twelve months. The Committee failed to take steps for conducting elections during the prescribed period and was continued until the sole Administrator was appointed vide order dated 26.07.2023. This appointment of Administrator beyond twelve months is against proviso to Section 77A(3), which is as follows:

“The Maharashtra Cooperative Societies Act, 1960

1.
2.

77A. Appointment of member of committee, new committee or Administrator, where there is failure to elect member, to constitute committee or where committee does not enter upon office —

(1) ...

(3) The Committee or Administrator so appointed shall hold office for a period of six months from the date of assuming the management of the society and shall make necessary arrangements for constituting a new committee within the said period and for enabling the new Committee including any new Committee referred to in sub-clause (f) of sub-section (1), which is determined by the Court to have been legally elected, to enter upon office.

Provided that, if a new committee is not, or cannot be constituted at the expiry or termination of the term of office of the committee or Administrator, for any reason beyond

the control of the committee or Administrator, the term of office of the committee or Administrator, as the case may be, shall be deemed to be extended, until the new committee is duly constituted.”

21. It is apposite to consider Section 73CC of the Act, which is as follows:

“The Maharashtra Cooperative Societies Act, 1960

1.

2.

73CC. Where due to scarcity, drought, flood, fire or any other natural calamity or [rainy season or due to scarcity, drought, flood, fire, hailstorm or any other natural calamity farmers, farm labourers or other persons on large scale have suffered resulting in reduction in numbers of voters and on the implementation of any Government Scheme made for their rehabilitation, there is likelihood of increase in numbers of voters or due to] any election programme, of the State Legislative Assembly or Council or House of the People or a local authority, coinciding with the election programme of any society or class of societies, in the authority, in the opinion of the State Government, it is not in the public interest to hold elections to any society or class of societies, the State Government may, notwithstanding anything contained in this Act or the rules, or bye-laws made thereunder, or any other law for the time being in force, for reasons to be recorded in writing, by general or special order, postpone the election of any society or class of societies, for a period not exceeding six months at a time, which period may further be extended so, however, that, the total period shall not exceed one year in the aggregate.]

22. For the contingencies stated in above provision, the State Government is empowered to postpone the election, but the postponement shall not exceed total period of one year in aggregate. In this case, due to postponement of election, the tenure of the Administrator was sought to be extended upto 31.12.2024 vide covering letter dated 14.03.2024. This proposal is again contrary to the proviso to Section 77A(3) of the Act. The elections of the respondent No.4/Society was already postponed beyond one year due to Parliamentary and Assembly elections. By order dated 23.07.2024, the tenure of the Administrator was extended upto 31.12.2024 under the garb of Section 157 of the Act. This extension is also against 77A(3).

23. The respondent No.4/Society could not deposit the expenses of the election. The Administrative Committee and thereafter Administrator failed to take effective steps to raise the funds to meet the election expenses. It was possible to raise the funds, as it was transpired during the course of hearing that the respondent No.4/Society had independent source of income and runs schools and colleges.

24. It is noticed that power under Section 157 of the Act has been misused by the respondents. The authorised officers should not have been continued for more than one year after the term is over. The extension to the Administrator was not in accordance with law. Under these circumstances, it was an abuse of power to grant any exemption from application of rigors of Section 77A of the Act.

25. Considering the sequence of events and the manner in which impugned orders are passed, we are of the considered view that recourse taken to the liquidation of the respondent No.4 is illegal and with oblique intentions. *Prima facie*, we do not find the compelling circumstances to resort to liquidation proceedings. Presently, the election expenses have already been deposited with the Election Authority. A candid statement has been made ensuring concluding of the election process by the end of May 2025. Therefore, the interim order dated 07.10.2024 cannot be an impediment for directing to conduct election and for quashing the impugned orders. We find that District Deputy Registrar, Rahuri would be a fit person to look after and oversee the Administration. We, therefore, pass following order.

ORDER

- (i) The respondent No.3/State Co-operative Election Authority shall commence the election process and shall conclude the same by the end of May, 2025 as per tentative programme placed on record at Exhibits X and Y.
- (ii) The respondents or their officers are restrained from postponing, halting or terminating the election process which is to be undertaken by the respondent No.3.
- (iii) Till the conclusion of election process, District Deputy Registrar Co-operative Societies, Ahmednagar, is appointed for administration and the supervision of the respondent No.4/Society by replacing earlier authorized officer.
- (iv) Orders dated 26.07.2024 and 23.07.2024 passed by Regional Joint Director (Sugar), Ahmednagar and respondent No.2 are quashed and set aside.
- (v) Rule is made absolute in the above terms.

[SHAILESH P. BRAHME]
JUDGE

[S. G. MEHARE]
JUDGE

Komal Kamble/