

(2020) 03 BOM CK 0040

In the Bombay High Court

Case No : Writ Petition No. 2091, 2292, 2524, 2642, 2681, 2907, 2910, 2924, 2983, 2986, 3008, 3015, 3127, 3155, 3463, 3499, 3504, 3512, 3769 Of 2020

Ishwar And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 11-03-2020

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 — Section 57, 73CC, 73AAA, 73AAA(3), 73(2)AAA, 26, 73A, 73AAA, 73B, 73C, 73G, 73(1b), 73G(2b), 73CA, 73CB, 73H(2), 73E, 75, 76, 78, 78A, 81, 157, 243
Constitution Of India, 1950 — Article 14, 19(1)(c), 226, 243, 243E, 243ZJ, 243ZJ(2), 243ZK

Citation : (2020) 03 BOM CK 0040

Hon'ble Judges : S.V. Gangapurwala, J;Shrikant D. Kulkarni, J

Bench : Division Bench

Advocate : V.D. Sapkal, S.R. Sapkal, D.R. Kale, V.H. Dighe, A.B. Jagtap, N.V. Gaware, S.K. Kadam, V.N. Upadhye, A.B. Kale, V.S. Deshmukh, P.D. Bachate, D.J. Choudhary, A.V. Hon, S.K. Kadam, Z.H. Farooqui, H.D. Deshmukh, A.M. Gaikwad, R.R. Karpe, G.B. Rajale, R.K. Temkar, S.P. Salgar, Ziya H. Farooqui

Final Decision : Disposed Of

Judgement

Shrikant D. Kulkarni, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, the matters are taken up for final disposal at admission stage.

2. This batch of petitions can be disposed of by common Judgment in view of similar set of facts and involving common question of law.

3. The petitioners are. challenging the orders issued by the State of Maharashtra, Department of Co-operation, Marketing and Textile vide No.

0120/ 24/13- dated 27th January, 2020 and 0120/ 29/13- dated 31st January, 2020. It would be

convenient to reproduce the Government orders dated 27th January, 2020 and 31st January, 2020, which are in vernacular as under:

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....4. Being aggrieved by the act of State Government with regard to the postponing the elections of District Central Co-operative Bank Ltd.

(hereinafter referred to as â??the D.C.C. Bankâ? for brevity) and so also, village level agricultural credit Co-op. Societies, sugar factories throughout

the State of Maharashtra totally, the petitioners have approached this Court by invoking Article 226 of the Constitution of India.

5. We have heard Shri V.D. Sapkal, learned Senior Counsel instructed by Shri S.R. Sapkal, Advocate, Shri N.V. Gaware, Shri A.B. Kale, Shri P.D.

Bachate, Shri A.V. Hon, Shri H.D. Deshmukh, Shri R.R. Karpe, Shri G.B. Rajale, Shri S.P. Salgar holding for Shri Ziyaulhaque Farooqui H.F. learned

Counsel for Petitioners, Shri D.R. Kale, the learned Government Pleader for Respondent/State, Shri V.H. Dighe, Shri A.B. Jagtap, Shri S.K. Kadam,

Shri V.N. Upadhye, Shri D.J. Choudhary and Shri Z.H. Farooqui, Shri A.M. Gaikwad, Shri R.K. Temkar, the learned Counsels for Respondents.

6. It is contended by the petitioners that the Government of Maharashtra, Department of Co-operation, Marketing and Textile, Mantralaya, Mumbai

vide impugned orders dated 27.01.2020 and 31.01.2020 postponed the elections of the D.C.C. Bank, Village Level Agricultural Credit Co-operative

Societies and Sugar Factories throughout the State of Maharashtra by contravening the provisions of Section with oblique motive. According to the

petitioners, the act of respondent No. 1 is illegal, arbitrary and violative of statutory provisions of the M.C.S. Act, 1960 and so also is ultra vires of the

provisions of the Constitution of India.

7. Shri V.D. Sapkal, learned Senior Counsel strenuously argued that the respondent No.1/State of Maharashtra in order to stall ongoing election with

some oblique motive had issued orders dated 27.01.2020 and 31.01.2020 purportedly under Section 157 and Section 73CC of the M.C.S. Act, 1960

whereby the general elections of D.C.C. Bank and Village Level Agricultural Credit Co-operative Societies/Sugary Factories throughout the State of

Maharashtra have been postponed for further period of three months on the ground that "Mahatma Jyotiba Phule Shetkari Karjamukti Yojna

2019" is to be implemented throughout the Maharashtra and the officers would be busy with the said work of Karjamukti Yojna, 2019.

8. Shri Sapkal, learned Senior Counsel submitted that the very invocation of provisions of Section 157 and 73CC of the M.C.S. Act, 1960 and order

dated 31.01.2020 is ex-facie illegal, arbitrary and amounts to colourable exercise of power by respondent No. 1/State of Maharashtra. The reasons

which have been cited in the orders dated 27.01.2020 and 31.01.2020 issued by the State of Maharashtra are per se, false and imaginary. According

to Shri Sapkal, learned Senior Counsel, the exercise of powers at the hands of respondent No. 1 is beyond its competence and also beyond the scope

of Section 157 and 73CC of the M.C.S. Act, 1960. Shri Sapkal, learned Senior Counsel submitted that no opportunity of hearing was extended to the

concerned petitioners before issuing the impugned orders by the State of Maharashtra and it is violative of principles of natural justice.

9. According to Shri Sapkal, the first proviso to Section 157 of the M.C.S. Act, 1960 contemplates that opportunity of hearing must be given to the

society to represent their case. But in the present case, no opportunity of hearing was extended to the petitioners and it has caused prejudice.

According to Shri Sapkal, learned Senior Counsel, as per Section 73AAA of the M.C.S. Act, 1960, the Committee is to be constituted in accordance

with the provisions of M.C.S. Act, 1960 and sub section (3) of Section 73AAA of the M.C.S. Act, 1960 which contemplates that the term of office of the elected members of the Committee and its office bearers shall be five years from the date of elections and the term of office bearers shall be co-terminus with the term of the Committee. As such, the very exercise of powers under Section 157 is contrary to the spirit of Section 157 of the M.C.S. Act, 1960.

10. Shri V.D. Sapkal, learned Senior Counsel further invited our attention to Clause 2 of Article 243/ZJ of the Constitution of India. Shri Sapkal, learned Senior Counsel submitted that the term of the elected members of Board and its office bearers shall be for five years and term of office bearers shall be co-terminus with the Board. It is constitutional mandate that the term of Managing Committee shall be for five years and it cannot be extended beyond the period of five years in view of Article 243/ZK of the Constitution of India. Shri Sapkal, the learned Senior Counsel Vehemently argued that the orders dated 27.01.2020 and 31.01.2020 are also ultra vires in view provisions of Article 243ZJ and 243ZK of the Constitution of India. According to the learned Senior Counsel Shri Sapkal, the petitioners have right to form Society also known as fundamental right as contemplated under Article 19 (1) (c) of the Constitution of India and the Constitution of the Committee has to be in accordance with the constitutional goals and the act of State Legislature. Shri Sapkal, learned Senior Counsel submitted that any act on the part of respondent No. 1 which is contrary or derogatory to the Constitution of India and M.C.S. Act, 1960 is liable to be struck down being ultra vires and unconstitutional which infringes the right of citizens under Article 14 of the Constitution of India.

11. According to Shri Sapkal, learned Senior Counsel, scope of exercise of powers at the hands of respondent No. 1 for postponement of elections of Co-operative Societies has been narrowed down in view of the provisions of Section 73CC of the M.C.S. Act, 1960.

12. The learned Senior Counsel submitted that impugned orders dated 27.01.2020 and 31.01.2020 are illegal, arbitrary and violative of Article 14, 19

(1) (c), 243ZJ and 243ZK of the Constitution of India, so also under Section 73CC and 157 of the M.C.S. Act, 1960. Shri Sapkal, learned Senior

Counsel urged to quash and set aside the impugned orders and communications

referred above by respondent No. 1 by issuing appropriate writ or directions in the nature of mandamus.

13. Shri Sapkal, learned Senior Counsel has placed his reliance on the following decisions of this Court in support of his argument :-

(i) Dattatray Yedu Thombre Vs. The State of Maharashtra and Ors. In Writ Petition No. 10184 of 2019 with connected writ petitions.

(ii) Dnyandeo Mohan Salunke & anr. Vs. State of Maharashtra & Ors. Reported in 2013 (4) Mh.L.J. 785, (Aurangabad Bench).

14. Shri N.V. Gaware, learned Counsel for the petitioners mixed his tone in the voice of Shri Sapkal, learned Senior Counsel and argued that

respondent No. 1/State of Maharashtra has acted in excess of jurisdiction and beyond the scope of Section 157 and Section 73CC of the M.C.S. Act,

1960. Shri Gaware, learned Counsel for the petitioners submitted that the act of respondent No. 1 postponing the elections of Co-operative Societies

and sugar factories by the impugned orders is arbitrary, illegal and liable to be quashed and set aside. He submitted that it is a case of colourable

exercise of powers and for some extraneous reasons.

15. The learned Counsel for the petitioners in connected petitions argued on the line and submissions made earlier by Shri V.D. Sapkal, learned Senior

Counsel and Shri Gaware, the learned Counsel for the petitioners.

16. Per contra, Shri D.R. Kale, learned Government Pleader for respondent Nos. 1 and 2/State submitted that the State Government has exercised its

powers given under section 157 of the M.C.S. Act, 1960 giving exemption to the Co-operative societies from holding elections for three months. As

per Section 73CC of the M.C.S. Act, 1960, the State Government is empowered to postpone the election of Co-operative Societies for a period not

extending six months at a time.

17. Shri Kale, learned Government Pleader submitted that the State Government has recorded the reasons while issuing orders dated 27.01.2020 and

31.01.2020, for postponement of elections of Co-operative Societies. Shri Kale, learned Government Pleader submitted that the State Government has

declared "Mahatma Jyotiba Phule Shetkari Karjamukti Yojna 2019" by issuing Government Resolution dated 27.12.2019. As such, concerned

officers from Revenue Department and Co-operative Department are instructed to implement the scheme within stipulated period. The State

Government intends to roll out and finish the entire loan waiver scheme by April, 2020. Shri Kale submitted that it is imperative to deploy the field machinery of Co-operation Department to implement the said scheme and as such, the elections of Co-operative Societies have been postponed for a period of three months. According to Shri Kale, the learned Government Pleader, the said decisions are taken by the State Government in the larger interest of the farmers in the State of Maharashtra.

18. According to Shri Kale, learned Government Pleader, the impugned decisions are taken by the State Government in the interest of farmers and same has not caused any kind of prejudice to the interest of any society. According to Shri Kale, the State Government has power under Section 73CC of the M.C.S. Act, 1960 to postpone the elections and has also power under Section 157 of the M.C.S. Act, 1960 to grant exemption and as such, the orders issued by the State of Maharashtra dated 27.01.2020 and 31.01.2020 are legal, proper and in accordance with law.

19. Having regard to the arguments canvassed by the learned Counsels for the petitioners, the learned Government Pleader for the State and the learned Counsels for the respective respondents, we have studied the Government orders issued by the Department of Co-operation, Marketing and Textile dated 27.01.2020 and 31.01.2020. We have also perused provisions of Section 73(2)AAA, 73CC and Section 157 of the M.C.S. Act, 1960 as well as Article 243ZJ and 243ZK of the Constitution of India.

20. It is noticed by us on perusing the impugned order dated 27.01.2020 and 31.01.2020 that the Department of Co-operation, Marketing and Textile, Mantralaya, Mumbai purportedly seems to have invoked Section 157 and 73CC of the M.C.S. Act, 1960. The learned Counsel for both the sides argued on the aspect of applicability of above said two provisions and the mandate of the Constitution of India.

21. Section 157 of the M.C.S. Act, 1960 reads thus -

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.

Provided further that, the State Government shall not exempt any society or class of societies from the provisions made under sections 26, 73A, 73AAA, 73B, 73C, 73CA, 73CB, 73E, 75, 76, 78, 78A and 81].

Section 157 empowers the State Government to exempt any society or class of any societies of any of the provisions of this Act. It may direct that

such provision shall apply to such society or class of societies with certain modifications subject to the provisions mentioned.

22. Now, coming to Section 73CC of the M.C.S. Act, 1960 on which Government has placed its reliance for granting exemption to the elections of the

Co-operative Societies, which reads thus -

Postponement of any Class of Societies in areas of natural calamity/draught etc.: MCS (Amendment) Act, 2015 In following cases, the State

Government may postpone elections of such Co-operative Societies Factors under consideration prior to deciding about postponement of elections.

Drought, scarcity, flood, fire, any natural calamity, rainy season, conflicting dates with election programme of State or Parliament Elections, or Local

Authority.

A Reasoned Order to be passed by recording opinion for postponement. The postponement of elections of Co-operative Societies for a period not

exceeding six months at a time with further extension but not exceeding one year in aggregate.

On studying above said provisions of the M.C.S. Act, 1960, it would be evident that the State Government may postpone elections/election programme

of any society or class of societies for the reasons mentioned thereunder. The factors for consideration for postponement of elections are drought,

scarcity, flood, fire, any natural calamity, rainy season, conflicting dates with election programme of State or Parliament Elections, or Local Authority.

23. If the reasons assigned in the impugned Government orders dated 27.01.2020 and 31.01.2020 are perused, it would be evident that the State

Government has not assigned any reason as mentioned aforesaid. The State Government has assigned the reason for postponement of general

elections of D.C.C. Banks, Village Level Agricultural Co-operative Credit Societies and other societies throughout the State of Maharashtra for

further period of three months for implementation of "Mahatma Jyotiba Phule Shetkari Karjamukti Yojna 2019" in the State. It is mentioned in the impugned orders that the officers would be busy for implementation of the said Shetkari Karjamukti Yojna 2019. It is the only reason assigned in the impugned orders by the State of Maharashtra for postponement of general elections of the Co-operative Societies. Certainly, the said reason is not covered under Section 73CC of the M.C.S. Act, 1960. At present, there is no drought-like situation in the State of Maharashtra. No scarcity, no flood, disaster, fire, any natural calamity, which may conflict the dates of election programme. There are no State or Parliament elections ahead in the State of Maharashtra. The reason for postponement of elections of any class of societies given under section 73CC of the M.C.S. Act, 1960 is not cited by the State while postponing general elections of Co-operative Societies. As such, the exercise of postponement of general elections of the Co-operative Societies, D.C.C. Banks, Sugar Factories and Village Level Agricultural Credit Co-operative Societies in the State of Maharashtra for a further period of three months by impugned orders dated 27.01.2020 and 31.01.2020 is not in consonance with provisions of Section 73CC of the M.C.S. Act, 1960. The State Government has sufficient manpower to conduct elections of Co-operative Societies even sparing the officials for implementation of "Mahatma Jyotiba Phule Shetkari Karjamukti Yojna 2019".

It is, therefore, clear that reason assigned in the impugned orders for postponement of general elections of the Co-operative Societies is out of the purview of Section 73CC of the M.C.S. Act, 1960.

24. In case of Dnyandeo Mohan Salunke & Anr. Vs. State of Maharashtra & Ors. Reported in 2013 (4) Mh.L.J. 78,5 it is held by the Division Bench

of this Court as under:-

Maharashtra Co-operative Societies Act, 1960, Secs. 73-G, 73H & 157 "Extension to a committee" Scope of Government Power" Petition

for appointment of a Administrator for respondent specified co-operative society under section 73-G of Act whose term has already expired on 26-11-

2011 and is continuing on extensions by granting exemptions under section 73 (1-B). Held, sub-section (2-B) of section 73-G provides that where for

any reason whatsoever election to members of committee are not held before expiry of term or extended term which can be maximum of one year,

members including officers of committee shall cease to hold office on expiry of its extended term and shall be deemed to have vacated office. Further

there is mandate of section 73-H(2) that when society ceases to hold office it is responsibility of registrar to take over its management or appoint an

Administrator but he shall not include any member of outgoing committee on its committee. Contention that Government in its power under section 157

of Act can protect Committee is not tenable because protection can be extended to society but not to Managing Committee, 2004 (Supp.)

Bom.C.R.362. In instant case inspite of extension given to committee it failed to hold fresh elections and it appears that State Government has granted

extension to it for indefinite period which is contrary to proviso to section 73-G (2-B). Grant of extension by Government is illegal. It is responsibility of

registrar to take steps and appoint Administrator.

25. In case of Dattatray Yedu Thombre Vs. The State of Maharashtra and Ors. Writ Petition No. 10184 of 2019 with connected writ petitions, it is

held by the Division Bench of this Court vide order dated 17.10.2019 to which one of us was party (Justice S.V. Gangapurwala), as under:

Article 243E of the Constitution provides for the duration of the Panchayat. The duration fixed by the Constitution under Article 243E of the

Panchayat is five years from the date appointed for its first meeting unless sooner dissolved under any law for the time being in force. The Ordinance

impugned does not tamper or interfere with the term of the Panchayat. Article 243 does not prescribe the term of the President and Vice President of

the Zilla Parishads and Chairman and Vice Chairman of the Panchayat Samitis. The term is provided of these persons under the State Legislation

under section 243 and 57 of the Act, 1961 respectively. To hold the office of the President and Vice President of the Zilla Parishads or Chairman and

Vice Chairman of the Panchayat Samitis is governed by the State Legislation.

26. In case of Hanumant Sahakari Dudh Utpadak Sanstha Maryadit & Ors. Vs. State of Maharashtra and Ors. reported in 2004 (2) Mh.L.J. 105, 2it

is held by the Division Bench of this Court that the powers vested with the Government for postponement of elections under provisions of M.C.S. Act,

1960 are required to be exercised by the competent authority in accordance with law.

27. Articles 243ZJ and 243ZK of the Constitution of India. Article ZJ (2) of the

Constitution of India speaks about number and term of members of

Board and its office bearers. The term of office of elected members of the Board and its office bearers shall be five years from the date of election

and the term of office bearers shall be co-terminus with the term of the Board.

28. Article 243ZK of the Constitution of India relates to election of members of the Board.

29. On going through the aforesaid provisions of the Constitution of India, it mandates that the election of the Board shall be conducted before the

expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of term of

office of the members of the outgoing Board. The wording of Article 243ZK starts with 'notwithstanding anything contained in any law made by the

Legislature of a State'. It speaks about the supremacy of these provisions of Constitution of India over all the State laws. It is mandate of

Constitution to hold election of a Board before the expiry of the term of the Board of Directors of any Class or any Co-operative Societies so that

newly elected members of the Board may assume office immediately on the expiry of the term of the office of members of the outgoing board.

30. The Constitution is *suprema lex*, the paramount law of the land and there is no authority, no department or branch of the State, which is above or

beyond the Constitution or has powers unfettered and unrestricted by the Constitution. The constitution has devised a structure of power relationship

with checks and balances and limits are placed on the powers of every authority of instrumentality under the Constitution. Every organ of the State, be

it the executive or the to act within the limits of such authority. Parliament and the legislature, derives its authority from the Constitution and it has to

act within the limits of such authority.

31. The mandate provided under Article 243ZJ of the Constitution of India speaks about the term of the members of the Board and its office bearers.

The term of office of elected members of the Board and its office bearers shall be five years from the date of election and the term of office bearers

shall be co-terminus with the term of the Board. Provided that the Board may fill a casual vacancy on the Board by nomination out of the same class

of members in respect of which the casual vacancy has arisen, if the term of office of the Board is less than half of its original term.

32. Having regard to the mandate of Article 243ZK of the Constitution of India, it is duty of the State Government to conduct election of the Co-

operative Societies in the State before the expiry of the term of the Board of five years so as to ensure that newly elected members of the Board

assume office immediately on the expiry of the office of Members of the outgoing Board.

33. Having regard to the above legal position, the impugned orders issued by the State of Maharashtra dated 27.01.2020 and 31.01.2020, do not pass

the test of constitutional mandate. The impugned orders issued by the State of Maharashtra dated 27.01.2020 and 31.01.2020 postponing the elections

of Co-operative Societies for a further period of three months are ex-facie illegal, arbitrary and violates Article 14, 19 (1) (c), 243ZJ and 243ZK of the

Constitution of India and so also Section 73CC and 157 of the M.C.S. Act, 1960. As such, those impugned orders are liable to be struck down.

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34. The impugned orders/communications dated 27th January, 2020 bearing No. 0120/ 24/13- and dated 31st January, 2020

bearing No. 0120/ 29/13- issued by respondent No. 1, purportedly under Section 157 and 73CC of M.C.S. Act, 1960 thereby

postponing the elections of D.C.C. Banks, Sugar Factories and Village Level Agricultural Credit Co-operative Societies throughout the State for a

period of further three months are illegal, arbitrary and ultra vires to the constitutional provisions embodied in Article 243ZJ and 243ZK of the

Constitution of India and Section 157 and 73CC of M.C.S. Act, 1960, and hence quashed and set aside.

35. The Rule made absolute in above terms.

36. The writ petitions are accordingly disposed of. No order as to costs.