

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 6266/2014.

Prakash Shivanna Myakalwar and another.

-VERSUS-

The Collector, Yavatmal and 17 others.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : **B.P.DHARMADHIKARI**
& P.N. DESHMUKH, JJ.

DATE : **SEPTEMBER 21, 2015.**

Heard Shri M.I. Dhattrak, learned Counsel
for the petitioners, Shri S.M. Ukey, learned Addl. G.P.
for respondent nos. 1 and 2 and Shri R.S. Kurekar,
learned Counsel for respondent no.3.

2. Shri Dhattrak, learned counsel fairly states
that in so far as challenge about proposer and
seconder, raised in the matter, same are covered by a
judgment of this Court reported at 2014 (3) Mh.L.J.
362 (Dinesh Sheshrao Thakre .vrs. Collector,
Nagpur and others). He further states that the said
judgment is upheld by the Hon'ble Apex Court and

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hence, he restricts the challenge to non-intimation of issuance of notice of no confidence to the Director. He states that said Director has to statutorily participate in the deliberations.

3. He has invited our attention to the provisions of Section 23A(2) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and a judgment of the Hon'ble Apex Court reported at **AIR 1990 SC 1023 (Gajanan Narayan Patil and others .vrs. Dattatraya Waman Patil and others)**.

4. Learned Addl. G.P. submits that here the meeting has already been held and thereafter, new persons have been elected as Chairman and Vice-Chairman of the A.P.M.C. According to him, petitioners have not demonstrated any prejudice caused to them for want of service of intimation upon the Directors.

5. Shri Dhatrak, learned counsel submits that though this Court did not grant any interim relief in the matter, however, outcome thereof has been subjected to orders of this Court.

6. After hearing the respective counsel, we

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find that Section 23A of the 1963 Act is on motion of no confidence against Chairman or Vice-chairman. As per sub-section [2], the request of such special meeting is to be sent by the requisitionists to the Collector under intimation to the Director. Under sub-section [3], the Collector has to convene that special meeting within 15 days. Sub-section [4][a] stipulates that such meeting has to be presided over either by the Collector or by the officer authorized by him. It is further mentioned that the Collector or such officer or the Director (if present), has no right to vote in such meeting. The Collector or his nominee has to preside over the meeting. Therefore, the words “**if present**” necessarily qualify the Director. Thus, option has been given to the Director either to remain present in such meeting or then not to remain present.

7. Perusal of the judgment of Hon'ble Apex Court in case of *Gajanan Narayan Patil vrs. Dattatraya Waman Patil (supra)*, shows that it deals with altogether different enactment namely - Maharashtra Cooperative Societies Act, 1960 and Rules framed thereunder. The special meeting of no confidence was called for without giving notice to the representatives

of a financing institute as well as co-opted expert nominee. Meeting was held illegal.

8. It is apparent that the said members of financing institution and co-opted expert nominee were entitled to sit in the meeting. The Hon'ble Apex Court has noted that Section 27 of the Maharashtra Cooperative Societies Act, 1960 provides an express bar and stipulates that Representatives of financial institution as well as expert Director (co-opted) are incompetent to participate only in elections of members of the Society. The said Directors have a right to participate in any meeting including special meeting of Board of Directors or of Managing Committee or Societies. The Hon'ble Apex Court therefore, has concluded that such members to whom notices were not served, were entitled to sit and vote in the meeting of the Committee conveyed for consideration of no confidence motion. It is apparent that the view has been reached after considering a particular provision contained in a specific enactment.

9. Here, because of the option given to Director to remain present or then not to attend the meeting, it is apparent that unless and until the

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petitioners demonstrate some prejudice, the non service of intimation upon the Directors cannot be held sufficient to vitiate the meeting itself. The present petition does not contain specific averment in this respect.

10. Therefore, we keep the question open for consideration in more appropriate facts. In present matter, we find that the petitioners are not in a position to demonstrate that non service of intimation upon the Directors has resulted in any prejudice to them. Writ Petition is, therefore, dismissed. No costs.

Rgd.

JUDGE

JUDGE