

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Writ Petition No. 12155 of 2017

District : Osmanabad

1. Dagadu s/o. Sadhu Gaikwad,
Aged : 53 years,
Occupation : Agriculture,
R/o. Chincholi (Bhu.),
Taluka Omerga,
District Osmanabad.
2. Dhanraj s/o. Govindrao Jadhav,
Aged : 52 years,
Occupation : Agriculture,
R/o. Kader, Taluka Omerga,
District Osmanabad.
3. Shridevi Manik Biradar,
Aged : 60 years,
Occupation : Household,
R/o. Kesarjawalga,
Taluka Omerga,
District Osmanabad.
4. Mangalbai Revan Lamjane,
Aged : 58 years,
Occupation : Household,
R/o. Supatgaon,
Taluka Omerga,
District Osmanabad.
5. Ayub Ibrahim Masuldar,
Aged : 55 years,
Occupation : Agriculture,
R/o. Murum,
Taluka Omerga,
District Osmanabad.
6. Chandrakant s/o. Sidram Gaikwad,
Aged : 51 years,
Occupation : Agriculture,
R/o. Sidram, Taluka Omerga,
District Osmanabad.

7. Pramod s/o. Vishwanath Murlikar,
Aged : 45 years,
Occupation : Agriculture,
R/o. Murali, Taluka Omerga,
District Osmanabad.

8. Shaikh Chandrsab (Chandpasha)
Shaikatali,
Aged : 55 years,
Occupation : Agriculture,
R/o. Velamb, Taluka Omerga,
District Osmanabad.

.. Petitioners.

versus

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra in
Co-operation, Marketing and
Textiles Department,
Mantralaya, Fort, Mumbai - 32.
2. The Maharashtra State
Marketing Board,
Plot No.7, Market Yard,
Gultekdi, Pune,
Through its Executive Director.
3. The District Deputy Registrar,
Co-operative Societies,
Osmanabad.
4. The Assistant Registrar,
Co-operative Societies,
Omerga, Dist. Osmanabad.
5. Mr. P.L. Shahapurkar
(Administrator),
The Additional Assistant
Registrar,
Co-operative Societies,
Omerga.
6. The Agricultural Produce
Market Committee, Murum,
Taluka Omerga,
District Osmanabad,
Through its Secretary.

7. Mr. Shrikant Shrikishan Maniyar,
Aged : Major,
Occupation : Business,
R/o. Murum, Taluka Omerga,
District Osmanabad. .. Respondents.

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*Mr. S.P. Brahme and Mr. N.R. Pawade, Advocates,
for petitioners.*

*Mr. A.B. Girase, Government Pleader, for
respondent nos.01, 03 and 04.*

Mr. B.N. Patil, Advocate, for respondent no.02.

Mr. K.B. Jadhavar, Advocate, for respondent no.05.

*Mr. N.P. Patil Jamalpurkar, Advocate, for
respondent no.06.*

*Mr. V.D. Salunke, Advocate, holding for
Mr. D.M. Mane, Advocate, for respondent no.07.*

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With

Writ Petition No. 12156 of 2017

District : Osmanabad

1. Bapurao s/o. Madhavrao Patil,
Aged : 55 years,
Occupation : Agriculture,
R/o. Murum, Taluka Omerga,
District Osmanabad.
2. Basavraaj s/o. Annarao Patil,
Aged : 56 years,
Occupation : Agriculture,
R/o. Kothari,
Taluka Omerga,
District Osmanabad.
3. Govind s/o. Vitthal Patil,
Aged : 53 years,
Occupation : Agriculture,

R/o. Kuntekur,
Taluka Omerga,
District Osmanabad.

4. Mahadev s/o. Basavanappa Tengale,
Aged : 52 years,
Occupation : Agriculture,
R/o. Bhosaga, Taluka Omerga,
District Osmanabad.
5. Basavraj s/o. Mailari Karbhari,
Aged : 50 years,
Occupation : Agriculture,
R/o. Jewali, Taluka Omerga,
District Osmanabad.
6. Saybanna s/o. Shivayya Hirmukhe,
Aged : 60 years,
Occupation : Agriculture,
R/o. Bhusani,
Taluka Omerga,
District Osmanabad.
7. Vijaykumar s/o. Sadashiv Sonkarale,
Aged : 40 years,
Occupation : Agriculture,
R/o. Yenegur, Taluka Omerga,
District Osmanabad.
8. Dhanraj s/o. Kashinath Mangrule,
Aged : 50 years,
Occupation : Agriculture,
R/. Murum, Taluka Omerga,
District Osmanabad.
9. Dattatraya s/o. Parmeshwar Karbhari,
Aged : 56 years,
Occupation : Agriculture,
R/o. Kaldevnimbala,
Taluka Omerga,
District Osmanabad.
10. Shyamsundar s/o. Shivbasappa
Torkade,
Aged : 50 years,
Occupation : Agriculture,
R/o. Jewali, Taluka Omerga,
District Osmanabad.

.. Petitioners

versus

1. The State of Maharashtra,
Through the Secretary to the
Government of Maharashtra in
Co-operation, Marketing and
Textiles Department,
Mantralaya, Fort, Mumbai - 32.
 2. The Maharashtra State
Marketing Board,
Plot No.7, Market Yard,
Gultekdi, Pune,
Through its Executive Director.
 3. The District Deputy Registrar,
Co-operative Societies,
Osmanabad.
 4. The Assistant Registrar,
Co-operative Societies,
Omerga, Dist. Osmanabad.
 5. Mr. P.L. Shahapurkar
(Administrator),
The Additional Assistant
Registrar,
Co-operative Societies,
Omerga.
 6. The Agricultural Produce
Market Committee, Murum,
Taluka Omerga,
District Osmanabad,
Through its Secretary.
 7. Mr. Shrikant Shrikishan Maniyar,
Aged : Major,
Occupation : Business,
R/o. Murum, Taluka Omerga,
District Osmanabad.
- .. Respondents.

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Mr. V.D. Sapkal, Advocate, for petitioners.

*Mr. A.B. Girase, Government Pleader, for
respondent nos.01, 03 and 04.*

Mr. B.N. Patil, Advocate, for respondent no.02.

Mr. K.B. Jadhavar, Advocate, for respondent no.05.

*Mr. N.P. Patil Jamalpurkar, Advocate, for
respondent no.06.*

*Mr. V.D. Salunke, Advocate, holding for
Mr. D.M. Mane, Advocate, for respondent no.07.*

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**CORAM : R.M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 04TH DECEMBER 2017

ORAL JUDGMENT (Per R.M. Borde, J.) :

01. Rule. Rule made returnable forthwith.
Heard finally with consent of learned Counsel for
respective parties.

02. The petitioners - elected body of the
Agricultural Produce Market Committee, Murum, Taluka
Omerga, District Osmanabad, are objecting to the
order passed by the District Deputy Registrar, Co-
operative Societies, Osmanabad, on 26th September
2017, in exercise of powers under Section 45(1) of
the Maharashtra Agricultural Produce Marketing
(Development and Regulation) Act, 1963 [**For short,**
"Act of 1963"]. By the said order, the elected body
of the Agricultural Produce Market Committee came to
be superseded and respondent no.05 herein came to be
appointed as Administrator on the Market Committee
for looking towards day to day functioning.

03. Learned Counsel appearing for the petitioners have invited our attention to Section 45(1) of the Act of 1963, which provides that "*if, in the opinion of the State Government, a Market Committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under this Act, or abuses its or his powers or wilfully disregards any instructions issued by the State Government or any officer duly authorised by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the office and work thereof, the State Government may, after giving the Committee or member, as the case may be, an opportunity of rendering an explanation, by an order in writing, with reasons therefor, supersede such Market Committee, or remove the member, as the case may be.*"

04. The petitioners point out that a notice has been issued by the District Deputy Registrar, calling upon the petitioners to tender explanation in respect of the charges levelled against them in the notice on 19th April 2017. The petitioners tendered their explanation to the notice on 04.05.2017. The federal body i.e. Maharashtra State Marketing Board - respondent no.02 was duly consulted and thereafter the District Deputy Registrar proceeded to issue the order impugned in these petitions on 26th September 2017.

05. We have perused the order passed by the District Deputy Registrar, Co-operative Societies, Osmanabad. The order, except concluding two paragraphs, records the contents of the complaint as well as the contentions raised by the petitioners in reply to the notice and the opinion expressed by the federal body. Except recording the details of the case, there are absolutely no reasons recorded by the District Deputy Registrar for arriving at the conclusion or for reaching the satisfaction in respect of the proposed action i.e. supersession of the Market Committee.

06. Section 45(1) of the Act of 1963 mandates the State Government to pass an order after extending opportunity of hearing to the Market Committee or its members by an order in writing with reasons therefor. The mandate providing for passing an order in writing with reasons therefor has been added to Section 45(1) by virtue of Maharashtra Act 10 of 2008. Before the enforcement of the aforesaid amendment, it was not obligatory for the State to record reasons for its satisfaction or even to record the order in writing. After enforcement of the amendment to Section 45(1) by virtue of Maharashtra Act 10 of 2008, it is imperative for the State Government to record the order in writing with reasons thereof. The rider has been incorporated in Section 45(1) in respect of recording reasons in support of the order in order to

observe transparency in the action. The recording of reasons also ensures application of mind by the authority issuing the order and also takes care of observance of principles of natural justice. In the instant matter, the mandate of Section 45(1) in respect of recording of reasons in support of the order passed by the State Government of superseding the Market Committee has not been adhered to. The order impugned in these petitions is vitiated and, as such, deserves to be quashed.

07. It would be apt to refer to a decision rendered by Division Bench of this Court in the case of **Arun Krishna Patil & others Vs. State of Maharashtra & others [2008 (3) Bom.C.R. 711]**. In paragraphs 15 and 16 of the judgment, it is observed thus :

"15. On mere perusal of the provisions of section 45, it is clear that whenever State Government comes to the conclusion to take action of superseding against the Agricultural Produce Marketing Committee for the reasons stated in the section itself, the State Government can do so only after giving the Committee or Member, as the case may be, an opportunity of rendering an explanation and by Notification in the *Official Gazette*, with reasons therefor to supersede the said Market Committee or remove the Members as the case may.

The Legislature while framing section 45(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, in its wisdom thought it fit to make provision that while issuing Notification in the *Official Gazette* for superseding the Market Committee reasons therefor

should be given in Notification. Therefore, it is not open to the State Government to contend that it is not necessary to give reasons along with Notification to be issued under section 45(1).

16. When the statutory provisions provide a particular thing to be done in a particular manner, it has to be done in that manner alone. In the instant case, the Notification dated 30th March, 2006 is issued by the State Government in *Official Gazette* without giving any reasons in support of its action to supersede the Board of Director of the Agricultural Produce Marketing Committee, Kalyan, and to appoint Administrator under section 45(2)(c) for six months.

On perusal of the Notification published in the *Official Gazette*, it is clear that no reason is given in the Notification and therefore the Notification issued in *Official Gazette* on 30th March, 2006 is not in accordance with provisions of Section 45(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, and same deserves to be quashed and set aside. "

08. On consideration of totality of circumstances, since the impugned order passed by the District Deputy Registrar, Co-operative Societies, Osmanabad, does not satisfy requirement of Section 45(1) of the Act of 1963, the order deserves to be quashed and set aside.

09. At this stage, learned Government Pleader appearing for the State contends that the charge of the affairs of the Managing Committee has been entrusted to the official of the State Government

i.e. Assistant Registrar, Co-operative Societies, Omerga, and the present arrangement need not be disturbed.

10. Since the impugned order is being set aside, the charge of the affairs of the management of the Agricultural Produce Market Committee shall have to be restored to the elected Managing Committee. Learned Government Pleader expressed concern that there is every likelihood that the Managing Committee may create a record with a view to substantiate its stand. It is contended that the Managing Committee did not keep the updated record nor provided the same for inspection to the Enquiry Officer.

11. In the result, the writ petitions are allowed.

(a) The impugned order dated 26th September 2017, passed by respondent no.03 - District Deputy Registrar, Co-operative Societies, Osmanabad, superseding Managing Committee of respondent no.06 - Agricultural Produce Market Committee, Murum, Taluka Omerga, District Osmanabad, is hereby quashed and set aside.

(b) In order to ensure proper enquiry into the matter, we direct the Administrator, who has already taken over charge of the affairs, to keep the concern record in safe custody with the District Deputy

Registrar, Co-operative Societies, Osmanabad, for smooth progression of enquiry into the matter. The Administrator shall obviously prepare the list of the record to be forwarded to the District Deputy Registrar of Co-operative Societies and furnish list to the Managing Committee of the Market Committee.

(c) As a result of quashment of the order passed by the District Deputy Registrar, directing supersession of the Market Committee, charge of the function of the Market Committee shall be handed over back to the elected Managing Committee. The elected Managing Committee of the Market Committee, during the pendency of the enquiry, completion of which we propose to direct within a stipulated period, shall not take any major policy decision, except for payment of salaries, other administrative expenses and payment of taxes or legally recoverable dues.

(d) It would be open for the District Deputy Registrar of Co-operative Societies to conclude the proceedings in pursuance to the notice issued by him earlier on the basis of material which is made available and after extending opportunity of hearing to the elected Managing Committee and other individuals connected with the affairs of the Market Committee. The enquiry shall be conducted from the stage at which notice dated 19th April 2017 came to be issued and same be concluded as expeditiously as possible, preferably within a period of three months

from today.

(e) Rule made absolute in the above terms. There shall be no order as to costs.

(Smt. Vibha Kankanwadi)
JUDGE

(R.M. Borde)
JUDGE

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