

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13069 OF 2018

NANDU YESHWANT SANGALE AND ANR.)...PETITIONERS

V/s.

THE STATE OF MAHARASHTRA & OTHERS)...RESPONDENTS

Mr.P.N.Joshi, Advocate for the Petitioners.

Mr.Rameshwar Gite, Advocate for Respondent Nos.6 and 7.

Mr.P.G.Sawant, AGP for the Respondent Nos.1 to 4.

Mr.I.M.Khairdi, Advocate for Respondent No.5.

**CORAM : INDRAJIT MAHANTY &
A. M. BADAR, JJ.**

DATE : 25th JUNE 2019

P.C. :

1 Heard the learned counsel for the parties. Challenge in the present petition has been made by the petitioners who had been nominated as “Special Invitees” by notification issued by the

State Government, Co-operation, Marketing and Textile Department, dated 26th October 2015 under Exhibit A. The names of the petitioners find mention at Serial Nos.1 and 2 of the said agreement. It appears that by subsequent notification dated 1st November 2018, while the names of the persons found at Serial Nos.3 and 4 were reiterated, the names of the petitioners at Serial Nos.1 and 2 were substituted by names of the respondent nos.6 and 7. Consequently, the writ petition has come to be filed seeking to challenge the removal of the petitioners as “Special Invitees” from respondent no.5 Agricultural Produce Market Committee. The learned counsel for petitioners drew our attention to Section 13(1C)(i) as well sub-section (c) of the said provision, which is quoted hereunder :

“13(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;

(ii)

(b)

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

It indicates that once a person is nominated as a “Special Invitee”, the term of office of such a “Special Invitee” shall be co-terminus with the term of the member of the Market Committee.

2 The learned counsel for petitioners further drew our attention to Section 45 and sub-section (1) thereof which is quoted hereunder :

“45 Supersession 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, ⁴[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.]”

By relying on the said provision, the learned counsel for petitioners submitted that in the event a member is not competent

to perform or persistently makes default in performing the duties imposed on it or him or abuses its or his powers or willfully disregards in instructions, the State Government may “after giving an opportunity of rendering an explanation by an order in writing with reasons therefor” remove such person, where after the State Government may appoint any person as a member of such Committee in his place for the remainder of his term of office.

3 It is further pointed out by the counsel for the petitioners that the term of the petitioners is for the period 2015 to 2020. In other words, before the petitioners' period expired, they were removed without complying with the requirements of Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, and consequently, the removal of petitioners and appointment of respondent nos.6 and 7 ought to be set aside and the petitioners ought to be permitted to perform their obligations, as cast upon them, and to continue as “Special Invitees” of respondent no.5 Agricultural Produce Market Committee.

4 The learned counsel appearing for the State has filed a counter affidavit inter alia claiming that the “Special Invitee” is a member of the Agricultural Produce Market Committee only on the desire of the State Government and the appointment of such a “Special Invitee” is purely an administrative act, and therefore, no compliance of requirements under Section 45(1) the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 is required for removal of such a “Special Invitee.”

5 The learned counsel appearing for respondent nos.6 and 7 highlighted the fact that under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, there are various categories from where the persons will either be elected or nominated. He asserted that Section 45 will apply only to them who have been elected and not to those who have been nominated.

6 After hearing the learned counsel for the parties, we are of the considered view that the statement made on behalf of

the respondent/State to the effect that the act of nomination or removal of a “Special Invitee” is an administrative act, is merely recorded for being rejected. Once the State Authority nominates a “Special Invitee”, whose term is to run co-terminus with the term of the office of the elected office bearers or elected members, it cannot be disputed that removal of a nominated member carries with it the necessary stigma of such removal. Consequently, it cannot be accepted that the act of removal of a “Special Invitee” from the Agricultural Produce Market Committee does not have severe consequences and stigma. Consequently, we are of the considered view that submission on behalf of the State that the act of appointment and / or removal of a “Special Invitee” is purely administrative in nature, cannot be accepted.

7 In so far as the contentions advanced on behalf of respondent nos.6 and 7 are concerned, it is quite clear from the Statute that where a certain number of people are elected members, the Act provides for nomination of other members, and in the category we are concerned with i.e. “Special Invitees” who

are required to have special knowledge in the specific field for the purpose of being nominated. They are such members who are nominated and notification issued as required under the law. Membership of such “Special Invitee” is to run “co-terminus” with the other members of the Agricultural Produce Market Committee. While the submission of the learned counsel for respondent nos.6 and 7 appears at the first glance to be fairly attractive, yet he has fairly conceded that apart from Section 45 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, there is no other provision under the Act provided for removal of the “Special Invitee”. In other words, apart from Section 45 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, there exists no other provision for effecting removal of a member, and in such event, it is mandatory on the part of the State to comply with the requirements of Section 45, prior to effecting any order of removal. In view of the aforesaid finding arrived at, by us, we have no hesitation in allowing the petition and setting aside the appointment of respondent nos.6 and 7 as well as Exhibit B to the

extent of removal of the present petitioners from the respondent no.5 Agricultural Produce Market Committee, and as such, the order :

ORDER

- i) It is hereby directed that the order of removal of the petitioners under Exhibit B shall stand and is hereby quashed as well as the consequential appointment of respondent nos.6 and 7 in the place of petitioners is also hereby consequently quashed.
- ii) No orders as to costs.
- iii) We, however, make it clear that, it shall be open to the State, if need be, to proceed with the matter strictly in accordance with the law, in the event the State is of the view that proceedings for removal of the petitioners is called for.
- iv) The writ petition, accordingly, stands disposed off.

(A. M. BADAR, J.)

(INDRAJIT MAHANTY, J.)