(2008) 09 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 4548 of 2008

Shivaji Bhalerao APPELLANT

Vs

The State of Maharashtra and Others RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) (Amendment and Validation) Act, 1985 — Section 2
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 14, 14(3), 14(3A), 14A, 15(3)

Citation : (2008) 6 ALLMR 666 : (2009) 1 BomCR 142 : (2008) 110 BOMLR 3096

Hon'ble Judges : K.U. Chandiwal, J;F.I. Rebello, J

Bench : Division Bench

Advocate : U.B. Bondar, for the Appellant; Umakant Patil, A.G.P. and V.D. Salunke, holding for S.K. Chavan, for Respondent Nos. 4 to 10, for the Respondent

Final Decision : Allowed

Judgement

F.I. Rebello, J.—Rule. Heard forthwith.

2. The petitioner has described himself as a voter of the Agricultural Produce Market Committee, Jawla Bazar and as a citizen of India. Respondent Nos. 4 to 10 are the members of the Board of Administrators appointed u/s 15A(1)(b) read with Section 15A(1A). Respondent Nos. 4, 5 and 6 were earlier members of the Managing Committee, respondent No. 4 being the Chairman, respondent No. 6 being the Vice-Chairman and respondent No. 5 being the member of the Committee. According to the admitted facts, the term of the elected committee was up to 31-12-2006. According to the petitioner, respondent - State had given three months extension to the members of the Managing Committee of the Agricultural Produce Market Committee (APMC). This period of three months was to expire on 31-03-2007. By order dated 23-03-2007 u/s 14(3) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, (hereafter referred to as "Act"), the term of the committee was extended

from 01-04-2007 to 30-09-2007. By way of further order dated 14th November 2007, further extension was granted from 01-10-2007 to 31-03-2008.

3. Respondent No. 3 by an order dated 17-06-2008 appointed an Administrative Committee, wherein the former Chairman, Vice-Chairman, one more member of the erstwhile Committee, as also respondent Nos. 7 to 10 have been approved as an Administrative Committee for further period of six months or taking over charge by the newly elected committee.

It may be mentioned that on 16-05-2008 a preliminary voters list was published directing that if anybody has objection, it can be taken on or before 13-06-2008. According to the petitioner, till date the final voters list has not been prepared and declared. On 16-07-2008 apart from the A.P.M.C. Jawla Bazar, the election programme of other A.P.M.Cs. in Hingoli District has been declared for the year 2008 and date of election was scheduled, on 16-07-2008.

4. By the present petition, the petitioners seek to challenge the order dated 17-06-2008 thereby praying to quash the same, with a further direction to direct holding the election of the Agricultural Produce Market Committee, Jawla Bazar.

5. Reply has been filed by Sunilkumar Ramsingh Pardeshi, Assistant Registrar, Co-operative Societies, on behalf of respondent No. 3. In the reply, it is set out that the term of the Managing Committee was till 31-12-2006. As the elections to the A.P.M.C. were to be held, they had to deposit the election funds in terms of Section 14A of the Act in the office of the District Deputy Registrar, Co-operative Societies, Hingoli. However, the committee did not deposit the election funds. Respondent No. 3 had issued a letter to A.P.M.C. on 02-05-2008 and informed that the amount of Rs. One lakh should be deposited to hold the elections. It was also informed that in the event that the amount for the election funds is not deposited, the Managing Committee would be held responsible for further action. Inspite of the letter issued by respondent No. 3, the A.P.M.C. did not deposit any amount for conducting the election. The Assistant Registrar, Co-operative Societies, therefore, issued a letter dated 08-05-2008 and informed that the amount of Rs. One lakh be deposited immediately to hold the election otherwise, the Managing Committee would be responsible for the same. This was also not complied with. This deponent admits that the election programme of the A.P.M.C. was published on 10-06-2008. However, respondent No. 3 never declared any election programme of the A.P.M.C. Jawla Bazar, as the election funds were not deposited by the Committee in spite of communication issued by respondent No. 3 herein. Further averments are that the Director of Marketing, M.S. Pune has given approval to appoint Administrative Committee of A.P.M.C. Reliance is made to the Government Letter dated 22-05-2008 whereby the Government has approved the names of the members of the Administrative Committee of A.P.M.C. It is submitted that there is no malafide intention or vested interest in extending the term. It is set out that the answering respondent is ready to declare the election of A.P.M.C. Jawla Bazar, in case A.P.M.C. Jawla Bazar deposits the election funds in the office of respondent No. 3 herein.

6. Reply also has been filed on behalf of respondent No. 4 and respondent Nos. 5 to 10 by Madan Baburao Karhale, the Ex-Vice-President of the A.P.M.C. A preliminary objection is raised that an appeal lies considering the provisions of Section 52B of the A.P.M.C. Act and on this count alone, the petition ought to be dismissed. It is then set out that the extended term of the committee had expired on 31-03-2008 but no election process had been completed till that time. As such, respondent No. 2 had issued the order dated 17-06-2008 and thereby appointed respondent Nos. 4 to 10 as the Board of Administrators. The order dated 17-06-2008 was issued by invoking the powers u/s 15A of the A.P.M.C. Act. During the tenure of earlier elected committee it had initiated the election process and provisional voters list was published on 16-05-2008 and objections were invited till 13-06-2008 but no election fund was deposited. The earlier Managing Committee had passed a resolution for merger of 27 villages from the area of operation of Jintur A.P.M.C. to Jawla Bazar A.P.M.C. and same was pending for approval of the Government. Reliance is made to the letters dated 23-04-2008 and 28-04-2008 to that effect. It is also pointed out that the Vasmat A.P.M.C. had issued proposal for asking the merger of 18 villages from the area of operation of Jawla Bazar to Vasmat A.P.M.C. This proposal was also pending before the State Government. It is on account of the proposal for merger of 27 villages and the proposal for exclusion of 18 villages from Jawla Bazar A.P.M.C. to Vasmat A.P.M.C. that the election expenses were possibly not asked by the D.D.R. and the same are not deposited. According to the affiant, they are ready and willing to deposit the amount of the election expenses even as on today with respondent No. 2. Considering the merger of villages from the area of operation of Jawla Bazar A.P.M.C., the voters list published earlier necessarily would require changes as the proposed changes in the voters list will affect the election process.

In answer to the contention that the earlier committee members were appointed as the Board of Administrators illegally, it is set out that there is no statutory bar imposed under the A.P.M.C. Act or Rules and as such, the earlier members are not excluded specifically or impliedly from acting as Board of Administrators. The Board of Administrators consisting of 7 persons, wherein 3 persons were the elected members of earlier committee and 4 were not elected members of the earlier committee, but are agriculturists and appointed from the different villages. They have already taken the charge and are acting as the Board of Administrators.

7. We shall first deal with the objection that an appeal lies u/s 52-B of the Act. The submission is correct but the impugned order though issued by the District Deputy Registrar reveals that by letter of 8th June 2008 the Government has granted approval to the appointment of an Administrative Board. An appeal if preferred would be from Ceasar to Ceasar. The first objection must therefore be rejected.

8. The question which arises for determination is whether respondent Nos. 1 to 3 acted illegally in appointing respondent Nos. 4 to 10 as Board of Administrators

of the A.P.M.C., and whether the Order dated 17-06-2008 to that extent is liable to be quashed and set aside, and if set aside, what relief is the petitioner entitled to.

9. In answering the issue, we may gainfully refer to the provisions of the Act. The A.P.M.C., on incorporation is a body corporate having perpetual succession and a common seal, and can sue and be sued and shall be competent to contract, acquire and hold property, both movable and immovable; and to do all other things as required. u/s 14(3) the terms of office is for the period of five years. There is a proviso which reads as under:

Provided further that, where the general election of members of a Committee could not be held for reasons beyond the control of the Committee before expiry of the term of office of its members as aforesaid, the State Government may, by order in the Official Gazette, extend from time to time, the term of office of any such Committee, so however, that the period for which the term of office is so extended shall not exceed the period of one year in the aggregate.

Under Section 14(3A), there is a power in the State Government to postpone holding of elections. Such power can be exercised on account of 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, which 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 in any of these circumstances, notwithstanding anything contained in the 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 elections 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.

On a reading therefore of Section 14 of the Act, what becomes clear is the term of office of the Committee is of five years. By virtue of the proviso to Section 14(3) for the reasons set out in the said proviso, State Government by publication of the order in the Official Gazette, can extend from time to time, the term of office of any such Committee. The period for which the term of office is to be extended however shall not exceed the period of one year in the aggregate. Exercise of such power is limited to those cases whereas the elections could not be held for reasons beyond the control of the Committee.

Similarly, as set out in Section 14 (3A) elections can be postponed 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. Exercise of such power is not because of default on the part of the Committee but for the reasons set out in that Section. Exercise of power u/s 14(3) proviso and Section 14(3A) are in different circumstances. In the instant case, we are not examing the exercise of power u/s 14, as there is no challenge to that exercise.

10. Section 14A requires an election fund to be constituted and for superintendence, direction and control of the preparation of the list of voters and conduct of all the elections. Section 15 provides for the commencement of the term of office of members. Sub section (3) reads as under.

The term of office of outgoing members shall be deemed to extend to, and expire with, the date immediately preceding the date of such first meeting.

11. Section 15A has been inserted by Section 4 of the Maharashtra Act 10 of 1984. Section 15A(1A) has been inserted by Section 2(b) of the Maharashtra Act 25 of 1985. A perusal of this Section which start with a non obstante clause, shows that notwithstanding anything contained in Sub section (3) of Section 15 or any other provisions of the Act, where the term of office, or as the case may be, the extended term of office, if any, under the proviso to Sub section (3) of Section 14 of the members of the Market Committee, has expired, the Director or any officer not below the rank of the District Deputy Registrar of Co-operative Societies can by order in writing, direct that all the members of the Committee shall cease to hold and vacate their offices as members or otherwise; and appoint an Administrator or the Board of Administrator to manage the affairs of the Committee. The relevant portion of Section 15A(1)(b) reads as under.

The Administrator or the Board of Administrators appointed by the Director or such authorised officer shall manage the affairs of the Committee, during the period from the date specified in the order upto the day on which the first meeting of the reconstituted Committee after the election is held, where there is a quorum (hereinafter in this section referred to as "the said period"). Such election shall be held within a period of Six months from the date the Administrator or the Board of Administrators assumes office: Provided that, this period of Six months may be extended, from time to time by the State Government, in exceptional circumstances, to a period not exceeding one year in the aggregate, by notification in the Official Gazette, for reasons, which shall be stated in the notification.

Section 15A(1A) reads as under:

Notwithstanding anything contained in Clause (b) of Sub section (1) as it stood before the commencement of the Maharashtra Agricultural Produce Marketing (Regulation) (Amendment and Validation) Act, 1985, where the Administrator has begun to manage the affairs of any Committee but election to such Committee has not been held within a period of one year as required under Clause (b) of of Sub-section (1), the period of holding election to such Committee shall be extended and shall be deemed always to have been extended upto, and inclusive of the 31st day of March 1986.

This seems to be a special provision in respect of certain contingencies which had arisen.

Thus, on a construction of these provisions, the Director or other authorised officer on the term or extended term of the Committee expiring, the Director or other officer is bound to appoint an Administrator or Board of Administrators to manage the affairs of the A.P.M.C. and to hold the election within six months. There is however a power in the State Government in exceptional circumstances to extend the period but not exceeding one year. The Administrator or Board of Administrators is thus mandated to hold elections within six months, with a further proviso, that six months may be extended from time to time by the State Government in exceptional circumstances, but not to exceed one year in the aggregate.

12. We may now consider the challenge made by the petitioner to the appointment of respondent Nos. 4 to 10 as Board of Administrators of the A.P.M.C.

The term of the Board expired on 31-12-2006. u/s 14 (3A) election could be postponed for six months which can be extended upto one year. The period of the Committee can also be extended so however not to exceed one year. Ordinarily, therefore, the term ought to have come to an end on or before 31-12-2007. We however find that though the term of the Committee could be extended only upto 31-12-2007, it was allowed to continue upto 31-03-2008. Admittedly, there was no power in the State - respondents for extending the term or postponing election for a period not exceeding one year in the aggregate. The extended term therefore, upto 31-03-2008 was clearly without authority of law.

There is nothing on record to show what steps the Committee took to hold elections during its term or extended term. The only material on record is the affidavit of respondent No. 4 which states that the provisional voters list was published on 16-05-2008. This was not during the legally extended period upto 31-12-2007. From the affidavit of respondent No. 3, it is clear that the Committee though called upon to deposit the money for holding the elections, failed to do so even after reminders were sent on 02-05-2008 and 08-05-2008. Though voters list was published on 16-05-2008, respondent No. 3 did not notify election programme as election funds were not deposited. Thus, it appears that during the extended term, no steps were taken to hold the election but during the period they were allowed to continue beyond the period of 12 months, the voters list was published but no funds were made available to hold the elections. In fact, the order dated 17th June 2008 notes that the election fund has not been paid / deposited and the final voters list has not been prepared. In other words, the Board of Administrators came to be appointed on account of failure by the elected committee of which respondent Nos. 4 to 6 were office bearers or members to discharge the duties under the Act, rules or bye laws.

13. A perusal of Section 15A(1)(b) would show that the Board of Administrators

can be appointed during the period from the date specified in the order upto the day on which the first meeting of the reconstituted Committee after the election is held. The object is to hold elections normally within period of six months from the date the Board of Administrators assumes office. Though the Board was appointed on 17th June 2008, yet there is nothing on record to show what any steps are taken for holding elections. The power to appoint a Board is because of the failure of the elected Committee to hold election. It cannot be a reward as in the instant case for the Principal Office bearers to continue in office under a different label. Dereliction of the duty to hold elections cannot be a reward as done in the instant case. The power to appoint is not a power to malad minister.

14. From the pleadings in the petition, it is clear that when the term of the Committee was first extended, there appears to have been no reason whatsoever to extend the term considering the provisions of Section 14 (3A). The extended time at the highest could be upto 31-12-2007, which without authority of law was allowed to extend upto 31-03-2008 under the deeming fiction. Even that pretence was given a go bye by allowing the Committee to continue till the Board of Administrators was appointed.

On behalf of respondent No. 3, it is pointed out that on 2nd May 2008, the Secretary of the Committee had been asked to deposit Rs. One lakh, which the Committee failed to do so. There was reminder sent on 08-05-2008. In spite of reminder, no money was sent. However, on 22-05-2008 approval was granted for the appointment of Administrative Committee which included Chairman, Vice-Chairman, as also another member of the erstwhile Committee. This exercise of appointing a Board with erstwhile office bearers and member is nothing but a colourable exercise of power. We further find in the reply filed on behalf of respondent Nos. 4 to 10 that during the deemed extended term, the resolution seems to have been passed on 23-04-2008 for merger of 27 villages with the A.P.M.C. If this can be a reason for not holding elections, every elected committee on its term coming to an end to perpetuate itself in power has merely to pass a resolution to include or exclude or include areas from the A.P.M.C. to continue in office either as an extended term or as Board of Administrators. We may point out in the instant case that was not a reason given to appoint the Board of Administrators.

15. Such an exercise in order to defeat holding of elections, in our opinion, is nothing but a colourable or malafide exercise of power. Respondent Nos. 4 to 6 who are the members of the erstwhile Committee in Para. 5 of their affidavit have set out that the earlier Committee had initiated election process and provisional voters list was published on 16-05-2008 and objections were invited till 13-06-2008 but no election fund was deposited. This amounted to failure on the part of the Committee which include respondent Nos. 4 to 6 in discharge of their functions. Appointment of persons who during the term or extended term did not discharge the duties under the act is clearly an abuse of power conferred or respondent No. 1 to appoint a Board of Administrators. This by itself ought to

have resulted in denying to these respondents'' appointment on the Board of the Administrators. Appointment of respondent Nos. 7 to 10 appears to be merely an exercise to justify the appointment of respondent Nos. 4 to 6. Respondent Nos. 7 to 10 have not filed any affidavit before this Court. The reply has only been filed by respondent No. 4 the erstwhile Chairman. Respondent Nos. 7 to 10 have not supported the appointments before this Court. It is clear that they have been appointed to give legitimacy to the appointment of respondent Nos. 4 to 6. This again being a colourable exercise of power, the appointment also will have to be struck down.

16. For the aforesaid reasons, this petition is allowed, in terms of prayer Clause - B. Respondent No. 3 to act as Administrator and to commence the election process forthwith. Respondent No. 3 to avail the sum of Rs. One lakh from the accounts of the A.P.M.C. for the purpose of conducting the election. The entire election process to be completed before 15th December 2008.

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

