

(2002) 09 BOM CK 0094

In the Bombay High Court

Case No : Writ Petition No. 3236 of 2002

Shaikh Burhan Shaikh Mannu

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 14(3)

Citation : (2003) 2 MhLj 861

Hon'ble Judges : S.B. Mhase, J;D.S. Zoting, J

Bench : Division Bench

Advocate : D.J. Choudhari, for the Appellant; E.P. Savant, Government Pleader for Respondent Nos. 1 to 4 and V.D. Salunke, for the Respondent

Final Decision : Allowed

Judgement

S.B. Mhase, J.—Heard Mr. D. J. Choudhari, learned Counsel for the petitioner, Mr. E. P. Savant, learned Government Pleader, for respondent Nos. 1 to 4 and Mr. V. D. Salunke, learned Counsel for the respondent No. 5.

Rule. Respondents waive service. By consent of the learned Counsel for the parties, Rule made returnable forthwith.

2. This is a petition filed by one of sitting Directors of the respondent No. 5 - Agricultural Produce Market Committee, Hingoli, which is established and functioning under the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. The elections to the Board of Directors of the said market committee were held on 3-7-1997 and the first meeting of the Board of Directors was held on 13-8-1997. The term of the market committee is of five years, and therefore, the term of the Board of Directors of the said Market Committee has come to an end on 12-8-2002. The Collector was expected to complete the elections before 12-8-2002. As there is failure on the part of the Collector to hold the elections, the petitioner has approached this Court seeking directions that the elections of the respondent No. 5 Market Committee be

directed to be held.

3. Mr. Savant, learned Government Pleader, appearing for the respondent Nos. 1 to 4, has filed affidavit on record, explaining as to how the election could not be held and has tendered the election programme. From this election programme the date of publication of voters list is already over i.e. on 27-8-2002 on which date the list has been published. The further dates i.e. the date for hearing the objections, publication of final list of voters after corrections and the date of filing nomination papers etc. have been shown in the said election programme. Thus, the election process, according to Mr. Savant has already commenced and it will be completed by 22nd December, 2002. The said programme is taken on record and marked "X" for identification purposes.

4. Mr. Salunke, learned Counsel appearing for the respondent No. 5 -Market Committee has objected for directing the election programme. According to him, the term of the Board of Directors of the Market Committee is extended by the Government by order dated 1-8-2002 by invoking the powers u/s 14(3) of the Act and the extension has been granted for a period of six months. Not only that, if the elections cannot be completed within that period of six months, the Government is entitled to grant further extension for a period of six months, thereby aggregate extension of one year is permissible under the proviso to Sub-section (3) of Section 14, and therefore, it would not be proper for this Court to direct the election.

5. What we have noticed in this case is that the term of the Board of Directors of the Market Committee was for a period of five years and before the said term of the Board of Directors comes to an end, it was the duty of the Collector to complete the election. However, if the elections are not completed, then in that circumstances, since the term of the elected members is over, they will have to vacate the elected posts and the Government will have to appoint the Administrator on the said market Committee. However, as the duty to conduct the elections has been cast on the Collector, and if the Collector fails to hold the election, then in that circumstances, the elected body in the office will be unnecessarily prejudiced. Not only that, but the same will be one of the ways to see that the Administrator is appointed on the market Committee and thereafter to conduct the elections. Taking into consideration the possible misuse of the provisions, the Legislature has introduced the proviso to Sub-section (3) of Section 14 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and it has been provided that because of the failure on the part of the Collector to hold the elections, the elected body should not suffer. Therefore, provision for extension of the term has been made. The test for granting extension is that if the general elections of the members of the committee could not be held for reasons beyond the control of the Market Committee, viz. the Market Committee is expected to take steps and make appropriate request to the Collector before the expiry of the term and they are under obligation to see that the Collector proceeds with the election. But if, in spite of the efforts by the

Market Committee, the elections could not be held by the Collector, then in that circumstances, the power of extension of the term of the Board of Directors has been granted to the Government. We find that simpliciter failure on the part of the Collector is not sufficient. The failure on the part of the Collector to hold the elections must be even after repeated requests and appropriate steps being taken by the Market Committee and that the reasons must be beyond the control of the Market Committee. The approach that whenever the elections are due the election process will be started by the Collector and if the Collector fails to take steps that is a ground for grant of extension, is not the proper approach. The Collector has several duties to perform under the various Acts, and therefore, even though he is under an obligation to conduct the elections, duty has been cast on the Market Committee to see that the elections are complete before the term of the Board of Directors comes to an end. Therefore, the efforts which are required to be considered by the Government for grant of extension are the efforts by the Market Committee to conduct the election before the expiry of term and all those efforts will be by the Market Committee directed against the Collector. Therefore, the usual or normal approach of the Market Committee is that the Collector failed to hold the elections, and therefore, it was beyond the control of the market Committee, and therefore, the Board of Directors is entitled for grant of extension is not the proper approach. On the contrary, the Market Committee while claiming the grant of extension has to show that all possible efforts were made by the Market Committee and even after repeated requests and appropriate steps being taken the Collector failed to hold the elections. This is so because it is possible that the Collector may, in a given set of facts and circumstances, with the connivance of the Board of Directors of the Market Committee may not call for the necessary information for holding the elections and thereby there may be failure on the part of the Collector. What is to be looked after is that there should be positive efforts by the Board of Directors to hold the election and in spite of positive efforts on their part, if the Collector fails to hold the election, then there is a case for grant of extension of the term of the Board of Directors. The order which has been placed on record simpliciter says that there is failure on the part of the Collector to hold the elections, and therefore, it was beyond the control of the Market Committee and extension has been granted by the above referred order. However, we find that in the facts and circumstances of the present case, petition is only directed for the purposes of directing the elections, however, in view of the above analysis, the submission made by Mr. Salunke, learned Counsel for the respondent No. 5 - Market Committee to the effect that as per the proviso to Sub-section (3) of Section 14 of the Act, the term has been extend it is not necessary for the Court to step in for the purposes of directing the election, is hereby rejected.

6. The second limb of submission made by Mr. Salunke, learned Counsel for the respondent No, 5 is that in view of the fact that the extension has been granted, the Collector will complete the election process before 12-2-2003 and therefore, it is not necessary to direct the election. This is also not correct and we do not

agree with the submission made by the learned Counsel. The extension which has been granted is very specific and it says that the extension is granted upto 12-2-2003 and/or before the newly elected Board of Directors enters into office, whichever event takes place earlier. That means, the Government also desires that as far as possible, the election should be completed and if the elections are completed earlier to the extended term, then in that circumstances, the elected body shall enter into office. Therefore, in fact, the period is extended till the newly elected body is capable to enter into office and in any eventuality before an outer limit of 12-2-2003. Therefore; it is not open for the Managing Committee to say that the elections cannot be directed. Lastly, in the matter of elections, body corporate with perpetual succession as contemplated under the provisions of law is to be regulated by the provisions of law. The individual interest of the members of the Board of Directors is not to be represented by the legal person like the respondent No. 5. It is only a necessary party in the matters of election for the purposes of following the orders which are passed by the various Courts and in the election matters, the Election Tribunal. It is a body expected to be indifferent except in obeying and/or following orders of the Court.

7. What we find is that both the submissions made by the learned Counsel Mr. Salunke, for respondent No. 5, as stated hereinabove, are devoid of any merit and we reject the same.

8. Under the aforesaid circumstances, we allow the petition and direct that the election of the respondent No. 5 be completed by the respondents as per the programme which is marked "X" for identification. The said programme should be followed scrupulously and no office of the State Government shall interfere with the said election programme.

Rule made absolute accordingly. There shall, however, be no order as to costs.