IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8959 OF 2014

M/s.Ramchandra Vitthal Dongre)
Wholesale Broker, Gala No.G-247,)
APMC Market (Fruit Section))
Vashi, Navi Mumbai)
Through its Partner)
Mr.G.V. Lohot) .. Petitioner

Versus

1. Mumbai Agricultural Produce Market Committee)

2. Mr.Satish Soni)
Administration and Additional Commissioner)

3. Mr.Shivaji Philkar)
Secretary, Central Facility Bldg, Vashi)

4. The Director for Marketing)
Maharashtra State, Pune.)

5. Mr.Kashinath M.Wavare)
for M/s.Hande Wavare & Co.)
(Wholesale Fruit Broker))
APMC -Fruit Department)
Vashi – Navi Mumbai)

6. The Minister for Co-operation,)
Marketing & Textile)
Through its Co-operation, Marketing & Textile)
Department, Mantralaya,)
served through the Government Pleader)

7. The State of Maharashtra) .. Respondents

ALONGWITH
WRIT PETITION NO. 8975 OF 2014

M/s.Ramchandra Vitthal Dongre Wholesale Broker, Gala No.G-247, APMC Market (Fruit Section) Vashi, Navi Mumbai Through its Partner Mr.G.V. Lohot	))))))	..	Petitioner

Versus

1. Mumbai Agricultural Produce Market Committee, Central Facility Bldg, Vashi	))		
2. Mr.Balasaheb Solaskar Chairman, Central Bldg, 2nd Flr., Pune	))		
3. Mr.Sudhir Deodatta Tungar Secretary, Central Facility Bldg, Vashi	))		
4. The Director for Marketing Maharashtra State, Pune.	))		
5. Mr.Kashinath M.Wavare for M/s.Hande Wavare & Co. (Wholesale Fruit Broker) APMC -Fruit Department Vashi – Navi Mumbai	)))))		
6. The Minister for Co-operation, Marketing & Textile Through its Co-operation, Marketing & Textile Department, Mantralaya, served through the Government Pleader	)))))		
7. The State of Maharashtra	)	..	Respondents

–

Mr.Vishwajeet V. Mohite for the petitioner.
Mr.N.N. Bhadrashete for the respondent nos.1 to 3.

Mr.Uday B. Nighot a/w Mr.Abhijeet B. Kadam for the respondent no.5.
Mr.S.H.Kankal, AGP for the respondent nos.6 & 7-State.

--

ALONGWITH
WRIT PETITION NO. 2090 OF 2015

Ganpat Sabaji Shinde Age Adult, Occu. Business Having address at -APMC, Fruit Section, Gala No.M-748, At post Turbhe, Navi Mumbai.	)))))	..	Petitioner

Versus

1. The State of Maharashtra Through the Ministry of Co-operation, Marketing & Textile Department, Mantralaya, Mumbai.	)))		
2. Mumbai Agricultural Produce Market Committee, Central Facility Bldg, Vashi	))		
3. The Director for Marketing Maharashtra State, Pune.	))		
4. Mr.Kashinath M.Wavare Age Adult., Occu. Business, for M/s.Hande Wavare & Co. (Wholesale Fruit Broker) APMC -Fruit Department Vashi – Navi Mumbai	))))))	..	Respondents

–

Ms.Jai V. Kanade i/by Mr.Sumit S. Kothari for the petitioner.
Mr.S.H.Kankal, AGP for the respondent nos.1 & 3-State.
Mr.N.N. Bhadrashete for the respondent no.2.
Mr.Uday B. Nighot a/w Mr.Abhijeet B. Kadam for the respondent no.4.

–

ALONGWITH
WRIT PETITION (ST) NO. 35978 OF 2017

Mr.Kashinath M.Wavare)
Age 58 years, Occu. Business,)
for M/s.Hande Wavare & Co.)
(Wholesale Fruit Broker))
MAPMC -Fruit Department)
Vashi – Navi Mumbai) .. Petitioner

Versus

1. Mumbai Agricultural Produce Market)
Committee, at Post Turbhe, Vashi, Navi Mumbai.)

2. The Director for Marketing)
Maharashtra State, Pune.)

3. The State of Maharashtra)
Through the Secretary, Ministry of Marketing,)
Mantralaya, Mumbai.)

4. Mr.Ganpat Sabaji Shinde)
Age Adult, Occu. Business,)
Gala No.M-748, Fruit Section,)
MAPMC Market, Vashi, Navi Mumbai.)

–

Mr.Uday B. Nighot a/w Mr.Abhijeet B. Kadam for the petitioner.
Mr.N.N. Bhadrashete for the respondent no.1.
Mr.S.H.Kankal, AGP for the respondent nos.2 & 3-State.

--

ALONGWITH
WRIT PETITION NO.10328 OF 2014

Mr.Habibullah Farhatullah)
an Indian Inhabitant of Mumbai)
carrying on business as a Wholesale broker/)
Commissioner Agent, having address at)
C/o. Gala No.H-670, APMC Market Fruit Section)
Vashi, Navi Mumbai 400 705.)

Versus

1. Ramchandra Vitthal Dongre)
Wholesale Broker, Gala No.G-247,)
APMC Market (Fruit Section))
Vashi, Navi Mumbai)
Through its Partner)
Mr.G.V. Lohot)

2. M/s.Hande Wavare & Co.)
A partnership firm its partner)
Mr.Kashinath M.Wavare)
carrying on business at Gala M-821,)
(Wholesale Fruit Broker),)
APMC-Fruit Department,)
Vashi, Navi Mumbai.)

3. M/s.Bhalchandra Chintaman Lele)
a partnership firm through its)
partners Mr.Keshav Bhalchandra Lele)
and Mr. Kedhar Keshav Lele)
at Gala No.J/486, MAPMC, Fruit Market, Vashi)

4. Ashok Dhondiram Punde)
Address at Gala No.M-970, MAPMC)
Fruit market, Vashi.)

5. Mumbai Agricultural Produce Market Committee)
through its Secretary having office at)
Administrative Bldg., 3rd Floor, MAPMC Market)
Sector – 18, Vashi.)

6. The Director of Marketing)
having office Central Facility Bldg.,)
3rd floor, Pune – 411 001.)

7. The Minister for Co-operation)
Marketing & Textile, through its Co-operation)
Marketing & Textile Department, Mantralaya,)
served through the Government Pleader.)

8. The State of Maharashtra)
through Ministry of Co-operation & Textile,)
having office at Mantralaya, Mumbai.)
(respondent nos.5 to 8 to be served through)
Government Pleader, High Court,)
Appellate Side, Mumbai.)) .. Respondents

--

Mr.Kaustav Talukdar i/by Ruturaj V. Bankar for the petitioner.
Mr.Uday B. Nighot a/w Mr.Abhijeet B. Kadam for the respondent no.2.
Mr.N.N. Bhadrashete for the respondent no.5.
Mr.S.H.Kankal, AGP for the respondent nos.6 & 8-State.

--

CORAM : R.D. DHANUKA, J.
RESERVED ON : 3rd AUGUST, 2018
PRONOUNCED ON : 21st NOVEMBER, 2018

JUDGMENT :

. By these five petitions filed under Article 227 of the Constitution of India, the petitioners have impugned various orders set out in more detail in the later part of this petition.

2. By consent of parties all five writ petitions were heard finally.

FACTS AND SUBMISSIONS IN WRIT PETITION NO. 8959 OF 2014 AND WRIT PETITION NO. 8975 OF 2014

3. Insofar as Writ Petition No.8959 of 2014 is concerned M/s.Ramchandra Vitthal Dongre, the petitioner claims to be a partnership firm and has impugned an order dated 12th September, 2014 passed by the respondent no.6 i.e. the Minister

for Co-operation, Marketing and Textile thereby allowing the appeal/revision filed by the respondent no.5 i.e. Mr.Kashinath M. Wavare. It is the case of the petitioner that the petitioner was carrying on a business of wholesale fruit distributor in Mahatma Phule Market Mumbai which was subsidiary wholesale market since 1980. The respondent no.1 is a body formed under the provisions of Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short the said APMC Act). In Writ Petition No. 8975 of 2014, the petitioner M/s. Ramchandra Vitthal Dongre has challenged the order dated 12th September, 2014 in R.A.No.27 of 2014 passed by the learned Minister for Corporation Marketing and Textile thereby rejecting the appeal/revision filed by the petitioner and prays for allotment of Gala No.F-158. The respondent no.1 is hereinafter referred to as the said 'APMC'.

4. With a view to facilitate trade dealing with wholesale trading of fruits, APMC constructed 1029 galas. Out of those 1029 galas, 739 galas each admeasuring 300 sq.ft. plus 150 sq.ft. loft aggregating to 450 sq.ft. were termed as 'large Gala' and 297 galas out of 200 sq.ft. plus 100 sq.ft. Loft aggregating 300 sq.ft. were termed as 'Small Size Galas'.

5. It is the case of the petitioner that the petitioner firm consists of two partners viz. Mr.Ramchandra Vitthal Dongre and Mr.G.C.Lohot which firm was constituted

by executing a deed of partnership dated 30th December,1997. The petitioner had applied for registration of the said partnership firm to the Registrar of Partnership Firms. On payment of penalty of Rs.1,800/-, a certificate of registration was granted to the petitioner bearing registration no. BA-108638 on 31st May, 2014. It is the case of the petitioner that since 1980, the petitioner firm had been carrying on wholesale fruit distributor business in the said Mahatma Phule Market building. The petitioner firm was carrying on the said partnership business in the name and style of M/s.Ramchandra Vitthal Dongre. The said partnership firm continued until the year 1994-95. It is the case of the petitioner that the petitioner paid substantial market fees for carrying out the said business of wholesale fruit distributor.

6. Sometime in the year 1987-88, the APMC decided to shift all the subsidiary market of fruits and vegetables from Mumbai to Vashi, Navi Mumbai in order to resolve the issues arising out of congestion of traffic health and pollution arrived in Mahatma Phule Market, Mumbai. APMC issued brochures in the year 1987-88 inviting the applications for booking of galas in the proposed new market at Navi Mumbai. There were several issues cropped up for allotment of galas and also the allotment process.

7. This court in Writ Petition No.943 of 1996 appointed Shri Justice S.M.Daud, a former judge of this court as a Commissioner to circumspect the old norms framed by the APMC for the allotment of galas and to suggest whether the said old norms required any modification and with an option to recommend new norms for just and fair allotment of galas to the allottees.

8. On or before 4th November, 1987, the petitioner applied for the allotment of a large gala in anticipation of its future needs and paid the booking amount of Rs.10,000/-. It is the case of the petitioner that on 15th September,1991, the petitioner paid a further sum of Rs.76,000/- towards booking the said gala. It is the case of the petitioner that the APMC was required to complete the construction of the market at Vashi, Navi Mumbai before 1990. The construction of the said market however could be completed sometime in the year 1995. It is the case of the petitioner that the petitioner continued to carry out the said business on the basis of the licence renewed by the committee of the APMC from time to time.

9. According to the petitioner, the APMC continued to scrutinize the applications of various applicants based on the old norms before such norms were suggested by Shri Justice Daud (for short “the learned commissioner”). It is the case of the petitioner that as per the old norms, in order to get two large galas in a

fruit section, the concerned allottee was required to hold a licence of the APMC as a wholesale broker and secondly the allottee should have booked two large galas and was required to pay market fees and cess above Rs.50,000/-. It is the case of the petitioner that even according to the said old norms, the petitioner was qualified for two large galas. The petitioner however was allotted only one gala i.e. Gala No.G-247 on 28th September, 1995 and was put in actual possession thereon on 21st March,1996.

10. The learned Commissioner submitted the first report on 25th July, 1996. This court however remanded the matter back to the learned commissioner for fresh consideration. The learned Commissioner accordingly submitted a second report on 31st March,1998. This court remanded the matter again to the learned Commissioner for certain clarification. It is the case of the petitioner that the learned Commissioner thereafter submitted a third report on 7th July, 1998 with various directions to relax certain conditions in fulfilling new norms given in the second report only in deserving cases.

11. On 29th July, 1998, this court accepted the new norms recommended by the learned Commissioner in the second and third report. According to the said report submitted by the learned Commissioner, the wholesale broker who had booked

two galas were divided in two broad categories viz. those who were doing business from 1985-86 to 1994-95 and those doing business from 1991-92 to 1994-95 on the basis of the licence obtained by the said wholesale brokers from APMC. It is the case of the petitioner that the petitioner fits in the first category i.e. in the time frame of 1985-86 to 1994-95. In the said report, the learned Commissioner suggested various norms for allotment of large and small galas on payment of various amounts and on various conditions.

12. It is the case of the petitioner that the petitioner had fulfilled all the conditions as enunciated in the norms suggested by the learned Commissioner. The petitioner had booked a large gala on 4th November,1987 by paying Rs.10,000/- and subsequently Rs.76,000/- on or before 31st July, 1991. It is the case of the petitioner that the petitioner was holding licence of APMC since 1981-82 to 1994-95 and had also carried out business and paid cess in all those 10 years above Rs.1,01,156/- during the said period of 10 years i.e. period between 1985-86 and 1994-95. It is the case of the petitioner that the petitioner was thus entitled to two large galas as per the norms suggested by the learned Commissioner on permanent basis.

13. By letter dated 29th August,1998, the petitioner requested the APMC to issue

permanent allotment letter of second gala to the petitioner. Several meetings were held between the petitioner and the officials of the APMC. It is the case of the petitioner that the officials of the APMC continued to assure the petitioner of allotment of second large gala as and when such large gala would become available from ineligible trader. According to the petitioner, Gala no.F-124 which was alloted to M/s.Indian Fruit Company became vacant. The APMC accordingly issued a allotment letter dated 9th May, 2001 in favour of the petitioner thereby allotting second large gala bearing no.F-124 and asked the petitioner to pay the balance amount of the said gala within 15 days from the receipt of said allotment letter. It is the case of the petitioner that based on the said allotment, the petitioner paid an amount of Rs.1,27,500/- on 23rd May,2001 to the APMC.

14. It is the case of the petitioner that by a resolution dated 26th April, 2001 passed in the meeting of the Board of Directors of the APMC, the APMC cancelled the allotment of Gala nos.F-123 and F-124 which were alloted to M/s.Indian Fruit Co. The possession of the said gala F-124 which was subsequently alloted to the petitioner was not taken by the APMC from M/s.Indian Fruit Co. The said M/s.Indian Fruit Co. filed a writ petition in this court thereby impugning the order of cancellation of the allotment of the said galas bearing nos. F-123 and F-124 by APMC in this court. This court passed an order on 25th May,2001 thereby

disposing of the said writ petition filed by the said M/s.Indian Fruit Co. and granted liberty to the said party to file an appeal under section 52(b) of the said APMC Act.

15. By an order dated 13th December,2001, the said appeal preferred by the said M/s.Indian Fruit Co. came to be allowed by the appellate authority. The petitioner had made an attempt to intervene in the said appeal but was not allowed. The petitioner filed a writ petition bearing no.234 of 2004 impugning the said order dated 13th December,2001 passed by this court in favour of the said M/s.Indian Fruit Co. Several writ petitions came to be filed in this court by various individuals who were aggrieved by the decision of the APMC for allotment of galas.

16. It is the case of the petitioner that some time in the year 2012, the petitioner preferred a Civil Application No.13 of 2012 in Writ Petition No.234 of 2004 inter alia praying for an early hearing of the said writ petition in view of the fact that the Gala F-158 allotted to Mr.Gavade came to be vacant pursuant to the order passed by the Hon'ble Supreme Court. On 1st July 2013, Division Bench of this Court passed an order in the Civil Application No.13 of 2012. This Court recorded the statement made by the learned counsel for the APMC that the petitioner was not only the claimant with regard to Gala F-158. There were other

four claimants similarly placed as that of the petitioner Division Bench of this Court directed the APMC to scrutinize the claims of all the eligible claimants for Gala No.F-158 and to submit recommendation to the Board who will take final decision in the matter regarding allotment of the said Gala expeditiously and not later than eight weeks from the date of the said order.

17. It is made clear in the said order that if the said decision was adverse to the petitioner herein, the petitioner would be free to take recourse to such other remedy as may be permissible in law. It was however made clear that if the allotment of Gala No.F-158 was in favour of the petitioner, that will be subject to the outcome of the pending writ petition in which the respondent no.3 i.e. the petitioner in Writ Petition No.8975 of 2014 had raised issue about the eligibility of the petitioner herein for allotment of the second large size gala.

18. It is the case of the petitioner that the APMC thereafter called upon the petitioner and four other parties namely Mr.Habibulla Farathulla, Mr.Kedar Keshav Lele (M/s.Bhalchandra Chintaman Lele), Mr.Ashok Dhondiba Punde and Mr.Kashinath Wavare (M/s.Hande Wavare & Co.) to participate in the lottery. The APMC resolved that the individual who was ready to pay Rs.55,00,000/- on getting selected in the lottery draw for the large Gala No.F-158

would be given the allotment and possession of the said Gala. It is the case of the petitioner that Mr.Habibulla Farathulla however did not participate in the lottery process on the ground that the demand of APMC was exorbitant.

19. It is the case of the petitioner that the petitioner however participated in the lottery for allotment of Gala No.F-158 under protest on 13th September 2013 and raised written objection to the said lottery system introduced by the APMC on the ground that the allotment of the said large Gala was to be done only on the basis of the criteria laid down by Justice Daud (Retd.) who was appointed as a Commissioner by this Court for suggesting various norms for allotment of Galas.

20. On 25th September 2013, the APMC passed a resolution to allot the Gala No.F-158 to the respondent no.5 pursuant to the said lottery drawn by the APMC. Some time in the year 2013, the petitioner preferred an appeal bearing No.244 of 2013 before the respondent no.4 under Section 52 of the APMC Act read with Rule 104 of the Rules frames under the said APMC Act.

21. By an order dated 4th June 2014, the respondent no.4 partly allowed the said appeal filed by the petitioner and set aside the order of allotment by lottery

and directed to invite bids amongst those 5 claimants and to allot the said Gala No.F-158 to the highest bidder. Some time in the year 2014, the petitioner preferred an appeal bearing No.27 of 2014 before the learned Minister for Co-operation (Marketing and Textile). Some time in the year 2014, the respondent no.5 preferred an appeal bearing No.28 of 2014 before the learned Minister (Marketing and Textile). On 12th September 2014, the learned Minister passed an order thereby allowing the appeal filed by the respondent no.5 and rejected the appeal filed by the petitioner. The learned Minister set aside the order dated 4th June 2014 passed by the respondent no.4 and confirmed the decision dated 5th September 2014 passed by the APMC.

22. Mr.Mohite, learned counsel for the petitioner placed reliance on a notorised Partnership Deed allegedly executed in the year 1987 in the name of M/s.Ramchandra Vitthal Dongre and would submit that the said partnership deed was duly registered in the year 2014 after payment of penalty of Rs.1800/-. He also placed reliance on the portion of the registration certificate and receipts issued by the authority registering the said partnership firm.

23. It is submitted by the learned counsel that the learned Minister had failed to appreciate that the APMC had committed irregularities in declaring four

applicants to be eligible for lottery draw in respect of the said Gala No.F-158 which was totally contrary to the norms suggested by Shri Justice Daud, learned commissioner in respect of allotment of Galas which report had been accepted by this Court. Except the petitioner, none of the other applicants were eligible to be considered for either lottery system or for consideration of their bids by the APMC. He submits that the finding of the learned Minister that the petitioner was not eligible for second large Gala is contrary to the record and without any basis. It was the case of the APMC before this Court in the civil application filed by the petitioner that apart from the petitioner, there were other applicants eligible for the second large Gala itself was false and misleading. He submits that merely because the petitioner appeared in the lottery system under protest, it cannot be considered that the petitioner had accepted the decision of APMC to draw lottery which was contrary to the norms suggested by the learned Commissioner. He submits that though the petitioner had demonstrated that except the petitioner, no other applicants were eligible to participate in the lottery or in the bid, the APMC had allowed the other applicants to participate in the said lottery system as well as the bid and committed gross illegality.

24. It is submitted by the learned counsel for the petitioner that the petitioner had already paid booking amount of Rs.10,000/- on 4th June 1988 vide receipt

no.147304, Rs.34,000/- on 9th September 1991 vide receipt no.142031 and Rs.32,725/- on 9th September 1991 vide receipt no.141799. In the year 1985-86 to 1994-95, the petitioner was fully qualified as per the norms suggested by the learned commissioner having paid more than the amount of Rs.68,000/- as booking amount and more particularly having been paid the amount of Rs.76,725/-. For 1985-86 to 1994-95, the petitioner has paid total Cess of Rs.1,01,156.26 and thus satisfied the second condition of the norms suggested by the learned commissioner which required payment of Cess amount of Rs.90,001/- and above but below Rs.3,00,000/-. He submits that the petitioner has been holding license issued by the APMC for 10 years i.e. from 1985-86 to 1994-95 and thus satisfied the third condition also i.e. the applicant shall hold a license for two years or more in the norms suggested by the learned commissioner.

25. It is submitted by the learned counsel for the petitioner that the petitioner had also paid the market fees for 10 years from 1985-86 to 1994-95 and thus satisfied the fourth condition suggested by the learned commissioner in the report. The said condition required payment of market fees for two years or more. It is submitted that the petitioner having been doing business for two years i.e. both in 1995-96 and 1996-97 and thus satisfied the fifth condition as per the norms suggested by the learned commissioner which prescribed that the business

shall be for one year out of 1995-96 and 1996-97. It is submitted by the learned counsel for the petitioner that the petitioner had also paid total Rs.1,60,000/- as consideration inclusive of booking amount and thus the applicant was entitled to two large Galas.

26. It is submitted that as per 'Early Bird Norms' as formulated by the learned commissioner which report has been accepted by this Court and confirmed by the Hon'ble Supreme Court, a person who had applied first has to be given precedence over others and thus the petitioner having applied first and having satisfied the conditions and norms of the learned commissioner ought to have been given preference over others if at they were all eligible.

27. Learned counsel for the petitioner submits that since the partnership deed was registered in the year 2014, the registration of the said partnership deed would relate back to the date of the said execution of the partnership deed in the year 1987 and thus the same ought to have been taken into consideration by the learned commissioner and by the APMC to consider the eligibility of the petitioner for allotment of the said large Gala No.F-158.

28. Learned counsel for the petitioner invited my attention to the grounds

raised by the petitioner in the appeal memo, the grounds raised by the respondent no.5 in the appeal memo filed by the respondent no.5 and also the findings rendered by the learned Minister of Co-operation and would submit that various observations and the findings rendered against the partners of the partnership firm are without application of mind and are perverse. He placed reliance on the orders passed by this Court from time to time thereby accepting the norms recommended by the learned commissioner.

29. Learned counsel for the petitioner invited my attention to various documents in writ petition filed by his client, affidavits filed by the APMC from time to time, some of the documents from the petition filed by other parties in support of his submission that the petitioner was the only eligible candidate for allotment of the said large Gala No.F-158 whereas the other applicants were not at all eligible not having satisfied the norms suggested by the learned commissioner. He submits that even according to the 'Early Bird Norms' recommended by the learned commissioner, the petitioner was only the eligible candidate and not the other applicants.

30. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of ***Hanumant Murlidhar Gavade Vs. Mumbai***

Agricultural Produce Market & Ors., (2012) 1 SCC 729 and in particular paragraphs 16 and 18 thereof in support of the submission that the petitioner in that case before the Hon'ble Supreme Court having failed to satisfy the norms and conditions suggested by the learned commissioner i.e. Shri Daud's Committee, the Hon'ble Supreme Court has rejected the claim of the said applicant Mr.Hanumant M. Gavade for allotment of Gala and approved the validity of the norms suggested by the learned commissioner.

31. It is submitted that the APMC thus could not have deviated from the norms laid down by the learned commissioner in his report which was not only accepted by this Court but also has been approved by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra).*** The APMC thus could not have followed the lottery system for allotment of the said large Gala at all which was contrary to the norms suggested by the learned commissioner and accepted by this Court. He submits that the APMC thus ought to have followed the only 'Early Bird Norms' as suggested by the learned commissioner in his report and not the lottery system or bidding system.

32. Learned counsel for the petitioner placed reliance on the judgment delivered on 15th February 2000 in the case of ***Mumbai Agricultural Produce***

Market Committee & Anr. Vs. Sharafatullah Hafiz Inayatulla & Anr. in Special Leave Petition bearing CC No.3870 of 1999 and would submit that the 'Early Bird Norms' suggested by the learned commissioner in the said report had been approved by the Hon'ble Supreme Court in the said judgment. The Hon'ble Supreme Court has held that the 'Early Bird Norms' which in principle means that the allotment will be made between the similarly-situated persons on the basis of the date of application which is a fair method to be adopted in the event of there being more eligible claimants than the available number of Galas. He submits that the APMC has failed to apply 'Early Bird Norms' suggested by the learned commissioner and approved by the Hon'ble Supreme Court in the said judgment.

33. Learned counsel for the petitioner invited my attention to the averments made by Mr.Kashinath Mahadeo Vavare, Partner of M/s.Hande Vavare Company (respondent no.5 herein) and more particularly paragraph 6 thereof alleging that the said petitioner was satisfying all the conditions prescribed in the norms suggested by the learned commissioner except condition no.5. The said petitioner admitted that the amount of Cess paid by the said petitioner between the year 1985-86 to 1994-95 is just short by Rs.155.90 to norm of Rs.10,000/- and had paid a sum of Rs.9,544.10 as against the required norms of Rs.10,000/-.

He also invited my attention to prayer clause (a) in the said writ petition by which the respondent no.5 herein had prayed for an order and directions against the APMC to allot to the respondent no.5 herein large Gala in fruit section APMC Market Vashi as marginal case since he had complied with the norms as suggested by the learned commissioner except a short payment of Rs.155.90 towards Cess. He submits that it was the case of the respondent no.5 herein that after allotment of Galas as per new norms, there were about 10-15 large Galas vacant.

34. Learned counsel for the petitioner relied upon the affidavit-in-reply filed by the APMC in the said Writ Petition No.2181 of 2002 on 6th August 2002 and more particularly para 2 thereof admitting that this Court had accepted the norms suggested by the learned commissioner to allot various Galas to the persons those are found to be eligible as per the said norms. In paragraph 3 of the said affidavit, the APMC contended that since the respondent no.5 herein had only paid Rs.9,844.10 and not more than Rs.10,000/- towards Cess, the respondent no.5 herein was not eligible for allotment of one large Gala.

35. Learned counsel for the petitioner placed reliance on the order dated 4th March 2003 passed by Division Bench of this Court in Writ Petition No.2181 of

2002 and other two writ petitions. This Court recorded the statement made by the APMC that when they construct 12 more Galas, the claim of those three petitioners i.e.Mr.Kedar Keshav Lele, Mr.Ashok Dhondiba Punde and Mr.Kashinath Mahadeo Vavare should be considered in accordance with law and as per guidelines laid down by a committee of Shri Justice Daud (Retd.).

36. It is submitted by the learned counsel for the petitioner that the APMC thus itself having taken a stand that the respondent no.5 herein was not eligible for allotment of large Gala having not satisfied the norms suggested by the learned commissioner and this Court directing the APMC by an order dated 4th March 2003 that as and when 12 more Galas were constructed by the APMC, the 3 applicants including the respondent no.5 should be considered in accordance with law and as per the guidelines laid down by the learned commissioner, the APMC has considered the application of the respondent no.5 illegally and allotted large Gala i.e.F-158 to the respondent no.5 contrary to the norms suggested by the learned commissioner and also contrary to the order dated 4th March 2003 passed by the Division Bench of this Court and the order passed by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra).***

37. Learned counsel for the petitioner invited my attention to the averments

made by Mr.Ashok D. Punde in Writ Petition No.2174 of 2002 filed by the said party against the APMC and the State of Maharashtra in this Court and more particularly paragraph 7 thereof admitting that the amount of Cess paid by Mr.Ashok Punde was short by 725.13 as against the norms prescribed by the learned commissioner. He also placed reliance on the prayer clauses (a) and (b) of the said writ petition admitting that he had paid less amount of Cess required for the eligibility of large Gala as per the norms suggested by the learned commissioner. He also placed reliance on the affidavit-in-reply filed by the APMC in the said writ petition and more particularly paragraph 3 contending that the said Mr.Ashok Punde having paid the the said amount of Cess less than Rs.10,000/- could not have been eligible for large size Gala.

38. Learned counsel for the petitioner placed reliance on the averments made by Mr.Kedar K. Lele in Writ Petition No.2265 of 2002 and in particular paragraph 7 thereof admitting that the amount of Cess paid by the said petitioner was short by Rs.1106.49 as against the prescribed norms of Rs.90,000/- in respect of the second large Gala. He also placed reliance on prayer clauses (a) and (b) of the said petition and would submit that the said petitioner has also admitted that his case may be considered as marginal case since there was a shortfall of Rs.1106.49 only towards the payment of Cess.

39. Learned counsel for the petitioner placed reliance on the affidavit-in-reply filed by the APMC in the Writ Petition No.2265 of 2002 contending that since there was a shortfall in payment of Cess by the said petitioner which was not in accordance with the norms suggested by the learned commissioner, the said petitioner was not eligible for allotment of second large Gala.

40. Learned counsel placed reliance on the affidavit filed by APMC in Writ Petition No.3194 of 1999 filed by Mohd. Mustafa Mohd.Musa vs. Mumbai Agricultural Produce Market Committee and others in the month of March, 2005 stating that M/s.Ramchandra Vitthal Dongre is entitled for two large galas however, had been given possession of only one large gala. Learned counsel placed reliance on the affidavit filed by APMC in Writ Petition (Stamp) No.10993 of 2012 filed by M/s.Ramchandra Vitthal Dongre vs. Mumbai Agricultural Produce Market Committee and others stating that the said petitioner is qualified for allotment of two galas as per the norms provided for the learned Commissioner. It is further stated in the said affidavit that the said petitioner had been allotted two large galas bearing gala nos.F-124 and G-247.

41. Learned counsel placed reliance on the affidavit in reply field by APMC on 21st September, 2001 in Writ Petition No.410 of 2001 filed by Mr.Narayan Nivrutti

Shinde vs. Mumbai Agricultural Produce Market Committee stating that there were at least three other persons, who were more eligible than the said M/s.Ramchandra Vitthal Dongre for allotment of second large gala and those persons had paid more booking amounts before December, 1993 which was the cut off date. It is further stated in the affidavit that the said two persons who were entitled to second large galas were M/s.Ramchandra Vitthal Dongre and M.G. Poojari.

42. It is submitted by the learned counsel that insofar as Mr.Ganpat Sahaji Shinde who is the petitioner in Writ Petition No.2090 of 2015 is concerned, he did not challenge the resolution passed by APMC for drawing a lottery in the writ petition but has challenged only the allotment made in favour of the respondent no.5. He submits that the grounds of challenge raised by the petitioner had not been considered by the Director of Marketing at all. His client has participated in the lottery under protest on 30th September, 2013. Learned Minister however, reversed the order of the Director of Marketing and confirmed the allotment in favour of the respondent no.5. He submits that the petitioner had submitted a copy of the registered Partnership Deed of the petitioner which was dated 30th September, 1987. APMC did not raise any issue on the partnership deed at any point of time and has raised such issue for the first time in affidavit in reply filed

by APMC in this writ petition. He submits that the said issue raised by APMC is contrary to their own affidavit in reply filed in the earlier writ petitions.

43. Learned counsel for the petitioner placed reliance on the order dated 7th January, 2013 passed by the Division Bench of this Court in Civil Application No.13 of 2012 in Writ Petition No.234 of 2004 filed by the petitioner herein. He submits that in paragraph 2 of the said order, this Court had recorded the submission made by APMC that the petitioner was not only the claimant with regard to gala no.F-158 but there were other four claimants similarly placed as that of the petitioner. This Court recorded that on one hand in the proceedings, APMC had gone on record on the affidavit that the petitioner herein was eligible for allotment of a large size gala however that does not mean that the petitioner should get precedents over the other eligible claims for gala no.F-158. This Court directed the APMC to scrutinize the claim of all the eligible claimants for gala no.F-158 and to submit a recommendation to the Board who would take final decision in the matter regarding allotment of the said gala. It is submitted that the petitioner has paid the entire consideration and has satisfied all the norms suggested by the learned Commissioner. He submits that the application of the petitioner was at the earliest point of time and was thus eligible for the said large gala bearing no.F-158.

SUBMISSIONS OF RESPONDENT NO.1 (APMC)

44. Mr.Bhadrashete, learned counsel for the APMC invited my attention to some of the annexures to both these petitions and would submit that this court by an order dated 7th May, 1999 has permitted the APMC to consider the case of 'marginally short' in compliance with the norms provided in the report submitted by the learned commissioner for allotment of various galas by the APMC. It is submitted that insofar as M/s.Ramchandra V.Dongre, the petitioner in Writ Petition No.8959 of 2014 and 8975 of 2014 is concerned, the said writ petition is allegedly filed through its partners Mr.G.V.Lohot by relying upon the partnership deed dated 30th December,1997. The said partnership firm had applied for registration on 12th December,2005 and was registered on 31st May, 2014. It is submitted that insofar as gala no.F-158 is concerned, the said gala was allotted to Mr.Gawde, whose allotment was set aside by the Supreme Court on the ground that Mr.Gawde did not pay the booking amount of Rs.34,000/- before 30th September,1991. The Supreme Court ordered the said Mr.Gawde to handover the possession to APMC and thus the said gala no.F-158 became available for allotment.

45. Learned counsel invited my attention to Civil Application No.13 of 2012 filed by the petitioner *inter alia* praying that the said gala F-158 be allotted to him. It is submitted that at that stage, the APMC made a statement before this court that

there were all five claimants similarly situated whose claim to allot the said gala no.F-158 would be considered by APMC. APMC therefore prepared a list of five persons who were marginal short i.e. (1) M/s.Ramchandra Vitthal Dongre, (2) M/s.Hande Wavare & Co., (3) Mr.Ashok Punde, (4) Mr.Bhalchandra Chintaman Lele and (5) Mr.Habibulla Farahtulla. Learned counsel for the APMC submitted that the Board of Directors of APMC thereafter took a decision on 7th March,2013 to allot the said gala by getting the said gala valued and by inviting offers from those five claimants in a sealed cover. It is the case of the APMC that all those five claimants who were marginally short in complying with the norms suggested by the learned commissioner. He placed reliance on the minutes of the Board of Directors dated 7th March,2013, annexed at Ex.G-1 in Writ Petition No.2090 of 2015.

46. It is submitted that on 26th April, 2013, the recommendation made by the committee of Board of Directors dated 7th March,2013 was subsequently confirmed in the meeting of the committee of board. On 26th August,2013, notices were issued to all the said five claimants with a direction to participate in the lottery proposed to be drawn on 19th September,2013. He submits that Mr.Habibulla Farahtulla by his letter dated 19th September, 2013 objected to the lottery being drawn by the APMC and did not participate in the said lottery on the

ground that he was already held eligible as per the order of the Director of Marketing.

47. M/s.Ramchandra V.Dongre participated in the said lottery system under protest. Out of those claimants who were allowed to participate in the lottery, only four claimants participated in the said lottery drawn by APMC. According to the said lottery drawn by the APMC, the allotment was decided in favour of Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) the petitioner in Writ Petition (St) No.35978 of 2017. It is submitted by the learned counsel that on 25th September,2013 in the meeting of APMC, the proceedings that had taken place on 19th September,2013 were confirmed. APMC passed a resolution to issue letter of allotment with a further resolution that the allotment shall be given at ready reckoner rate to the said Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.). Accordingly on 21st December, 2013, a letter of allotment came to be issued in favour of Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) and directed him to make payment of Rs.27,69,500/-. The said amount was paid by the said party on 7th January,2014. The APMC handed over possession of the said gala F-158 to him, on 7th March, 2015.

48. It is submitted that sometime in the month of December 2013, Mr.Ramchandra V. Dongre filed appeal bearing no.244 of 2013 before the Director

of Marketing impugning the decision of the APM dated 25th September,2013 allotting gala no.F-158 to Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) and prayed for allotment of the said gala to the said M/s.Ramchandra V. Dongre. He submits that the decision dated 7th March, 2013 read with 26th April, 2013 of the APMC were not challenged by M/s.Ramchandra V.Dongre.

49. It is submitted that the Director of Marketing by an order dated 4th June, 2014 has set aside the decision dated 25th September, 2013 of APMC and directed to allot gala no.F-158 by inviting bids from five persons-claimants in a sealed cover. M/s.Ramchandra V. Dongre thereafter filed a Revision Application No.28 of 2014 before the learned Minister *inter alia* praying for allotment of the said gala no.F-158 to the said firm. By an order dated 12th September, 2014, the learned Minister has set aside the order dated 4th June, 2014 passed by the Director of Marketing and confirmed the decision of APMC on 25th September, 2013. In the Revision Application No.28 of 2014 filed by Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) challenging the order dated 4th June, 2014 passed by the Director of Marketing, the learned Minister has set aside the order dated 4th June, 2014 passed by the Director of Marketing and confirmed the decision of APMC dated 25th September, 2013. M/s.Ramchandra V.Dongre thereafter filed Writ Petition No.8959 of 2014 *inter alia* challenging the order dated 12th September, 2014

passed by the learned Minister and prayed for allotment of the said gala F-158 in the said writ petition.

50. Learned counsel for the APMC invited my attention to the cause title of the Writ Petition No.8975 of 2014 and would submit that this writ petition has been filed by Mr.Ramchandra V.Dongre through partner Mr.G.V.Lohot. He placed reliance on the verification clause and would submit that the said verification clause would clearly indicate that the said writ petition has been filed by Mr.G.V.Lohot. He placed reliance on the further affidavit filed by the APMC. He placed reliance on the licence issued by the APMC, Mumbai in favour of Mr.Ramchandra V.Dongre and would submit that the said licence was issued on 26th January,1962 and was renewed upto 2014. He submits that the market fees and the cess had been paid by Mr.Ramchandra V.Dongre in his individual capacity. The said Mr.Ramchandra V.Dongre was eligible for one large gala. The APMC had executed a sub-lease on 29th October,1999 in favour of Mr.Ramchandra V.Dongre who was carrying on business in the name and style of sole proprietor of Mr.Ramchandra V.Dongre.

51. Learned counsel placed reliance on another licence issued by APMC on 30th July, 1972 in favour of Mr.Ganpat V.Lohot which licence has also been renewed

from time to time upto 2014. He submits that Mr.Ganpat V.Lohot is also carrying on business in his individual name. It is submitted that as per the record of APMC, no booking amount is recorded in the name of M/s.Ramchandra V. Dongre i.e. in the name of the partnership firm. No cess amount is recorded in the partnership firm in the records of the APMC. He submits that the case of the said M/s.Ramchandra V.Dongre that they were licencee and has paid the booking amount and cess as per the norms decided by the learned commissioner is factually incorrect and contrary to the record of the APMC. The said firm also did not produce any record that the said firm was holding any licence and had paid the booking fees to APMC. The said partnership firm has placed reliance on the documents of the individual partners while demanding allotment of the large gala in the name of the firm which is not permissible. It is submitted that Mr.Ramchandra V.Dongre, a partner of the said firm has used his individual amount to the said gala no. G-247. He submits that the claim of the partnership firm that it had paid booking amount of Rs.76,725/- is also false and and misleading. The record of the APMC would show that Rs.10,000/- was paid on 4th June, 1988 and Rs.34,000/- was paid on 9th September,1991 by Mr.Ramchandra V.Dongre and Rs.32,725/- was paid by Mr.G.V.Lohot i.e. the partners in their individual capacity and not by the firm. He submits that the said firm M/s.Ramchandra V.Dongre was not thus eligible for large gala.

52. Insofar as three affidavits filed by the APMC in Writ Petition No.4101 of 2001, Writ Petition No.3194 of 1999 and Writ Petition (Stamp) No.10993 of 2002 numbered as Writ Petition No.234 of 2004 on which reliance was placed by M/s.Ramchandra V.Dongre is concerned, it is submitted by the learned counsel for the APMC that those three affidavits were in respect of the claim of Mr.Ramchandra V.Dongre and not by M/s.Ramchandra V.Dongre, the partnership firm and thus no reliance on those three affidavits can be placed by M/s.Ramchandra V. Dongre. It is submitted by the learned counsel that in the report submitted by the learned commissioner suggesting various norms for allotment of gala, no separate norms for eligibility of partnership firm are prescribed. He submits that according to the norms suggested by the learned commissioner, the petitioner had to establish that they were carrying on business for last five years and APMC had issued licence for two years in last in last 10 years period. He submits that even if any concession had been given by the APMC in favour of any other allottee as alleged by the petitioner, the same would not create any right in favour of the petitioner.

53. Insofar as Writ Petition No.8959 of 2014 filed by M/s.Ramchandra V.Dongre is concerned, it is submitted by the learned counsel that the said M/s.Ramchandra V.Dongre is not eligible as per the norms suggested by the

learned commissioner. He submits that the Affidavit filed by APMC in Writ Petition No.234 of 2004 relied upon by the petitioner was filed by Mr.Ramchandra V. Dongre as a proprietor of Ramchandra V.Dongre, proprietary concern. He invited my attention to the verification in the said Writ Petition No.234 of 2004 and would submit that the said writ petition was verified by Mr.Ramchandra V.Dongre in his individual capacity.

54. Learned counsel placed reliance on the letter dated 9th May, 2001 addressed by the APMC to Mr.Ramchandra V.Dongre thereby allotting a gala in his individual capacity. He submits that in the said Writ Petition No.234 of 2004 filed by Mr.Ramchandra V.Dongre, he had impugned the order passed by the appellate authority thereby evicting the said Mr.Ramchandra V.Dongre from gala no.F-123 to gala no.F-124 in the appeal filed by Mr.Mohammed R.Ikramuddin. It is submitted that the APMC never admitted in any proceedings that the said M/s.Ramchandra V.Dongre was eligible in respect of any of the gala.

55. It is submitted that Mr.Ramchandra V.Dongre had paid booking amount of Rs.10,000/- on 4th June, 1988 and Rs.34,000/- on 9th September, 1991. The said party had paid cess in the sum of Rs.1,01,156/- and was alloted gala no.G-247 which was a large gala. The registered Deed of Sub-lease dated 29th October, 1999

in the name of Mr.Ramchandra V.Dongre in his individual capacity was executed. The said Mr.Ramchandra V.Dongre had paid payment of booking amount and cess in his individual capacity and was accordingly alloted a gala. His claim for second gala is pending in the Writ Petition No.234 of 2004. It is submitted that the said Mr.Ramchandra V.Dongre is also thus not eligible for allotment of gala no.F-158.

REJOINDER ARGUMENTS OF PETITIONER IN WRIT PETITION NO. 8959 OF 2014 AND WRIT PETITION NO. 8959 OF 2014

56. Mr. Mohite, learned counsel for the petitioner in rejoinder submits that the partnership firm of his client was established in the year 1987. There were two partners viz. Mr.Ramchandra Vitthal Dongre and Mr.Ganpat V. Lohot. Mr.Ramchandra Vitthal Dongre already had licence before the norms were suggested by the learned Commissioner. He submits that the licence was already issued in the year 1986. Only a partnership deed was executed in the year 1987. The first booking was applied by Mr.Ramchandra Vitthal Dongre in the year 1988. In the year 1991, Mr.Ganpat Lohot had applied for licence. The form filed by the said Mr.Ganpat Lohot clearly stated that he was a partner of Mr.Ramchandra Vitthal Dongre. He submits that the collective criteria was thus satisfied. The said Mr.Ramchandra Vitthal Dongre was holding municipal licence. In the year 1988, the booking was applied by the firms. The other partner had contributed Rs.5,000/-. In the year 1991, the second parter had applied for licence. All the

requisite documents were already submitted by the petitioner.

57. It is submitted that in the year 1991-92, the partners of the said firm had jointly complied with all the requirements / norms suggested by the learned Commissioner for two larger gala. Only one partner was alloted gala no. G-247. He placed reliance on section 4 of the Partnership Act, 1932 and also on the judgment of Supreme Court in a case reported in ***AIR 2007 SC 1634*** and would submit that a proprietary concern would not answer the description of the firm under the Partnership Act, 1932. He placed reliance on the copy of the Writ Petition No.234 of 2004 filed by the partner of the said M/s.Ramchandra V.Dongre forming part of the additional compilation filed before this court. He relied upon section 14 of the Partnership Act, 1932 and submits that the individual partner can retain a gala and cannot retain any gala as part of the stock of the firm.

58. It is submitted by the learned counsel that insofar as Writ Petition No.8959 of 2014 is concerned, the lease deed was executed by the APMC in favour of Mr.Ramchandra V.Dongre. The claimant making an application for allotment of a gala could be individual or even a partnership firm or a company. The norms suggested by the learned Commissioner does not prohibit any partnership firm to make any application for allotment of any gala. He relied upon clauses 27 and 28

of the sub-lease and would submit that the said sub-lease clearly permitted the sub-lessee to carry on one or more business, however, on the condition that such sub-lessee should have a licence. He submits that holding of a licence for allotment of a gala was only a mere formality. He submits that the said M/s.Ramchandra V.Dongre as well as the individual partners were eligible to apply for a separate large gala under the norms suggested by the learned Commissioner. He submits that the application was made by M/s.Ramchandra V.Dongre and Mr.Ganpat Lohot during the period between 1996 to 1998. The APMC raised an objection about allotment of the first gala only in the year 2015. The APMC had already issued a allotment letter in the name of M/s. Ramchandra V.Dongre. All the terms and conditions of the said allotment had been duly complied with by his client.

59. Insofar as issue raised by the APMC that all the licences were issued and cess was paid in the individual name is concerned, it is submitted by the learned counsel for the petitioner that the sub-lease was in favour of one of the partner. The second partner also can apply for separate allotment of a gala. The firm does not hold any licence, but the said licences are held in the name of the partners. The norms suggested by the learned Commissioner thus would permit two separate large gala in such a situation. He submits that the APMC has made several illegal allotment in favour of large number of parties by allotting more than a one gala

and thus the petitioner could not have been excluded for allotment of second large gala. He submits that the APMC had already filed affidavit in various writ petitions already forming part of the record that the petitioner was one of the eligible candidate for allotment of a gala. APMC is estopped from taking a different stand now.

60. It is submitted that the petitioner had already challenged the lottery system conducted by the APMC and had participated in the lottery under protest. The APMC could not have increased the price for allotment of such large gala. The enhancement of price of allotment of such large gala was not even contemplated in the lottery system allotted by the APMC. He submits that even the bidding amongst the five claimants could not have been permitted which was contrary to the norms suggested by the learned Commissioner and contrary to the judgment of Hon'ble Supreme Court. He submits that the order passed by the learned Minister in the revision application filed by the petitioner is totally perverse.

<u>The facts and submissions in Writ Petition No. 2090 of 2015.</u>

61. The petitioner Mr.Ganpat Sabaji Shinde has filed this writ petition inter alia praying for writ of certiorari for quashing and setting aside the impugned order dated 12th September, 2014 passed by the respondent no.1 in Revision Application

No. 0714/Pra.No.197/77-S in terms of the minutes of the meeting dated 7th March, 2014 allotting gala no.F 158 to the respondent no.4 as confirmed by the minutes of the meeting dated 25th September,2013 recorded by the Director of Marketing, Pune being Ex.H-1 to the writ petition and also impugns the order dated 4th June, 2014 passed by the Director of Marketing, Pune to the extent of directing the respondent no.2 to allot the gala on auction basis and call for afresh bid from the 5 participants only. During the course of arguments, the petitioner applied for deletion of the original prayers (a), (c) to (e) and were allowed to delete those prayers. Some of the relevant facts for the purpose of deciding this petition are as under :-

62. It is the case of the petitioner that during the period between 1987 and 1991, the petitioner had deposited/paid an amount of Rs.35,725/- with APMC for allotment of a gala as a the petitioner was allegedly entitled for allocation of large gala in view of the petitioner having deposited an amount of Rs.35,725/- which was more than Rs.34,000/- as per norms suggested by the learned Commissioner appointed by this court. On 26th April, 1999, the APMC sent a letter of allotment to the petitioner thereby allotting a small gala bearing no. 748 in M Block situated at Vashi, Navi Mumbai. By letter dated 21st June, 2003, the petitioner sent a letter to the APMC requesting for the details of the total booking amount deposited,

remaining amount, etc. in respect of the allotted gala no. M-748.

63. The APMC vide its letter dated 3rd July, 2003 informed the petitioner that the petitioner had deposited an amount of Rs.35,725/- and the same had been transferred for registration of gala no.M-748 in the name of the petitioner and requested the petitioner to execute the agreement for registration. It is the case of the petitioner that Sant Gadge Maharaj Fruit Section Marketing Association had sent an undated letter to the petitioner informing the petitioner that he was a member of the said Association and during the period between 1987 to 1991, the petitioner had deposited an amount of Rs.35,725/- for registration of a gala and the said amount was deposited for a large gala.

64. On 31st August,2006, the Deputy Director, Marketing Committee, Maharashtra State sent a letter to the APMC informing that the petitioner had made a complaint and that the said complaint should be decided after an enquiry. On 29th January, 2010, the petitioner sent a complaint letter to the Marketing Director of APMC alleging that inspite of the petitioner depositing an amount of Rs.35,725/-, the APMC had allotted small gala to the petitioner inspite of a large gala.

65. The Marketing Director of APMC addressed a letter dated 5th February,2010 to the Secretary of APMC that the petitioner had deposited an amount of Rs.34,000/- and therefore was eligible for large gala and thus the complaint filed by the petitioner be decided on merits. The Secretary of the APMC sent a letter dated 17th February, 2010 to the petitioner stating that the petitioner had deposited an amount of Rs.32,725/- as against an amount of Rs.34,000/- which was required to be deposited in order to get an allotment of large gala. It was further alleged in the said letter that in the year 2003, as per the directions of the Central Fruit Section Marketing Association, Rs.3,000/- has been transferred for lease premium and thus the petitioner not having deposited more than Rs.34,000/- was not eligible for large gala.

66. The petitioner filed an appeal (14 of 2010) on 27th October, 2010 under section 52B of the APMC Act before the learned Director of Marketing, Government of Maharashtra, Pune. The said appeal was allowed by the learned Director of Marketing by an order dated 9th November, 2011 by quashing the letter cum order dated 17th February, 2010 issued by the learned Secretary of the APMC. The learned Director of Marketing recorded a finding that the petitioner had deposited more than Rs.34,000/- and was thus entitled to the allotment of one large gala. The learned Director of Marketing remanded the matter before the APMC

and directed the Secretary APMC to give an opportunity of hearing and follow the principles of natural justice while deciding the complaint filed by the petitioner.

67. It is the case of the petitioner that the APMC on 7th March, 2012 without considering the norms suggested by the learned Commissioner decided to hold the lottery system for gala no.F-158 amongst only 5 claimants and more particularly during the pendency of the application filed by the petitioner for allotment for large gala which application was pending before APMC. On 24th July, 2013, the Additional Collector/Secretary, APMC addressed a letter to the petitioner informing the petitioner that as per the decision in the meeting of the Marketing Committee dated 7th March, 2012 vide resolution no.9, the petitioner was eligible for one more small gala and informed the petitioner that if the petitioner was ready to purchase the said gala as per the price mentioned in the Government Ready Reckoner, then the petitioner could confirm such acceptance of additional small gala to the Marketing Committee of the APMC.

68. On 1st August, 2013, the petitioner addressed a letter to the APMC informing that the petitioner had deposited an amount of Rs.35,725/- before 1993 for allotment of the large gala. He also referred to the order dated 9th November, 2011 passed by the Marketing Director of the APMC confirming that the petitioner had

deposited an amount of Rs.35,725/- which amount was lying with the APMC. On 25th September, 2013, the Board of Directors of APMC alloted the said gala no.F-158 to Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.), the respondent no.4 herein.

69. By letter dated 27th September,2013, the petitioner informed the Secretary/Additional Collector of APMC that as per the order of this court on 29th July, 1998 the eligibility and purchase price of the gala had been decided and the same could not be changed. The said gala no. F 158 was within the the premises of Fruit Section of APMC and was in possession of APMC. The petitioner was not communicated with the decision of declaration of lottery process of the said gala no. F 158.

70. By a letter dated 19th October,2013, the Additional Collector of APMC informed the petitioner that the petitioner had been alloted one additional small gala bearing no. M-754 and if the petitioner was ready to purchase the said gala no.M-754, then the petitioner should confirm the same within the period of 15 days. The application of the petitioner for allotment of large gala was rejected. The petitioner was directed to pay an amount of Rs.25,50,000/- as per market value and was informed that if the said amount was not deposited and the

petitioner did not confirm the acceptance of the said additional gala, it would be deemed that the petitioner was not interested to purchase the said gala.

71. The petitioner vide his letter dated 17th December,2013 to APMC informed that since the large gala was not available at that moment, the petitioner accepted the said small gala. It is the case of the petitioner that the petitioner was under an impression that the big gala was not available with the APMC at that moment and the said offer was without prejudice to the rights and contentions for obtaining a big gala as and when it was made available.

72. M/s.Ramchandra Vitthal Dongre filed an appeal challenging the order allotting the gala to Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) i.e. respondent no.4 herein before the Director of Marketing. By an order dated 4th June, 2014, the Director of Marketing cancelled the allotment of gala in favour of Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) and directed the respondent no.2 to call a fresh bid from the five contestants and to allot the gala on auction basis. Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) and M/s.Ramchandra Vitthal Dongre filed Revision Application No.28 of 2014 before the learned Minister, Co-operation, impugning the order dated 4th June, 2014.

73. On 26th November, 2014, the learned Additional Collector, APMC addressed a letter to the petitioner informing that he was liable to pay an amount of Rs.19,66,517/- as per the ready reckoner rate. The petitioner preferred an appeal against the said order dated 26th November, 2014 before the Director of Marketing, APMC on 6th February,2015. The order of the respondent no.3 was challenged by the respondent no.4 before the respondent no.1 *inter alia challenging* the order of setting aside the allotment of gala no. F-158 in favour of the respondent no.4 by the respondent no.3. The learned Minister passed an order on 12th September,2014 allowing the said revision application directing the respondent no.2 to allot the said gala no.F-158 to the respondent no.4. The said order dated 12th September,2014 passed by the respondent no.1 was challenged by M/s.Ramchandra Vitthal Dongre in Writ Petition No.8959 of 2014.

74. By an order dated 29th September,2014 passed by this court in the said Writ Petition No.8959 of 2014, this court passed an order of *status quo* in that writ petition. The petitioner filed a Civil Application No.460 of 2015 for intervention in the said Writ Petition No.8959 of 2014. By an order dated 24th February,2015, this court dismissed the said civil application filed by the petitioner and granted liberty to file a substantive writ petition. All the contentions of the petitioner were kept open. The petitioner thus filed this writ petition *inter alia praying* for various

reliefs.

75. Mrs.Kanade, learned counsel for the petitioner submits that the petitioner was not a party before the Director of Marketing or before the learned Minister in the proceedings filed by the respondent no.4 and was not given any notice. Much prior to **30th September,1991**, the petitioner had already deposited a sum of Rs.35,725/- with the APMC and was thus eligible for allotment of a large gala as against the requisite deposit of Rs.34,001/- or more as per the norms suggested by the learned Commissioner. The petitioner was however alloted a small gala M-754 on **26th September,1999**. Learned counsel invited my attention to various correspondence exchanged between the parties and various orders passed by the APMC and submits that on one hand, the APMC decided to allot small gala to the petitioner and on the same date illegally passed a resolution to consider the eligibility of five other claimants. She submits that the findings already rendered by the Director of Marketing that the petitioner had already paid the requisite amount for large gala had not been challenged by any party or by APMC and the said finding had attained finality. The petitioner took possession of the small gala which was allotted by the APMC under protest. She submits that the Sant Gadge Maharaj Fruit Section Marketing Association had already confirmed that the petitioner had deposited a sum of Rs.35,725/- with the APMC which was more

than requisite amount described by the learned Commissioner for allotment of a large gala and thus the APMC could not have alloted the smaller gala and could not have rejected the application of the petitioner for a large gala.

76. Learned counsel for the petitioner placed reliance on the letter dated 19th October,2013 addressed by the APMC to the petitioner informing that five persons were held eligible for the said large gala bearing no.F-158 and the same could not be alloted to the petitioner. The petitioner was not informed to participate in the said lottery. She submits that the APMC was required to scrutinize the applications of all the eligible claimants for gala no.F-158 and could not have excluded the petitioner for consideration of the said large gala. The APMC was required to fulfill all the norms prescribed by the learned commissioner by this court. It is submitted that if the said Sant Gadge Maharaj Fruit Section Marketing Association had illegally retained any amount towards lease premium, the petitioner could not be held responsible for the same. The APMC was required to consider the entire amount of Rs.35,725/- paid by the petitioner and confirmed by the Director of Marketing for the purpose of considering an allotment of large gala in favour of the petitioner.

77. Learned counsel for the petitioner placed reliance on the letter dated **6th**

September,2014 from the APMC to Mr.Balasaheb D.Kengle while providing the information under the Right to Information Act, 2005 informing that the said Sant Gadge Maharaj Fruit Section Marketing Association could not have retained any amount towards lease premium from the amount deposited by any applicant towards the booking amount. It is submitted by the learned counsel that the APMC while drawing a lottery before allotting the said large gala bearing no.F-158 to the respondent no.4 did not follow the norms prescribed by the learned Commissioner including 'Early Bird Norms'. The entire system followed for the allotment of gala no. F-158 to the respondent no.4 was totally illegal and contrary to the norms suggested by the learned commissioner.

78. It is submitted that the petitioner has been alloted two small galas admeasuring 350 sq.ft. each whereas the size of the large gala was 450 sq.ft. The APMC thereafter withdrew allotment of second gala allotted to the petitioner. The petitioner challenged the said decision of the cancellation of the second small gala. The said appeal is allowed. The petitioner is held eligible for one large gala. Learned counsel placed reliance on the order dated 2nd March,2015 passed by this court in this writ petition recording a *prima facie* finding that in the letter dated 17th December,2013 the petitioner without making any specific grievance regarding refusal to make allotment of gala no.F-158 showed willingness to accept

gala no.M-745 at the ready reckoner value. This court accordingly refused to grant any *ad-interim* relief in favour of the petitioner. This court however directed that if the possession of gala no.F-158 was handed over to the respondent no.4, the same should be subject to further orders which would be passed in this writ petition.

79. Learned counsel appearing for the petitioner placed reliance on the order dated 7th May, 1999 passed by the Division Bench of this court in Writ Petition No.2556 of 1999 filed by Mr.Shantaram Y.Bhagat against the APMC thereby directing the APMC to make allotment strictly by adhering to the norms laid down by the learned commissioner. However, it was further directed that if any gala remains in balance after allotment in accordance with the norms, it would be open to the APMC to allot the same to those who marginally fall short of the norms that had been laid down. Learned counsel placed reliance on the affidavit in reply filed by the APMC In this writ petition on 30th March,2015 and more particularly paragraph (5)(F) dealing with the case of the petitioner. He submits that in the affidavit in reply, it was contended by the APMC that the petitioner was held eligible for allotment of small size gala and was accordingly allotted M-748 by letter dated 26th April, 1999 which gala was accepted by the petitioner and had paid the consideration thereof and had taken possession. He submits that the said

allotment was accepted by the petitioner without prejudice to the rights of the petitioner to get large gala.

<u>SUBMISSIONS OF APMC IN WRIT PETITION NO.2090 OF 2015.</u>

80. Mr.Bhadrashete, learned counsel appearing for the APMC submits that the petitioner had paid an amount of Rs.32,725/- towards the booking of large gala through his association before 31st December, 1993 and was eligible for allotment of a small gala. The petitioner was allotted small gala no.M-742 subject to the terms and conditions therein including payment of lease amount etc. He accepted the said allotment and has been using the said gala since the date of allotment. The petitioner was thus not entitled to apply for any large gala in view of the petitioner already having accepted a small gala bearing no.M-748 and even on the ground of non-compliance of other norms suggested by the learned Commissioner.

81. It is submitted by the learned counsel that the petitioner had filed an alleged undated letter issued by the Traders Association addressed to the petitioner stating that during the period between 1987 and 1991, the said Association had paid an amount of Rs.35,725/- towards the booking amount on behalf of the petitioner to the APMC. He submits that no such letter was addressed to the APMC. The record of the APMC did not show any receipt of Rs.35,725/- before 31st December, 1993.

The records of the APMC showed Rs.32,725/- in the name of the petitioner. It is submitted by the learned counsel that the petitioner was making complaint to the Director of Marketing about refusal on the part of APMC to allot large size gala to the petitioner. The Director of Marketing accordingly addressed a letter to the APMC dated 5th February, 2010 instructing the APMC to decide the said complaint made by the petitioner. On 17th February, 2010, the APMC had addressed a letter to the petitioner pointing out that the petitioner had paid only Rs.32,725/- towards the booking amount and had been allotted a small gala no.M-748. A sum of Rs.3,000/- was received in the year 2003 from the Traders Association and the same was adjusted towards the lease premium of gala no.M.748 allotted vide letter dated 29th February, 1999.

82. Learned counsel invited my attention to an order dated 9th November, 2011 passed by the Director of Marketing in the appeal filed by the petitioner directing the APMC to take a decision on merits. He submits that on 7th March, 2013, the Board of Directors of the APMC took a decision to allot the said large gala no.F-158 by considering the claim of five claimants by inviting offers in a sealed cover in compliance with the norms suggested by the learned Commissioner. The name of the petitioner was not included in the list of five claimants in view of the fact that the petitioner was entitled for allotment of small gala as per the norms

suggested by the learned Commissioner and he had already accepted the allotment of small gala no.M-748 vide allotment gala dated 26^{th} April, 1999.

83. It is submitted that on 25^{th} September, 2013, the Board of Directors decided to demand the market rate and as per the ready reckoner price. APMC thereafter took a decision on 19^{th} October, 2013 to allot another small gala no.M-745 at the market rate but the petitioner was not eligible for allotment of large gala. It is submitted that the petitioner accepted the said allotment of additional gala on 17^{th} December, 2013 however, wanted the said allotment at the ready reckoner rate and not market rate. The APMC accordingly agreed to allot small gala to the petitioner on 26^{th} November, 2014 at the ready reckoner rate. The APMC issued a letter of offer for a small gala at the market rate and asked for the consent of the petitioner in writing to enable the APMC to proceed further in the matter.

84. It is submitted that the petitioner filed Appeal No.2 of 2015 challenging the said offer letter dated 26^{th} November, 2014 on 6^{th} February, 2015 before the Director of Marketing. On 14^{th} January, 2015, the APMC passed a resolution to cancel the allotment of the petitioner of small gala since the petitioner did not give his consent for allotment of the additional gala and informed the petitioner about such cancellation by a letter dated 18^{th} February, 2015. The petitioner filed Appeal

No.12 of 2015 challenging the said resolution dated 14th January, 2015 resolving to cancel the allotment of small gala to the petitioner.

85. Learned counsel invited my attention to the order dated 29th April, 2015 passed by the Director of Marketing in the appeals filed by the petitioner i.e. appeal No.2 of 2015 and 12 of 2015. The Director of Marketing was pleased to set aside the resolution dated 28th February, 2014 and the letter dated 26th November, 2014 and directed that the petitioner was eligible for allotment of large gala and be allotted. The said order dated 29th April, 2015 has been impugned by Mr.Kashinath M.Wavare (M/s.Hande & Wavare & Co.) by filing a Writ Petition (Stamp) No.35978 of 2017 which was heard along with this petition.

86. Learned counsel for the APMC invited my attention to the order dated 4th June, 2014 passed by the Director of Marketing in appeal No.244 of 2013 thereby setting aside the decision dated 25th September, 2013 taken by the APMC and directing that the said large gala be allotted by inviting the bids in a sealed cover from five persons. He invited my attention to the prayers in this writ petition and would submit that the petitioner has impugned the order dated 12th September, 2014 passed by the learned Minister thereby setting aside the order dated 4th June, 2014 passed by the Director of Marketing and confirming the decision of the

APMC dated 25th September, 2013 and seeks allotment of larger gala no.F-158. The petitioner has also impugned the decision of the Board of Directors of the APMC dated 7th March, 2013 and 25th September, 2013 in this writ petition.

87. It is submitted by the learned counsel that since the petitioner had not paid the entire booking amount as per the norms suggested by the learned Commissioner and had accepted the small gala unconditionally, the petitioner was not entitled to apply for large gala and was accordingly not invited for participation in lottery drawn by the APMC. The petitioner has been in possession of the small gala even today unconditionally and without protest. The petitioner had made a complaint after 11 years to the Director of Marketing after accepting the small gala from the APMC and did not even return the said gala to the APMC.

88. It is submitted by the learned counsel that the order passed by the Director of Marketing that the petitioner had paid a sum of Rs.35,725/- towards the booking amount to the APMC is without any basis and contrary to the documents on record. Even today, the petitioner is not able to show before this Court that the petitioner had paid more than Rs.34,000/- before the cut off date. He submits that though the petitioner was not eligible to allot the second small gala, the APMC offered him second small gala to show good gesture. The petitioner had offered to

pay and to accept the second small gala at the market rate, which request was also accepted by the APMC. The petitioner filed an appeal before the Director of Marketing challenging the said decision of the APMC and applied for cancellation of the allotment of second small gala and prayed for allotment of a large gala. He submits that though the order passed by the Director of Marketing allowing an appeal filed by the petitioner has not been challenged by the APMC by which resolution passed by the APMC was set aside, another applicant for the said large gala has already challenged the said decision of the Appellate Authority by filing a Writ Petition (Stamp) No.35978 of 2017. He submits that in view of such conduct on the part of the petitioner and after having accepted the small gala and also agreed to accept the second small gala, though on payment of ready reckoner rate, and thereafter challenging the said resolution, the petitioner is not entitled to seek large gala by filing this writ petition under Article 227 of the Constitution of India.

<u>REJOINDER ARGUMENTS IN WRIT PETITION NO. 2090 OF 2015 BY MRS.KANADE</u>

89. It is submitted in rejoinder by the learned counsel for the petitioner that Mr.Kashinath M. Wavare was not eligible for large gala in view of he not satisfying any of the norms and more particularly in respect of the payment of deposit of booking amount suggested by the learned Commissioner. She submits that her client has satisfied all the norms and had deposited all the booking

amounts for the allotment of a large gala as per the norms suggested by the learned Commissioner. She submits that it was averred by her client all throughout that the APMC had admitted the receipt of the requisite amount from the petitioner towards the booking of a large gala. The findings of fact rendered by the Director of Marketing being a finding of fact, cannot be interferred with by this court in the writ petition filed by the other petitioners impugning the said order under Article 227 of the Constitution of India.

90. It is submitted that the order passed by the Director of Marketing in favour of the petitioner has not been challenged admittedly by the APMC. The writ petition filed by her client is only for seeking enforcement of the order passed by the Director of the Marketing. She submits that the principles of *res judicata* would apply to this case. In support of this submission, learned counsel placed reliance on the judgment of Supreme Court in case of ***Mathura Prasad Bajoo Jaiswal and others vs. Dossibai N. B. Jeejeebhoy, 1970(1) SCC 613*** and in particular paragraphs 3, 4, 5 and 11.

91. Learned counsel placed reliance on section 53B of the APMC Act, 1963 and would submit that the order passed by the appellate authority under the said provision is final. The correctness of the said order cannot be challenged now by

the respondents. She submits that only her client and Mr.Habibulla Farahtulla whose eligibility was decided by the Directors of Marketing were eligible contenders for allotment of large gala and only these two names could be considered by the APMC. Learned counsel submits that as per the norms suggested by the learned Commissioner on 'Early Bird norms' would apply. The application of the petitioner for allotment of large gala was made first in point of time i.e. even prior to the application made by Mr.Habibulla Farahtulla. The petitioner thus was the only person entitled for allotment of the large gala.

FACTS AND SUBMISSIONS IN WRIT PETITION (STAMP)NO. 35978 OF 2017.

92. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 29th April, 2015 passed by the Director of Marketing, Maharashtra State, Pune in Appeal No.2 of 2015 and Appeal No.12 of 2015 filed by Mr.Ganpat Sabaji Shinde (petitioner in Writ Petition No.2090 of 2015).

93. At the outset Mr.Kanade, learned counsel for the respondent no.4 in this writ petition (petitioner in Writ Petition No.2090 of 2015) opposing this petition on the ground that there is gross delay on the part of the petitioner in filing this writ petition. The impugned order is passed by the the Director of Marketing on 29th April, 2015 whereas the writ petition has been filed on 14th December,2017. Some

of the relevant facts for the purpose of deciding this petition are as under :-

94. It is the case of the petitioner that since 1985-1986, the petitioner has been doing their business of wholesale broker of fruits and has been renewing licence issued by the APMC every year. The petitioner has been regularly paying cess to the APMC and was carrying on business from Crawford Market, Mumbai prior to shifting the wholesale market at New APMC Market at Vashi. It is the case of the petitioner that the respondent no.4 was doing business prior to 1985 and had booked one gala by paying amount through association Sant Gadge Maharaj Phal Vibhag Vyapari Association and had paid an amount of Rs.32,725/- to the APMC. The said Association had paid an amount of Rs.32,725/- to the respondent no.1 in the personal account of the respondent no.1 to the respondent no.4.

95. The APMC by letter dated 11th September, 1995, alloted to the petitioner a small gala no.M-821 in New Fruit and Vegetable Market Complex Vashi. The petitioner refused to accept the said small gala but was asked to accept the said gala till completion of the shifting. The petitioner was thereafter put in possession of gala no.M-821. The petitioner was doing his business from M-821 since shifting of the market at Vashi on 19th March,1996.

96. It is the case of the petitioner that the petitioner being the wholesale broker had applied for a large gala in fruit market by paying an amount of Rs.15,000/- by 16th January 1991 and further paid an amount of Rs.20,000/- on 15th July 1991 and amount of Rs.14,000/- on 5th August 1991 through the Association towards booking of a large gala. It is the case of the petitioner that the petitioner had satisfied all the norms suggested by the learned commissioner except condition no.5. The petitioner has paid cess of Rs.9,544.10 within the time frame of 1985-86 to 1994-95. During the said period, the petitioner was short of payment of cess by Rs.155.90 as against the requirement of Rs.10,000/- fixed by the learned commissioner. The case of the petitioner was therefore marginal case and was deserving an allotment of a large gala as per the norms of the learned commissioner.

97. The petitioner filed a writ petition bearing no.2181 of 2002 before this court for allotment of large gala as a marginal case. There were two more similar petitions filed by two other parties i.e. Mr.Ashok Punde and Mr.Bhalchandra C. Lele. By an order dated 4th March,2003 passed by this court, all those three writ petitions were disposed of. This court recorded the statement made by the APMC that it would consider the request of the petitioner in those three petitions in accordance with law when new 12 galas would be constructed. It is the case of the

petitioner that the petitioners, Mr.Punde and Mr.Lele were eligible for large gala by the said order dated 4th March,2003.

98. This court passed an order on 7th January, 2013 in Civil Application No.13 of 2012 in Writ Petition No.234 of 2004 directing the APMC to scrutinize the claim of all eligible wholesale brokers and take final decision of allotment of said gala no.F-158 within eight weeks. The respondent no.1 accordingly passed a resolution on 26th April, 2013 to consider the claim of five eligible persons. According to the APMC, the petitioner i.e. Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.), M/s.Ramchandra Vitthal Dongare, Mr.Habibulla Farahtulla, Mr.Ashok Punde and M/s.Bhalchandra Chintaman Lele were the said five eligible persons.

99. On 19th September, 2013, the respondent no.1 drew lottery amongst five persons as per order dated 7th January,2013. The petitioner was selected in the said lottery for allotment of the said gala no.F-158. It is the case of the petitioner that after receiving letter dated 17th December,2013 from the respondent no.4 stating that the respondent no.4 was ready to accept M-745 at the market rate, the APMC issued a letter of allotment dated 21st December, 2013 thereby allotting gala no.F-158 to the petitioner and asked the petitioner to pay Rs.27,69,500/- within one

month. The petitioner paid the said amount to the APMC on 7th January,2014. The said decision of allotment of the said gala F-158 to the petitioner by APMC was challenged by M/s.Ramchandra Vitthal Dongare and Mr.Habibulla Farahtulla by filing two separate writ petitions before this court.

100. This court passed an order on 24th February, 2015 in the Writ Petition No.8959 of 2014, Writ Petition No.8975 of 2014 and Writ Petition No.10328 of 2014 admitting all these three petitions. This court however made it clear that the allotment of F-158 in favour of the petitioner herein (respondent no.5 to those three petitions) shall be subject to the final decision in those three petitions and further clarified that the petitioner herein shall not claim any equity in that regard and shall not create any third party rights in respect of those galas without leave of this court. On 14th December,2017, the petitioner herein field this writ petition *inter alia* praying for quashing and setting aside the common order dated 29th April, 2015 passed by the Director of Marketing, Maharashtra State, Pune in Appeal No.2 of 2015 and Appeal No.12 of 2015 filed by Mr.Ganpat Sabaji Shinde.

101. Mr.U.V.Nighot, learned counsel for the petitioner invited my attention to the various exhibits annexed to the petition and also the compilation of documents filed by M/s.Ramchandra Vitthal Dongre in Writ Petition No.8959 of 2014 and

various annexures annexed by the respondent no.4 to this writ petition (petitioner in Writ Petition No.2090 of 2015) and submit that the petitioner had been carrying on business of wholesale broker of fruit since 1985-86 and had already paid an amount of Rs.15,000/- on 16th April, 1991, Rs.20,000/- on 15th July, 1991 and Rs.14,000/- on 5th August,1991 which was more than amount of Rs.34,001/- required for allotment of a large gala as per the norms suggested by the learned commissioner. The respondent no.4 however had not deposited the requisite amount more than Rs.34,000/- with the APMC. He submits that the APMC had alloted small gala no.M-821 to the petitioner on 11th September, 1995. Though the petitioner had refused to accept the said gala, the APMC asked the petitioner to accept the said gala till the completion of shifting which shifting was completed on 19th March,1996.

102. Learned counsel placed reliance upon three reports submitted by the learned commissioner suggesting various norms for allotment of gala which report came to be accepted by this court. It is submitted that the respondent no.4 had only made payment of Rs.32,725/- to APMC and not Rs.35,725/- as alleged by respondent no.4 and was thus even otherwise was not eligible for allotment of any large gala. The respondent no.4 had accepted the allotment of small gala and did not file any writ petition for allotment of any large gala or any appeal under section 52B before

the Director of Marketing challenging the allotment of small gala bearing no.M-748.

103. It is submitted that the respondent no.2 had already considered the case of the respondent no.4 and had informed the respondent no.4 that he was not entitled for consideration of large gala as an amount of Rs.3,000/- was paid by the Association in the year 2003 which was after the cut off date of 31st December,1991 fixed by the learned Commissioner and thus the total amount paid by the respondent no.4 was less than the prescribed amount of Rs.34,000/- or more on the cut off date. It is submitted that the respondent no.4 had given his consent for allotment of small gala M-748 on payment of market rate and had accepted the said allotment without raising any protest and thus was not eligible for any allotment of any large gala. The respondent no.4 thus could not have challenged the allotment of large gala in favour of the petitioner.

104. It is submitted by the learned counsel that in the appeal preferred by the respondent no.4 before the Director of Marketing i.e. Appeal No.2 of 2015 and Appeal No.12 of 2015, the respondent no.4 did not implead the petitioner herein or other four eligible traders who were called to participate in the lottery by APMC. The respondent no.4 thus could not have passed an order on 29th April, 2015

thereby cancelling the resolution and letters issued by the APMC in favour of the petitioner and could not have held that the respondent no.4 was eligible for a large gala as per the norms suggested by the learned commissioner. He submits that surprisingly, the APMC did not challenge the order dated 29th April, 2015 passed by the Director of Marketing in favour of the respondent no.4. The respondent no.4 however has filed a separate writ petition bearing no.2090 of 2015 challenging the allotment of the petitioner on various grounds.

105. It is submitted by the learned counsel that since there was shortfall of a small amount for payment of cess by the petitioner, the case of the petitioner was required to be considered under the category of 'marginal case' as per the norms of the learned commissioner and thus case of his client was rightly considered and could not have been challenged by the respondent no.4 by filing appeals. He submits that the order passed by the Director of Marketing on 29th April, 2015 is illegal and thus deserves to be set aside. Learned counsel for the petitioner placed reliance on the affidavit in reply filed by the petitioner in Writ Petition No.2090 of 2015 filed by respondent no.4 herein and more particularly to show the receipt of payment made by the petitioner and as to how the case of the petitioner would fall under the category of 'marginal case'.

106. It is submitted that the respondent no.4 did not approach this court till 2015 for challenging the allotment in favour of the petitioner. The petitioner has already paid substantial amount and has been placed in possession of the said large gala no. F-158 in the month of March 2015 and has been carrying on business in the said large gala upon handing over possession of the said large gala to the petitioner by the APMC. The petitioner has already surrendered the small gala to the APMC and is in possession of only a large gala since then. Learned counsel placed reliance on the order passed by this court in Civil Application No.13 of 2012 in case of M/s.Ramchandra Vitthal Dongre recording the statement made by the APMC that five persons were eligible including the petitioner herein were eligible for consideration of allotment of large gala.

107. Learned counsel for the petitioner placed reliance on the chart submitted by the petitioner in Writ Petition no.8959 of 2014 and would submit that all the parties mentioned therein were falling short of payment of cess and were falling under the category of 'marginal case'. He also placed reliance on the chart prepared by the APMC showing the amount of cess paid by each of the petitioner. He also made a submission as to how M/s.Ramchandra Vitthal Dongre was not eligible for a large gala. He submits that the partner of the said so called partnership firm were carrying on business in the individual name and not as a

partnership firm. The licence was issued in the name of the individuals and not in the name of the firm. APMC has executed sub-lease in favour of Mr.Ramchandra Vitthal Dongre and not in favour of M/s.Ramchandra Vitthal Dongre on 29th October,1999. No partnership firm is entitled for allotment of a large gala. The said M/s.Ramchandra Vitthal Dongre in any event did not pay the entire consideration. Letter dated **6th February,1999** addressed by the APMC was also in favour of Mr.Ramchandra Vitthal Dongre individually and not in favour of the firm. He also relied upon the letter dated 6th January,2010 addressed by Mr.Ramchandra Vitthal Dongre in his individual capacity. He relied upon the communication dated 29th December,2014 obtained under the provisions of Right to Information Act showing that the gala was alloted to Mr.Ramchandra Vitthal Dongre in his individual category.

108. Learned counsel for the petitioner also invited my attention to some of the documents annexed by the petitioner Mr.Habibulla Farahtulla in Writ Petition No.10328 of 2014 admitting that the said petitioner was also short payment of cess. Two galas were already allotted to the father of the petitioner. The father of the said petitioner had requested to transfer the said application of third gala in the name of his son. The APMC rejected the said request of the father of the petitioner in Writ Petition No.10328 of 2014. He submits that though the APMC had not

challenged the order passed by the Director of Marketing in favour of Mr.Habibulla Farahtulla, the said order would not be binding upon the petitioner herein, Mr.Habibulla Farahtulla was fully aware of the lottery system followed by the APMC and was also aware of the allotment of large gala to the petitioner. Except the said Mr.Habibulla Farahtulla, the other parties had participated in the lottery system. Though M/s.Ramchandra Vitthal Dongre was not eligible, the said party still participated in the said lottery system. The petitioner has already succeeded in the said lottery system and has already paid the requisite amount asper the ready reckoner.

109. It is lastly submitted by the learned counsel that the order passed by Director of Marketing on 29th April, 2015 in favour of the respondent no.4 shall be set aside and the writ petition filed by his client shall be allowed. He further submits that the allotment of large gala in favour of his client shall be upheld by this court and the petition challenging the said allotment of large gala in favour of his client shall be dismissed.

<u>SUBMISSIONS OF APMC IN WRIT PETITION (ST) NO. 35978 OF 2017.</u>

110. Mr.Bhadrashete, learned counsel for the APMC submits that on 9th September,1991, the petitioner had paid a sum of Rs.34,000/- towards booking a large gala. However, there was marginal short payment of cess by the petitioner.

During the period between 1985-86 to 1994-95, the petitioner had paid a cess of Rs.9844.10. During the period between 1995-97 the petitioner had paid the cess of Rs.8561.30. The petitioner was thus short of Rs.156/- for payment of cess as the petitioner could not pay the sum of Rs.10,000/- or more towards cess. The case of the petitioner was accordingly treated as 'marginally short'. He was thus allotted a small gala M-821. It is submitted that none of the petitioners were eligible as per the norms suggested by the learned Commissioner. However, in view of the subsequent orders passed by the court and as per the decision taken by the Board of Directors of APMC, initially a lottery was drawn and thereafter upon cancellation of the said lottery system, the bids were invited from five claimants. It is submitted that though Mr.Habibulla Farahtulla was given a chance to participate in the lottery system, however, he refused to participate. M/s.Ramchandra Vitthal Dongre though participated in the said lottery system, it participated under protest. It is submitted that the said M/s.Ramchandra Vitthal Dongre could not have participated in the lottery system under protest.

111. Learned counsel placed reliance on the norms suggested by the learned Commissioner and more particularly 'Early Bird Norms'. He submits that the said norms were required to be followed by the APMC in respect of all the categories. The preference was to be given according to the date of the application, however,

on the condition that the requisite booking fees was paid and the subject to fulfillment of other requirements by the successful claimant. He submits that since none of the conditions prescribed in 'Early Bird Norms' were satisfied by any of the candidates, the APMC had applied the 'marginal case' approach to all five claimants for allotment of large gala. He placed reliance on the order passed by the Division Bench on 7th May, 1999 in Writ Petition No.2556 of 1999 filed by Mr.Shantaram Y.Bhagat thereby directing the APMC to make allotment strictly by adhering to the norms laid down by the learned commissioner. He submits that by the said order, this court had directed that if any gala remains in balance after allotment in accordance with the norms, it would be open to the APMC to allot the same to those who marginally fall short of the norms that had been laid down.

112. It is submitted by the learned counsel that none of the petitioners had challenged the decision of the APMC to allot the large gala to one of those five eligible candidates by drawing a lottery or at the market rate. The said decision of the APMC was not even set aside by any order passed by this court or by the Directors of Marketing. It is submitted that the said Mr.Kashinath M. Wavare was thus successful in the bid submitted by him and was rightly allotted the large gala bearing no. F-158 and no fault can be found with the said allotment made by the APMC in favour of the said party.

REJOINDER ARGUMENTS IN WRIT PETITION (ST) NO. 35978 OF 2017

113. Mr.Nighot, learned counsel for the petitioner in this writ petition and for the respondent in Writ Petition No.8959 of 2014 submits that M/s.Ramchandra V.Dongre was not fit under any of the norms suggested by the learned Commissioner. He submits that since none of the petitioners were eligible as per the norms suggested by the learned Commissioner, the APMC rightly followed the 'marginally short' criteria and was justified in adopting the lottery system and thereafter to invite bids. He submits that the order passed by the Director of Marketing in favour of M/s.Ramchandra V.Dongre has been already challenged by his client in the Writ Petition (St) No.35978 of 2017.

114. Insofar as the case of Mr.Habibulla Farahtulla in Writ Petition No.10328 of 2014 is concerned, it is submitted by the learned counsel that the father of the said Mr.Habibulla Farahtulla was already allotted three galas. The said Mr.Habibulla Farahtulla had not deposited any amount towards booking of any gala. The father of Mr.Habibulla Farahtulla had applied for transfer of gala in the name of Mr.Habibulla Farahtulla.

115. Insofar as the case of M/s.Ramchandra V.Dongre is concerned, it is submitted that the licence issued in favour of the said applicant and more

particularly clause 20 clearly indicates that if there was any partnership firm, then the applicant was required to be informed about the same. It is submitted that the said M/s.Ramchandra V.Dongre had participated and did not challenge the lottery system or bidding. He submits that the petitioner had already surrendered the earlier gala to APMC and has paid the substantial amount. The petitioner has been carrying on business since 2015 from the said large gala bearing no. F-158 allotted by the APMC.

<u>Facts & Submissions in Writ Petition No.10328 of 2014 in case of Habibullah Farahatullah vs. Ramchandra Vitthal Dongre & Ors.</u>

116. By this petition, the petitioner has impugned the order dated 12th September, 2014 in R.A. No.28 of 2014 and order dated 4th June, 2014 in Appeal No.244 of 2013 and prays for allotment of large gala no.F-158. It is the case of the petitioner that some time in year 1991-92, the petitioner had applied for license to APMC in his own name. On 2nd May, 2001, APMC rejected the request of the petitioner. In the month of May, 2001, the petitioner filed an appeal (34 of 2002) before the Appellate Authority under section 52-B of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963.

117. On 25th June, 2002, the petitioner lodged a complaint with the Joint Director of Marketing, Pune alleging that about 25 persons were allotted galas illegally who

were not at all entitled to allotment of any galas and none of them had satisfied the norms laid down by the learned Commissioner on 9th August, 2002. On 24th September, 2002, the Director of Marketing, Pune allowed the appeal bearing No.34 of 2002 filed by the petitioner and directed APMC to allot a large gala to the petitioner. It is the case of the petitioner that on 24th September, 2002, APMC accepted the order of the said Appellate Authority and informed the petitioner that large galas were not available due to the allotments made earlier and due to the pendency of the proceedings challenging cancellation of illegal allotments.

118. On 3rd August, 2004, APMC addressed a letter to the Director of Marketing and referred to the large gala nos.H-556 and H-675 and informed that those galas were *sub-judice* in the proceedings pending before this Court in Writ Petition Nos.3194 of 1999 and 7039 of 1998. The Marketing Director was informed by APMC that appropriate steps would be taken to allot the petitioner a large gala as per the order dated 24th September, 2002 pursuant to the decisions in the said two Writ Petitions bearing No.3194 of 1999 and 7039 of 1998.

119. Pursuant to the order dated 7th January, 2013 passed by this Court in Civil Application No.13 of 2012 filed by M/s.Ramchandra Vitthal Dongre, the Board of Directors of the APMC convened a meeting and decided to value the said gala F-

158 and to conduct a lottery amongst five claimants. APMC addressed a letter to the petitioner on 26th August, 2013 about such lottery being conducted on 16th September, 2013. The petitioner vide his letter dated 14th September, 2013, raised an objection to the decision of the APMC to conduct a lottery. The petitioner pointed out that the petitioner was the only person who was eligible and was entitled for the said gala no.F-158 as per the order dated 24th September, 2002 passed by the Appellate Authority in Appeal No.34 of 2002 filed by the petitioner which order had attained finality. The petitioner accordingly did not participate.

120. The respondent no.2 i.e. the respondent no.2 in the writ petition filed by Mr.Kashinath M. Wavare (M/s.Hande Wavare & Co.) challenged the decision of APMC drawing a lottery by filing an appeal before the Director of Marketing. The petitioner however, was not made a party to the said appeal. It is the case of the petitioner that on 4th June, 2014, the petitioner came to know that the Director of Marketing had passed an order allotting the said gala no.F-105 to the respondent no.2. By the said decision dated 4th June, 2014, the Director of Marketing had set aside the decision of the APMC to draw a lottery and directed that gala no.F-158 shall be auctioned.

121. On 12th September, 2014, the learned Minister for Co-operation in Appeal /

Revision No.28 of 2014 filed by APMC has set aside the order dated 4th June, 2014 passed by the Director of Marketing and confirmed the decision dated 25th September, 2013 of APMC allotting the said gala to M/s.Ramchandra Vitthal Dongre. The petitioner filed this petition *inter-alia* praying for writ of certiorari impugning the order dated 12th September, 2014 passed by the learned Minister in favour of the respondent no.1 and also prayed for an order and direction against APMC to allot the said gala no.F-158 to the petitioner.

122. Mr.Kaustav Talukdar, learned counsel for the petitioner invited my attention to various documents to the writ petition filed by his client and also to compilation of documents filed by M/s.Ramchandra Vitthal Dongre. It is submitted that the Appellate Authority had already allowed the appeal filed by the petitioner and had rendered a finding that the petitioner was eligible for large gala having satisfied the norms suggested by the learned Commissioner. The said order passed by the Appellate Authority was not challenged by APMC or by any other party and had attained finality. The drawing of lottery by APMC at th first instance itself was unwarranted and was contrary to the order passed by the Appellate Authority in the appeal filed by his client and the norms suggested by the learned commissioner. He submits that the petitioner thus did not participate in the lottery drawn by APMC though was called upon by APMC to participate.

123. It is submitted by the learned counsel for the petitioner that the petitioner was not impleaded as a party respondent to the proceedings filed by the respondent no.1 before the Director of Marketing and also before the learned Minister for Co-operation. It is submitted that the petitioner had obtained a license in his favour in the year 1992 from APMC and had applied for large gala on 26th April, 1999 based on the norms suggested by the learned Commissioner. The petitioner had however, allotted a small gala bearing no.M-775. The petitioner did not accept the said small gala from APMC. On 2nd April, 2001, the petitioner made the application for large gala. The said application was rejected by APMC on 2nd May, 2001. The appeal filed by the petitioner came to be allowed by the Director of Marketing. He submits that the name of the petitioner was included in the list of five candidates considered by the APMC though other four names could not have been considered by APMC at all. The eligibility of the petitioner was already adjudicated upon in getting allotment of large gala by the Director of Marketing which is not set aside by the learned Minister of Co-operation in any appeal by APMC or by any other party in the proceedings filed by the respondent no.1. The Writ Petition No.638 of 2008 filed by the petitioner for allotment of gala nos.H-675 and H-556 was pending.

124. Insofar as the order dated 7th May, 1999 passed by the Division Bench of

this Court is concerned, it is submitted by the learned counsel that the said order passed by this Court was no longer good and was not binding after the judgment of the Supreme Court in case of ***Hanumant M. Gavade (supra)***. There was no surplus gala available but on the contrary, it was the case of short fall of gala.

125. The learned counsel appearing for the petitioner placed reliance on paragraph 5(b) of the further affidavit filed by APMC in this writ petition in which APMC had referred to an order dated 24th September, 2002 passed by the Director of Marketing in the appeal preferred by the petitioner holding that the petitioner was entitled for large gala as per the norms laid down by the learned Commissioner and that booking for large gala made by the father of the petitioner stood transferred in the name of the petitioner by virtue of the said order. He submits that APMC has admitted in the said affidavit that in view of the order of the Director of marketing, the petitioner was considered for allotment of large size gala. He submits that no lottery could be drawn at all by APMC in violation of the norms suggested by the learned Commissioner. The petitioner was not heard by the Director of Marketing or by the learned Minister while deciding in favour of the respondent no.4. The said orders were in violation of the principles of natural justice.

126. It is the case of the petitioner that the petitioner is on the higher pedestal over other petitioners. It is submitted that this Court shall not remand back the matter after so many years to the authority in view of the fact that the entitlement of the petitioner for large gala has been upheld by the Director of Marketing which order has attained finality. Learned counsel invited my attention to a letter dated 13th September, 2013 addressed by the petitioner to the Chairman of APMC thereby raising an objection to the lottery being drawn by APMC and requesting APMC not to proceed with the same without hearing the objection of the petitioner. The petitioner also contended in the said letter that the petitioner was the only person to whom the said large gala no.F-158 should be allotted as per the order dated 24th September, 2002 passed by the Director of Marketing. There was no reply to the said objection raised by the petitioner and on the very next day, APMC illegally drew the lottery.

127. It is submitted by the learned counsel that on 7th January, 2013, in the affidavit filed by the respondent no.1 before this Court, APMC had made a statement that there were five eligible candidates including the petitioner. He submits that except the petitioner, no other candidate was eligible and thus the applications of those other four candidates could not have been even considered by APMC for allotment of large gala bearing no.F-158. He submits that the norms

suggested by the learned Commissioner and approved by this Court were not flexible and had to be followed strictly by APMC while making allotment of any gala whether large or small which the APMC failed to follow.

SUBMISSIONS OF APMC IN WRIT PETITION NO.10328 OF 2014

128. Mr.Bhadrashete, learned counsel appearing for the APMC invited my attention to the order dated 24th September, 2002 in Appeal No.34 of 2002 and would submit that the entire petition of this petitioner is based on the said order dated 24th September, 2002. He submits that though the APMC had not challenged the said order dated 24th September, 2002, for various grounds raised by the APMC opposing this writ petition, the petitioner is also not eligible to be allotted any large gala. By the said order dated 24th September, 2002s, the APMC held that the petitioner herein was entitled for large gala as per the norms laid down by the learned Commissioner and booking of one large gala by the father of the petitioner Farhatullah Haji Barkatullah stood transferred in the name of the petitioner by virtue of the said order dated 24th September, 2002.

129. It is submitted by the learned counsel that during the period between 1991-92 and 1994-95, the petitioner was carrying on business. The petitioner however, did not pay any booking amount. The petitioner was not doing any business at the relevant time. The petitioner had applied for allotment of third gala. He submits

that under the norms suggested by the learned Commissioner, there was no scope for transfer of booking of one client to the name of any other person. The order dated 24th September, 2002 passed by the Director of Agricultural Marketing, Maharashtra State, Pune allowing the appeal filed by the petitioner is contrary to the order passed by the Division Bench of this Court and also the order of the Hon'ble Supreme Court. In support of this submission, learned counsel placed reliance on the order dated 29th July, 1998 passed by the Division Bench of this Court.

130. It is submitted that even though the Appellate Authority had allowed the appeal filed by the petitioner by an order dated 24th September, 2002, there was no dispensing with the norms suggested by the learned Commissioner for seeking allotment of a large gala. He submits that since the petitioner himself did not pay any booking amount, the question of allotting any large gala to the petitioner did not arise. The petitioner admittedly did not book any gala in his own name. It is submitted by the learned counsel that the Board of Directors of the APMC had taken a decision on 7th March, 2013 to allot the said large gala bearing no.F-158 amongst five persons including the petitioner herein who was also marginally short in complying with the norms. The petitioner however, did not participate in the process of allotment adopted by APMC.

REJOINDER ARGUMENTS OF THE PETITIONER IN WRIT PETITION NO. 10328 OF 2014

131. Learned counsel for the petitioner in rejoinder submits that there was no provision made in the norms suggested by the learned Commissioner permitting the allotment of the large gala in case of 'marginal short case'. The APMC thus could not have considered the case of the five persons under the said category illegally. He submits that in any event, the said order dated 7th May, 1999 passed by the Division Bench of this court in case of Writ Petition No. 2556 of 1999 would clearly indicate that if any gala would remain in balance after allotment in accordance with the norms suggested by the learned Commissioner, only in that circumstances it would be open to the APMC to allot the same to those who marginally fall short of the norms that had been decided by the learned Commissioner. In this case, there is no surplus gala left after allotment of all the galas already alloted strictly by adhering to the norms suggested by the learned Commissioner.

132. It is submitted that the norms suggested by the learned Commissioner were with an intention to see that only rightful claimants were required to be considered for allotment of gala by the APMC. He submits that the said category of 'marginally short' criteria was not provided under any statute or under the norms

suggested by the learned Commissioner. He submits that even in the order passed by the Hon'ble Supreme Court, the petitioners therein who had fallen short of Rs.1/- was considered as disqualified. It is submitted that the order passed by the Division Bench of this court on 7th May, 1999 was thus overruled by the Supreme Court and thus could not have been followed by the APMC. He submits that there was a statutory adjudication in favour of the petitioner by the appellate authority i.e. the Director of Marketing in the month of September 2002 rendering a finding that the petitioner had satisfied all the norms suggested by the learned Commissioner and was eligible to be allotted a larger gala which order had attained finality in view of the APMC or any other person not having impugned the said order. The APMC cannot be allowed to disobey the said order passed by the appellate authority thereby adjudicating the right of the petitioner about his right to get allotment of the larger gala. The petitioner is seeking enforcement of the said order passed by the Director of Marketing against APMC. APMC cannot be allowed to urge that the said order passed by the Directors of Marketing was wrongly passed.

133. It is submitted by the learned counsel for the petitioner that his client rightly did not participate in the lottery system since his right was already crystallized and adjudicated upon by the Director of Marketing. Insofar as the issue raised by the

APMC that the booking amount was allegedly not paid by the petitioner is concerned, it is submitted by the learned counsel that the petitioner has fulfilled all the criteria for allotment of a larger gala. On 4th September, 1999, the father of the petitioner had already paid the booking amount.

134. It is submitted that the order passed by the Director of Marketing holding that the petitioner was eligible for allotment of the larger gala would relate back to the date of the payment made by the father of the petitioner which was prior in point of time than the other applicants. The petitioner had obtained licence much prior to the date of depositing the booking amount and had been carrying on business since then. The petitioner had thus fulfilled the 'Early Bird Norms' having made payment in earliest point of time. The petitioner could not have been placed by the APMC 'marginally short' category.

135. Insofar as M/s. Ramchandra Vitthal Dongre is concerned, it is submitted by the learned counsel that the norms suggested by the learned Commissioner are silent insofar as the eligibility of the partnership firm to apply for allotment a gala is concerned. The partnership firm as well as the partners have to be considered separately and both have to fulfill the conditions. The conditions fulfilled by one of the party cannot be considered as fulfillment of conditions by another.

136. Mr. Kankal, learned A.P.G. appearing for the State of Maharashtra supported the case of the APMC and opposed all the petitions.

REASONS AND CONCLUSIONS

in Writ Petition Nos.8959 of 2014 with 8975 of 2014 with Writ Petition (St.) No.35978 of 2017 with Writ Petition No.2090 of 2015.

137. In the year 1987-88, the respondent no.1 had decided to shift all the subsidiary market of fruits and vegetables from Mumbai to Vashi, Navi Mumbai. In the year 1995, the construction of the said market however could be completed. In view of the dispute between traders in respect of the allotment of galas/shops, several petitions came to be filed before this Court. On 26th April 1998, this Court appointed a former Judge of this Court Shri Justice S.M.Daud as a Court Commissioner to suggest the norms to allot the galas/shops in the newly constructed wholesale market at Vashi.

138. Learned commissioner submitted three reports which were accepted by this Court. The said new wholesale Fruit Market had total number of 1029 galas. Out of 1029 galas, 732 being the large galas each measuring 450 sq. ft. and 297 small galas each measuring 300 sq. ft. The learned commissioner provided for eligibility for two time frames. The first time frame was 1985-86 to 1994-95 and the second time frame was of 1991-92 to 1994-95.

139. In so far as the first time frame 1985-86 to 1994-95 is concerned, the claimants were required to establish doing of five years business as reflected in payment of market fee irrespective of quantum thereof. The claimant was further required to show that he had held a licence issued by the respondent no.1 for at least two years in the above ten year period and also that he did business in one of the years 1995-96 or 1996-97. This was required to be established by proof of cess paid. Various amounts were provided towards payment of cess and depending upon such payment of cess, the said report provided for entitlement of gala.

140. The said report submitted by the learned commissioner further provided that no one would get more than three large galas and for retaining the third, the claimant would have to pay the market price within 90 days of the acceptance of the norm by the High Court. Those who had booked the galas upto December 31, 1993 and had come into the business from 1991-92 to 1994-95, the second time frame 1991-92 to 1994-95 was made applicable. It was further provided that those eligible in this category must have held the licence issued by the respondent no.1 for at least three years and done business for three years as reflected in the payment of market fee irrespective of quantum and show that they were doing business in 1995-96 or 1996-97 by proof of having paid market fee either in 1995-96 or 1996-97. By way of clarification in the norms fixed by the learned

commissioner, it was provided that those claimants who fell in the time frame 1985-86 to 1994-95 and had made bookings upto September 30, 1991 and those who fell in the time frame 1991-92 to 1994-95 and had made their bookings upto December 31, 1993, the amount paid and intent indicator would be as follows :-

Sr.No.	***Amount Paid***	***For***
(1)	Rs.10,000 to Rs.34,000	1 small gala
(2)	More than Rs.34,000 and up to Rs.68,000	1 large gala
(3)	More than Rs.68,000 and up to Rs.1,02,000	2 large galas
(4)	More than Rs.1,02,000	3 small galas

141. All these petitions are filed in respect of allotment of large gala bearing No.F-158 which become vacant in view of the judgment of the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade Vs. Mumbai Agricultural Produce Market & Ors., (2012) 1 SCC 729.*** In the said judgment, the Hon'ble Supreme Court had cancelled the allotment of the said large gala bearing No.F-158 which was alloted in favour of the said Mr.Hanumant Murlidhar Gavade. The petitioner before the Hon'ble Supreme Court having found not eligible for payment of the said large gala having made short payment of cess and directing the Mumbai Agricultural Produce Market to allot a small gala in favour of the petitioner before the Hon'ble Supreme Court. Pursuant to the said judgment of the Hon'ble Supreme Court, the said Mr. Hanumant Murlidhar Gavade surrendered the said large gala bearing No.F-158 to the respondent no.1. Several claimants

thus made claims for allotment of the said large gala bearing No.F-158.

142. In so far as the Writ Petition No.8959 of 2014 filed by the petitioner M/s.Ramchandra Vitthal Dongre is concerned, the petitioner claimed to be the partnership firm and has impugned the order dated 12th September 2014 passed by the learned Minister for Cooperation, Marketing and Textile allowing the Appeal/Revision No.28 of 2014 filed by the respondent no.5 Mr.Kashinath M.Wavare and directing the respondent no.1 to allot large gala bearing No.F-158 to the respondent no.5.

143. In so far as the Writ Petition No.8975 of 2014 filed by the petitioner M/s.Ramchandra Vitthal Dongre is concerned, the petitioner has impugned the order dated 12th September 2014 passed by the learned Minister for Cooperation, Marketing and Textile rejecting the Appeal/ Revision No.27 of 2014 filed by the petitioner and has prayed for allotment of large gala bearing No.F-158.

144. The petitioner had placed reliance on a Partnership Deed dated 30th December 1987 which is registered in the year 2014 comprising of two partners Mr.Ramchandra Vitthal Dongre and Mr.G.V. Lohot. A perusal of the record indicates that no booking amount is recorded in the name of the petitioner in the

said partnership firm in the record of the respondent no.1. The petitioner-firm has also not produced any record of payment of cess to the respondent no.1 in the name of the firm. The petitioner also did not show any license held in its name issued by the respondent no.1 nor has paid any market fee or booking amount. The partners of the petitioner however, relied upon the documents in the name of the individual partners so as to claim to be eligible in respect of large gala in the name of the petitioner-firm.

145. Mr. Ramchandra Vitthal Dongre who claim to be a partner of the petitioner-firm has already used the payment made by him in his individual capacity to claim gala No.G-247. The petitioner however, has contended that it has paid Rs.76,725/- towards booking amount. According to the record of the respondent no.1, Mr.Ramchandra Vitthal Dongre has paid a sum of Rs.10,000/- on 4th June 1988 and Rs.34,000/- paid on 9th September 1991. Mr.G.V.Lohot had paid Rs.32,725/- in his individual capacity and not in the name of the petitioner-firm.

146. A perusal of the record indicates that in the Civil Application No.13 of 2012 filed by the petitioner in Writ Petition No.234 of 2004, the petitioner had prayed for allotment of the said large gala bearing No.F-158. The respondent no.1 had made a statement before this Court that they were all five persons similarly

situated whose claims would be considered by the respondent no.1 and the eligible claimant would be allotted the said gala No.F-158. The respondent no.1 had prepared a list of five persons which according to the respondent no.1 were marginally short i.e. (1) M/s.Ramchandra Vitthal Dongre, (2) M/s.Hande Wavare & Co., (3) Mr.Ashok Punde, (4) Mr.Bhalchandra Chintaman Lele and (5) Mr.Habibulla Farahatulla.

147. It appears that the respondent no.1 thereafter took a decision on 7th March 2013 to allot the said gala by getting it valued amongst those five persons and by inviting offers in a sealed cover. It was however subsequently decided that the notices be issued to all those five persons who participated in the lottery proposed to be drawn on 19th September 2013. It is the case of the petitioner that the petitioner had participated in the lottery under protest. Mr.Habibulla Farahatulla by his letter dated 19th September, 2013 objected to the lottery being drawn by the respondent no.1 and did not participate in the said lottery on the ground that he was eligible as per the report of the committee of the respondent no.1. The other four persons participated in the said lottery drawn by the respondent no.1.

148. According to the said lottery drawn by the respondent no.1, the allotment was decided in favour of the respondent no.5, Mr.Kashinath M. Waware for

M/s.Hande Wavare & Co., the petitioner in Writ Petition (St) No.35978 of 2017. It was thereafter decided by the respondent no.1 that the allotment shall be given as per ready reckoner rate to the respondent no.5 and accordingly a letter of allotment came to be issued in favour of the respondent no.5 on 21st December 2013 directing him to make payment of Rs.27,69,500/-. The respondent no.5 had paid the said amount on 7th January 2014. The respondent no.1 handed over possession of the said gala F-158 to the respondent no.5 on 7th March 2015.

149. The decision of the respondent no.1 to allot the said large Gala bearing No.F-158 was challenged by the petitioner by filing an appeal before the Director of Marketing. The Director of Marketing decided the said appeal in favour of the petitioner and directed to allot the said Gala No.F-158 by inviting bid in a sealed cover by five persons. The said order passed by the Director of Marketing however, subsequently was set aside by the learned Minister for Cooperation by an order dated 12th September 2014. The respondent no.6 i.e. Minister for Cooperation, Marketing and Textile rejected the revision application filed by the petitioner.

150. A perusal of the verification clause in Writ Petition No.8975 of 2014 filed by the petitioner clearly indicates that the said writ petition has been filed by Mr.G.V.Lohot. He placed reliance on the licence issued by the respondent no.1 in

Writ Petition No.8959 of 2014 filed by M/s.Ramchandra V.Dongre. It further indicates that the market fees and the cess had been paid by Mr.Ramchandra V.Dongre in his individual capacity. The said Mr.Ramchandra V.Dongre was eligible for one large gala. The respondent no.1 had executed a sub-lease on 29th October 1999 in favour of Mr.Ramchandra Vitthal Dongre who was carrying on business in the name and style of sole proprietor of M/s.Ramchandra Vitthal Dongre. In so far as the said Mr.G.V. Lohot is concerned, he was issued a license by the respondent no.1 on 30th July, 1972 which license has also been renewed from time to time upto 2014. The said Mr.G. V. Lohot is also carrying on business in his individual name.

151. Learned counsel could not produce any document even before this Court to show that the petitioner had paid any booking amount for allotment of large gala or cess as per the norms decided by the learned commissioner. The petitioner has produced certain documents in the name of individual partner of the petitioner firm while seeking allotment of the said large gala in the name of petitioner firm. Learned counsel for the petitioner could not show any of the norms suggested by the learned commissioner making a partnership firm separately eligible for allotment of a gala on the basis of the license issued in the name of individual partner, the amount paid by the said individual partner towards booking

of the gala, payment of cess made by such individual partner or any other criteria required to be fulfilled by such individual partner for being eligible to get allotment of such gala.

152. In my view, the license obtained by an individual partner, the booking amount, if any, paid by such individual partner, payment of cess, if any, paid by such individual partner or other requirements which individual partner is required to be fulfilled as per the norms suggested by the learned commissioner for being eligible to allotment of such gala cannot be utilised by the partnership firm consisting of such partners to make such firm eligible for allotment of any gala under the said norms suggested by the learned commissioner. The petitioner firm had relied upon various payments made by the partners of the said firm in its individual capacity for which payment, the partners were already allotted separate galas based on such documents.

153. In my view, the documents relied upon by the petitioner for seeking allotment of the said gala No.F-158 which were the documents of individual partner of the petitioner could not be used and/or relied upon for the purpose of seeking allotment of the said gala No.F-158 in the name of the said partnership firm. The said application itself was contrary to the norms recommended by the learned commissioner which norms are accepted by this Court. Writ Petition

No.234 of 2004 which was relied upon by the learned counsel for the petitioner filed by Mr.Ramchandra Vitthal Dongre, proprietor of M/s.Ramchandra Vitthal Dongre, a proprietory concerns, was verified by the said Mr.Ramchandra Vitthal Dongre in his individual capacity. The letter of allotment dated 9th May 2001 addressed by the respondent no.1 to Mr.Ramchandra Vitthal Dongre was also in his individual capacity.

154. In the said Writ Petition No.234 of 2004 filed by Mr.Ramchandra Vitthal Dongre, he had challenged the order passed by the Appellate Court thereby allotting second large gala bearing nos.F-124. I am inclined to accept the submission made by the learned counsel for the respondent no.1 that Mr.Ramchandra Vitthal Dongre was alloted the said gala on the basis of the norms suggested by the learned commissioner. The petitioner as a partnership firm consisting of Mr.Ramchandra Vitthal Dongre and Mr.G.V. Lohot was not separately entitled to allot any separate gala based on the documents of the individual partners.

155. In so far as the submission of the learned counsel for the petitioner that the lottery drawn by the respondent no.1 in respect of the said gala No.F-158 itself was contrary to the norms suggested by the learned commissioner is concerned, a perusal of the norms suggested by the learned commissioner clearly indicates that

no such lottery could be drawn by the respondent no.1 for deciding the allotment of gala as decided by the respondent no.1. In view of the judgment of the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra),*** the said gala No.F-158 became vacant and was thus required to be allotted strictly in accordance with the norms suggested by the learned commissioner. In my view, Mr.Habibulla Farahatulla was though issued a notice to participate in the said lottery drawn by the respondent no.1 rightly did not participate in the said lottery. Learned counsel for the respondent no.1 could not demonstrate as to under which norms suggested by the learned commissioner drawing of such lottery was permissible and that also amongst five persons who were not similarly situated.

156. In so far as the petitioner is concerned, though the petitioner was not at all eligible being a firm had not satisfied the norms suggested by the learned commissioner as referred to aforesaid, the petitioner was illegally considered as one of the eligible claimants for the purpose of allotment of the said gala No.F-158 who participated in the said lottery and having not found successful, challenge the said lottery system contending that the petitioner had participated in the said lottery under protest.

157. In so far as the submission of the learned counsel for the petitioner that the

petitioner had already paid booking amount on various dates and was fully qualified as per the norms suggested by the learned commissioner is concerned, this submission is contrary to the documents produced on record which would indicate that various documents produced by the petitioner were the documents showing the payment made by individual partner of the petitioner firm and not showing the eligibility criteria in case of the petitioner has fulfilled for allotment of separate large gala.

158. The question of applicability of 'Early Bird Norms' suggested by the learned commissioner was thus not applicable in so far as the petitioner firm is concerned. The Hon'ble Supreme Court in the case of ***Mumbai Agricultural Produce Market Committee & Anr. Vs. Sharafatullah Hafiz Inayatulla & Anr.*** delivered on 15th February 2000 in SLP bearing CC No.3870 of 1999 has considered the norms suggested by the learned commissioner which norms are the subject matter of this writ petition also and has held in that matter that the applicant who had applied for allotment of gala had not produced any material to show that his case was identical to the case of the other claimants who had regularly done business during the relevant period and who like the writ petitioner had not paid the market fee and obtained a licence because of any genuine dispute with the Market Committee.

159. The Hon'ble Supreme Court held that the learned commissioner had recommended the norms which has termed as 'Early Bird Norms' which in principle means that the allotment will be made between the similarly-situated persons on the basis of the date of application which was a fair method to be adopted in the event of there being more eligible claimants than the available number of galas.

160. The petitioner thus being not at all eligible even to make an application for such gala could not claim parity with other claimants and could not have claimed precedence over the other claimants on the ground that the petitioner had applied for allotment of such gala first and was thus eligible under the said term 'Early Bird Norms' suggested by the learned commissioner. In my view, the petitioner was not being similarly situated with the other claimants whose claims were considered by the respondent no.1, case of the petitioner could not have been considered by the respondent no.1 even under the said 'Early Bird Norms' suggested by the learned commissioner. The principles laid down by the Hon'ble Supreme Court in the case of ***Mumbai Agricultural Produce Market Committee & Anr. (supra)*** would squarely apply to the facts of this case.

161. The submission thus made by the learned counsel for the petitioner that the case of the petitioner ought to have been considered by the respondent no.1 by

applying the principles of 'Early Bird Norms' recommended by the learned commissioner and on that basis, the petitioner allegedly having applied first for allotment of such large gala ought to have been allotted the said large gala bearing No.F-158 is contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of ***Mumbai Agricultural Produce Market Committee & Anr. (supra).***

162. A perusal of the report submitted by the learned commissioner indicates that it is recommended that the 'Early Bird Norms' shall be followed by APMC in respect of all the categories. The preference will be in keeping with the dates of applications, provided however that the requisite booking fee was paid. It was made clear in the said report that the successful claimants will be those who comply with the other requirements. It is thus clear that if all the claimants who had complied with all the requirements suggested in the said report, however the dates of such applications of such claimants were different, in that event, the claimant who had filed an application for allotment of gala in the earliest point of time was to be allotted such gala applying the principle of 'Early Bird Norms.'

163. It is thus clear that those claimants who had not complied with other requirements prescribed in the said report, even if the application of any of such claimant was in the earliest point of time, his case could not have been considered

by applying the principle of 'Early Bird Norms' merely on the ground that his application was in the earliest point of time. The petitioner in Writ Petition Nos.8959 of 2014 and 8975 of 2014 could not have invoked the said principle 'Early Bird Norms' suggested by the learned commissioner.

164. Division Bench of this Court has passed the order dated 7th January 2013 in Civil Application No.13 of 2012 in Writ Petition No.234 of 2004 which application is filed by M/s.Ramchandra Vitthal Dongre. It was the case of APMC that there were other four claimants similarly placed as that of M/s.Ramchandra Vitthal Dongre. Division Bench of this Court however made it clear that that does not mean that the said M/s.Ramchandra Vitthal Dongre should get precedence over other eligible claimants for gala No.F-158. This Court has directed that the respondent no.1 will scrutinize the claim of all the eligible claimants for gala No.F-158 and submit recommendation to the Board of the respondent no.1 who would take final decision in the matter regarding allotment of the said gala. It was made clear that the if the said decision was adverse to M/s.Ramchandra Vitthal Dongre, the said applicant would be free to take recourse to such other remedy as may be permissible in law.

165. In so far as the submission of the learned counsel for the petitioner that since the partnership deed of the petitioner was registered in the year 2014 and

thus the said registration would relate back to the date of execution of the partnership deed in the year 1987 and on that basis, the petitioner was eligible to apply for allotment of large gala No.F-158 is concerned, in my view, there is no merit in this submission of the learned counsel for the petitioner. Be that as it may, even if the petitioner is deemed to have been registered with effect from the date of execution of the partnership deed, the petitioner firm not having complied with any norms suggested by the learned commissioner, such registration even if considered as registration in the year 1987 would not assist the case of the petitioner.

166. There is no merit in the submission of the learned counsel for the petitioner that various findings and the observations made by the learned Minister for Cooperation in so far as the partners of the partnership firm are concerned, are without application of mind and are perverse. There is also no merit in the submission of the learned counsel that the petitioner was eligible claimant for allotment of the said gala. The revision application (Appeal/Revision No.27 of 2014) thus filed by the petitioner before the respondent no.6, in my view, has been rightly rejected by the learned Minister for Cooperation and does not warrant any interference.

167. In so far as the challenge to the order passed by the learned Minister for Cooperation in the Appeal/Revision No.28 of 2014 in favour of the respondent no.5 which is the subject matter of the Writ Petition No.8959 of 2014 is concerned, it would be appropriate if the subject matter of the Writ Petition (St.) No.35978 of 2017 filed by Mr.Kashinath Wavare (M/s.Hande Wavare & Co.) who is the respondent no.5 in Writ Petition Nos.8959 of 2014 and 8975 of 2014 and the subject matter of the Writ Petition No.2090 of 2015 filed by Mr.Ganpat Sabaji Shinde shall also be considered at this stage.

168. In so far as the prayers in Writ Petition (St.) No.35978 of 2017 are concerned, the said petitioner i.e. Mr.Kashinath M.Wavare has impugned the order dated 29th April 2015 passed by the Director of Marketing, Maharashtra State, Pune in Appeal Nos.2 of 2015 and 12 of 2015 filed by Mr.Ganpat Sabaji Shinde allowing those appeals and and cancelling the resolution dated 28th February 2014 and the letter dated 26th November 2014. The respondent no.1 had passed a resolution dated 14th January 2015 thereby cancelling the allotment of small gala made to Mr.Ganpat Sabaji Shinde. On 18th February 2015, the respondent no.1 had cancelled the allotment of small gala made to Mr.Ganpat Sabaji Shinde.

169. This Court shall now decide whether the petitioner in Writ Petition (St.) No.35978 of 2017 has made out any case for grant of relief in the said petition.

170. In so far as the said Mr.Kashinath M.Wavare who is the petitioner in Writ Petition (St.) No.35978 of 2017 is concerned, learned counsel appearing for the petitioner in Writ Petition Nos.8959 of 2014, 10328 of 2014 and 2090 of 2015 invited my attention to the averments made by the same petitioner in Writ Petition No.2181 of 2002 filed in this Court against the respondent no.1 and the State of Maharashtra. In the said writ petition, the petitioner Mr.Kashinath M. Wavare had prayed for an order and direction against the respondent no.1 to allot to the petitioner large gala in fruit section APMC Market Vashi as marginal case.

171. A perusal of the averments made by the petitioner in Writ Petition No.2181 of 2002 filed by Mr.Kashinath Mahadeo Wavare indicates that it was averred by the petitioner that as per the new norms suggested by the learned commissioner, the wholesale broker in fruit section who was coming in time frame of 1985-86 to 1994-95 was entitled for large gala on fulfillment of the conditions viz. (1) He should have booked gala by paying booking amount upto Rs.34,000/- before closing date; (2) He should hold license issued by the respondent no.1 for at least 2 years between the year 1985-86 to 1994-95; (3) He should have done business at least 5 years between the years 1985-86 to 1994-96; (4) He should have done

business either in the year 1995-96 or 1996-97 by paying cess and (5) For entitlement of large gala, he should have paid cess between Rs.10,001/- to Rs.90,000/- in the years 1985-86 to 1994-95.

172. In paragraph 6 of the said petition, it was averred by the petitioner that the petitioner was satisfying all the above five conditions except condition no.5. The petitioner did not get large gala as his cess was less by Rs.155.90 to required norm of Rs.10,000/- suggested by the learned commissioner. The cess paid was Rs.9544.10 in the time frame of 1985-86 to 1994-95.

173. In prayer clause (a) of the said Writ Petition No.2181 of 2002, it was admitted by the petitioner that since the petitioner had not satisfied the norms of payment of cess of Rs.10,000/- in view of short payment of Rs.155.90, his case should be considered for allotment of large gala as a marginal case. It is vehemently urged by all the petitioners in other writ petitions that admittedly the petitioner Mr.Kashinath M.Wavare had not complied with all the norms suggested by the learned commissioner. My attention is also invited to various affidavits filed by the respondent no.1 in so far as the averments made by Mr.Kashinath M. Wavare in Writ Petition No.2181 of 2002 and a common affidavit filed by the respondent no.1 in Writ Petition No.8959 of 2014 filed by Mr.Ramchandra Vitthal Dongre is concerned.

174. In so far as the affidavit-in-reply filed by the respondent no.1 in Writ Petition No.2181 of 2002 filed by Mr.Kashinath Mahadeo Wavare is concerned, a perusal of the said affidavit-in-reply dated 6th August 2002 filed by the respondent no.1 clearly indicates that it was the case of the respondent no.1 that the petitioner Mr.Kashinath Mahadeo Wavare was not entitled for large gala because the payment of cess during the relevant period was less than the limit prescribed by the norms suggested by the learned commissioner.

175. In so far as the petitioner Mr.Kashinath Mahadeo Wavare (M/s.Hande Wavare & Co.) is concerned, in the affidavit-in-reply dated 30th March 2015 filed by the respondent no.1 in Writ Petition No.8959 of 2014 filed by M/s.Ramchandra V. Dongre, it is contended by the respondent no.1 that the petitioner had paid Rs.9844.10 towards market fee and Rs.34,000/- towards booking a gala. The petitioner has not complied with the norms provided in the report submitted by the learned commissioner for allotting large size gala and thus the petitioner was not allotted large size gala and was eligible a small size gala bearing No.M-821. It is further contended that it is the case of the petitioner that under the category of marginally short, the name of the petitioner in the said list prepared by the respondent no.1. The respondent no.1 had made a statement while opposing the Writ Petition No.2181 of 2002 filed by Mr.Kashinath M.

Wavare that the claim of the said petitioner would be considered in accordance with law and as per the guidelines laid down by the learned commissioner.

176. In so far as the Writ Petition (St.) No.35978 of 2017 filed by Mr.Kashinath M. Wavare impugning the order dated 29th April 2015 passed by the Director of Marketing allowing the appeals filed by Mr.Ganpat Sabaji Shinde is concerned, the said Mr.Ganpat Sabaji Shinde had made a complaint on 29th January 2010 to the respondent no.2 that though he had paid the amount more than Rs.34,000/- towards booking of gala, he was not allotted large gala as per the order dated 29th July 1998 passed by this Court. The respondent no.2 had accordingly directed the respondent no.1 to consider the complaint of Mr.Ganpat Sabaji Shinde on its own merit. The respondent no.2 had accordingly passed an order that the said Mr.Ganpat Sabaji Shinde was not entitled for consideration of allotment of large gala as he had not paid booking amount of Rs.34,000/- before the cut-off date. The respondent no.1 however had erroneously allowed the appeal filed by Mr.Ganpat Sabaji Shinde.

177. The submission of the learned counsel for Mr.Kashinath M.Wavare before this Court is that M/s.Ramchandra Vitthal Dongre was not fit under any of the norms suggested by the learned Commissioner. He further submitted that since none of the petitioners were eligible as per the norms suggested by the learned

Commissioner, the respondent no.1 had rightly followed the 'marginally short' criteria and was justified in adopting the lottery system. It is also vehemently urged by the learned counsel for Mr.Kashinath M. Wavare that he had already paid the substantial amount for allotment of the said Gala No.F-158 to the respondent no.1 and has been carrying on business in the said gala till date. The cancellation of the said gala allotted to the petitioner now would seriously prejudice to the petitioner.

178. In so far as the respondent no.1 is concerned, it is urged by the learned counsel for the respondent no.1 that there was a shortfall in payment of cess by Mr.Kashinath M. Wavare. However, in view of the subsequent order passed by this Court and as per the decision taken by the Board of Director of the respondent no.1, a lottery was drawn by the respondent no.1. He urged that since none of the conditions prescribed in 'Early Bird Norms' suggested by the learned commissioner were complied with by any of the claimants, the said norms were not at all applicable. The claims of all such persons who were marginally short were considered for allotment of large gala.

179. The respondent no.1 has strongly placed reliance on the order dated 7th May 1999 passed by the Division Bench in Writ Petition No.2556 of 1999 in

the case of ***Shantaram Y. Bhagat Vs. The Mumbai Agricultural Produce Market Committee & Anr.*** By the said order dated 7th May 1999, the Division Bench of this Court has directed the respondent no.1 to make allotment strictly by adhering to the norms laid down by the learned commissioner. It is further directed that if any galas remain in balance after allotment in accordance with the norms, it will be open to the respondent no.1 to allot the same to those who marginally fall short of the norms that have been laid down. Division Bench of this Court passed an order in terms of the minutes of the order signed by the advocates appearing in that writ petition.

180. It is the case of the respondent no.1 that in view of the order dated 7th May 1999, the respondent no.1 had considered the case of those five claimants who fell marginally short of the norms laid down by the learned commissioner. In my view, the reliance placed by the learned counsel for the respondent no.1 on the said order dated 7th May 1999 passed by this Court in support of the submission that the case of five claimants including the case of the petitioner M/s.Ramchandra Vitthal Dongre and case of the M/s.Hande Wavare & Co. was considered allegedly falling under the category of 'marginally short' is ex facie contrary to the norms suggested by the learned commissioner and even in any case contrary to the order dated 7th May 1999 and the principles of law laid down

by the Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra).***

181. Division Bench of this Court passed an order dated 4th March 2003 while disposing of the Writ Petition No.2181 of 2002 filed by Mr.Kashinath Mahadeo Waware inter alia praying for an order and direction against the respondent no.1 to allot to the petitioner large gala in fruit section APMC market Vashi as marginal case by recording a statement of the respondent no.1 that when they would construct 12 more galas (tenement), the claim of the petitioner should be considered in accordance with law and as per the guidelines laid down by the learned commissioner. In my view, in view of the said order dated 4th March 2003 passed by this Court recording a statement made by the respondent no.1 that the claim of Mr.Kashinath M.Waware would be considered in accordance with law and as per the guidelines laid down by the learned commissioner, the APMC could not have applied the criteria of 'marginally short' while considering the case of five claimants.

182. In my view, the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra)*** had set aside the allotment in favour of the said Mr.Hanumant Murlidhar Gavade on the ground that there was short payment of cess by the said claimant since the said allotment in favour of Mr.Hanumant Murlidhar Gavade was not in accordance with the norms suggested by the learned

commissioner. In my view, the consideration of the case of the said Mr.Kashinath M. Wavare under the guise of applying the norms 'marginally short' is thus ex facie contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra)*** by which the Hon'ble Supreme Court had set aside the allotment in favour of the said Mr.Hanumant Murlidhar Gavade in view of a short payment of cess having found ineligible as per the norms suggested by the learned commissioner. In my view, the respondent no.1 could not have considered the claims of the other four claimants under the category of 'marginally short.' The allotment of one large gala thus made in favour of the said Mr.Kashinath Mahadeo Wavare (M/s.Hande Wavare & Co.) is thus ex facie illegal and contrary to the stand taken by the APMC from time to time in various affidavits filed by the respondent no.1 not only in the earlier writ petition filed by the said Mr.Kashinath Mahadeo Wavare but also in the other petitions filed by different parties.

183. This Court while admitting the Writ Petition Nos.8959 of 2014, 8975 of 2014 and 10328 of 2014 on 24th February 2015 has made it clear that the said Mr.Kashinath M.Wavare had already deposited an amount of Rs.27.69 lacs on 7th January 2015 and thus there was no question of grant of any interim relief which would have the effect of keeping the said gala vacant or unused. It was

however made clear that the allotment of the said gala in favour of Mr.Kashinath M. Wavare shall be subject to final decision in this petition and the said Mr.Kashinath M.Wavare shall not claim any equities in that regard. He shall also not create any third party rights in respect of the said gala during the pendency of this petition without leave of this Court. In my view, the respondent no.5-Mr.Kashinath M.Wavare in Writ Petition Nos.8959 of 2014 & 8975 of 2014 and the petitioner in Writ Petition (St.) No.35978 of 2017 thus cannot be allowed to urge that if the allotment of the said gala No.F-158 in favour of the said Mr.Kashinath M.Wavare is set aside by this Court, serious prejudice would be caused to Mr.Kashinath M.Wavare.

184. In my view, since the allotment of gala No.F-158 itself is illegal and contrary to the norms suggested by the learned commissioner whose norms are accepted by this Court and the allotment being ex facie contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra)***, allotment of gala No.F-158 in favour of the respondent no.5-Mr.Kashinath M. Wavare in Writ Petition Nos.8959 of 2014 & 8975 of 2014 and the petitioner in Writ Petition (St.) No.35978 of 2017 deserves to be set aside.

185. In so far as the Writ Petition No.2090 of 2015 filed by Mr.Ganpat Sabaji Shinde is concerned, it was the case of the petitioner that since he had deposited an amount of Rs.35,725/- with the APMC during the period between 1987 and 1991 for allotment of large gala which amount was more than Rs.34,000/- as per norms suggested by the learned Commissioner appointed by this Court, he was eligible for allotment of large gala No.F-158. The APMC however sent a letter of allotment to the petitioner on 26th April 1999 thereby allotting a small gala bearing no.748 in M-Block in the said new Vegitable Market. The respondent no.1 had informed the petitioner on 3rd July 2003 that the amount of deposit of Rs.32,725/- made by the petitioner had been transferred for registration of gala No.M-748 in the name of the petitioner.

186. During the course of the arguments, Mrs. Kanade, learned counsel for the petitioner strongly placed reliance on an undated letter of Sant Gadge Maharaj Fruit Section Marketing Association to the petitioner informing that the petitioner was a member of the said Association and during the period between 1987 to 1991, the petitioner had deposited an amount of Rs.35,725/- for registration of a gala and the said amount was deposited for a large gala. The said petitioner had made a complaint to the Director of Marketing of the respondent no.1 regarding the allotment of small gala inspite of large gala to the petitioner by the respondent

no.1. The respondent no.1 however, by letter dated 17th February 2010 had informed the petitioner that the petitioner had deposited an amount of Rs.32,725/- as against an amount of Rs.34,000/- which was required to be deposited in order to get allotment of large gala. The petitioner was also informed that in the year 2003, as per the directions of the Central Fruit Section Marketing Association, a sum of Rs.3,000/- was transferred for lease premium and thus the petitioner had not deposited the amount of Rs.35,725/- but had deposited the amount of Rs.32,725/- which was less than Rs.34,000/- as per the norms suggested by the learned commissioner.

187. Learned Director of Marketing in the appeal preferred by the petitioner remanded the matter back to the respondent no.1 with a direction to grant an opportunity of hearing to the petitioner and pass a fresh order. The respondent no.1 thereafter offered one more small gala by letter dated 24th July 2013 to the petitioner and informed that if the petitioner was ready to purchase the said gala as per the price mentioned in the Government Ready Reckoner, then the petitioner could confirm about such acceptance of additional small gala to the Marketing Committee of the respondent no.1. The respondent no.1 sent reminder the petitioner to confirm whether the petitioner was agreeable to purchase the said gala. Since the petitioner did not confirm about such acceptance of additional

small gala, the said additional small gala came to be rejected by the respondent no.1. Prior to such cancellation, on 26th November 2014, the respondent no.1 addressed a letter to the petitioner to pay an amount of Rs.19,66,517/- as per the ready reckoner rate.

188. The petitioner challenged the said order dated 26th November 2014 before the Director of Marketing. In the parallel proceedings filed by M/s.Ramchandra Vitthal Dongre, the petitioner has impugned the order dated 4th June 2014 passed by the Director of Marketing, Pune to the extent of directing the APMC to allot the gala on auction basis and call for afresh bid from the five participants only. The petitioner has also impugned the allotment of gala No.F-158 in favour of Mr.Kashinath M.Wavare. By carrying out the amendment to the petition, the petitioner has made it clear that the petitioner shall initiate separate proceeding seeking allotment of the said Gala No.F-158 and was restricting this writ petition only to the challenge of the impugned order dated 12th September 2014 and 4th June 2014. The petition filed by Mr.Ganpat Sabaji Shinde has been opposed by the petitioners in other three petitions and also by the APMC. Mr.Ganpat Sabaji Shinde also in turn opposes the petition filed by the other petitioners on various grounds.

189. It is the case of the petitioner that the order passed by the Director of

Marketing in favour of the petitioner has not been challenged by any of the parties including the APMC. It is the case of the petitioner that only the petitioner and Mr.Habibullah Farahatulla whose eligibility was decided by the Director of Marketing were eligible claimants for allotment of large gala and only these two names ought to have been considered by the APMC. However, the application of the petitioner was the first in point of time, thus the petitioner only was the person eligible for allotment of the large gala No.F-158.

190. The petitioner has also placed reliance on the judgment of the Supreme Court in the case of ***Mathura Prasad Bajoo Jaiswal & Ors. (supra)*** in support of the submission that since the order passed by the Director of Marketing has not been challenged by any party or by APMC, the order has attained finality and thus the plea now raised by the respondent no.1 that the petitioner was not eligible is barred by principles of *res judicata.*

191. In so far as the case of Mr.Ganpat Sabaji Shinde is concerned, there was a dispute between the parties whether the petitioner had deposited a sum of Rs.35,725 or Rs.32,725/- prior to 31st December 1993 with the respondent no.1. The petitioner has alleged to have deposited a sum of Rs.35,725/- with the trader's Association. There was a dispute that out of Rs.35,725/-, a sum of Rs.3,000/- was adjusted toward lease of Gala No.M-748. The petitioner could

not controvert the case of the respondent no.1 that prior to the cut off date, the entire amount of Rs.35,725/- was not deposited by the petitioner with the respondent no.1. It is thus clear that the case of the petitioner that the petitioner had paid more than Rs.34,000/- towards allotment of large gala as per the norms suggested by the learned commissioner prior to the cut off date was without any basis and not proved. The alleged letter from the trader's Association produced by the petitioner on record is admittedly undated.

192. In my view, Mr.Kashinath M.Wavare has rightly urged before this Court through his counsel that the said Mr.Ganpat Sabaji Shinde had only paid a sum of Rs.32,725/- towards booking amount and was accordingly allotted a small Gala No.M-748 in the year 1999. The trader's Association had transferred the said amount in the year 2003 to the account of the said Mr.Ganpat Sabaji Shinde and was not deposited in the personal account of the said Mr.Ganpat Sabaji Shinde with APMC on or before 31st December 1993. In my view, there is no substance in the submission of Ms.Kanade, learned counsel for the petitioner Mr.Ganpat Sabaji Shinde that the order dated 17th February 2010 passed by the Director of Marketing in Appeal No.14 of 2010 was unchallenged. The respondent no.1 had taken a decision upon remand of the said matter by the Director of Marketing by an order dated 9th November 2011 by considering the case of the petitioner and

offered him additional small gala.

193. The question of application of principles of *res judicata* thus did not apply to the facts of this case. The said Mr.Kashinath M. Wavare has already challenged the order of Director of Marketing on 29th April 2015 arising out of Appeal Nos.2 of 2015 and 12 of 2015. The impugned order dated 29th April 2015 which is the subject matter of the said Writ Petition (St.) No.35978 of 2017 being contrary to the norms suggested by the learned commissioner and contrary to the factual position that the petitioner had deposited only a sum of Rs.32,725/- thus deserves to be set aside. The Writ Petition (St.) No.35978 of 2017 thus deserves to be allowed.

REASONS AND CONCLUSIONS IN WRIT PETITION NO. 10328 OF 2014 FILED BY MR.HABIBULLA FARAHATULLA.

194. The petitioner in this petition has impugned the order dated 12th September 2014 passed by the learned Minister in Appeal/Revision No.28 of 2014 and the judgment and order dated 4th June 2014 passed by the Director of Marketing to the extent directing the APMC to hold fresh auction and seeks an order and direction against the APMC and Director of Marketing of APMC to allot gala No.F-158 to the petitioner.

195. It was the case of the petitioner that though the petitioner was entitled for a large gala as per the approved norms and though he had made an application for the same on 26th April 1999, the petitioner was allotted a small Gala No.M-775 by the APMC. The petitioner had filed an appeal before the Director of Marketing in the month of May 2001 and had also lodged a complaint with the Joint Director of Marketing, Pune alleging the illegal allotment of galas to around 25 persons who were not eligible according to the petitioner. On 24th September 2002, the Director of Marketing allowed the Appeal No.34 of 2002 and directed the Director of Marketing of APMC to allot large gala to the petitioner.

196. A perusal of the record indicates that the APMC did not challenge the said order dated 24th September 2002 passed by the Director of Marketing directing the APMC to allot large gala to the petitioner. The APMC addressed a letter dated 24th September 2002 to the petitioner that large galas were not available at that point of time. By letter dated 3rd August 2004, the APMC informed the Director of Marketing that few petitions were pending before this Court regarding large gala Nos.H-556 and H-675 and that steps would be taken to allot the petitioner a large gala as per the order dated 24th September 2002. The petitioner did not participate in the lottery drawn by the respondent no.1 and opposed the said decision of the respondent no.1 to draw a lottery. The petitioner had pointed out

by letter dated 13th September 2013 that the petitioner was the only person who was eligible and entitled for the subject gala as per the order dated 24th September 2002. Since the respondent no.1 allotted the said Gala No.F-158 to Mr.Kashinath M.Wavare though the said party was not eligible to allot the said large gala and since the petitioner was not allotted the large gala inspite of the order dated 24th September 2002 passed by the Director of Marketing, the petitioner filed this petition.

197. In so far as the aforesaid contention of the petitioner is concerned, a perusal of the record indicates that it was the case of the respondent no.1 that in the Board of Directors' meeting, it was resolved that five eligible claimants including the petitioner would be considered for allotment of Gala No.-F-158 by drawing a lottery. Though the petitioner was issued a notice for participating a lottery, the petitioner did not participate. A perusal of the affidavit-in-reply dated 30th March filed by the APMC in this petition indicates that it was the case of the respondent no.1 that the petitioner was not eligible for allotment of large gala as he had allegedly not complied with the norms suggested by the learned commissioner. The father of the petitioner had paid market fees of Rs.1,48,827.90 and Rs.1,32,000/- for booking galas and was eligible for allotment of two large galas. He was accordingly allotted Gala Nos.H-670 and H-671.

198. It is further stated in the said affidavit that the Director of Marketing by an order dated 24th September 2002 had ordered the APMC to allot large gala to the petitioner immediately from the large galas available for allotment on first priority and if it is not available immediately, it should be allotted as and when it becomes available as a first priority. The Director of Marketing held that the petitioner was entitled for a large gala as per the norms laid down by the learned commissioner and the booking of one large gala by the father of the petitioner namely Shri Farahatullah Haji Barkatullah stood transferred in the name of the petitioner by view of the said order. In the said affidavit, the respondent no.1 had admitted that in these circumstances and more particularly in view of the order passed by the Director of Marketing on 24th September 2002, the petitioner was considered for allotment of large size gala.

199. During the course of arguments, it was urged by the learned counsel for the APMC that though the Appellate Authority vide order dated 24th September 2002 had directed the APMC to allot large gala to the petitioner, the said order would not dispense with the norms suggested by the learned commissioner which norms were accepted by this Court. It is not in dispute that in the order passed by the Appellate authority i.e. Director of Marketing in appeal preferred by the petitioner

while allowing the said appeal had categorically held that the petitioner was entitled for large gala as per the norms laid down by the learned commissioner and had further held that the booking of one large gala by father of the petitioner stood transferred in the name of the petitioner. The APMC was accordingly directed to allot the large gala to the petitioner on first priority and if the large gala was not available immediately, it should be alloted as and when it bebcomes avaialble as a a first priority. The said order passed by the Director of Marketing has attained finality and is binding on the APMC.

200. A perusal of the correspondence exchanged between the petitioner and the APMC after 24th September 2002 clearly indicates that the APMC had informed the Director of Marketing that steps would be taken to allot the petitioner a large gala as per the order dated 24th September 2002. In my view, since the Appellate Authority had already rendered a finding that the petitioner was eligible to allotment of a large gala in accordance with the norms suggested by the learned commissioner and the booking of one large gala by the father of the petitioner namely Shri Farahatullah Haji Barkatullah stood transferred in the name of the petitioner, none of the other claimants can be allowed to raise an issue that the petitioner himself had not paid any booking amount.

201. In my view, in these circumstances, the right of the petitioner to get an allotment of large gala having been crystallized, upon the said large gala No.F-158 becoming available by virtue of the order passed by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra),*** the APMC ought to have allotted the said gala to the petitioner in compliance with the order passed by the Appellate Authority in Appeal No.34 of 2002 filed by the petitioner. In my view, the APMC thus could not have drawn lottery to consider the claim of other four claimants under the guise of implementing the order dated 7th May 1999 passed by the Division Bench in Writ Petition No.2556 of 1999 in the case of ***Shantaram Y. Bhagat Vs. The Mumbai Agricultural Produce Market Committee & Anr.***

202. A perusal of the said order clearly indicates that even according to the said order, the APMC was directed to make allotment strictly by adhering to the norms laid down by the learned commissioner. The APMC was directed that if any galas remain in balance after allotment in accordance with the norms, it would be open to the respondent no.1 to allot the same to those who marginally fall short of the norms that have been laid down. In my view, since the petitioner was the only eligible claimant for allotment of the said large gala No.F-158 whose appeal was allowed by the Appellate Authority with a finding that he was

eligible to allotted a large gala in accordance with the norms suggested by the learned commissioner, the APMC could not have considered the case of other claimants under the alleged category of 'marginal case'. The entire procedure thus followed by the APMC drawing a lottery and to consider the case of four other claimants was totally without jurisdiction and illegal and contrary to the norms suggested by the learned commissioner and also contrary to the principles of law laid down by the Hon'ble Supreme Court in the case of ***Hanumant Murlidhar Gavade (supra)*** and in the case of ***Mumbai Agricultural Produce Market Committee & Anr. Vs. Sharafatullah Hafiz Inayatulla & Anr.(supra)*****.**

203. The entire action on the part of the APMC in taking inconsistent stand in various proceedings and allotting the large gala No.F-158 in favour of Mr. Kashinath M.Wavare is totally illegal and without authority of law, contrary to and in violation of the orders passed by this Court accepting the norms suggested by the learned commissioner. In my view, the petitioner Mr.Habibulla Farahatullah has thus made out a case for allotment of the said large Gala No.F-158 and also has made out a case for setting aside the order dated 12th September 2014 in Appeal/Revision No.28 of 2014 and the order dated 4th June 2014 passed by the Director of Marketing to the extent of holding fresh auction.

204. I therefore pass the following order : -

<u>Writ Petition No.8959 of 2014</u>

(i) The impugned order dated 12th September 2014 passed by the learned Minister for Co-operation, Marketing and Textile in Appeal/ Revision No.28 of 2014 filed by the respondent no.5 Mr.Kashinath M.Waware is quashed and set aside.

(ii) The Appeal/Revision No.28 of 2014 filed by the respondent no.5 Mr.Kashinath M.Waware is dismissed.

(iii) Rule is made absolute in aforesaid terms.

(iv) No order as to costs.

<u>Writ Petition No.8975 of 2014</u>

(i) The prayer for setting aside the order dated 12th September 2014 passed by the learned Minister for Co-operation, Marketing and Textile in Appeal/ Revision No.27 of 2014 filed by M/s.Ramchandra Vitthal Dongre is rejected.

(ii) Rule is discharged.

(iii) No order as to costs.

<u>Writ Petition (St.) No.35978 of 2017</u>

(i) The order dated 29th April 2015 passed by the Director of Marketing, Maharashtra State, Pune allowing the Appeal Nos.2 of 2015 and 12 of 2015 filed by Mr.Ganpat Sabaji Shinde is quashed and set aside.

(ii) The Appeal Nos.2 of 2015 and 12 of 2015 filed by Mr.Ganpat Sabaji Shinde are dismissed.

(iii) Writ petition is allowed in aforesaid terms.

(iv) No order as to costs.

Writ Petition No.2090 of 2015

(i) The order dated 12th September 2014 passed by the learned Minister of Cooperation in Revision Application No.0714/Pra.No.197/77-S, the impugned orders in terms of the minutes of meeting dated 7th March 2014 allotting the Gala No.F-158 to Mr.Kashinath M.Wavare as confirmed by the minutes of meeting dated 25th September 2013 recorded by the Director of Marketing, Maharashtra State, Pune are quashed and set aside.

(ii) The impugned order dated 4th June 2014 passed by the Director of Marketing, Pune to the extent directing the respondent no.2- APMC to allot the gala on auction basis and call for afresh bid from the five participants only is quashed and set aside.

(iii) The impugned allotment of large Gala No.F-158 in favour of Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) vide allotment letter dated 7th March 2014 is quashed and set aside.

(iv) Writ petition is allowed in aforesaid terms.

(v) No order as to costs.

Writ Petition No.10328 of 2014

(i) The Mumbai Agricultural Produce Market Committee-the respondent no.5 is directed to allot and hand over possession of the large Gala No.F-158 to the petitioner Mr.Habibulla Farahatulla in compliance with the order dated 24th September 2002 passed by the Director of Marketing in Appeal No.34 of 2002 within eight weeks from today.

(ii) Mr.Kashinath M. Wavare (M/s.Hande Wavare & Co.) is directed to hand over the vacant possession of Gala No.F-158 to the APMC within six weeks from today.

(iii) The APMC is directed to refund the amount paid by Mr.Kashinath M.Wavare (M/s.Hande Wavare & Co.) to the said party which was paid by him upon allotment of the said Gala No.F-158, within four weeks from today.

(iv) Rule is made absolute in aforesaid terms.

(v) No order as to costs.

(vi) Parties to act on the authenticated copy of this judgment.

R.D. DHANUKA, J.