

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

**WRIT PETITION NO.10525 OF 2018
WITH
CIVIL APPLICATION NO.12977 OF 2018
WITH
CIVIL APPLICATION NO.15042 OF 2018
WITH
CIVIL APPLICATION NO.2136 OF 2019**

Nilkanth S/o. Laxmanrao Gadade & Ors...Petitioners

Versus

The State of Maharashtra & Ors. ..Respondents

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Mr. S. R. Bagal, Advocates for the Petitioners.

Mrs. A. V. Gondhalekar, A.G.P. for Respondent Nos.1 to 3.

Mr. S. K. Kadam, Advocate for Respondent No.4.

Mr. S. K. Chavan, Advocate for Respondent No.5.

Mr. S. G. Dodya, Advocate for Applicant in CA/12977/2018 (Intervention).

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**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

Closed for Orders on : 08.02.2019.

Order Pronounced on : 03.05.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The petitioners assail the action of respondent no.1 dissolving Agricultural Produce Marketing Committee, Sengaon, District Hingoli and also the order appointing Administrator over the A.P.M.C., Sengaon.

2. The petitioners are elected members of the A.P.M.C., Sengaon. The term of the Managing

Committee commenced on 21.09.2015 and is for five years that is upto 20.09.2020. The petitioner no.1 is the Chairman of the A.P.M.C., Sengaon. The members of the opposite group tendered their resignations. The respondent no.3-District Deputy Registrar reported the vacancies in the A.P.M.C., Sengaon to respondent no.1 and requested to hold by-elections or to nominate the member to fill up the vacancies as per Section 16(2) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for the sake of brevity hereinafter referred to as "Act, 1963") under letter dated 23.08.2018. However, respondent no.1 passed the impugned order directing dissolution of the A.P.M.C., Sengaon. The said order is passed without notice to petitioners and without hearing them.

3. Mr. Bagal, learned counsel submits that there is no provision in the Act, 1963 conferring power of dissolution upon the State Government. In an eventuality, when the vacancies are created due to resignation, Section 16(2) of the Act, 1963 mandates nomination or by-elections. The learned counsel further submits that No Confidence Motion was moved against the petitioner no.1. The Motion failed and upon failure of No Confidence Motion, 9 members submitted cyclostyled resignations. The learned counsel submits that only recourse open to the respondents is to fill in vacancies by conducting by-elections and not by dissolution.

The petitioners are democratically elected members of the A.P.M.C., Sengaon. They have right to continue till the end of their term. A democratically elected body cannot be divested of their powers in such a manner. The learned counsel relies on the judgment of the Apex Court in a case of **Comptroller and Auditor General of India Vs. K. S. Jagannathan** reported in 1986 (4) CPSC 91 and submits that this Court can exercise powers under Article 226 of the Constitution of India and direct the respondent-authority to exercise the powers conferred upon it by the Statute or Rule. The respondents be directed to conduct by-elections of the vacant posts by setting aside the order of dissolution of the A.P.M.C., Sengaon. The learned counsel further relies on the judgment of the Division Bench of this Court in **Letters Patent Appeal No.76 of 2006** dated 20.12.2006 and submits that the respondents should have directed by-elections. Those who have not resigned have mandate of the electorate and the powers conferred upon them cannot be lightly taken away by the impugned order. The principles of natural justices have been flouted.

4. The learned A.G.P. supports the order and submits that A.P.M.C., Sengaon comprises of 18 members. Out of 18 members, one member is disqualified, one member has expired and 9 members have resigned, thereby leaving only 7 members in the office. The disqualified member has filed writ

petition bearing no.9516/2017. By virtue of interim order passed therein, his post cannot be filled in either by election, nomination or co-option. Out of 9 members who have resigned, 7 members were elected respectively from amongst Grampanchayat members and Primary Agriculture Credit Cooperative Societies. The paragraph no.6 of the affidavit-in-reply of respondents reads thus:

"6. I say and submit that, in light of the amendment by virtue of Maharashtra Act, XIII of 2018 brought into effect from 13.06.2017, total of 7 members to be elected from amongst members of Primary Agriculture Credit Cooperative Societies and from amongst Grampanchayat members stand elected. It is therefore, that the 7 members from amongst the 9 members who have resigned cannot now be either elected, co-opted or nominated as the constituencies from which they were elected are no more in existence w.e.f. 13.06.2017"

5. The quorum as prescribed in the bye-laws and more particularly bye-laws No.38 of the A.P.M.C., Sengaon cannot be comprised. The required members for the quorum is 10. Only 7 members are in the office and as against 11 vacancies, 8 cannot be filled in either by election, nomination or co-option. The State Government by referring to provision of 16(2) and 18 of A.P.M.C. Act had passed an order dissolving the A.P.M.C., Sengaon. After dissolution, the government has appointed a Government Official as an Administrator working as an Assistant Registrar, Co-operative Society, Sengaon. He has taken charge

of A.P.M.C., Sengaon immediately on 13.09.2018. It is in this peculiar circumstance the Government has taken decision in dissolving A.P.M.C., Sengaon and to conduct fresh elections. Already two persons were co-opted namely Dwarkadas Sarda in the meeting dated 14.12.2015 and Balmukund Narayan Jethliya in the meeting dated 16.11.2017. One of the co-opted Director Mr. Sarda has also resigned from the Traders Constituency. There are only 7 Directors occupying the post of Board of Directors of A.P.M.C., Sengaon. Even if, Government again exercises powers of co-opting two Directors, the quorum of A.P.M.C., Sengaon cannot be said to be complete because of bye-law No.38.

6. The civil application no.12977/2018 is filed by the intervenor claiming to be Ex-Director of A.P.M.C., Sengaon who had resigned. He supports the stand of the Government.

7. Mr. Bagal, learned counsel submits that at present there are 8 valid members in the A.P.M.C., Sengaon. One co-opted member Mr. Narayan Khedekar is still valid member. One elected member Shri. Sarjerao Ramrao Pol died on 01.01.2018. Initially 5 members were declared disqualified. The A.P.M.C., Sengaon on 16.11.2017 filled in the vacancy as per Section 18 of the Act, 1963 by co-option of one Mr. Khedkar. Thus there are total 8 valid members and remaining two can be co-opted and nominated.

8. The respondents rely on the judgment of the Apex Court in a case of **Cheviti Venkanna Yadav Vs. State of Telangana and Ors.** reported in **AIR 2016 Supreme Court 4982** and submits that only because the period of member is curtailed, it cannot be said that their vested right is negated. The Government has power to supersede or dissolve the A.P.M.C., Sengaon and this Court would not consider the order passed by the Government dissolving the A.P.M.C. as an Appellate Authority nor the Government can be directed to justify order on merits. Reliance is placed on the judgment of the Division Bench of this High Court in a case of **Shankarappa Ramappa and Others Vs. State of Bombay and Others** reported in **AIR 1957 Bombay 55**. Reliance is also placed on the judgment in a case of **State of Punjab Vs. Mohar Singh Pratap Singh** reported in **AIR 1955 Supreme Court 84** to submit that the provisions of the amended legislation will have to be considered. In view of the amendment to the A.P.M.C. Act the by-elections cannot be held. Relying on the judgment of the Apex Court in a case of **The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others** reported in **AIR 2003 Supreme Court 1659** it is submitted that the Rules of natural justice are flexible Rules. By giving hearing no different view would be permissible.

9. The only issue that needs to be considered is whether the action of the respondent no.1

dissolving the Market Committee is legal and proper or the respondent no.1 should have resorted to conduct the by-elections for the posts of members that have become vacant on account of resignation.

10. For every market area, a Market Committee consisting of Chairman, a Vice-Chairman and other members is established for regulating marketing of different kinds of agricultural produce. The powers and duties of the Market Committee are detailed in the Chapter IV of the Act, 1963.

11. The constitution of the Market Committee is detailed in the Section 13 of the Act, 1963. The Section 13 of the Act, 1963 reads thus:

13. Constitution of Market Committees.

(1) Subject to the provisions of sub-section (2), every Market Committee Market shall consist of the following 1[2[-----] members], namely :-

[(a) [fifteen agriculturist residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty-one years of age on the date specified, from time to time, by the Collector or the District Deputy Registrar, as the case may be, in this behalf), as specified below :-]

(i) eleven (of which, two shall be women, one shall be a person belonging to Other Backward classes and one shall be a person belonging to De-notified Tribes (Vimukta Jatis) or Nomadic Tribes) shall be elected by the members of the Managing Committees of the Agricultural Credit Societies and Multi-purpose Co-operative Societies (within the meaning of the Maharashtra Co-operative Societies Act, 1960 and the rules made thereunder) functioning in the market area :

Provided that, where the Market Committee is situated in Tribal area, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid ; and

(ii) four (of which, one shall be a person belonging to Scheduled Castes or Scheduled Tribes and one shall be a person belonging to Economically Weaker Section), shall be elected by members of the village panchayats functioning therein ;]

[(b) two shall be elected by traders and commission agents, holding licences for not less than two years to operate as such in the market area;]

[(b-1) one member shall be elected by hamals and weighmen operating as such in the market area

(c) one shall be the Chairman of the co-operative society doing business of processing or marketing of agricultural produce in the market area [having its registered office situated in the same market area]; or in his absence a representative of the co-operative society elected by its managing committee :

Provided that, if there be more than one such co-operative societies in the market area, then the Chairman of any one of such co-operative societies or in his absence a representative, elected by the managing committees of such societies ;

(d) one shall be the Chairman of the Panchayat Samiti within the jurisdiction of which the market area or major portion thereof is situated or the representative elected by such Panchayat Samiti;

(e) one shall be the President or Sarpanch of the local authority (other than a Panchayat Samiti) within the jurisdiction of which the principal market is situated or the representative elected by such local authority ;

[(f) the Deputy Registrar of Co-operative Societies

of the district or his representative, who shall have no right to vote:]

[(g) the Secretary of the Market Committee, who shall have no right to vote;]

[(1-a) A person who is a member of the Market Committee under clauses (c), (d) and (e) shall -have a right to take part in the discussions of the Committee, but shall have no right to vote at a meeting thereof.]

[[(1/A) (a) Notwithstanding anything contained in sub-section (1) of this section or in section 4 or other provisions of this Act, the area comprising Greater Bombay and Turbhe Village in Thane Taluka of Thane District [and such other area or areas as may be specified by the State Government by notification in the Official Gazette, from time to time] (hereinafter referred to as "the Bombay market area") shall be deemed to be a market area for the purposes of this Act, and the Market Committee for that area to be called by name of the Bombay Agricultural Produce Market Committee shall subject to the provisions of sub-section (2), consist of the following [----- members], namely:-

(i) twelve representatives of agriculturists elected by the agriculturist members of the other Agricultural Produce Market Committee in the State, [two such members] to be elected from each Revenue Division;

(ii) five representatives, elected by the traders and commission agents, holding licences to operate as such in the Bombay market area, as specified below,-

(A) one representative dealing in onion, potato and garlic, elected by and from amongst themselves;

(B) one representative dealing in fruits, elected by and from amongst themselves;

(C) one representative dealing in vegetables, elected by and from amongst themselves;

(D) one representative dealing in foodgrains,

pulses, edible and non-edible oils, elected by and from amongst themselves;

(iii) one nominated representative of the Navi Mumbai Municipal Corporation;

(iv) one nominated representative of the Mumbai Municipal Corporation;

(v) one nominated representative of the Mumbai Metropolitan Region Development Authority constituted under the Mumbai Metropolitan Region Development Authority Act, 1974;

[(vi) five representatives (of which, two shall be women, one shall be a person belonging to the Scheduled Castes or the Scheduled Tribes, one shall be a person belonging to the Other Backward Classes and one shall be a person belonging to the Denotified Tribes (Vimukta Jatis) or Nomadic Tribes), to be nominated by the State Government;]

(vii) the Director of Agricultural Marketing, Maharashtra State, Pune ;]

[(viii) [-----]]

[(ix) [-----]]

[(b) a person who is a member of the Market Committee under sub-clauses (iii), (iv), (v) or (vii) of clause (a), shall have a right to take part in the discussions of the Committee, but shall not have a right to vote at a meeting thereof.]

[(1B)(a) Notwithstanding anything contained in any provisions of this Act, the State Government may, by notification in the Official Gazette, declare any Agricultural Produce Market Committee to be the Divisional Market Committee for more than one districts or Regional Market Committee for more than one talukas.

(b) The area specified by the State Government by notification in the Official Gazette, from time to time, shall be deemed to be the market area for the

purposes of this Act and the Market Committee for that area shall be called by the name as may be notified by the State Government and it shall function as the Divisional or Regional Market Committee.

(c) The Divisional or Regional Market Committee shall, subject to the provisions of sub-section (2), consist of the following members, namely:—

(i) two representatives of the agriculturists, elected by the agriculturist members of the Agricultural Produce Market Committee from each district included in the area of operation of the Divisional Market Committee; or

(ii) one representative from the agriculturists elected by the agriculturist members of the Agricultural Produce Market Committee from each taluka included in the area of operation of the Regional Market Committee;
or

(iii) two representatives elected by the traders and commission agents, holding licences to operate as such in the market area;

(iv) one representative, elected by the hamals and weighmen operating as such in the market area ;

(v) one representative of the State Marketing Board;

(vi) one representative of the Municipal Corporation or Municipal Council functioning at the Head Quarters of the Market Committee;

[(vi-a) four representatives (of which, one shall be woman, one shall be a person belonging to the Scheduled Castes or Scheduled Tribes, one shall be a person belonging to the Other Backward Classes and one shall be a person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes to be nominated by the State Government :

Provided that, where the Divisional or Regional Market Committee is situated in Tribal Areas, the State Government shall nominate the person belonging to the Scheduled Tribes in place of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes;]

(vii) the Director of Marketing, Maharashtra State; Pune or his representative.

(d) A person who is a member of the Market Committee under sub-clauses (v), (vi) and (vii) of clause (c), shall have a right to take part in the discussions of the committee, but shall not have right to vote at a meeting thereof]

(2) When Market Committee is constituted for first time, [whether under sub-section (1), [(1A) or (113)] all the members thereof and the Chairman and Vice-Chairman shall be nominated by the State Government:

"[Provided that, the Chairman and Vice-Chairman shall be so nominated from amongst the agriculturist members:]

[Provided further that, the State Government may, if it considers expedient, instead of nominating the members of the Market Committee constituted for the first time, appoint an Administrator or the board of Administrators, and the Administrator or the Board of Administrators, so appointed, shall, for all purposes, be considered to be the Committee constituted for the first time.]

12. Section 13 underwent amendment by virtue of MA No.13/2018 with effect from 13.06.2017. The amended provision of Section 13 reads thus:

13. Constitution of Market Committees.

(1) Subject to the provisions of sub-section (2), every Market Committee Market shall consist of the following 1[2[-----] members], namely :-

[(a) [fifteen agriculturist residing in the market area (being persons whose names appear in the voter's list for the concerned constituency and who are not less than twenty one years of the age on the date specified, from time to time, by the State Co-operative Election Authority, if required with the help of the Collector or the District Deputy Registrar, as the case may be, in this behalf), as specified below :-]

(i) fifteen (of which, two shall be women, one shall be a person belonging to Other Backward Classes, one shall be a person belonging to De-notified Tribes (Vimukta Jatis) or Nomadic Tribes and one shall be a person belonging to the Scheduled Castes or Scheduled Tribes) shall be elected by eligible voters (agriculturist who holds minimum 10R land and who are not less than eighteen years of age on the date specified by the State Election Authority and who has sold his or her notified agriculture produce in the concerned Market Committee at least three times in preceding five years before date of declaration of election) residing in the market area:

Provided that, where the Market Committee is situated in Tribal area, one person belonging to the Scheduled Tribes shall be elected in place of election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid ; and

(ii) four (of which, one shall be a person belonging to Scheduled Castes or Scheduled Tribes and one shall be a person belonging to Economically Weaker Section), shall be elected by members of the village panchayats functioning therein ;]

[(b) two shall be elected by traders and commission agents, holding licences for not less than two years to operate as such in the market area;]

[(b-1) one member shall be elected by hamals and weighmen operating as such in the market area

Provided that, during the period of five years from

the date of commencement of the Maharashtra Agriculture Produce Marketing (Development and Regulation) (Amendment) Act, 2017, in an election conducted immediately after such date of commencement; all the agriculturists residing in the market area who hold minimum 10R land and who are not less than eighteen years of age on the date specified by the State Co-operative Election Authority shall be eligible for voting unless otherwise ineligible to vote.

[(f) the Deputy Registrar of Co-operative Societies of the district or his representative, who shall have no right to vote:]

[(g) the Secretary of the Market Committee, who shall have no right to vote;]

[[(1/A) (a) Notwithstanding anything contained in sub-section (1) of this section or in section 4 or other provisions of this Act, the area comprising Greater Bombay and Turbhe Village in Thane Taluka of Thane District [and such other area or areas as may be specified by the State Government by notification in the Official Gazette, from time to time] (hereinafter referred to as "the Bombay market area") shall be deemed to be a market area for the purposes of this Act, and the Market Committee for that area to be called by name of the Bombay Agricultural Produce Market Committee shall subject to the provisions of sub-section (2), consist of the following [----- members], namely:-

(i) twelve representatives of agriculturists elected by the agriculturist members of the other Agricultural Produce Market Committee in the State, [two such members] to be elected from each Revenue Division;

(ii) five representatives, elected by the traders and commission agents, holding licences to operate as such in the Bombay market area, as specified below,-

- (A) one representative dealing in onion, potato and garlic, elected by and from amongst themselves;
- (B) one representative dealing in fruits, elected by and from amongst themselves;
- (C) one representative dealing in vegetables, elected by and from amongst themselves;
- (D) one representative dealing in foodgrains, pulses, edible and non-edible oils, elected by and from amongst themselves;

(iii) one nominated representative of the Navi Mumbai Municipal Corporation;

(iv) one nominated representative of the Mumbai Municipal Corporation;

(v) one nominated representative of the Mumbai Metropolitan Region Development Authority constituted under the Mumbai Metropolitan Region Development Authority Act, 1974;

[(vi) five representatives (of which, two shall be women, one shall be a person belonging to the Scheduled Castes or the Scheduled Tribes, one shall be a person belonging to the Other Backward Classes and one shall be a person belonging to the Denotified Tribes (Vimukta Jatis) or Nomadic Tribes), to be nominated by the State Government;]

(vii) the Director of Agricultural Marketing, Maharashtra State, Pune ;]

[(viii) [-----]]

[(ix) [-----]]

[(b) a person who is a member of the Market Committee under sub-clauses (iii), (iv), (v) or (vii) of clause (a), shall have a right to take part in the discussions of the Committee, but shall not have a right to vote at a meeting thereof.]

[(1B)(a) Notwithstanding anything contained in any provisions of this Act, the State Government may, by notification in the Official Gazette, declare any Agricultural Produce Market Committee to be the

Divisional Market Committee for more than one districts or Regional Market Committee for more than one talukas.

(b) The area specified by the State Government by notification in the Official Gazette, from time to time, shall be deemed to be the market area for the purposes of this Act and the Market Committee for that area shall be called by the name as may be notified by the State Government and it shall function as the Divisional or Regional Market Committee.

(c) The Divisional or Regional Market Committee shall, subject to the provisions of sub-section (2), consist of the following members, namely:—

(i) Fifteen representative of the agriculturist (of which one shall be woman, one shall be a person belonging to Other Backward Classes, one shall be a person belonging to De-notified Tribes (Vimukta Jatis) or Nomadic Tribes and one shall be a person belonging to the Scheduled Castes or Scheduled Tribes) shall be elected by eligible voters (agriculturist who holds minimum 10R land and who are not less than eighteen years of age on the date specified by the State Co-operative Election Authority and who has sold his or her notified agriculture produce atleast three times in preceding five years before date of declaration of election) residing in the market area of the Divisional Market Committee:

Provided that, where the Divisional Market Committee is situated in Tribal areas, one person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid,";

(ii) Fifteen representative of the agriculturist (of which one shall be woman, one shall be a person belonging to Other Backward Classes, one shall be a person belonging to De-notified Tribes (Vimukta Jatis) or Nomadic Tribes and one shall be a person

belonging to the Scheduled Castes or Scheduled Tribes), shall be elected by eligible voters (agriculturist who holds minimum 10R land and who are not less than eighteen years of age on the date specified by the State Co-operative Election Authority and who has sold his or her notified agriculture produce at least three time in preceding five years before date of declaration of election) residing in the market area of the Regional Market Committee:

Provided that, where the Regional Market Committee is situated in Tribal areas, on e person belonging to the Scheduled Tribes shall be elected in place of the election of the person belonging to the De-notified Tribes (Vimukta Jatis) or Nomadic Tribes as aforesaid; and

(iii) two representatives elected by the traders and commission agents, holding licences to operate as such in the market area;

(iv) one representative, elected by the hamals and weighmen operating as such in the market area ;

(vii) the Director of Marketing, Maharashtra State; Pune or his representative.

(d) A person who is a member of the Market Committee under sub-clause (vii) of clause (c), shall have a right to take part in the discussions of the Committee, but shall not have right to vote at a meeting thereof.

(1C) (a) The State Government may, by an order in the Official Gazette, appoint,-

(i) four special invitees, on every Market Committee whose income from fees levied and collected under sub-section (1) of section 31 in the immediate preceding market year exceeds rupees five crores; and

(ii) two special invitees, on every Market Committee whose income from fees levied and collected under sub-section (1) of section 31 in the immediate preceding market year is upto rupees five crores,

who shall be the experts in the field of agriculture, agricultural processing, agricultural marketing, law, economics or commerce.

(b) The special invitees appointed under clause (a) shall have a right to take part in the discussions of the Market Committee, but shall have no right to vote at a meeting thereof.

(c) The term of the special invitees shall be co-terminus with the term of the members of a Market Committee.

(2) When Market Committee is constituted for first time, [whether under sub-section (1), [(1A) or (113)] all the members thereof and the Chairman and Vice-Chairman shall be nominated by the State Government:

"[Provided that, the Chairman and Vice-Chairman shall be so nominated from amongst the agriculturist members:]

[Provided further that, the State Government may, if it considers expedient, instead of nominating the members of the Market Committee constituted for the first time, appoint an Administrator or the board of Administrators, and the Administrator or the Board of Administrators, so appointed, shall, for all purposes, be considered to be the Committee constituted for the first time.]

13. It would be worthwhile to note that the constitution of the Market Committee has undergone change with effect from 13.06.2017. The Section 13(1)(a)(i) of the original provision stands substituted, whereas Section 13(1)(a)(ii), so also 13(1)(c)(d)(e) and (1-a) stand deleted. The major changes have been made in the amended Section 13. The constitution of the Market Committee has

undergone change. This Court under Article 226 of the Constitution of India has the power to issue writ of mandamus or writ in the nature of mandamus and give necessary directions if the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by Statute or the action of the Government is arbitrary and is based on irrelevant considerations.

14. It is also a matter of fact that the petitioners were elected democratically. Their term of office is for a period of five years as provided under Section 14(3) of the Act, 1963. The member has got right to resign. Section 16 of the Act, 1963 reads thus:

"16. Resignation of members and nomination in certain circumstances.

(1) Any member of the Market Committee may resign his office by writing under his hand addressed to the Chairman, and the Chairman may resign his office of member by writing under his hand addressed to the Director. The resignation shall take effect from the date it is accepted by the Chairman, or as the case may be, the Director.

(2) If at any time it appears to the State Government that any Market Committee by reason of the resignation of all or a majority of the members thereof, is unable to discharge the functions conferred or imposed upon it by or under this Act, the State Government may by order published in the *Official Gazette*, nominate persons to fill the vacancies of the members who have resigned; but the persons so nominated shall hold office only for the

residue of the term of the members in whose place they are nominated or until the vacancies are duly filled in by election which ever is earlier."

15. Section 16 of the Act, 1963 empowers the State Government to fill in the vacancies of the members who have resigned by nominating the persons to fill in the vacancies and they shall continue till the remainder of their term. The member as such is held entitled to be in the office for the term of five years in normal course, unless the member has subjected himself to an action for misconduct or has voluntarily given up his membership or otherwise disqualified to remain as a member. The State Government has powers to appoint Administrator after the normal or extended term of office has expired as provided under Section 15(A) of the Act, 1963. Section 18 of the Act, 1963 provides for filling in vacancies on account of death, resignation or removal of a member or member becoming incapable of acting as a member by co-opting a person eligible for being elected as member. The proviso circumscribes the power of co-option two members only.

16. Perusal of the scheme of the Act, 1963, it is manifest that, normal term of elected members of the Market Committee is five years. If vacancy arises because of resignation or otherwise, the State Government under Section 16 is empowered to nominate the members for residue of the term of the

committee and after the term has expired the Government can appoint an Administrator.

17. We do not find any provision giving powers to the Government to dissolve the Market Committee before the expiry of the period. The power to appoint an Administrator is after normal term or extended term of the committee is over as provided under Section 15(A) of the Act, 1963.

18. By virtue of an amendment, the constitution of the Market Committee has undergone change. The persons to be nominated now cannot be the persons from the Vividh Karyakari Sevabhavi Sanstha and from Grampanchayat constituency. Out of those who had given resignations, 7 members were from Vividh Karyakari Sevabhavi Sanstha and from Grampanchayat constituency. Reading sub-section 2 of Section 16, the State Government may by order published in the Official Gazette, nominate persons to fill the vacancies of the members that have resigned. The vacancies of 7 members that have resigned cannot be filled in because now no person can be elected from the said constituency in view of the amendment to Section 13. One person is already disqualified and his matter is pending before the Court, because of this no co-option or election can be held of post held by him. Now under the amended Section 13, a person possessing 10 Gunthas of land will be eligible to vote. The

voters list for Agriculture Constituency would also undergo change. Fresh process of preparation of the voters list will have to be undertaken. The by-election cannot be held from the Agriculture Constituency on the basis of the voters list of the year 2014 in view of the amendment to Section 13. As such, at no point of time the committee will be in a position to work with its full strength of 18 members. The quorum also would not be complete. In view of that, it appears that the decision has been taken by the Government to dissolve A.P.M.C., Sengaon.

19. Though, the petitioners have right to continue for remainder of their term, but because of contingencies that has taken place and there is no way the committee could operate with its full strength for remainder of the period, it would not be possible for this Court to declare impugned order to be wholly unreasonable or arbitrary.

20. In light of that no relief can be granted to petitioners. Writ Petition disposed of. No costs.

21. In view of disposal of writ petition, the present civil applications stand disposed of.

(A. M. DHAVAL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

22. At this stage the learned counsel for the petitioners seeks continuation of interim order.

23. We have observed that the committee is not in a position to continue with its complete strength. Even the quorum is not available for it to take decision.

24. In view of that, the prayer for stay is rejected.

(A. M. DHAVALÉ)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/May-19