FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

**WRIT PETITION NO.2325 OF 2015**

**Chandrashekhar S/o Dhondiba Bhosale and another Vs. The State of Maharashtra and others.**

| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders. | Court's or Judge's orders |
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Mr.M.S.Deshmukh, advocate for the Petitioners.
Mrs.M.A.Deshpande, A.G.P. for the State.
Mr.U.R.Momale, advocate for Respondent No.5.
Mr.A.N.Irpatgire, advocate for Respondent No.6.

**CORAM : S.V.GANGAPURWALA AND V.K.JADHAV,JJ.**
**Date : 07.09.2016.**

**PER COURT :**

1. Heard.

2. The order passed by the Director Marketing, thereby directing re-audit of Respondent No.5 if assailed in the present petition.

3. Mr.Deshmukh, learned counsel for the petitioner strenuously contends that the Respondent No.2 has exercised his powers pursuant to the pressure exerted by Respondent No.6, who is a MLA. The Respondent No.6 belongs to the rival party and to settle the political score, the Respondent No.6 exerted pressure

upon the Respondent No.2 in passing the impugned order. The impugned order is not passed independently by the Respondent No.2 but the same is upon the dictate of Respondent No.6. The authority is expected to act and function independently without external pressure. The same would amount to non-exercise of powers by the authority. The learned counsel relies on the judgment of the Apex Court in a case of **"State of M.P. and others Vs. Sanjay Nagayach and others"** reported in **AIR 2013 Supreme Court 1921.** Learned counsel submits that the audit report is submitted. 30 days period was given for compliance of deficiencies. In fact, as per the statute 90 days period is required to be given, however, even before the end of 30 days period, the impugned order is passed directing reaudit by the Respondent No.2. The petitioners have complied the deficiencies as per the audit report within the stipulated period. The order impugned be quashed and set aside.

4. We have also heard Mr.Irpatgire, learned counsel for Respondent No.6, learned counsel for Respondent No.5 and learned A.G.P. Learned A.G.P. states that for a period of two (2) years, no compliance was made by the APMC with regard to the deficiencies shown in the audit report and thereafter the Director exercising powers under Sub-rule 7 of Rule 116 of the APMC Rules has passed the order directing reaudit.

5. We have considered the submissions. We have also perused the order passed by the Director. The Director in his order has observed that in the statutory auditor's report the clear details of the irregularities committed and/of the expenses are not spelt out and as such has directed reaudit for the period for which audit report is submitted i.e. for the years 2011-12, 2012-13 and 2013-14.

6. It is not that the Respondent No.3 has acted on the dictate of Respondent No.6 while issuing the said order. It has been stated on affidavit by the Assistant Director Cooperative Societies that the audit of the Respondent No.5 Committee for the period 2010-12 was completed and the audit report was submitted on 30.3.2013. The Respondent No.5 Committee did not submit the rectification report within 90 days as required under Rule 116(6) of the Maharashtra Agricultural Produce Marketing (Development and Regulation )Rules, 1967. Even for the year 2012-13 the same thing happened. The rectification report was submitted within the prescribed time. It was found by the authority on perusal of the audit report for the period 2010-12 and 2012-13 that there were many irregularities and the rectification report was not submitted. Regular inspection U/s 14 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 was ordered, however, the Assistant Registrar did not submit the inspection report. Even in the audit report of 2013-14 irregularities were

mentioned.

7. It appears that on consideration of all these aspect, the Director has exercised his powers under Rule 116(7) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 and passed an order of reaudit. The petitioners should not be aggrieved by the same. They are two of the Directors of Respondent No.5. They should not be shy of reaudit.

8. Considering above, the Writ Petition is disposed of. No costs.

**(V.K.JADHAV,J.)** **(S.V.GANGAPURWALA,J.)**

Dt.07.09.2016.
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