

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 WRIT PETITION NO.7478 OF 2022

PARBAT NAMDEO NAIKWADI AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

...

Advocate for Petitioners : Mr. R. N. Dhorde Senior Advocate a/w Mr. P.
S. Dighe i/b V. R. Dhorde

GP for Respondent No.1-State : Mr. D. R. Kale

Advocate for Respondent Nos.2 to 4 : Mr. V. H. Dighe

Advocate for Respondent No.5 : Mrs. S. A. Sambre

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WITH

909 WRIT PETITION NO.8158 OF 2022

DILIP RAMNATH MANDLIK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS PRINCIPAL SECRETARY
AND OTHERS

...

Advocate for Petitioners : Mr. Kale Ajeet B.

GP for Respondent No.1-State : Mr. D. R. Kale

Advocate for Respondent Nos.2 to 4 : Mr. V. H. Dighe

Advocate for Respondent No.5 : Mrs. S. A. Sambre

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**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 30th August, 2022

PER COURT :

1. The petitioners in the first petition have put forth prayer Clauses

'B', 'C', 'D' and 'E', as under : -

(B) Hold and declare that the impugned order dated 15.07.2022 issued by the Respondent No.1-State Government postponing the elections of the Respondent No.5- Co-operative Sugar Factory is illegal, arbitrary and violative of Article 14, 19 (1)(c) and 243-ZK of the Constitution of India and in contravention to the provisions of the section 73CC of the Maharashtra Co-operative Societies Act, 1960 and therefore the same is liable to be quashed and set aside and for that purpose issue necessary orders.

(C) Issue writ of mandamus or any other appropriate writ, order or directions in the nature of writ of mandamus directing the Respondents to proceed to hold the elections to the Managing Committee of the Respondent No.5-Co-operative Sugar Factory as per election programme dated 10.06.2022 published by the Respondent No.2-Authority and accordingly complete the same and for that purpose issue necessary orders.

(D) Pending the hearing and final disposal of this Writ Petition grant stay to the impugned order dated 15.07.2022 issued by the Respondent No.1-State Government postponing

the elections to the Respondent No.5-Co-operative Sugar Factory and for that purpose issue necessary orders.

(E) pending the hearing and final disposal of the Writ Petition grant an injunction directing the Respondents, their officers and subordinates to proceed to hold the elections of the Managing Committee of the Respondent No.5-Co-operative Sugar Factory as per the election programme dated 10.06.2022 published by the Respondent No.2- Authority and for that purpose issue necessary orders.

2. By the impugned order dated 15/07/2022, the State of Maharashtra decided to exercise its powers under Section 73CC of The Maharashtra Co-operative Societies Act, 1960, and suspend the election programme, just 2 days before the actual polling date, thereby postponing elections to the societies. The impugned order indicates only 1 solitary reason that the Government assessed a flood like situation by placing reliance upon the report submitted by the State Disaster Management Authority (SDMA) dated 13/07/2022. It was noted that around 89 people and 181 animals lost their lives due to heavy rainfall. 249 villages were affected and around 1362 houses suffered damage due to the heavy rains.

SUBMISSIONS OF THE PETITIONERS'

3. The petitioners are aggrieved by the impugned order dated 15/07/2022 as the election programme was already published by the Co-operative Election Authority, Respondent No.2, on 10/06/2022. The final list of nomination was published and symbols were allotted on 07/07/2022. The petitioners are contesting the elections to the Managing Committee. The polling was scheduled on 17/07/2022.

4. The petitioners have canvassed that the impugned order passed by the State Government is illegal, arbitrary and violative of Articles 14, 19 (1) (c) and 243-ZK of the Constitution of India. It is the claim of the petitioners that the State has postponed the elections only on account of its desire that the elections should not be conducted and reliance on Section 73CC of The Maharashtra Co-operative Societies Act, 1960, in the light of the report of the State Disaster Management Authority dated 13/07/2022, was a pretense. Our attention is drawn to the district forecast and warning issued by the Regional Meteorological Centre, Mumbai (RMC, Mumbai) for a period 12/07/2022 till 16/07/2022, wherein the rains in the Ahmednagar Region were indicated to be moderate, heavy rains at

isolated places, moderate rain and light moderate rain for the five days from 12/07/2022 till 16/07/2022. The polling was scheduled on 17/07/2022.

5. The learned Senior Advocate has vehemently canvassed that it is the report of the State published by the Regional Meteorological Centre which would indicate that heavy rains were expected in Palghar, Thane, Mumbai, Raigad and Sindhudurg. Heavy rains were also likely in Pune, Kolhapur, Satara, Parbhani, Akola, Amravati, Bhandara, Buldhana, Chandrapur, Gadchiroli, Gondiya, Nagpur, Wardha, Washim and Yavatmal. Despite this fact, the elections concerning these petitioners to be held in Taluka Akole in Ahmednagar District, have been postponed. It is further submitted that the rain fall has now stopped and there are reports from the Meteorological Department that it is only the returning rains that are now expected. The learned Senior Advocate further submits that when this matter was heard by a Co-ordinate Bench on 16/07/2022, the prayer for interim relief was refused by the Court at an ad-interim stage.

6. It is further submitted that it is not a question as to the

postponement of the elections for a particular duration, which is up to 30/09/2022. The issue is as regards, whether the impugned order can be justified when there was not even an alert declared by the Regional Meteorological Department predicting rain fall in the area in which the elections were to be held in Ahmednagar District.

7. Our attention is then drawn to an order issued by the State Election Commission Maharashtra, addressed to the District Collectors of Nandurbar, Dhule, Jalgaon, Buldhana, Akola, Washim, Amravati, Yavatmal, Nanded, Hingoli, Parbhani, Nashik, Pune, **AHMEDNAGAR**, Latur, Satara and Kolhapur, dated 12/08/2022. It is mentioned in the said order that as the Hon'ble Supreme Court has passed an order in Special Leave to Appeal No.19756 of 2021, directing to hold the elections, the State Election Commission decided to proceed to conduct such elections even in the month of August 2022. A reference is made at Clauses (viii) and (ix), to the order of the Hon'ble Supreme Court, wherein elections were to be avoided in areas where there was extremely heavy rain fall and which created a flood like situation. In rest of the areas, where there have been no heavy rains, the elections were decided to be held. On account of this decision and the directions set out therein,

the State Election Commission declared elections for the Grampanchayats even situated in the Ahmednagar District and the election programme was commenced on 18/08/2022, and polling was scheduled on 18/09/2022.

8. The learned Senior Advocate, therefore, submits that in the cases in hand, the impugned decision would indicate that it is only the polling on 17/07/2022 which was suspended, as the impugned order was issued two days prior to the polling date and it is specifically mentioned that polling would be conducted and the election programme may be proceed with from the stage at which it was suspended.

SUBMISSIONS OF THE STATE

9. The learned GP, while relying upon Section 73CC, supported the stand of the Government that the postponing of the elections was justified. The power of the Government under Section 73CC clearly enables the Government to postpone elections when the situation indicates scarcity, drought, flood, fire or a natural calamity or rainy season or due to scarcity, drought, flood, fire, heavy storm due to which farmers, farm labourers and other persons have

suffered on a large scale. Since holding elections in such circumstances is neither advisable nor in the interest of the people at large, that the competent authority exercised its powers under Section 73CC.

**SUBMISSIONS OF THE MAHARASHTRA STATE ELECTION
COOPERATIVE AUTHORITY**

10. The learned Advocate representing respondent No.2- Maharashtra State Election Co-operative Authority submits that there are about 8342 voters. In every two villages, a ballot box is placed. He refers to the affidavit in reply dated 21/07/2022 to contend that the election of the respondent No.5- Cooperative Sugar Factory is being held on account of the term of the Board of Directors having come to an end on 25/02/2021. The voters list was finalised, election programme was declared and the filing of the nomination forms began on 14/06/2022. The final list of valid contesting candidates and allotment of symbols was published on 07/07/2022. As the Government issued the impugned order dated 15/07/2022, under Section 73CC, the elections had to be postponed. There are 8342 valid individual voters and 50 voters/ representatives from different categories. One lakh ballot papers

have been printed at the cost of the Sugar Factory. 250 persons would be deployed for the polling on the day on which the polling is to be recorded. Around 100 employees are to be deployed for counting of votes. Subject to the lifting of the ban, the elections can be held.

ANALYSIS AND CONCLUSIONS

11. Section 73CC of the Maharashtra Co-operative Societies Act, reads as under :-

“Where due to scarcity, drought, flood, fire or any other natural calamity or rainy season or due to scarcity, drought, flood, fire, hailstorm or any other natural calamity farmers, farm labourers or other persons on large scale have suffered resulting in reduction in numbers of voters and on the implementation of any Government Scheme made for their rehabilitation, there is likelihood of increase in numbers of voters or due to any election programme, of the State Legislative Assembly or Council or House of the People or a local authority, coinciding with the election programme of any society or class of societies, in the opinion of the State Government it is not in the public interest to hold elections to

any society or class of societies, the State Government may, notwithstanding anything contained in this Act or the rules, or bye-laws made thereunder, or any other law for the time being in force, for reasons to be recorded in writing, by general or special order, postpone the election of any society or lass of societies, 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.”

12. It does appear from Section 73CC that the State Government can postpone an election, if it is not in public interest to hold the elections to any society or class of societies. In any situation as contemplated under Section 73CC, which is indicative of drought or flood, as is relevant in the present case, rainy season or a natural calamity, the State could postpone the elections.

13. In this backdrop, we expected the State Government to place material before us in view of a specific challenge posed by the petitioners while raising the issue that there were hardly any rains in the Ahmednagar Region, unlike the heavy rain fall in the said region, in the 2021 rainy season. Vide the affidavit in reply dated

25/07/2022, the State has placed before the Court, the "State Disaster Situation Report Index." The report is dated 13/07/2022, which is just two days prior to the issuance of the impugned order under Section 73CC. The report of the State Disaster Management Authority would indicate that the Committee had division-wise data available before it, for the State of Maharashtra. What would be relevant to the instant case is the report for the Nasik Division which includes District Ahmednagar.

14. The report indicates that there was heavy rain fall of 14.03 millimeters in Nashik around the first week of July 2022 and heavy rains were predicted for the three following days. Similarly, Nandurbar received 2.8 millimeters rains in the 24 hours preceding 13/07/2022 and two death of animals was reported. The report does not whisper anything about the Ahmednagar Region. The said report contains district wise details. Ahmednagar suffered a loss of three human lives between 01/06/2022 to 11/07/2022. No death of animals was reported. On 12/07/2022, the entire Nashik Region was uneventful. A part of the said report is the district forecast and warning, which we already have referred to in the foregoing paragraphs and what was indicated by the Regional Meteorological

Centre, Mumbai, was that there was light to moderate rain fall predicted on 14/07/2022, 15/07/2022 and 16/07/2022. The probability was "*likely*". The intensity of the rain fall and the probability of such rain, is indicative of the fact that there was hardly any heavy rain fall in the Ahmednagar Region, as is officially borne out by the report of the State Government.

15. The petitioners have filed a rejoinder affidavit dated 18/08/2022. A certificate issued by the Tahsildar, Taluka Akole, dated 03/08/2022, indicates that there was no flooding of rivers in the Akole Tahsil in between 10/07/2022 to 03/08/2022.

16. In the light of the above, it appears to us, on the basis of the record and the pleadings of the parties that the report of the State Government referred to herein above, which is the sole basis of the impugned order, did not even predict heavy rain fall in Ahmednagar District. The Taluka Akole has neither reported any flooding of the rivers, nor loss of human life or live stock. The elections scheduled on 17/07/2022 were to be held in the Akole Taluka. As such, we do not find that the fact situation placed before us by the Government, would justify the issuance of the impugned order dated 15/07/2022.

17. It does not call for any debate that, in elections, every voter is expected to participate and cast votes. If the situation on account of the season is such that the voters would be unable to reach the polling booth, this could be a ground under Section 73CC to postpone the elections. Postponing of elections is in an unprecedented situation and the Hon'ble Apex Court has recently expressed its view in several orders that once the election programme is announced, it is practically an anathema to interject in the election process and stall or postpone the elections. When strong reasons are to be assigned for postponing elections in the backdrop of the specific provision found in Section 73CC of the Act, an order postponing the elections taking recourse to the said provision, cannot be passed on insufficient material or skeletal evidence. Sufficiency of the reasons can alone justify such an order. The learned GP has relied upon the Report of the SDMA and RMC, Mumbai to support the impugned order.

18. We are, therefore, of the view that the impugned order dated 15/07/2022, to the extent of the grievance voiced by the petitioners pertaining to the Akole Taluka, situated in the Ahmednagar District,

in the light of the various reports referred to by us in the forgoing paragraphs, was unjustified.

19. Needless to state, having arrived at a conclusion as recorded above, the remedial step would be to direct the polling to be conducted since it was only the stage of polling that was postponed by the impugned order. The learned Advocate representing the Election Authority has pointed out that one lakh ballot papers, though carrying the date 17/07/2022, are ready and can be put to use, if all the parties agree to utilize the same ballot papers, in order to avoid further expenditure, which is being borne by the respondent No.5-Sugar Factory. The petitioners are agreeable. The learned Advocate further submits that there would be around 24 polling centres, which would be situated in Zilla Parishad Schools and Private Schools. The permission of the Management of such Schools will have to be acquired and by ensuring that the polling is held only on holidays, as the school children would not be present in the schools, that this Court may consider scheduling the election only on a holiday.

20. The learned Senior Advocate Shri Dhorde submits that an

order of this Court would be necessary since there is every likelihood that, if the Court leaves it to the Government or the Election Authority to decide the date for polling, things would not move even after 30/09/2022, and keeping in mind Section 73CC, the Government may avoid the elections even after 30/09/2022. He, therefore, prays that the elections be scheduled either on 04/09/2022 or on 11/09/2022.

21. The learned Government Pleader submits that the 'Lord Ganesh Festival' would be commencing from tomorrow. The immersion of the Lord Ganesh Idols would occur on 'Anant Chaturdashi', which is 09/09/2022. In several parts of the State, the immersion processions and the rituals continue even overnight. There is a heavy pressure on the local administration and the police authorities. He further submits that elections on 17/09/2022 and 18/09/2022 would also not be possible as the Village Panchayat Elections are already scheduled on 18/09/2022, in the Akole Tahsil itself. It would, therefore, be cumbersome to hold the polling either on 'Anant Chaturdashi' and the next day, and on 18/09/2022.

22. The learned Advocate representing the Election Authority

submits that the authority requires at least three weeks for seeking permission from the Schools and making arrangements for polling. Positioning the ballot boxes, as well as allotting the duties to the election staff, would take at least three weeks. He further submits that there would be pressure on the system if two elections in different categories like village panchayat elections on 18/09/2022 and the polling in the present case, coincide on the same day.

23. We are, therefore, of the view that it would be a safe proposition to direct respondent No.2 -Election Authority to conduct the polling on 25/09/2022, Sunday. The counting of the votes can be scheduled on 26/09/2022, Monday.

24. In view of the above, this petition No.7478 of 2022 is partly allowed. The impugned order dated 15/07/2022, is partly set aside only to the extent of the elections at issue with regard to Respondent No.5. Respondent No.2 would initiate appropriate steps and make the necessary arrangements to ensure that polling is held on 25/09/2022 as per the plan which the authority would independently announce/ publish. The one lakh ballot papers which are already printed, would be utilized for the purposes of the polling

notwithstanding the printed date. We grant liberty to the respondent No.2 authority to deploy its staff to stamp a new date of 25/09/2022 on the existing printed date. Needless to state, this would not be a ground, for any candidate, to be raised in any election petition.

25. As per the earlier schedule, the learned Advocate representing the Election Authority submits that the counting of the votes would be held on the next date 26/09/2022 from 09.00 a.m. at the Akole Taluka Education Society's, Agasti Arts and Commerce and Dadasaheb Rupvate Science College in the Late K. B. (Dada) Deshmukh Hall/ Auditorium at Akole. This statement is accepted.

26. Considering the above, Writ Petition No.8158 of 2022 stands disposed off.

27. The learned Advocate Mr. A. B. Kale, after seeking the due consent of the learned Senior Advocate to address the Court, submits that the Sugar Factory as well as respondent No.2-Election Authority may publish the date of polling. This Court need not issue such directions in the light of the fact that respondent No.2-Election

Authority is aware of it's duties and is capable of conducting the elections as well as the polling which have ordered on 25/09/2022. Insofar as the Sugar Factory is concerned, it is at liberty to intimate all it's voters that the polling date is scheduled on 25/09/2022.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

vjg/-.