

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION (ST) NO. 29743 OF 2018**

- 1 Rajendra Pundlikrao Deore
Age : Adult, Occu.: Agriculturist
- 2 Mahendra Sukhdev Aher
Aged : Adult, Occu.: Agriculturist
- 3 Vilas Mohanrao Deore
Aged : Adult, Occu.: Agriculturist
- 4 Balasaheb Damu Aher
Aged : Adult, Occu.: Agriculturist
- 5 Milind Keshavrao Shevale
Aged : Adult, Occu.: Agriculturist
- 6 Vishwas Jayram Baste
Aged : Adult, Occu.: Agriculturist
- 7 Ramrao Namdev Thackrey
Aged : Adult, Occu.: Agriculturist
- 8 Hiranman Nimba Khairnar
Aged : Adult, Occu.: Agriculturist
- 9 Sanjay Manohar Ahire
Aged : Adult, Occu.: Agriculturist
- 10 Vijayatai Kautik Khairnar
Aged : Adult, Occu.: Agriculturist
- 11 Smt. Sarla Rajendra Khairnar
Aged : Adult, Occu.: Agriculturist
- 12 Sundarabai Devram Jharole
Aged : Adult, Occu.: Agriculturist
- 13 Sanjay Khanderao Deore
Aged : Adult, Occu.: Agriculturist
- 14 Pravinlal Popatlal Bafna
Aged : Adult, Occu.: Agriculturist
all residents of Umrane, Tal. Deole,
District Nashik, Maharashtra

...Petitioners**Versus**

- 1 The State of Maharashtra, through
Secretary – Co-operation & Marketing
Dept., Mantralaya, Mumbai – 32.
- 2 District Deputy Registrar
Co-operative Societies, Nashik having its
office at Sahakar Sankul, Near National
Urdu High School, Sharda Circle,
Nashik – 422 001.

- 3 Assistant Registrar, Co-operative Societies, Malegaon, Dist – Nashik copy to the Respondent nos.1 to 3 to be served upon office of the Government Pleader, High Court, (Appellate Side) Bombay
- 4 Agriculture Produce Marketing Committee, through its Secretary, Umrane, Tal: Deole, Dist Nashik
- 5 Prashant Viswasrao Deore
Aged : Adult, Occu.: Agriculturist
residing at Umrane, Tal.: Deole, District Nashik, Maharashtra
- 6 Maharashtra State Agriculture Marketing Board
having address at Plot No.R-7, Maket Yard, Gultekdi, Pune – 411 037.

...**Respondents**

Mr. Atul Damle, Senior Advocate, a/w Mr. Avinash H. Fatangare, I/b Ms. Vishakha V. Pandit, for the Petitioners.

Mrs. R. A. Salunkhe, AGP for Respondent nos.1 to 3.

Mr. Vijay Patil a/w Mr. Amit Sale, for Respondent no.5.

Mr. Murlidhar L. Patil, for Respondent no.6.

CORAM: B. R. GAVAI &
N. J. JAMADAR, JJ

DATED: 14th January, 2019

JUDGMENT:- (Per : N. J. Jamadar, J.)

1. Heard.

2. Rule. With the consent of the parties, rule made returnable forthwith and heard finally.

3. This petition assails the legality, propriety and correctness of the order of supersession of the Umrane Agricultural Produce Market Committee, Umrane, Taluka Deole

District Nashik (hereinafter referred to as “the market committee”, for short) passed by the District Deputy Registrar, Co-operative Societies, Nashik, Respondent no.2, under the provision of Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “the Act”, for short)

4. The background facts which led to this petition can be stated, in brief, as under:

a) Umrane Agricultural Produce Market Committee came to be established on 28th June, 2012. The Petitioners herein were elected as the members of the Managing Committee of the Market Committee on 14th March, 2016. On account of certain developments affecting liquidity in market, certain issues arose. While the Petitioners were addressing those issues, the agriculturalists, who had sold the agricultural produce to the traders in the market committee, made a grievance that the price of their agricultural produce has not been paid within the stipulated time.

b) Respondent no.2, District Deputy Registrar issued directions to the market committee under Section 40 of the Act, *inter alia*, directing the market committee to ensure immediate and scrupulous compliance of Rule 20 of the Maharashtra

Agricultural Produce Marketing Committee (Development and Regulation) Rules, 1967 (hereinafter referred to “the Rules”, for short) and the Rule 24 of the Market Committee Model bye-laws. The Petitioners apprised Respondent no.2 about the action taken to ensure payment of the price of agricultural produce to the agriculturalists, within the stipulated period, by communication dated 4th December, 2017.

c) Though the Petitioners were making all the efforts to streamline the functioning of the market committee, Respondent no.2, without conducting an enquiry, as envisaged under Section 40 of the Act, called upon the Petitioners and the other members of the managing committee to show cause as to why, *inter alia*, the market committee may not be superseded under Section 45(1) of the Act and an Administrator be not appointed. The Petitioners gave reply to the show cause notice on 23rd April, 2018 pointing out the action initiated by the Petitioners and the unjustifiability of the proposed action. Yet, Respondent no.2, by order dated 13th July, 2018 passed an order under Section 45(1) of the Act and thereby superseded market committee and appointed Assistant Registrar, Co-operative Societies, Nandgaon, as the Administrator.

d) Being aggrieved by the said order the Petitioners preferred Writ Petition No.7869 of 2018. This Court vide order dated 24th July, 2018, quashed and set aside the said order dated 13th July, 2018 and remitted back the matter for consideration to Respondent no.2, for the reason that the officer who had extended opportunity of hearing had not passed the order impugned therein. Respondent no.2 was thus directed to provide an opportunity of hearing to the Petitioners and all the parties concerned, and pass order afresh.

e) The Petitioners appeared before Respondent no.2 and submitted additional reply and thereby brought to the notice of Respondent no.2 the subsequent developments. After hearing the parties and consulting the Maharashtra State Agricultural Marketing Board, Respondent no.6 passed an order on 9th October, 2018 and again superseded the market committee under Section 45(1) of the Act and appointed Mr. Sanjay Gite, Assistant Registrar, Co-operative Societies, Deola, District Nashik, as the Administrator to administer the affairs of the market committee. The Petitioners have thus invoked the Writ of Jurisdiction of this Court.

5. The substance of the petition is that, firstly, the impugned order has been passed for extraneous consideration. Secondly,

despite substantial compliance of the directions issued by Respondent no.2 under Section 40 of the Act, Respondent no.2 has superseded a democratically elected managing committee under political pressure. Thirdly, the directions issued by Respondent no.2 under Section 40 of the Act, were in breach of the Rules, 1967 as those directions ought to have been preceded by an enquiry contemplated by Rule 117 of the Rules, 1967. Fourthly, the prime factor which weighed with the Respondent no.2 i.e. failure to recover the market committee fee and supervision fee to the tune of Rs.3,66,59,373/-, attributed to the Petitioners, was not the subject matter of the show cause notice dated 23rd April, 2018 and thus could not have formed the basis of the impugned order. Lastly, there was no effective consultation with the State Agricultural Marketing Board, Respondent no.6, and thus the entire exercise is vitiated.

6. Respondent no.2 has contested the petition by filing reply and sought to justify the impugned order. Respondent no.5 Prashant Deore, who claimed to be the minority director in the erstwhile managing committee, also filed an Affidavit and supported the impugned order.

7. We have heard Mr. Damle, the learned Senior Counsel for the Petitioners, Mr. Salunkhe, the learned AGP for Respondent

nos.1 to 3, Mr. Vijay Patil, the learned Counsel for Respondent no.5 and Mr. Murlidhar Patil, the learned Counsel for Respondent no.6.

8. Mr. Damle, the learned Senior Counsel for the Petitioners strenuously urged that a democratically elected Managing Committee could not have been superseded in a high handed manner despite there being satisfactory explanation for the delay in payment of the price of the agricultural produce to the agriculturists by the traders and in the recovery of the market fee and supervision fee from the traders by the market committee. The earnest action taken by the Petitioners to remedy the situation has not been dispassionately considered by Respondent no.2 and the impugned order has been passed without proper consideration and consultation, urged learned Senior Counsel. The directions issued by Respondent no.2 under Section 40 of the Act were assailed for non-compliance of the provision of Rule 117, which envisages an enquiry.

9. Before adverting to deal with this submissions in the context of the default attributed to the Petitioners, it is necessary to note the provisions of Rule 20 of the Rules, 1967, which prescribe the time for payment to the agriculturists, who sell their agricultural produce in the market committee. Sub-

rules (1) and (3) of Rule 20 are relevant and, thus, extracted below:

“20. Payment in respect of agricultural produce sold to be made immediately after weighment or sale thereof -

(1) (a) Immediately after any declared agricultural produce (not being poultry, cattle, sheep or goats) is weighed or measured the purchaser shall settle the account and pay the seller or his commission agent as the case may be for the sale of the produce so weighed, on the same day.

[(b) The Commission agent shall pay the seller the sale proceeds of the agricultural produce sold from his own account on the same day of its sale for the produce sold on the same day after deducting therefrom his commission and market charges in accordance with the bye-laws made in that behalf.

(2)

(3) For the purpose of ascertaining that payment for the declared agricultural produce sold at any place in the market area are made to the seller as required by this rule, the Market Committee shall through its Secretary or any officer specially empowered by it in this behalf, arrange for the periodical inspection of the books of accounts of traders and commission agents operating in the market area [or shall make enquiry, as the case may be, whereas as a result of such inspection or enquiry, it is found that the payment has not been made within the time limit as mentioned in sub-rules (1) and (2), the Market Committee shall be competent to recover the amount from the deposit kept by the purchaser or commission agent with the Market Committee and pay the same to the seller or direct the Bank which has given guarantee on behalf of such purchaser or commission agent to pay the amount to the seller.]

10. It is evident that in order to ensure prompt payment to the agriculturists, sub-rule (1) warrants the payment of the price of the agricultural produce on the same day on which the

agricultural produce is weighed or measured. A corresponding duty is cast upon the market committee to ensure the enforcement of aforesaid rule by conducting periodical inspection or making an enquiry. Sub-rule (3) further authorises the market committee to recover the unpaid price of the agricultural produce from the purchaser or commission agent out of the deposit with the market committee or by encashing the bank guarantee.

11. In this context, if the directions under Section 40(e) of the Act dated 30th November, 2017, are perused, it becomes abundantly clear that the grievance, i.e., the agriculturalists who had sold their agricultural produce to the traders in the market committee were not paid the price of the produce, was personally verified and found to be true by the Deputy Registrar, Respondent no.2, on 30th November, 2017, and, thereafter, the said directives were issued. From the perusal of the record, we have found that the Petitioners have not disputed the fact that about 135 agriculturists were not paid and the dues were to the tune of Rs.1,28,00,000/- as of 17th April, 2018.

12. In the aforesaid factual backdrop, the submission on behalf of the Petitioners that Rule 117 of the Rules mandates

an enquiry before directives are issued under Section 40 of the Act appears to be not supported by the text of Section 40 and Rule 117:

“Section 40.- Inspection, inquiry, submission of statements etc.- The Director or any other authorised by him by general or special order in this behalf, may-

- (a) inspect or cause to be inspected the accounts and offices of a Market Committee;
- (b) hold inquiry into the affairs of a Market Committee;
- (c)
- (d)
- (e) direct that anything which is about to be done or is being done should not be done, pending consideration of the reply and anything which should be done but is not being done within such time as he may direct.”

117. Manner of enquiry and inspection. - (1) An order, authorising inquiry or inspection under section 40 shall, among other things, contain the following :-

- (a) the name of the person authorised to conduct the enquiry or inspection;
- (b) the name of the Market Committee whose affairs are to be enquired into or whose accounts and records are to be inspected;
- (c) the specific point or points on which enquiry or inspection is to be made, the period within which the enquiry or inspection is to be completed and report submitted to the Director;
- (d) any other matter relating to the enquiry or inspection.

13. If the aforesaid Rule 117(1) is read in juxtaposition with Section 40 of the Act, 1963, it becomes abundantly clear that before issuing a direction under Section 40(e) of the Act to the market committee to do an act within the stipulated time, no prior enquiry is warranted. The provisions of Rule 20 extracted

above cast an obligation upon the market committee to ensure that the agriculturists are paid for the agricultural produce sold by them on the very day of the sale. Since, indisputedly, more than 100 agriculturists were not paid and an amount of Rs.1,28,00,000/- was outstanding from the traders, the Respondent no.2 was justified in issuing the directions under Section 40 of the Act, which constituted the basis of the show cause notice dated 23rd April, 2018. Thus the challenge to the impugned order on the basis of the breach of Rule 117 is unsustainable.

14. The learned Senior Counsel for the Petitioners next urged that there was no element of “persistent default” in the performance of the duties by the market committee. It is the persistent default only, which, according to the learned Senior Counsel, furnishes sustainable justification for the extreme action of supersession of the market committee under Section 45(1) of the Act. In the case at hand, since the Petitioners had made efforts to recover the amount which was due to the agriculturists, the factum of dues to the agriculturists could not have been construed as, “persistent default”.

15. Since the challenge on this score and that of ineffective consultation with State Marketing Board are based on the text

of Section 45(1) of the Act, 1963, it may be advantageous to extract the same, which reads as under:

“45. Suppression of Market Committee etc. :- (1) If, in the opinion of the State Government, a Market Committee or any member thereof, is not competent to perform or persistently makes default in performing the duties imposed on it or him by or under this Act or abuses its or his powers or wilfully disregards any instructions issued by the State Government or any officer duly authorised by it in this behalf arising out of audit of accounts of the Market Committee or inspection of the office and work thereof, the State Government may, after giving the Committee or member, as the case may be, an opportunity of rendering an explanation, [by an order in writing, with reasons therefor], supersede such Market Committee, or remove the member, as the case may be; and where a member is removed, the State Government shall appoint any person as a member of such Committee in his place for the remainder of his term of office.

[Provided that, no Market Committee shall be superseded without the [State Marketing Board] referred to in section 44 being previously consulted.]

16. From the phraseology of Sub-section 1 of Section 45 it becomes explicitly clear that there are more than one grounds on which a market committee can be superseded; namely,

the market committee or any of its member:

- (i) is found not competent to perform or
- (ii) makes persistent default in performing the duties under Act or
- (iii) abuses its or his powers or
- (iv) wilfully disregards any instruction issued by the competent authority.

Evidently persistent default in performing the duties is one of the ground.

17. The gravity of the default on the part of the market committee is required to be appreciated in the backdrop of the duties imposed upon the market committee under the Act, 1963 and Rules thereunder. Chapter IV of the Act, 1963 subsumes the provisions regarding the powers and duties of the market committee. Section 29(1) declares that it shall be the duty of the market committee to implement the provisions of the Act, the Rules and bye-laws made thereunder. Clause (xvii) of sub-section (2) of Section 29 empowers the market committee to levy, take, recover and receive charges, fees, rates and other sum or money to which the market committee is entitled. Chapter IV-A contains provisions regarding cost of supervision. Section 34B of the Act imposes a duty upon a market committee to collect the cost of supervision. Section 34C provides that in the event of default by the market committee, it shall be recovered together with penalty from the market committee as an arrear of land revenue under Section 57 of the Act.

18. We have already extracted Rule 20 of Rule 1967 which imposes a wholesome obligation upon the purchaser to pay the

price of the agricultural produce on the same day. Sub-rule 3 of Rule 20, as observed, casts a corresponding obligation upon the market committee to ensure the payment of the price to the seller.

19. From the perusal of the material on record it is rather indisputable that the grievances of non-payment of the price of the agricultural produce sold by the agriculturists, in the market committee, were received by the State Government in the month of October-2017. The direction under Section 40(e) came to be issued on 30th November, 2017. The show cause notice dated 23rd April, 2018 contains a specific charge that as of 17th April, 2018, the day the review of the pending dues of the agriculturists was taken, it was noticed that eight of the traders had defaulted in payment of the price of the agricultural produce of about 135 agriculturists and the total outstanding amount was Rs.1,28,00,000/-. In the face of these hard casts, it would be difficult to accede to the submission on behalf of the Petitioners that it was not a case of persistent default. Since Rule 20 of the Rules mandates that the price of the agricultural produce shall be paid to the agriculturists on the very day of the transaction, the failure of the market committee to take action to ensure the payment of unpaid price to the agriculturists and adopt the measures as authorised by sub-

rule (3) of Rule 20, for such a long period i.e. 30th November, 2017 to 17th April, 2018, if considered on the touchstone of norm of payment on the very day of the sale, not only indicates the persistent default but also reflects upon the competency of the managing committee to discharge its functions and perform the duties imposed upon it under the Act.

20. The learned Senior Counsel for the Petitioners then urged that the impugned order cannot be sustained as the principal factor which weighed with Respondent no.2 was the failure of the market committee to recover a sum of Rs.3,66,59,373/- towards the market fee and supervision fee and yet the notice dated 23rd April, 2018 was conspicuously silent about the same.

21. We have perused the notice date 23rd April, 2018. It is true that the said notice, in terms, doesn't refer to the said default in recovery of the market fee and supervision fee to the tune of Rs.3,66,59,373/-.

22. Mr. Vijay Patil, the learned Counsel for Respondent no.5, however, pointed out that there are assertions in the said notice of failure on the part of the market committee to perform the said duties also. However, the amount which was due towards the market fee and supervision fee was not quantified. The learned Counsel for Respondent no.5 would urge that the

Petitioners did get an opportunity to rebut the said charge and did respond to it in the additional reply, which came to be filed post the remittance of the matter by the order of this Court dated 24th July, 2018. Inviting the attention of the Court to paragraph 10 of the said additional reply it was pointed out that the said fact of dues towards the market fee and supervision fee from the traders has not been disputed.

23. We find substance in the submission on behalf of Respondent no.5. In paragraph 10 of the said reply, the Petitioners have contended that the licences of 59 traders who owed a sum of Rs.3,66,59,373/- were renewed for the year 2018-2019. Out of those 59 traders, a sum of Rs.3,11,06,937/- was recovered from 49 traders as of 13th July, 2018. Whereas fees was yet to be recovered from 10 traders.

24. What exacerbates the situation and accentuates the default is the fact that despite being served with a directive under Section 40 of the Act and the market committee being put on notice, the licences of 59 traders were renewed for the year 2018-2019 though they were in default of market fee and supervision fee to the tune of Rs.3,66,00,000/-. The Act, 1963 and the Rules thereunder contain adequate provisions and empower the market committee to refuse to renew the licence of

those in default. The least that was expected was that the renewal of the licences of those 59 traders who were in default was withheld. The Act and Rules empower the market committee to even suspend and cancel the licence in the event of default.

25. On a careful perusal of the material on record, we have found that despite the direction under Section 40(e) of the Act dated 30th November, 2017, the market committee didn't mend its actions and make good the defaults. Though a desperate effort was made to show that subsequent to the directives and the show cause notice dated 23rd April, 2018, certain actions were initiated, yet we find that the market committee failed in its duty to supervise, and committed default in performance of duties imposed upon it under the Act. When we questioned the Petitioners as to whether any action was taken by the market committee to recover the dues from the traders the price of the agricultural produce, which remained unpaid, prior to the directions dated 30th November, 2017, the Petitioners were unable to show any document in that regard.

26. We are, therefore, of the considered view that even if the said ground of default in recovery of the market fee and supervision fee is eschewed from consideration, on the count

that it was not specifically mentioned in the show cause notice, yet on the other grounds, the impugned order can be sustained. It is trite that if the impugned order can be sustained on one of the grounds, the fact that the other grounds which weighed with the decision making authority, were not found to be duly proved, doesn't detract materially from the validity of such order.

27. A profitable reference, in this context, can be made to a judgment of Supreme Court in the case of Zora Singh vs. J. M. Tandon and others¹, wherein the aforesaid proposition was expounded, in the following words:

“The High Court was right in holding that even if there were, amongst the reasons given by the Commissioner, some which were extraneous, if the rest were relevant and could be considered sufficient, the Commissioner's conclusions would not be vitiated. The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior Court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior Court would not interfere if the finding can be sustained on the rest of the evidence.”

1 AIR 1971 Supreme Court 1537.

28. It was lastly urged on behalf of the Petitioners that there was no effective consultation with the State Marketing Board, as envisaged by the Proviso to Section 45(1) of the Act (extracted above). The learned Senior Counsel for the Petitioners would urge that the impugned order reveals that Respondent no.2 has merely reproduced the opinion of the State Marketing Board, and the said opinion does not justify an inference of effective consultation. To buttress this submission, the learned Senior Counsel for the Petitioners placed a strong reliance upon a judgment of the Division Bench of this Court in the case of Abhishek Shankarrao Thakare and others vs. District Deputy Registrar, Co-operative Societies, Yavatmal².

29. In the case of *Abhishek Thakare (supra)*, this Court, had quashed and set aside the order passed by the State Government under Section 41(1) of the Act of supersession of APMC, Ghatanji, on the ground that there was no effective consultation as mandated by the Proviso to Sub-section (1). From the perusal of the observations of this Court in the said judgment, especially paragraphs 19 and 21 thereto, it becomes explicitly clear that this Court had found that the explanation submitted by the Petitioners therein to the show cause notice was not at all considered by the State Marketing Board and the

State Marketing Board had not conveyed any positive opinion and had merely reproduced the points of objections in the show cause notice and the replies submitted thereto by the group of Directors, who represented the opposite group of the Petitioners, and thereafter opined that action in accordance with law may be taken.

30. We are of the view that the aforesaid facts in the case of *Abhishek Thakare (supra)* were peculiar. The aforesaid judgment, therefore, in our view, cannot govern the facts of the case at hand with equal force.

31. Nonetheless, since, the Proviso to Section 45(1) contains an interdict that no market committee shall be superseded without the State Marketing Board being previously consulted, we considered it appropriate to briefly deal with this challenge. If the requirement of 'consultation', envisaged by Proviso to Section 45(1) is considered in the light of the plenary power of supersession of a democratically elected market committee, then the significance of consultation with the State Marketing Board becomes clear. Evidently, the State Marketing, is a broad based entity comprising the representatives of the Government, officers of the Government and the representatives of the marketing committees. The State Marketing Board is expected

to take an objective view of the matter. The consultation with the Board is envisaged as a safeguard against arbitrary and unjustified action. Thus, consultation with the State Marketing Board is not an empty formality.

32. The requirement of 'consultation' and the propositions which emerge when such consultation is provided in the statutory provisions have been expounded in various judicial pronouncements. A profitable reference can be made to a judgment of the Supreme Court in the case of Indian Administration Services (S.C.C.) Association U.P. and others vs. Union of India and others³, wherein a three-Judge bench of the Supreme Court, after a survey of the previous pronouncements, enunciated the following principles as regards the requirement of consultation, in paragraph 26:

“26. The result of the above discussion leads to the following conclusions:

(1) Consultations is a process which requires meeting of minds between the parties involved in the process of consultation on the material facts and points involved to evolve a correct or at least satisfactory solution. There should be meeting of minds between the proposer and the persons to be consulted on the subject of consultation. There must be definite facts which constitute the foundation and source for final decision. The object of the consultation is to render consultation meaningful to serve the intended purpose. Prior consultation in that behalf is mandatory.

(2) When the offending action affects fundamental rights or to effectuate built-in insulation, as fair procedure, consultation is mandatory and non-

consultation renders the action ultra vires or invalid or void.

(3) When the opinion or advice binds the proposer, consultation is mandatory and its infraction renders the action or order illegal.

(4) When the opinion or advice or view does not bind the person or authority, any action or decision taken contrary to the advice is not illegal, nor becomes void.

(5) When the object of the consultation is only to apprise of the proposed action and when the opinion or advice is not binding on the authorities or person and is not bound to be accepted, the prior consultation is only directory. The authority proposing to take action should make known the general scheme or outlines of the actions proposed to taken be put to notice of the authority or the persons to be consulted; have the views or objections, take them into consideration, and thereafter, the authority or person would be entitled or has/have authority to pass appropriate orders or take decision thereon. In such circumstances it amounts to an action “after consultation”.

(6) No hard and fast rule could be laid, no useful purpose would be served by formulating words or definitions nor would it be appropriate to lay down the manner in which consultation must take place. It is for the Court to determine in each case in the light of its facts and circumstances whether the action is “after consultation”; “was in fact consulted” or was it a “sufficient consultation”.

33. The aforesaid pronouncement was followed by the Supreme Court in the case of State of Madhya Pradesh and others vs. Sanjay Nagayach and others⁴, wherein, with specific reference to the supersession of the Board of Directors of a Society, under the MP Co-operative Societies Act, 1960, the Supreme Court added one more proposition to the above propositions, namely, “when the outcome of the proposed action is to oust a democratically elected body and the

⁴ (2013) 7 SCC 25.

expression used is, “shall not be passed without previous consultation”, it is to be construed as mandatory.” Paragraph 24 of the said judgment read as under:

“Indian Administrative Service (S.C.S.) Assn., 1993 Supp (1) SCC 730 has laid down six propositions while examining the meaning of the expression “consultation”. One more proposition is added: that when the outcome of the proposed action is to oust a democratically elected body and the expression used is “shall not be passed without previous consultation”, it is to be construed as mandatory.”

34. A useful reference can also be made to a judgment of a Division Bench of this Court in the case of Appasaheb Sheshrao Chavan and others vs. State of Maharashtra and others⁵, wherein, in the context of consultation envisaged by the Act, 1963, the following propositions were expounded:

“25. This Court in the case of *Agricultural Produce Market Committee, Dharni*, cited (supra), held that mere sending of the copy of the show cause notice without anything more cannot amount to consultation within the meaning of the statutory provision. No opinion could be given only on the basis of show cause notice issued. It also held that there is a corresponding duty also on the body whose consultation is mandatory to give its opinion. The corresponding duty to give opinion is also to be performed truthfully, observing the spirit for which the provision is made. A federal body is considered to be a body of experts, which is able to take a detached view of the matter and, therefore, it has to be consulted. An authority making a proposal may have extraneous considerations influenced by the local conditions in its mind and a second opinion to be given by the federal body may weigh with the body making the proposal. Such an exchange of views is necessary between those bodies and executive functionaries. Therefore, the judicial

pronouncements have laid down the following propositions regarding consultation –

- (1) Consultation, if so provided in the Statute, is mandatory before taking further steps of dissolution, supersession, diversion, amalgamation or bifurcation, etc.:
- (2) Consultation has to be effective and, therefore, all the material necessary for taking the steps must have been placed before the body to be consulted:
- (3) The body to be consulted has a corresponding duty to give its opinion. It cannot merely say that steps according to law may be taken. This is no opinion expressed by the body consulted.”

35. Reverting to the facts of the case, in the backdrop of the aforesaid legal position, it has to be seen whether all the material was placed before the State Marketing Board, whether the State Marketing Board considered all the relevant material and circumstances, and did the State Marketing Board give its opinion to Respondent no.2.

36. The impugned order reveals that the entire file (page nos.1 to 933) was submitted to the State Marking Board vide communication dated 24th August, 2018. Thereafter, the said proposal was placed before the State Marketing Board on 20th September, 2018. The opinion of the State Marketing Board, extracted in the impugned order, records that after considering the proposed action, in the light of the fresh opportunity of hearing provided to the Petitioners, the State Board was in agreement with the view that the market committee failed to

perform its duties under the Act and thus gave concurrence to the proposed action.

37. In our view, the aforesaid consideration satisfies the requirement of consultation in all the three aspects, the consultee being apprised of the material and proposed action, the consultee having considered the matter and all the relevant material, and the consultee having recorded its categorical opinion on the matter on which it was consulted. Thus, we are unable to persuade ourselves to agree with the submissions on behalf of the Petitioners that the impugned order is unsustainable as it suffers from the vice of ineffective consultation.

38. For the foregoing reasons, we are not inclined to interfere with the impugned order.

39. Hence, the Writ Petition stands dismissed. However, there shall be no order as to costs.

[N. J. JAMADAR, J.]

[B. R. GAVAI, J.]