

(1995) 11 BOM CK 0006
In the Bombay High Court
Case No : Writ Petition No. 3100 of 1995

Arvind Kasture

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-11-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 3 BomCR 560

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Advocate : R.S. Parsodkar, for the Appellant; Charde, A.G.P. for respondent No. 2., for the Respondent

Final Decision : Allowed

Judgement

B.U. Wahane, J.—Rule. Heard forthwith.

2. In this petition under Article 226 of the Constitution of India, the petitioner Arvind s/o Laxmanrao Kasture the President of Jalgaon Tahsil, Sale and Purchase Co-operative Society, challenged the order dated 30th September, 1995 passed by the respondent No.2- The Assistant Registrar, Co-operative Societies, Jalgaon Jamod, Tah: Jalgaon Jamod, Dist: Buldhana superseding the Managing Committee of Jalgaon Jamod Taluka Sale Purchase Society, Jalgaon Jamod and appointing the Administrator thereon.

On behalf of the respondent No. 2-The Assistant Registrar, Co-operative Societies, Jalgaon Jamod, the submissions are filed on record.

3. Shri Parsodkar, the learned Counsel for the petitioner strenuously submitted that the Society had already started the process of election by preparing the voter list, invited objections and considering the objections, the final list was published on 12-6-1995. While the process was on, on 24th May 1995 a telegram was issued by the Deputy Secretary to the Government of Maharashtra, Co-operation and Textile Department, Mantralaya, Bombay -32 to all Collectors,

All Divisional Commissioners, The Commissioner for Co-operation and Registrar of Co-operative Societies, Maharashtra State, Pune, All Divisional Joint Registrars Co-operative Societies, All District Deputy Registrars Co-operative Societies, to stay all the elections of all classes of Co-operative Societies, except of those societies who have started the process of election from the stage of nomination. According to this communication the elections were to be postponed till 30th September 1995. The contents of the Telegram are reproduced herein which are as under:---

"It is felt expedient in the public interest to postpone the elections to the Committees of all classes of Co-operative Societies, where the process of election from the stage of nomination has not started, and election to the committees of Co-operative sugar factories already having been postponed earlier by Government Orders No. CSL-1095/CR-49/15C dated the 24th May, 1995 and even number dated the 13th June, 1995 uptill the 23rd September, 1995 except in respect of those societies where there are specific directions in term of orders of Courts during the rainy season. The Government of Maharashtra has therefore directed that the elections to the committees of all classes of Co-operative societies (other than the Co-operative societies which are neither notified societies nor specified societies) where the process of election from the stage of nomination had not started excluding the Co-operative societies in respect of which the Co-operative Court, High Court or Supreme Court has given specific directions to hold elections, shall be postponed till the 30th September 1995 or until further orders whichever is earlier."

Again on 28-9-1995, there was a communication to All Collectors, All Divisional Commissioner, The Commissioner for Co-operation and Registrar of Co-operative Societies Maharashtra State, Pune, All Divisional District Deputy Registrars Co-operative Societies, postponing the elections for a period of 6 months from 1st October, 1995. The communication dated 28-9-1995 is reproduced as under:

"All Collectors and District Election Officer in the State as well as the Administrative Machinery at their disposal shall be fully engaged in the work of revision of electoral rolls and thereafter in holding of general elections to the Loksabha and consequently it would be impracticable for the Collectors to simultaneously hold elections to the committees of Co-operative Societies whose elections have fallen due during this period. The Government of Maharashtra has therefore, directed that the elections to the committees of all classes of Co-operative societies specified u/s 73-G of the Maharashtra Co-operative Societies Act 1960 where the process of election from the stage of nomination has not started excluding the Co-operative Societies in respect of which Co-operative Court, High Court or Supreme Court has given specific directions to hold elections shall be postponed for period of six months from 1st October, 1995 or until further orders whichever is earlier. Notification issued on 27-9-95 in the behalf follows."

4. Shri Parsodkar, the learned Counsel for the petitioner submitted that in view of

the orders issued by the Government, the petitioner Society could not initiate the process of election.

f 5. It is further submitted that in one breath the Government had directed not to conduct the elections initially till 30th September, 1995 and thereafter for 6 months w.e.f. 1-10-1995, and in another breath issued order dated 30th September, 1995 superseding the present body. Relevant portion of the said order needs to be reproduced here, which is as under:

"Vide powers invested in me by the Maharashtra State Co-operative Textile Division, Mantralaya Bombay, Act A-1960, section 77(A), sub-section (E) Two (2) and vide order of GSL/1983/1962/C.R./47/15-C dated 7-8-1993 and vide using my powers under the said Act, I Shri M.B. Shirao, Assistant Registrar, Co-operative Societies, Taluka/Jalgaon Jamod Samiti, R.No. 151, District Buldana and as the tenure of this Society is over by dated 30-5-95 and the new body was not formed during this period and so until the new body is elected, the daily working may be badly affected and for the regular working, I dismiss all the members from their posts and in their places nominate the following members for the working of day to day working."

6. The respondent No. 2 filed its submissions on record. Shri Charde, the learned A.G.P. for the respondent No. 2 took me through the content's of para No. 2 of the submissions. On perusal of the submissions, it appears that there is no whisper in the submissions about the grounds on the basis of which the petitioner-Body was superseded by the respondent No. 2. The contents of para 2 of the submissions are altogether different to the effect that there being serious complaints and charges of corruption, misappropriation, mal-practices etc. against the present body of the petitioner-Society, the respondent No. 2 was constrained to supersede the body. There is no whisper in the order passed by the respondent No. 2 regarding the supersession of the Body on the basis of the complaints or charges levelled regarding corruption, misappropriation, mal-practices etc. There being no reply at all to the allegations made by the petitioner, the order of supersession issued by the respondent No. 2 is not only illegal but mala-fide and perverse. Considering the facts and circumstances of the case, the order impugned is illegal because the petitioner-Society has not conducted the election in view of the specific communications issued by the Government of Maharashtra, not allowing the election initially till 30th September, 1995 and thereafter for 6 months w.e.f. 1-10-1995. It is, thus, clear that the petitioner has not conducted the election in view of the orders passed by the Government of Maharashtra in two stages.

7. Giving conscious thought to the submissions made by Shri Parsodkar, the learned Counsel for the petitioner, perusing the submissions filed by the respondent No. 2 and considering the facts and circumstances, according to me, the order impugned passed by the respondent No. 2 on 30-9-1995 deserves to be set aside. Consequently, it is quashed and set aside. The respondent No. 2 is directed to restore the charge of the said Society to the petitioner forthwith. In

view of the observations made, the application for intervention cannot be entertained.

8. In the result, in the above terms, the instant writ petition is allowed. No order as to costs.