IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9675 OF 2019

Sanjay Vitthalrao Jadhav and others .. Petitioners

Versus

The State of Maharashtra and Others .. Respondents

Mr. V. D. Sapkal, Advocate i/by Mr. Vijay B. Jagtap, Advocate for Petitioners.
Mr. S. B. Yawalkar, Addl. G. P. for Respondent Nos. 1 to 4 and 8.
Mr. Y. S. Choudhari, Advocate for Respondent No. 5.
Mr. R. V. Gore, Advocate for Respondent No. 6.
Mr. S. K. Kadam, Advocate for Respondent No. 7.

CORAM : S. V. GANGAPURWALA &
AVINASH G. GHAROTE, JJ.

Reserved for orders on : 05th December, 2019.

Order pronounced on : 13th March, 2020.

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

1. The petitioners are the Directors of Agricultural Produce Market Committee (for short APMC) Gangapur, Dist. Aurangabad. The petitioners assail the order passed by the respondent No. 3 superseding the Board of Directors and appointing administrator over the APMC.

2. Mr. Sapkal, learned counsel for the petitioners strenuously contends that ten charges were levelled against the Directors of the

APMC. Explanation was given to each and every charge. The decision taken and the expenses made are well within the domain of the Board of Directors. No illegality or irregularity has been committed by the petitioners in discharge of their functions under the statute. The learned counsel submits that the principles of natural justice have not been followed. No proper opportunity was given to the petitioners. The petitioners were never issued with the notices of enquiry. The enquiry report was also not given to the petitioners. On the ground of non adherence to the principles of natural justice, the impugned order deserves to be set aside.

3. The learned counsel further contends that after the enquiry officer was appointed, he submitted the report on 06.10.2018. As the petitioners were not indicted in the said report, he was again directed to give a fresh report and in the fresh report dated 17.10.2018 the petitioners are indicted. After the first report dated 06.10.2018 and prior to the submission of the report dated 17.10.2018 no opportunity was given to the petitioners. The learned counsel submits that the respondent / authority before passing the order did not consider the explanation given by the petitioners to each and every charge. The learned counsel submits that all the charges are based on assumptions. The provisions were quoted enabling the petitioners to make the

expenses. The decision was taken for the benefit of the APMC and the employees.

4. The learned counsel submits that following explanation was required to be considered by the authority before passing the order.

i) **Transfer of funds from ADCC Bank to IDBI bank -**

As per the provision of section 29 (2) (xxiv) read with section 36 of the act the committee has rightly taken the decision thereby transferred funds from ADCC Bank to IDBI bank as the financial position of the ADCC bank was not good.

ii) **Advertisements given in the newspaper -**

As per the section 29 (2) (xii) r/w section 37 (1) (i) and (s) the expenses are permissible. The advertisements are issued so as to show the faith of the political leaders in the market committee. Also as income of the committee increases therefore such advertisement has published.

iii) **Employees appointed by the market committee -**

As per section 29 (2) (xxii) of the act, it is within the power of the market committee to appoint the employee for efficient implementation of the provision of the act.

iv) **Amount taken by the Chairman and Vice Chairman for various expenses as well as advances -**

As per the section 37 (1) (j) and (j-1) of the act the committee can make payment for the same. But in the present case the advances are taken and against the same the bills submitted. Also some advances taken are deposited by the Chairman and Vice Chairman as not utilized.

v) Expenses on pesticides for grass -

The committee as per section 29 (2) (iv) and (v) has duty to maintain and manage the market. It has to provide necessary facility for agriculturist for marketing the agriculture produce and for the said purpose the pesticides are sprayed on the grass.

vi) Medical Advance to Mr. Chavan -

As per section 29 (2) (xxiii) the committee can give advances. But said advances are refunded by the employee.

vii) Advances by Mr. Thawal -

For promotion of co-operative marketing of agriculture, advances are taken per section 37 (1) (s) & (9) of the act but as same are not utilized therefore refunded.

viii) Retirements benefits to the employees -

As per section 29 (2) (xxiii) the committee has power to pay the retirement benefits to the employees.

5. According to the learned counsel all the charges levelled against

the committee are within the duties and powers of the committee and the committee has rightly exercised the said powers. Section 29 of the Agricultural Produce Marketing (Development and Regulation) Act 1963 (hereinafter referred as 'Act') has not been considered by the respondent in its correct perspective. The committee has rightly expended the funds as per Section 37 of the Act. The utilization of the funds is approved by the committee in the meeting as per Section 45 of the Act. There is no breach of condition by the committee and the act done by the committee is within the purview of Section 29 and 37 of the Act. The order passed by the authority is perverse and erroneous. The learned counsel relies on the judgment of the Apex Court in a case of ***Ravi Yashwant Bhoir Vs. District Collector, Raigad & Ors*** reported in ***2012 (4) SCC 407*** and submits that even if a technical misconduct occurs and there is no intention or purpose to cause wrongful loss to the APMC, the same would not amount to misconduct. The committee cannot be superseded. The learned counsel also relies on the judgment of the Division Bench of this Court in a case of ***Vilas Rangrao Mahalle & Ors. Vs. State of Maharashtra & Ors.*** reported in ***2013 (4) Mh.L.J. 276***.

6. The learned Additional Government Pleader for the State supports the order passed by the authority. According to Addl. G. P., the petitioners have indulged in gross misconduct. The enquiry is

contemplated under Section 40 of the Act. Enquiry was conducted in accordance with the procedure prescribed under Rule 117 of the Act. The learned Addl. G. P. submits that Section 37 provides for the purpose for which funds must be expended. Section 37 (i) and 37 (v) are relevant. Section 38 (a) provides restriction on the utilization of funds. Rule 108 of the Rules provides for modality of the expenditure. According to the learned Addl. G. P. issuing advertisements on the birthday of political leaders and expending on the same is not within the powers of the Board of Directors. Section 29 (xii) of the Act relied by the petitioners is misplaced. Section 30 provides for the publication and propaganda for opening of the centers in furtherance of achieving an objective for which the market committee is established. Section 32 (d) provides for taking steps to prevent purchase of agricultural produce below support price. Section 37 (i) cannot be read as permitting the committee to celebrate birthday of political leader. Section 37 (n) (o) and (q) and Rule 13 relate to sale by auction. Rule 14 relates to fixation of price, Rule 24 is relating to verifying correctness of weights and measurements and Rule 31 and 94 (6) deals with propaganda and also development of marketing for agricultural produce. The petitioners have violated the same. The charges with regard to advances paid to the employees are also proved.

7. The principles of natural justice are followed by issuing notices. No prejudice has been caused to the petitioners. Opportunity of hearing has been given to the petitioners. The petitioners have breached and abused the powers. In fact, they have exercised the powers not vested with them thereby causing huge loss to the APMC. The learned Addl. G. P. relies on the judgment of the Apex Court in a case of ***Chennai Metropolitan Water Supply and Sewerage Board and others Vs. T. T. Murali Babu*** reported in ***2014 (4) SCC 108*** to contend that the punishment of supersession has been rightly imposed.

8. Mr. Gore, learned counsel for respondent No. 6 submits that all the ten charges levelled against the petitioners are serious. The same are proved and amounts to persistent default in performing the duties imposed on the committee under the Act. The findings recorded by the D.D.R. shows that loss to the tune of lakhs of rupees has been caused to the market committee as a result of the arbitrary and fraudulent conduct of the petitioners. The petitioners have admitted the charge of keeping of market fund in private bank, giving advertisements in the newspaper to celebrate the birthday of political leaders. The same do not have statutory force. The serious charges regarding the receipt book of the market committee found in possession of one Avinash Sonwane relative of Chairman is proved. No explanation regarding this charge is

given by the petitioners. As per Rule 33, only authorized person or an employee of the committee can keep the receipt book. The learned counsel relies on the judgment of Division Bench of this Court in a case of ***Pandurang Eknath Khare & others Vs. State of Maharashtra & others*** reported in ***1998 (4) B.C.R. 240*** and submits that serious irregularities in exceeding the powers and appropriating funds under wrong heads would result in supersession of the committee. The petitioners were given the notice and hearing as contemplated in the scheme of Section 45 (1) of the Act. The learned counsel further submits that the argument of petitioners regarding two enquiry reports is erroneous. In both the enquiry reports the evidence is the same and during the hearing under Section 45 (1) of the Act. Every opportunity is given to the petitioners. The subsequent enquiry report is a detail report as the first enquiry report was not giving the details. The notice issued to the petitioners sets out the charges in extenso giving the details thereof. The replies are solicited from the members of the market committee. Sufficient opportunity has been given. No jurisdictional error exists.

9. We have considered the submissions canvassed by the learned counsel for the parties.

10. The following charges were framed against the petitioners.

Sr. No.	Charges	Provisions
1.	Market Committee/Petitioner had kept market fund Rs. 1,5,00,000/- in IDBI Bank on 28/07/2017.	As per Rule 107 of the Rules, 1967. Market fund shall be kept in a Central Co-operative Bank and as per Sub-Rule 2 of Rule 107 the Market Committee may, with the approval of the director invest its Surplus Fund.
2.	Advertisement given in the newspaper for celebrating birthday of political leaders.	There is no provision for such expenses, hence, committee is liable to take action in view of Section 45 (1) (2) of the Act of 1963. As same is abused of power.
3.	Appointing new 4 temporary workers and not giving opportunity to old temporary workers and giving payment to person who are working personal work of Chairman and Vice Chairman.	As per Rule 100 (5) of Rules of 1967 no new post shall be created.
4.	No action taken to recover dues against Kisan Kotex gining and Kisan Agro gining worth Rs. 36,67,211/- .	As per section 57 of the Act of 1963 recovery of sums is mandatory.
5.	Issuing bogus bills by Chairman and Vice Chairman whereby causing loss to Committee.	Giving of bogus bills in violation of the Section 45 (1) (2) of the Act of 1963 which amounts to abuse of power.
6.	Pesticides on grass spread in the month of January but not in rainy season.	As per Section 45 (1) (2) of the Act of 1963, it amounts to abuse of power.
7.	Advances to Gorakh Thawal.	As per Rule 108 of Rules of 1967 and as per Section 37

		of the Act, prior approval is necessary for expenses.
8.	Receipt book of market committee given to relative (Avinash Sonwane) of Chairman.	As per Rule 33 only authorize person of committee can possess receipt book.
9.	Illegal payments.	As per Section 45 (1) (2) of the Act of 1963, it amounts to abuse of power.
10.	Expenses in meeting dated 16/03/2018.	As per Section 45 (1) (2) of the Act of 1963, it amounts to abuse of power.

11. Section 40 of the Act empowers the Director or any officer authorized by him to inspect or cause to be inspected the accounts of the market committee, hold enquiry into the affairs of the market committee. Rule 117 of Rules 1967 prescribes the manner of enquiry and inspection.

12. In the present case, the D.D.R. Co-operative Societies, Aurangabad received complaints about the illegalities on the part of the petitioners in affairs of the respondent No. 5 / market committee from Mrs. Pramila Vinod Kale and Shri Deepak Bade. On the basis of the said complaints, the respondent No. 2 / Director of Marketing under letter dated 16.03.2018 issued directions to the respondent No. 3 to conduct an enquiry and submit the report. The D.D.R. under letter dated 10.04.2018 directed the Assistant Registrar, Co-operative Societies,

Kannad to conduct enquiry and submit the report. Thereafter, on or about 29.06.2018 the order was passed under Section 40 (a) (b) of the Act for conducting enquiry. Four members' committee was appointed to conduct an enquiry. More complaints were received. The enquiry committee issued notice to the Chairman and Secretary and directed them to furnish information in their possession. Pursuant to the said notice the market committee furnished the information. The relevant record was also produced for inspection before the enquiry committee. As per the contention of the respondents even the officiating Chairman and employees appeared before the enquiry committee. After inspection and verification of the record, the enquiry committee submitted its report on 06.10.2018 to the respondent No. 3. The respondent No. 3 required detail report. The report was returned back by the respondent No. 3 and directed the enquiry committee under order dated 12.10.2018 to submit self explanatory enquiry committee report with clear observations about the facts and violations, if any, referring to the provisions of the Act, rules, circulars. Pursuant to the same the enquiry committee submitted revised detail enquiry report.

13. The enquiry committee submitted the revised detailed enquiry report on 17.10.2018. It was not a fresh enquiry, however, the report was submitted in detail on the basis of enquiry made for which earlier

report dated 06.10.2018 was submitted and that did not contain the details. It cannot be said that the revised enquiry report was without examining the documents and providing opportunity. Fresh enquiry was not conducted while submitting the detailed enquiry report on 17.10.2018. The arguments of the petitioners in that regard cannot be sustained.

14. After receipt of the enquiry report dated 17.10.2018, the respondent No. 3 upon verification of the report issued show cause notice under Section 45 (1) (2) (a) (b) (c) and 2A of the Act asking the petitioners to submit the reply and appear for hearing. The Secretary of APMC filed his reply. The petitioners also filed their reply to the show cause notice. The petitioners were accorded opportunity of hearing. The respondent No. 3 forwarded the proposal with relevant documents to the Maharashtra State Agricultural Marketing Board, Pune for consultation as further requirement of Section 45 (1) of the Act giving opportunity of hearing. The respondent No. 3 / Marketing Board passed resolution in the meeting dated 03.09.2018 seeking effective consultation for taking action against the petitioners under Section 45 (1) of the Act. Thereafter, the board was superseded under order dated 26.07.2019.

15. The enquiry committee held the petitioners guilty of the charges levelled against them. The authority and the marketing board were also convinced about the guilt of the petitioners for the charges framed against them and superseded the board.

16. The petitioners heavily relied upon the powers bestowed upon them under Section 27 and 35 of the Act. Section 37 of Act specifies the purpose for which the market funds may be expended. Section 29 details the powers and duties of the market committee.

17. It is not disputed that the petitioners had transferred the funds from ADCC bank to IDBI bank. Section 36 empowers the market committee to invest the funds as may be prescribed. Section 29 (2) may not be of much help to the petitioners. The directions are issued to keep the funds of the market committee with the ADCC bank. If the same has to be kept in a private bank, the permission was required to be obtained. The same is not obtained in the present case.

18. The petitioners are relying upon Section 29 (2) r/w Section 37 of the Act to contend that the advertisement issued by them was to show the faith of political leaders in the market committee and the income of the committee increases by such advertisements. Section 37 (1) (i) of

the Act empowers the utilization of market funds for propaganda in favour of agricultural improvement and orderly marketing. So also, Section 37 (1) (s) of the Act provides for promotion of co-operative marketing of agricultural produce. But issuing advertisement to celebrate the birthday of political leaders is not within the ambit and purview of Section 37 of the Act. There was no need for the members of the market committee to show their loyalty to political leaders. No reasonable explanation is forthcoming in that regard.

19. The petitioners could not give plausible explanation for receipt book of the market committee in possession of one Mr. Avinash Sonwane relative of Chairman. As per Rule 33 of the Rules only authorized person can keep the receipt book. The advances are also given, may be subsequently they have been deposited. The other charges of irregularities are also on record.

20. Section 45 of the Act is relevant and needs consideration. Under the said provision 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 the Act, or abuses its or his powers or willfully disregards any instructions issued by the State Government or any

officer duly authorized 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, supersede such market committee or remove the member as the case may be.

21. In the present case, the illegalities and the irregularities on the part of the market committee are writ large. Supersession of market committee certainly cannot be done, as a matter of course. If an individual act is considered, the same may not be sufficient to invoke the powers under Section 45 of the Act. However, if all the charges are taken into consideration cumulatively, it would appear that the market committee, its members have made default in performing the duties imposed upon them by the Act. They consistently abused their powers and have disregarded the instructions issued by the State Government. Taking all the charges collectively and cumulatively, the action of the State Government appears to be reasonable and does not suffer from the vice of disproportionality.

22. It is expected of the members of the market committee to maintain the highest standard of integrity, sincerity and devotion and

not to abuse their powers. The confidence on the members of the market committee is shaken in the minds of the agriculturists, traders for whom the market committee exists.

23. This Court in exercises of its writ jurisdiction under article 226 of the Constitution of India would not sit as an appellate authority over the decision taken by the competent authority. However, it would be more concerned with the due adherence to the decision making process. The decision making process is not flawed nor it suffers from non adherence to the principles of natural justice. Considering the cumulative effect of all the charges, it does not require interference on the ground of disproportionality. The grounds enumerated in Section 45 of the Act are attracted. The contention of the petitioners that it is only in case the committee abuses its powers or disregards any instructions issued by the State Government or any officer duly authorized by it in this behalf arising out of audit of accounts of the market committee, then only market committee be superseded cannot be comprehended. If upon inspection of the office and work thereof and if there is persistent default on the part of the members of the market committee in performing the duties imposed on it or him in the Act or abuse their powers, the action of supersession can be taken resorting to Section 45 of the Act.

24. The reliance placed on the judgment of the Apex Court in a case of **Ravi Yashwant Bhoir (supra)** may not inure to the benefit of the petitioners. In the said case, the finding of fact was not recorded by the competent authority or the High Court that some urgent work could not be carried out for want of General Body Meeting of the Council. The Apex Court held that merely not to conduct oneself according to the procedure prescribed or omission to conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some positive intentional misconduct is shown. In the present case, the facts are otherwise. The enquiry officer and the authority have arrived at a conclusion about the abuse of the powers on the part of the petitioners, non adherence to the provisions of the statute and the instructions of the State Government.

25. In the result, we do not find any merit in the writ petition. The writ petition, as such, is dismissed, however, with no order as to costs.

(AVINASH G. GHAROTE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

P.S.B.