CASE NO.:
Appeal (civil) 2084 of 2004

PETITIONER:
Deoraj

RESPONDENT:
State of Maharashtra & Ors.

DATE OF JUDGMENT: 06/04/2004

BENCH:
R.C. LAHOTI & ASHOK BHAN.

JUDGMENT:
J U D G M E N T

(Arising out of S.L.P. (C) NO. 2617 OF 2004)

R.C. Lahoti, J.

Leave granted.
Tuljabhavani Zilla Sahakari Doodh Utpadak Va Prakriya Sangh Maryadit, Osmanabad (hereinafter 'the Sangh', for short) is a cooperative society falling in one of the categories included in Section 73G of the Maharashtra Cooperative Society Act, 1960 (hereinafter, 'the Act' for short). Section 144Y of the Act makes special provision for election of officers of such societies. It reads as under:-
"144Y. Special provision for election of officers of specified societies

(1) This section shall apply only to election of officers by members of committees of societies belonging to the categories specified in section 73-G.

(2) After the election of the members of the committee and, where necessary, co-option or appointment, as the case may be, of members to the reserved seats under section 73-B or whenever such election is due, the election of the officer or officers of any such society shall be held as provided in its bye-laws but any meeting of the committee for this purpose shall be presided over by the Collector or an officer nominated by him in this behalf."

Here itself it would be relevant to reproduce the relevant bye-laws of the society as under:-
"Bye-law No.18.3: Every year after annual General Body Meeting, in first meeting of Board of Directors, as per provisions of law, Chairman shall be elected for a period of one year. Till the new Chairman is elected, previous Chairman should continue to hold the post.

Bye-law No.18.11: Out of total number of elected Directors, if 50 percent plus one Directors (including nominated directors) are present for meeting then, corum (sic.,

quorum) for the meeting shall
be complete."

The Sangh has a Board of Directors consisting of eight Directors to look after the management and working of the Sangh. The present Board of Directors which includes the appellant also as a Director was elected on 27.3.2000. The term of the Board is five years but the Chairman is elected every year for a term of one year each. The previous three Chairmen were elected respectively in the meetings held on 12.10.2000, 12.11.2001, 9.12.2002. As the term of the Chairman previously elected on 9.12.2002 was coming to an end, the election of new Chairman, was notified to be held on 14.11.2003 so as to elect the Chairman for the next term of one year. The Collector, Osmanabad was to preside over the meeting called for the purpose. Collector, Osmanabad by his order dated 29.11.2003 appointed Tehsildar, Osmanabad as the Returning Officer. The election programme was notified by Tehsildar-cum-Returning Officer on 3.12.2003 as under:-

"Election Programme for the post of Chairman schedule on 11.12.2003

Date Time	Stages of Election
11.12.2003 11.00 to 12.00 a.m.	Distribution of nomination papers & acceptance of nomination papers
11.12.2003 12.00 noon to 12.15 p.m.	Scrutiny of nomination papers
11.12.2003 12.30 p.m. to 13.00 p.m.	Withdrawal of nomination papers
11.12.2003 14.00 noon	If felt necessary, then voting, counting & declaration of result of election.

(underlining by us)

Simultaneously with the notification of the election programme, the Managing Director of the Sangh issued notices to all the Directors informing them of the meeting scheduled to be held at 2 p.m. on 11.12.2003. The election programme was also communicated to all the Directors.

On 11.12.2003, at 11.48 a.m. the appellant filed his nomination paper the receipt whereof was issued by the Returning Officer. There was no other nomination filed. On scrutiny the nomination filed by the appellant was found to be in order. There was no withdrawal.

At 2 p.m. only four Directors, including the appellant, out of the total eight Directors of the Sangh were present. The Returning Officer awaited for the arrival of other Directors for ten minutes. At 10 minutes past 2 p.m., the Tehsildar-cum-Returning Officer drew up the

proceedings of special meeting recording all the facts relating to the notification of election, the filing of single nomination paper, its scrutiny and no withdrawal and the fact that only four Directors had turned up for the meeting. In the concluding paragraphs the Tehsildar-cum-Returning Officer recorded as under:-

"The Board of Directors of the said society consist of total 8 directors. The coram for special meeting is half + 1 Director. But 4 directors are present for the meeting, the coram for the meeting is not completed. Therefore, the said special meeting is stayed. It is declared so.

The Returning Officer has declared that the said special meeting is being stayed, will be communicated to the Collector, Osmanabad, thereafter, further proceedings will be done as per his orders. After giving vote of thank to the present Directors, the meeting is declared to be over.

Date : 11.12.2003"

It appears that the appellant insisted on his being declared as the duly elected Chairman in view of he only being the duly nominated candidate for the office of Chairman. But he received no response. On 17.12.2003, he filed a writ petition in the High Court of Bombay, Bench at Aurangabad seeking quashing of the order dated 11.12.2003 passed by the Tehsildar-cum-Returning Officer and a command to complete the election programme as scheduled by resuming the same from the stage at which it had stopped. In substance the appellant sought for his being declared the duly elected Chairman of the Sangh. The appellant also sought for an ad-interim writ to the same effect.

The petition remained pending alongwith the prayer for interim relief. In the meantime, on 26.12.2003, the Collector announced fresh election programme convening a meeting to be held on 5.1.2004. The whole process of election was directed to be commenced from the beginning. The appellant moved an application for amendment in the writ petition seeking setting aside of the election programme declared on 26.12.2003 and an ad-interim writ seeking suspension of the election proposed to be held afresh. By the impugned order dated 5.1.2004, the Division Bench of the High Court directed rule to issue in the presence of the Government pleader for the State and its officials and the counsel for the Society but at the same time directed the prayer for interim relief to be rejected. Feeling aggrieved therewith this appeal by special leave has been filed.

Ordinarily, this Court in its exercise of jurisdiction under Article 136 of the Constitution does not interfere with the orders of interim nature passed by the High Court or Tribunals. This is a rule of discretion developed by experience, inasmuch as indulgence being shown by this Court at an interim stage of the proceedings pending before a competent Court or Tribunal results in duplication of proceedings; while the main matter is yet to be heard by the Court or Tribunal seized of the hearing and competent to do so, valuable time and energy of this Court are consumed in adjudicating upon a controversy the life of which will be co-terminus with the life of the main matter itself which is not before it and there is duplication of pleadings and documents which of necessity shall have to be placed on the record of this Court as well. However, this rule of discretion followed in practice is by way of just self-imposed discipline.

The Courts and Tribunals seized of the proceedings within their

jurisdiction take a reasonable time in disposing of the same. This is on account of fair procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the Courts are also over burdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any Judge to test.

Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case ___ of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent.

The present one is a case where we are fully satisfied that a foolproof case for the grant of interim relief was made out in favour of the petitioner in the High Court on the basis of the material available before the Court. There was only one nomination filed which was found to be in order and was not withdrawn. The time appointed for filing nominations, scrutiny and withdrawal was over. There was no contest. Nothing had remained to be done at the meeting of the Committee which was to be convened only for the purpose of declaring the result. Nothing was to be put to vote. Holding of a meeting was only for the purpose of performing the formality of declaring the appellant as elected. In fact the election programme, as notified, itself contemplated the meeting at 1400 hours for voting and counting 'if felt necessary'. The provision as to quorum lost all its significance. It did not make any difference whether there were eight directors to hear the declaration of result or just four or even none. May be the directors having learnt of there being a single valid nomination and that too not withdrawn, also knew that the result of the election was a fait accompli, and therefore, did not want to take the trouble of even coming to the venue of the meeting. Unless something was brought to the notice of the Court either by way of material in the shape of documents or affidavits or even by way of a plea raised before the Court which could come in the way of the relief being granted to the writ petitioner, in the case of such a nature, the interim relief ought to have been granted. The writ petitioner-appellant is right in submitting

that the election was for a period of one year out of which a little less than half of the time has already elapsed and in the absence of interim relief being granted to him there is nothing which would survive for being given to him by way of relief at the end of the final hearing.

It is pertinent to note that in spite of the respondents having been noticed by this Court none has made appearance excepting the State of Maharashtra and the State too has not chosen to file any counter affidavit.

The appeal is allowed. The impugned order dated 5.1.2004, in so far as it rejects the prayer for the grant of interim relief, is set aside. The prayer for the grant of interim relief as made by the writ petitioner/appellant is allowed. The respondents are directed to announce the result of election in accordance with the election programme dated 11.12.2003 post haste and act accordingly.

Before parting we make it clear that whatever has been stated hereinabove is for the purpose of disposing of the prayer for the grant of ad-interim relief and that has been done on the basis of material available on record at this stage. As a very short question of law arises for decision in the case, the High Court would do well to take up the main matter itself for hearing at an early date and decide the same finally. The High Court while deciding the writ petition on merits would obviously do so on the basis of pleadings and documents produced and submissions made before it; the High Court need not feel inhibited by anything said in this order. No order as to the costs.