

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

**Letters Patent Appeal No.37 of 2008
In
Writ Petition No.3235 of 2007**

- 1) The Divisional Manager,
Jalgaon Division
The Maharashtra State Co-operative
Cotton Growers' Marketing
Federation Ltd.
Having office at Ashirwad Building,
Near Natraj Theatre, Zilla Peth,
Jalgaon.
 - 2) The Sub Divisional Manager,
Jalgaon Sub Division,
The Maharashtra State Co-operative
Cotton Growers' Marketing
Federation Ltd.
Having office at Gendalal Mill,
Shivajinagar Jalgaon.
- .. Appellants.**

Versus

- 1) The Agricultural Produce Market
Committee, Jalgaon,
Through its Secretary.
 - 2) The State of Maharashtra
Through the Principal Secretary,
Co-operation, Marketing and
Textile Department,
Mantralaya, Mumbai - 32.
- .. Respondents.**

Shri. Shivaji T. Shelke, Advocate, for appellants.
Shri. G.V. Wani, Advocate, for respondent No.1.
Shri. S.B. Pulkundwar, Assistant Government Pleader, for
respondent No.2.

**Coram: T.V. NALAWADE &
S.K. KOTWAL, JJ.**

Date: 11 January 2018

JUDGMENT (Per T.V. Talawade, J.):

1) The appeal is filed against the decision given by the learned Single Judge of this Court by which Writ Petition No.3235/2007 is dismissed. The writ petition was filed by the present appellant to challenge the order dated 9-5-2007 passed by the Tribunal constituted under the provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, "the APMC Act"). Application No.1/2007 was filed before the Tribunal by respondent No.1, Market Committee, Jalgaon and it was allowed by the Tribunal. Present appellant was directed by the Tribunal to pay Rs.49,78,656/- as market fees and supervision fees to the Market Committee, respondent No.1. Both the sides are heard.

2) The appellant is the Chief Agent of the State Government, an institution created for procurement of

raw cotton. The institution is created to implement the scheme of the State Government and through the appellant, the State Government purchases raw cotton from market. The object behind the scheme was to see that the farmers of this State are not exploited and they get reasonable price of cotton. The Government also wanted to see that the farmers get minimum support price due to such purchase by the agent of the State Government.

3) Agricultural Produce Market Committee Jalgaon is created under the APMC Act. The Committee has the power to levy and collect fees from every purchaser of agricultural produce marketed in the market area. The appellant was expected to purchase the cotton in the market area of the Market Committee Jalgaon. As per the provision of the APMC Act, the purchaser is required to make payment of cess, fees to the Market Committee and for purchasing the raw cotton from market the appellant was expected to pay fees to the Market Committee, Jalgaon.

4) In view of the provisions of Section 31 of the APMC Act, the minimum and maximum fees can be fixed by the State Government by issuing notification in the official gazette. As per this provision, the Market Committee can levy and recover the fees within the limits fixed by the State Government. The provision of section 31(1) of the APMC Act runs as under :

"31 - Power of Market Committee to levy fees and rates of commission (*adat*) : (1) It shall be competent to a market committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the *Official Gazette*, in that behalf), from every purchaser of agricultural produce marketed in the market area."

5) Every year the State Government was issuing notification as per section 31 of the APMC Act to fix the fees in respect of raw cotton. By notification dated 10-11-2003 the State Government had informed the decision that for the year 2003-2004 the fees was increased from 50 paisa per hundred rupees to Re. 1 per hundred rupees. Direction was given to the appellant to start purchasing the cotton in that notification from 10-11-2003. Thus, for the year 2003-2004 the State Government had allowed to

levy fees of Re.1 per hundred rupees of the purchase price. As per the definition given in section 2(f) of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971, "cotton season" means the period from the 1st day of July of any year to the 30th day of June of the next year (both days inclusive). As per the practice, the appellant was to start purchase of the cotton only after receiving direction from the State Government.

6) For the year 2004-2005 the State Government issued notification on 21-9-2005 and fixed the aforesaid fees as 50 paise per hundred rupees. The appellant paid the fees to the Market Committee Jalgaon at this rate for the year 2004-2005.

7) In the meeting dated 11-11-2004 the Market Committee Jalgaon had passed resolution to levy and recover the fees at the rate of Re.1 per hundred rupees in view of the previous notification of the year 2003-2004. By notice dated 20-2-2007 the Market Committee Jalgaon informed to the appellant that the appellant was liable to pay the fees at the rate of Re.1 per hundred rupees and it

was informed that the notification of the State Government dated 21-9-2005 which was issued by the State Government for the year 2004-2005 was not applicable for the purchases made by the present appellant for that year. It was also informed that if the remaining amount was not paid, the Market Committee Jalgaon would take the matter to the Tribunal constituted under the APMC Act.

8) When the matter was taken before the Tribunal, the appellant produced copy of the notification dated 21-9-2005 and contended that the Market Committee Jalgaon had no power to levy and recover the fees at the rate of Re.1 per hundred rupees as the State Government had fixed the the fees at the rate of fifty paisa per hundred rupees. The Tribunal rejected this contention and accepted the proposition made by the Market Committee Jalgaon. This decision was challenged by the appellant by filing aforesaid writ petition. The learned Single Judge of this Court also held that in view of the resolution of the Market Committee Jalgaon which had the basis of the previous notification of the State Government, the

appellant was liable to pay the amount demanded by the Market Committee Jalgaon, at the rate of Re.1 per hundred rupees.

9) The learned Single Judge of this Court has considered the provision of section 31 of the APMC Act. The learned Single Judge has held that the bye-laws were framed by the Market Committee Jalgaon on the basis of the previous notification and so as per the bye-laws the present appellant was liable to pay the fees. Section 31 has put restriction on the power of the Market Committee to levy and recover the fees and so the Market Committee cannot recover the fees at higher rate on the basis of the notification which was issued for the previous year. Provision of section 31 shows that the power is kept with the State Government to fix the fees and that power includes the power to change the fees also. In view of the restriction given by section 31 of the APMC Act it was not possible for the Market Committee Jalgaon to recover the fees at higher rate. As per the practice also the State Government was issuing notification for every year, season. Thus, the rate fixed on the basis of the previous

notification by the Market Committee could not have been made applicable in view of the subsequent notification dated 21-9-2005. In the notice of demand issued by the Market Committee dated 20-2-2007 the year in which the purchase was made is specifically mentioned as 2004-2005 and this year is covered by the notification dated 21-9-2005. In view of this position of law and as the bye-laws of the Market Committee cannot supersede the provisions of the APMC Act, this Court holds that both the Tribunal and the learned Single Judge of this Court have committed error in holding that the present appellant is liable to pay the fees at the rate of Re.1 per hundred rupees of the purchase price.

10) In the result, the appeal is allowed. The orders of the Tribunal and the learned Single Judge mentioned above are hereby set aside.

Sd/-
(S.K. KOTWAL, J.)

Sd/-
(T.V. NALAWADE, J.)

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