<u>IN THE HIGH COURT OF JUDICATURE AT BOMBAY</u>
<u>BENCH AT AURANGABAD</u>

WRIT PETITION NO.7309 of 2020

1. Rajendra Kaashinath Magar,
   Age : 42 years, Occu. Agri.,
   R/o Hivarkheda (Na), Tal. Kannad,
   District Aurangabad

2. Panditrao Punjaji Vetal,
   Age : 56 years, Occu. Agri.,
   R/o Jaitkheda, Tal. Kannad,
   District Aurangabad **PETITIONERS**

VERSUS

1. The State of Maharashtra,
   through District Collector,
   Aurangabad, Dist. Aurangabad

2. Sub Divisional Officer,
   Kannad, Tq. Kannad,
   Dist. Aurangabad

3. Agriculture Produce Market Committee,
   Kannad, Tal. Kannad, Dist. Aurangabad,
   through its Secretary

4. Aashok Sarjerao Magar,
   Age : Major, Occu. Agri.,
   R/o Hivarkheda (Na), Tal. Kannad,
   District Aurangabad

5. Prakaash Pandurang Ghule,
   Age : Major, Occu. Agri.,
   R/o Chinchkheda, Tal. Kannad,
   District Aurangabad

6. Kishor Narayanrao Pawar,
   Age : Major, Occu. Agri.,
   R/o Chapaner, Tal. Kannad,
   District Aurangabad

7. Kailash Saluba Mangate,
Age : Major, Occu. Agri.,
R/o Shelgaon, Tal. Kannad,
District Aurangabad

8. Babaasaheb Laxmanrao Mohite,
Age : Major, occu. Agri.,
R/o Andhaner, Tal. Kannaad,
District Aurangabad

9. Sau. Jijabai Karbhari Zarekar,
Age : Major, Occu. Agri.,
R/o Keshapur, Tal. Kannad,
District Aurangabad

10. Bharat Laxmanrao Jadhav,
Age : Major, Occu. Agri.,
R/o Kannad, Tal. Kannad,
District Aurangabad

11. Balasaheb Rauba Jadhav,
Age : Major, Occu. Agri.,
R/o Pishor, Tal. Kannad,
District Aurangabad

12. Sou Sonali Jayesh Borse,
Age : Major, Occu. Agri.,
R/o Shirodi, Tal. Kannad,
District Aurangabad

13. Prakash Punamchand Agrawal,
Age : Major, Occu. Business,
R/o Kannad, Tal. Kannad,
District Aurangabad

14. Mahavir Shantilal Gangwal,
Age : Major, Occu. Business,
R/o Kannad, Tal. Kannad,
District Aurangabad

15. Shaikh Yusuf Shaikh Munir,
Age : Major, Occu. Business,
R/o Kannad, Tal. Kannad,
District Aurangabad **RESPONDENTS**

Mr. Laxman H. Kawale, Advocate for the petitioner
Mr. D.R. Kale, Government Pleader for respondent Nos. 1 and 2
Mr. S.R. Shirsath, Advocate holdin g for Mr. Avinash Khande, Advocate for respondent No.3
Mr. R.N. Dhorde, Senior Advocate instructed by Mr. V.R. Dhorde, Advocate for respondent Nos.4 to 15

CORAM : MANGESH S. PATIL, J.

JUDGMENT RESERVED ON : 17.12.2020
JUDGMENT PRONOUNCED ON : 22.12.2020

JUDGMENT :

Heard.

2. Rule. The Rule is made returnable forthwith. With the consent of both the sides, the matter is heard finally at the stage of admission.

3. By this Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioners, who were the Chairman and Vice-Chairman of respondent No.3 – Agriculture Produce Market Committee ("Committee", for short), are questioning the legality and validity of the no confidence motion passed against them by the Committee pursuant to the provisions of Section 23A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as "Act"), dated 29.09.2020.

4. It is the case of the petitioners that they were elected as Chairman and Vice-Chairman of the Committee on 25.12.2016. They were managing the affairs of the Committee appropriately. Inspite of such state-of-affairs, the respondent Nos.4 to 15, who are the Directors of the Committee, submitted a requisition to respondent No.1 Collector on 18.09.2020 proposing to move a no confidence motion against the petitioners, pursuant to the provisions of Section 23A of the Act. Accordingly, respondent No.2 Sub-Divisional Officer issued a notice dated 23.09.2020 convening a meeting of the Committee on 29.09.2020 at 3.00 p.m. in the office of respondent No.3 Committee. Accordingly, the meeting was held. A no confidence motion was stated to have been passed against the petitioners.

5. Mr. L.H. Kawale, learned Advocate for the petitioners submits that the petitioners are challenging the no confidence motion and the resolution passed pursuant thereto on various grounds. Though it is only the Collector, who has been empowered under Section 23A of the Act to call a meeting and preside over it, in fact, it was respondent No.2 Sub Divisional Officer who exercised that power. He would further submit that though according to the approved bye-law No.36 of the bye-laws of the Committee, a notice of 10 days is necessary to be issued for convening any meeting, a notice of shorter period was issued. The motion was composite one, in respect of both the petitioners in their capacity as Chairman and Vice-Chairman, when it ought to have been separate and even the composite

resolution has been passed, which is also illegal. He then submits that respondent Nos.13 and 14, who were representing traders community, were also disqualified to continue as the Directors pursuant to Rule 10 (1)(f) of the Maharashtra Agriculture Produce Market Committee (Election to Committee) Rules, 2017 ("Rules", for short) as they were in arrears of market fees as well as supervision fees. Similarly they were also disqualified under Rule 10(2)(i) since their licences were not renewed and stood expired. He would, therefore, submit that for all these reasons, the impugned resolution passed under Section 23A of the Act is grossly illegal and be quashed and set aside.

6. The learned Advocate for the petitioners would then rely upon the decision of the Division Bench of this Court in the case of ***Dinesh s/o Sheshrao Thakre Vs. Collector, Nagpur District, Nagpur and others; 2014(1) Mh.L.J.460***, to substantiate his argument that the requisition contemplated under Section 23A of the Act has to be addressed to the Collector, who is expected to convene a special meeting.

7. Mr. D.R. Kale, the learned Government Pleader for respondent Nos.1 and 2 and Mr. R.N. Dhorde, learned Senior Advocate for respondent Nos.4 to 15 submit that it is pursuant to the powers delegated to the Collector under sub-section (4) of Section 23A of the Act that he had delegated the power to respondent No.2 Sub Divisional Officer to oversee the procedure leading upto the passing of the resolution, by his order dated 18.09.2020. Since the provision itself provides for such a delegation, no fault

can be found with respondent No.1 Collector in exercising it. They would further submit that there is no dispute about the fact that respondent Nos.4 to 15 had, in fact, issued the requisition dated 18.09.2020 which was addressed to the Collector himself and not to respondent No.2 Sub Divisional Officer.

8. The decision in the case of ***Dinesh s/o Sheshrao Thakre*** (supra), cited by the learned Advocate for the petitioners, presents a different state of facts. The requisition was not at all addressed to the Collector as is required by Section 23A of the Act and it was directed to the District Deputy Registrar and it is in view of such peculiar state-of-affairs that the Division Bench had found that the no confidence motion was vitiated. Such being not the state-of-affairs in the matter in hand, the petitioners are not entitled to derive any benefit from the decision in the case of ***Dinesh s/o Sheshrao Thakre*** (supra).

9. The learned Senior Advocate and the learned Government Pleader would then submit that as far as the period of notice is concerned, a notice of short period would not *ipso facto* be sufficient to brush aside the motion and the resolution. The whole purpose of issuing a notice is to intimate the Directors that a motion is to be moved so as to make them convenient to attend it. It is only if and when for want of a notice for a sufficient period, some prejudice is caused to a Director or to the procedure that such a question needs to be gone into. Since it is not the case of the petitioners nor of anybody else about the proceeding in which the impugned

no confidence motion was passed has resulted in prejudice, the period of notice is inconsequential.

10. As a corollary, the learned Senior Advocate and the learned Government Pleader would submit that even otherwise out of 18 Directors of the Committee, 12 had attended the meeting. The impugned resolution was passed by all the 12 Directors, who had attended it. They would point out that by virtue of mandate of Section 23A of the Act, a no confidence motion has to be passed by not less than two-third of the Directors entitled to vote. Since the motion was passed by 12 Directors out of a total strength of 18, it was duly passed by not less than two-third majority. Therefore, when no-one else is making any grievance about the notice period being short, the petitioners cannot be heard on that count.

11. The learned Senior Advocate and the learned Government Pleader, relying on the decision of the Supreme Court in the case of ***K. Narasimhiah vs. H.C. Singri Gowda; AIR 1966 SC 330***, which has been followed by a coordinate Bench of this Court in the case of ***Pravin Shripati Yadav vs. Grampanchayat, Minche and others; 2013 (2) Mh.L.J.934***, submit that unless the procedure is prejudicially affected by any irregularity in the meeting of a no confidence, there is no requirement of strict adherence with the procedural aspects and consequently, when on facts, the period of the notice convening the meeting being short is merely an irregularity it will not go to the root of validity of the no confidence motion that has been duly

passed.

12. So far as the disqualification of respondent Nos.13 and 14 is concerned, the learned Senior Advocate would submit that though the petitioners are making an attempt to demonstrate as to how these respondents are liable to be disqualified, admittedly, they have not been so declared. The petitioners at any point of time have not sought to establish that fact. Rather the petitioners conspicuously remained absent at the meeting and having not objected to the participation of respondent Nos.13 and 14 at the meeting, they cannot be now heard in that respect.

13. I have carefully gone through the papers. As far as the legal aspects are concerned, there cannot be a dispute that by virtue of the specific wording of Section 23A, not less than one-half of the Directors are expected to requisition the Collector for holding a special meeting for considering a no confidence motion. However, as has been pointed out by the learned Senior Advocate, sub-section (4) of Section 23A of the Act empowers the Collector to delegate his powers to any of his subordinate officer/s. Section 23A of the Act reads thus :-

> **23A**. (1) A Chairman or a Vice-Chairman shall cease forthwith to be Chairman or Vice-Chairman, as the case may be, if the Market Committee by a resolution passed by a majority of not less than two-third of the total number of members (excluding the members who have no right to vote) at a special meeting so decides.
>
> (2) The requisition for such special meeting shall be signed by

> not less than one-half of the total number of members (excluding the members who have no right to vote) and shall be sent to the Collector under intimation to the Director.
>
> (3) The Collector shall, within fifteen days from the date of receipt of the requisition under sub-section (2), convene a special meeting of the Committee.
>
> Provided that, when the Collector convenes such special meeting of the Committee, he shall give intimation thereof to the Chairman, or as the case may be, Vice-Chairman and also to the Director.
>
> (4) (a) A special meeting to consider a resolution under sub-section (1) shall be presided over by the Collector or the officer authorised by him in this behalf, but the Collector or such officer or the Director (if present) shall have no right to vote at such meeting.
>
> (b) The members of the Committee who have no right to vote may take part in the discussions, but shall not vote.
>
> (5) If the motion of no confidence is not carried as aforesaid or if the meeting could not be held for want of quorum, no such requisition for considering a fresh motion expressing want of confidence in the same Chairman or Vice-Chairman shall be made until after the expiry of six months from the date of such meeting.

14. As can be seen from the papers produced by the petitioners, such a requisition was indeed addressed to none other than respondent No.1 Collector on 18.09.2020 (Exhibit-P-I). It is purportedly moved by 13 Directors. As has been pointed out by the learned Senior Advocate, pursuant to sub-section (4) of Section 23A of the Act, the Collector, by his order dated 18.09.2020, appointed respondent No.2 Sub Divisional Officer to convene a meeting and preside over it pursuant to such requisition. It is thereafter that the notice was issued by respondent No.2 Sub Divisional Officer on

23.09.2020 convening a meeting on 29.09.2020. Therefore no error or illegality has been committed by the respondent No.1 Collector in delegating his powers under Section 23A of the Act.

15. So far as the period of a notice is concerned, though Section 23A does not prescribe any specific period of notice before the meeting, sub-section (3) of Section 23A expects him to convene a special meeting of the Committee within 15 days from the date of receipt of the requisition. Since the requisition was received on 18.09.2020, he was supposed to convene a meeting within 15 days therefrom. Accordingly, the meeting has been held on 29.09.2020 i.e. within the time prescribed by this provision.

16. Section 23A, however, does not prescribe any period of the notice which is laid down in byelaw No.36 of the approved byelaws (Exhibit-E), which requires 10 days notice before convening a meeting. Admittedly, the notice issued by respondent no.2 Sub Divisional Officer was not of sufficient duration.

17. However, as can be seen from the decision of the Supreme Court in the case of ***K. Narasimhiah*** (supra), subsequently relied upon by a Single Judge of this Court in the case of ***Pravin Shripati Yadav*** (supra), in respect of the procedural irregularities in the matter of passing of no confidence motion and particularly in respect of the period of notice being short, it has been observed in paragraph 20 as under :-

> *"20. We are therefore of opinion that the fact that some of the Councillors received less than three clear days' notice of the meeting did not by itself make the proceedings of the meeting or the resolution passed there invalid. These would be invalid only if the proceedings were prejudicially affected by such irregularity. As already stated, nineteen of the twenty Councillors attended the meeting. Of these 19, 15 voted in favour of the resolution of no-confidence against the appellant. There is thus absolutely no reason for thinking that the proceedings of the meeting were prejudicially affected by the "irregularity in the service of notice." (emphasis supplied)"*

It is thus quite clear that the proceeding would vitiate only if such an irregularity prejudicially affects it.

18. As can be seen, 12 out of 18 Directors were present at the meeting and had passed the resolution, which constitutes not less than two-third majority. Above all, none of the other Directors except the petitioners are questioning the legality and validity of the no confidence motion passed in that meeting. Consequently, even though in the matter in hand there was no notice of sufficient period before convening the special meeting, there is not enough material to hold that the proceeding was prejudicially affected.

19. Similarly, some capital has been tried to be made by the petitioners of the fact that the requisition submitted to the Collector – respondent No.1 and the subsequent no confidence motion being a composite one, should be declared as illegal.

20. True it is that it is a joint requisition seeking a no confidence

motion to be moved against the petitioners as the Chairman and Vice-Chairman. However, as can be seen from the minutes, a separate resolution was passed in respect of each of them. Besides, as has been laid down in the case of ***K. Narasimhiah*** (supra), so long as such irregularities do not result in prejudicially affecting the proceeding, the irregularities are of no consequence and do not vitiate the proceeding. Therefore, the petitioners are not entitled to even take benefit of such state-of-affairs.

21. So far as entitlement of respondent Nos.13 and 14 to vote at the meeting in question is concerned, the petitioners have produced some record to substantiate their allegation that they were representing traders community but their licences had expired and that they were in arrears of market fees and supervision fees. True it is that pursuant to Rules 10(2)(i) and 10(1)(f) of the Rules, these are the grounds of disqualification. However, it would be mixed question of fact and law, to be adjudicated upon. When the petitioners were loath in attending the meeting and raising any such objection and when they have not independently ever sought respondent Nos.13 and 14 to be declared as disqualified pursuant to such provisions, it cannot be said that respondent Nos.13 and 14 were not entitled to vote at the meeting.

22. It is thus apparent that not less than one-half of the Directors of the Committee had requisitioned respondent No.1 Collector as contemplated under Section 23A of the Act, he delegated the powers to his subordinate

officer respondent No.2 – Sub Divisional Officer, who issued a notice convening a meeting within 15 days of respondent No.1 Collector receiving the requisition and the motion was passed by not less than two-third majority. Therefore, there can be no manner of doubt that it has been duly passed strictly in accordance with law.

23. There is no substance in the Writ Petition. It is dismissed. The Rule is discharged.

24. In view of dismissal of Writ Petition, Civil Application No.7322/2020 stands disposed of.

[MANGESH S. PATIL]
JUDGE

25. After pronouncement of the judgment, the learned Advocate for the petitioners seeks continuation of the interim relief, which is in force till date. In the teeth of the view I have expressed in the judgment, the request is rejected.

[MANGESH S. PATIL]
JUDGE

npj/WP7309-2020