IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11623 OF 2017

Murlidhar Sadashiv Tagade,
Age: Major, Occu: Agriculture,
R/o: Laxmi Road, Washi, Tq. Washi,
Dist. Osmanabad ..PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Secretary,
Co-operation & Marketing Department,
Mantralaya, Mumbai

2. The Director of Marketing,
Pune

3. The District Deputy Registrar,
Co-operative Societies, Osmanabad,
Dist. Osmanabad

4. The Secretary,
Agriculture Produce Market Committee,
Washi, Dist. Osmanabad

5. Shri. S. R. Belambe,
Age: Major, Occu: Service,
Presently working as Auditor Grade-II,
Co-Operative Societies, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad ..RESPONDENTS

Mr A. B. Kale, Advocate for petitioner;
Mr S. Y. Mahajan, A.G.P. for respondent Nos.1 to 3;
Mr V. D. Sapkal, Advocate for respondent No.4;
Mr S. N. Patne, Advocate for respondent No.5

CORAM : PRASANNA B. VARALE
AND
MANISH PITALE, JJ.

DATE : 23rd October, 2018

ORAL ORDER:

Heard Mr Kale, learned Counsel appearing on behalf of the petitioner, learned Asstt. Govt. Pleader for respondent Nos.1 to 3 ; Mr Sapkal, learned Counsel appearing on behalf of respondent No.4 and Mr Patne, learned Counsel appearing on behalf of respondent No.5.

2. The petitioner is before this Court with a prayer seeking directions to respondents to initiate prosecution against guilty persons as found in the audit report and the special report, which are at Exh.'A' and 'B' to the petition, by issuing writ of mandamus or any other writ in the like nature.

3. Mr Kale, learned Counsel for the petitioners vehemently submits that the nominatory board was appointed over the Agriculture Produce Market Committee (APMC), Washi. The audit was conducted. Mr Kale then invited our attention to the copy of audit report placed on record through Shri. S. R. Belambe, Auditor, Class-II, Co-operative Societies, Tuljapur. This audit was conducted for the period from 1st April, 2013 to 31st March, 2015.

4. It is submitted by Mr Kale, learned Counsel for the petitioner that in the said audit, the authority found serious lapses and by inviting our attention to the references made in the said report, Mr Kale submitted that large amounts were accepted as the personal accounts from the members

and the amount so collected is not utilized for the benefit of the APMC, but it is only to suit some oblique motive. He then submitted that the Auditor found that the persons, who have collected the amount under various heads, have not utilized the same for the benefit of APMC and the said amount be recovered from these persons. He also invited our attention to the reference made in the audit report. The amount is disbursed as an advance amount to one contractor. It is further submitted by Mr Kale that on the backdrop of these findings in the audit report, the reasonable and logical consequence was of initiation of the prosecution against the erring persons, but no action was initiated, as such, the petitioner was constrained to approach this Court.

5. Mr Kale, learned Counsel for the petitioner also invited our attention to the communication placed on record at Exh.'C' to submit that the District Deputy Registrar, Co-operative Societies, Osmanabad forwarded said communication to the Auditor and it is stated that a large amount is misappropriated as reflected in the audit report and then it is directed to the Auditor to initiate action immediately. Mr Kale then submitted that the District Deputy Registrar cautioned the Auditor that if no action is initiated, the District Deputy Registrar would be constrained to initiate an inquiry against the Auditor himself.

6. The notice was issued to the respondents by the Division Bench of this Court and in response to the notice, an affidavit-in-reply is filed on

behalf of respondent No.3 through Mr Vishwas Raghupatrao Deshmukh, District Deputy Registrar, Co-operative Societies, Osmanabad. It is submitted in the affidavit-in-reply that the first audit report was received by the authorities. In the earlier report, certain persons were found responsible for embezzlement of amount. It is stated in the affidavit-in-reply that the explanations were submitted by Shri. Chandrakant Maruti Nipanikar, Shri. Chandrakant Madhukar Chede, Shri Digambar Gopalrao Kawade, Shri. Ratnakar Bhagwat Undre and Shri. Makarand Kalyanrao Shinganapure, whose names were included in the special report. It is then stated in the affidavit-in-reply that the authorities, by exercising its powers, withdrawn the first special report and directed to conduct re-audit. The documents are placed on record. The communication dated 11th March, 2016 refers to the explanation submitted by the persons and then the directions to submit a fresh fact finding report. Accordingly, the exercise of re-audit was undertaken. In the second report dated 23rd June, 2016, the Auditor found that the expenses incurred on various works were matching with the account. It also refers to the completion certificate issued by the authorities. It further refers to the spot panchnama duly signed by some of the respectable residents.

7. Learned Asstt. Govt. Pleader, by inviting our attention to the order dated 30th August, 2018, submitted that the authority, namely, the Director of Marketing, Maharashtra State, Pune, on considering the aspect that there

are two reports and also considering the representations of the petitioner, who was before the authority, making a request to initiate an action, was of the opinion that a fresh audit or re-audit is required in view of the material before him. Accordingly, the Director of Marketing, Maharashtra State, Pune passed the order, thereby directing Shri. S. P. Chavhan, Special Auditor, Class-II, Co-operative Societies, Latur (Marketing) to conduct re-audit of the APMC, Washi, District Osmanabad for the period from 1st April, 2013 to 31st March, 2015. The Director of Marketing further states that the exercise of re-audit is to be completed and the report is to be submitted within a period of three months from the date of the order. Learned Asstt. Govt. Pleader, thus, submitted that as the specific order is passed by the Director of Marketing, it would be in the fitness of the things that let the report be received by the Director of Marketing and then the Director of Marketing, by exercising his powers may initiate further action.

8. In view of the affidavit-in-reply and more particularly in view of the order passed by the Director of Marketing, State of Maharashtra for re-audit, that too, by appointing the Auditor, who is an outsider to the affairs of Washi Taluka i.e. a Special Auditor, Class-II attached to the Co-operative Societies, Latur (Marketing), in our opinion, a care is taken by the authorities to seek for a fresh material in the form of report. The stipulation of period of three months in order to undertake an exercise and complete the same with the report, we see no reason to assume at this stage that the authority like the

Director of Marketing will not consider fresh report on its merits and we are of the opinion that the Director of Marketing, on receiving the report considering merits will take appropriate steps and if needed and if it is convenient, the Director of Marketing may also initiate an action against the erring persons. We hope and trust that if an opinion is formed by the Director of Marketing that the report requires initiation of action, the Director of Marketing would pass appropriate orders of initiation of action, as expeditiously as possible.

With the above referred directions and observations, the petition is disposed of.

In view of the directions of this Court, the District Deputy Registrar, Co-operative Societies, Osmanabad is present in this Court.

(MANISH PITALE, J.) **(PRASANNA B. VARALE, J.)**

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