

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10518 OF 2018
WITH
WRIT PETITION NO.10519 OF 2018
(Madan s/o Dattarao Ladane Vs. The State of Maharashtra and
others)

Mr.V.D.Salunke h/f Mr.R.J.Nirmal, Advocate for the petitioner.
Mr.P.N.Kutti, AGP for State/respondent.
Mr.S.J.Salunke h/f Mr.P.R.Kadam, Advocate for respondent No.5 in
WP No.10518/2018.
Mr.K.B.Jadhav, Advocate for respondent No.4.
Mr.S.S.Kulkarni h/f Mr.P.R.Kadam, Advocate for respondent No.5 in
WPNo.10519/2018.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 30/10/2018

PER COURT :

1. By these two identical petitions, the petitioners have put forth
prayer clause “B”, which are identical prayers, as under :-

“Prayer clause B in WP No.10518/2018 :- By way of allowing
present writ petition order dated 27/08/2018 passed by
Divisional Joint Registrar in Appeal No.48/2018 may kindly be
quashed and set aside.

Prayer clause B in WP No.10519/2018 :- By way of allowing
present writ petition order dated 27/08/2018 passed by
Divisional Joint Registrar, in Appeal No.47/2018 may kindly be
quashed and set aside.”

2. It is submitted that these petitioners had approached the

District Deputy Registrar, Co-operative Societies, Parbhani (For short, D.D.R.) by filing an application seeking the disqualification of respondent No.5 considering that the term of office of the said candidate had ended and he could not continue as a Director of the A.P.M.C. The D.D.R. registered the said matter and issued a simple notice of hearing to the contesting respondent No.5. The notice was issued on 12/06/2018 and the returnable date was posted on 18/06/2018. Liberty was granted to such respondents to engage an advocate and appear in the matter. Respondent No.5, instead of appearing in the matter, preferred an application before the superior authority which is the Divisional Joint Registrar u/s 43 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 . The Divisional Joint Registrar, instead of directing the said applicant to appear before the D.D.R. in response to the notice of hearing, himself dealt with the said proceedings and has stayed the proceedings before the D.D.R. Grievance therefore is that the Divisional Joint Registrar has misused his authority under Section 43 of the A.P.M.C.Act.

3. Learned Advocates appearing on behalf of respondent No.4 A.P.M.C. and respondent No.5, the concerned contesting candidate, submit that the proceedings lodged before the D.D.R. cannot be

entertained by him and the Divisional Joint Registrar has rightly stayed the proceedings in view of the orders of the Hon'ble Apex Court in an another matter in SLP No.14126/2016 preferred by one Mr.Anant Rambhau Jadhav and others. It is, therefore, submitted that the Divisional Joint Registrar may be directed to decide the proceedings u/s 43 instead of the D.D.R. u/s 15.

4. The learned AGP supports the A.P.M.C. and the contesting candidate and opposes this petition.

5. I find a peculiar situation in these proceedings. When the D.D.R. had merely issued a notice so as to enable the respondents to cause their appearance and oppose the application filed by these petitioners, respondent No.5 candidate avoids the D.D.R. and approaches the Divisional Joint Registrar under the plea that the D.D.R. has no authority. What intrigues this Court is, as to what could be the purpose for respondent No.5 to avoid appearing before the forum of the D.D.R. u/s 15 and instead choose a different Forum under Section 43.

6. Section 43 of the Act provides for the State Government or the Director to call for and examine the proceedings of any market

Committee or of the Director for satisfying itself as regards the legality or propriety of any decision or order passed by the Market Committee, Director or the Officer, as the case may be. The State Government or the Director can then modify or annul or reverse the order passed. It would be apposite to reproduce Section 43 as under :-

“43. Powers of State Government or Director to call for proceedings of Market Committee, etc. and to pass orders thereon :-

The State Government may at any time call for and examine the proceedings of any Market Committee or of the Director, and the Director may at any time call for and examine the proceedings of any Market Committee or an officer empowered to exercise the powers of the Market Committee or of the Director for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed by the Market Committee, Director or the officer, as the case may be, under this Act. If in any case, it appears to the State Government or the Director that any decision or order or proceeding so called for should be modified, annulled or reversed, the State Government or the Director may pass such order thereon as it or he may think it.”

7. In the above backdrop, it needs to be scrutinized as to whether the D.D.R. can be said to have delivered any decision or had passed

any order. These two terms have to be interpreted to mean that the D.D.R. has taken cognizance of the matter before it and has passed an order or has delivered a decision and that the State Government deems it proper to call for and examine the legality or propriety of any such decision or order.

8. I do not find that a simple notice issued by the D.D.R., since a proceeding was lodged before him, could be termed as an order passed or a decision taken after considering the rival cases. The D.D.R. has not granted any ex-parte ad-interim relief to the petitioner, much less, expressed any opinion on the merits of the matter.

9. In the above backdrop, when a simple notice of hearing is issued, I do not find that the Divisional Joint Registrar can be said to have properly exercised his jurisdiction u/s 43 of the A.P.M.C. Act. If these factors are taken into account, I prima-facie find that the said respondents had avoided the Forum of the D.D.R. and had approached a superior Forum which could have exercised its powers u/s 43 only after the authority below had passed an order or had taken a decision on the merits of the matter.

10. Considering the above and in order to discourage the litigants from indulging in forum shopping, this petition is allowed in terms of prayer clause "B". Respondent Nos. 4 and 5 are therefore at liberty to appear before the D.D.R. in the proceedings initiated by this petitioner. Learned Advocates for the respective sides fairly state that they would appear before the D.D.R. on 21/11/2018 at 11.00 a.m. Learned Advocate for the respective contesting respondent No.5 in both the petitions submits that they have recently entered their written say and would file their written notes of submissions alongwith case laws, if any. Learned Advocate for the petitioner submits that they would be relying upon the decision of this Court (Coram : R.K.Deshpande, J.) dated 18/10/2016 passed in WP No.3820/2016 at the Nagpur Bench and the order of the Hon'ble Apex Court dated 04/07/2017 by which the SLP has been dismissed.

11. Needless to state, the litigating sides are at liberty to address the D.D.R. on all issues including the issue of maintainability of the proceedings before the D.D.R.. It is expected that the D.D.R. would thereafter pass a reasoned order deciding all issues, even the objections of the respondents herein.

(Ravindra V.Ghuge, J.)