
(2017) 03 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 585 of 2017

Bhagwan Sampatrao Ghodmare	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 09-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 14(3-A)

Citation : (2017) 3 ALLMR 15 : (2017) 3 BCR 348

Hon'ble Judges : B.P. Dharmadhikari and Mrs. Swapna Joshi, JJ.

Bench : Division Bench

Advocate : Shri A.A. Naik, Advocate, for the Petitioners; Shri P. Tembhare, AGP, for the Respondent Nos. 1, 3 and 4; Shri S.W. Sambre, Advocate, for the Respondent No. 5

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J. (Oral)—Considering the nature of controversy, by issuing rule and making it returnable forthwith, we have heard the matter finally with the consent of Shri Naik, learned counsel for the petitioners, Shri Tembhare, learned AGP for respondent Nos. 1, 3 & 4 and Shri Sambre, learned counsel for respondent No. 5.

2. The petitioners are agriculturists in the jurisdiction of Respondent No. 5 - Agricultural Produce Market Committee (APMC). Petitioner No. 1 is the Director of Vihirgaon Seva Sahakari Sanstha, Vihirgaon, Tahsil and District - Nagpur and Petitioner No. 2 is the President of Seva Sahakari Sanstha, Bahadura, Post - Vihirgaon, Tahsil and District - Nagpur. Their societies are members of Respondent No. 5 - Agricultural Produce Market Committee, Nagpur, and the petitioners claim that they are voters in the elections of APMC i.e. for electing its Directors. The order dated 10.01.2017 passed under Section 14(3) and (3A) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, (hereinafter referred to as the Act), is questioned on the ground that

without recording any opinion properly, as mandated by those provisions, mechanically proposal put up by the subordinates has been accepted and elections are postponed.

3. Shri Naik, learned counsel in addition submits that in 2012 elections of local authorities like Nagpur Municipal Corporation, Zilla Parishad, Nagpur and Respondent No. 5 - APMC were simultaneously conducted. As such, the fact that the elections of these local authorities are being held, cannot be sufficient to postpone elections of Respondent No. 5 - APMC. By reading out impugned order and legal provisions, he submits that non application of mind by respondent No. 1 is apparent because the grounds prescribed in the statute and the reasons expected in support thereof, do not find any evaluation in the impugned communication. Lastly, it is submitted that the election process has already started inasmuch as on 01.12.2016, objections were invited and thereafter provisional list of voters was published on 26.12.2016. The final list of voters was also ready thereafter and it was to be published on 13.01.2017. Thus, election process had already commenced and it could not have been interdicted.

4. Shri Sambre, learned counsel for respondent No. 5 - APMC does not dispute the fact that the election process had already started. He submits that Respondent No. 5 - APMC was ready and willing to proceed further with the election process. He, however, adds that respondent No. 5 has no particular say in the matter and it will abide by the directions of this Court.

5. The learned AGP is relying upon the impugned order and provisions of Section 14(3) and (3A) of the Act.

According to him, the order expressly mentions satisfaction of the State Government and the grounds on which it is based. He submits that in present facts, distinction sought to be drawn between the reasons and ground is non existent. According to him, as the elections of local body viz. Nagpur Municipal Corporation and Zilla Parishad, Nagpur, were also simultaneously announced, the contingencies contemplated in Section 14(3A) are satisfied and hence action cannot be said to be either without jurisdiction or erroneous. He, therefore, prays for dismissal of writ petition. According to him, in this situation, as election can be postponed, the fact that stage of publication of final list of voters was reached, is itself not decisive.

6. Shri Naik, learned counsel, in reply, submits that today only in Writ Petition No. 6676 of 2016, this Court has taken note of status quo order passed by the Hon"ble Apex Court. Because of those orders, election of Zilla Parishad, Nagpur, cannot be conducted in near future. He adds that when in last election of APMC, simultaneous conduct of other elections was not found to be an obstacle, the impugned order passed on 10.01.2017, is unwarranted.

7. Section 14(3) of the Act stipulates that the members of Marketing Committee hold office for a period of five years. Second proviso thereto mentions that when elections to elect new Board of Directors cannot be held for reasons beyond the

control of Committee before expiry of such term, the State Government may from time to time extend the term of office of such Committee. Section 14(3A) envisages a situation where due to Election programme of local body coincides with the election of Market Committee and in the opinion of the State Government, it is not in "public interest" to hold election to Market Committee, the State Government can by a general or special order, for the reasons to be recorded in writing, postpone the elections of Market Committee for a period not extending six months. The power of State Government under Section 14(3A) is overriding in nature because it operates notwithstanding anything contained in APMC Act.

8. In this background, when the impugned order dated 10.01.2017 is looked into, it takes note of the fact that the date of expiry of term of body of Board of Directors is 08.03.2017. Thereafter it points out representation received by the State Government for grant extension to Board of Directors as election to local bodies were scheduled in January and March 2017. As per those representations, Respondent No. 3 - District Deputy Registrar submitted a proposal to the State Government. After mentioning these developments, the impugned order observes that considering the grounds mentioned above, the State Government was satisfied that it would be appropriate to give extension to the Board of Directors. In view of this, in the operative order after mentioning Section 14(3) and (3A) of the Act, extension of six months up to 07.09.2017 has been allowed. The existing Board of Directors have been asked to complete the process of election during that period. Thus, the existing Board of Directors of respondent No. 5 - APMC is permitted to continue till 07.09.2017.

9. This order, therefore, nowhere reveals the process of application of mind for satisfaction reached by the State Government or even a opinion by it that holding of simultaneous elections would not be in public interest. The provisions of Section 14(3) and second proviso are attracted consequently because APMC cannot be held to be at fault for not completing the election process within time. However, the basic extension granted under Section 14(3A) is the reason for not holding elections within that time. Thus, the backbone of order is only Section 14(3A). Section 14(3A) reads as under :

"Where due to scarcity, draught, flood, fire or any other natural calamity or rainy season or any election programme of the State legislature or the Parliament or a local authority, coinciding with the election programme of any Market Committee or such other special reason, in the opinion of the State Government, it is not in the public interest to hold elections to any Market Committee, the State Government may, notwithstanding anything contained in this Act or in any rules, or bye law made thereunder, or any other law for the time being in force, for the reasons to be recorded in writing, by general or special order, postpone the election of any Market Committee 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."

Thus, scarcity, draught or election programme are the contingencies/grounds envisaged therein. If these contingencies/circumstances are prevailing, and the State Government finds that it would not be in public interest to hold elections of Market Committee, then only the powers under Section 14(3A) can be invoked. Thus, grounds or contingencies mentioned in subsection (3A) of the Act, by itself are not sufficient to postpone the elections. Those grounds must be found sufficient by the State Government to postpone elections because of public interest involved in the matter. Thus, bearing of those grounds on public interest is required to be demonstrated by the State Government in the impugned order. This exercise of application of mind will constitute reasons for postponing the elections. In the impugned order, except for mentioning receipt of representation demanding extension and simultaneous holding of elections of Municipal Corporation and Zilla Parishad, there is no such application of mind. This assumes importance because in 2012 when last elections of APMC were conducted, the exercise was undertaken simultaneously. This exercise which then could be undertaken simultaneously and was not against public interest, cannot be now presumed to be against public interest. Special reasons or circumstances prevailing now which do not permit simultaneous conduct of elections or then which render it against public interest, therefore, ought to have been mentioned in the order dated 10.01.2017. Same are lacking even in the reply affidavit. Those reasons and application of mind accordingly is conspicuously absent in present matter.

10. Co-relationship between elections of local body and "public interest" has to emerge only through reasons to be "recorded". Unless such reasons are recorded, impact of "grounds" adverse to public interest cannot be appreciated by anybody. Though "opinion" or satisfaction to be reached by the State Government may be subjective, still logical consideration of relevant material having nexus with the object i.e. public interest is the sine qua non to take recourse to power under section 14(3A) of the Act. Bare perusal of impugned order dated 10.01.2017 here reveals failure to adopt this procedure and render it arbitrary.

11. In this situation, it is not necessary for us to look into other contentions raised by the petitioners. We, therefore, quash and set aside the impugned order dated 10.01.2017. We direct respondent No. 1 to proceed further with the election of Respondent No. 5 - APMC as per law.

12. Rule is made absolute accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.