

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5409/2016

Prabhakarrrao H. Wagh
 ..VS..

The Jt. Director of Marketing & ors.

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Mr. S.D. Chopde, Advocate for the petitioner
 Ms. Mrunal Naik, AGP for the respondent nos. 1 to 3

CORAM : MANISH PITALE, J.

DATED : 23/01/2020

1] Notice in this writ petition was issued for final disposal on 20/09/2016. The respondent nos. 1 to 3 are represented through the learned AGP while the contesting respondent no. 4 has chosen not to appear before this Court despite service. In fact, on 16/12/2019, this Court had taken note of the fact that the contesting respondent no. 4 had not appeared before this Court despite service and therefore, as a matter of last chance, this petition was directed to be listed for final disposal. Even today, when the writ petition is called out for final disposal, none has appeared on behalf of the contesting respondent no. 4. Admittedly, the respondent no. 5 in the facts and circumstances of the present case cannot be said to be a contesting respondent.

2] By this writ petition, the petitioner has challenged order dated 24/05/2016 passed by the Joint Director of Marketing, Maharashtra (respondent no. 1), whereby order dated 09/03/2016 passed by the District

Deputy Registrar (respondent no. 2) has been set aside. The impugned order was passed on an appeal filed by the respondent no. 4.

3] The brief facts leading up to filing of the present writ petition are that the respondent no. 2 by the aforesaid order dated 09/03/2016, while exercising power under Section 13 (1) (c) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “the said Act”) had upheld the objection raised by the petitioner herein in respect of the entitlement of the respondent no. 4 – Society to send a representative under the said provision on the respondent no. 5 – Marketing Committee. The respondent no. 2 held that the contention raised on behalf of the petitioner deserved acceptance that since the respondent no. 4 – Society was not doing business of processing or marketing of agricultural produce in the market area, it did not have the right to send the representative under Section 13 (1) (c) of the said Act on the respondent no. 5 – Marketing Committee.

4] The said order was challenged by the respondent no. 4 before the respondent no. 1 under Section 52B of the said Act by filing an appeal. The respondent no. 1 allowed the appeal and set aside the order passed by the respondent no. 2. It was held that the petitioner had failed to demonstrate as to under what provision the respondent no. 2 had passed the aforesaid order upholding the objection raised by the petitioner and further that the said order could have been passed only during the process of elections to the respondent no. 5 – Marketing Committee.

5] Aggrieved by the said order of the respondent no. 1, the petitioner has filed the instant writ petition. The learned counsel appearing on behalf of the petitioner invited attention of this Court to Section 13 (1) (c) of the said Act and emphasized on the words “the Co-operative Society doing business of processing or marketing of agricultural produce in the market area”. It was submitted that the requirement of the said provision was that the concerned Co-operative Society desirous of sending a representative to the Marketing Committee ought to be doing business of processing or marketing of agricultural produce. It was submitted that the petitioner had placed material before the respondent no. 2 – District Deputy Registrar to demonstrate that for the years 2014 and 2015, traders license itself was not issued to the respondent no. 4 – Society by the Competent Authority and therefore, there was no question of the respondent no. 4 – Society doing the business of processing or marketing of agricultural produce in the market area. It was submitted that such material was correctly taken into consideration by the respondent no. 2 while upholding the objection raised by the petitioner. As regards the power of the respondent no. 2 to pass such an order, the learned counsel for the petitioner invited attention of this Court to various rules of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967, particularly Rules 35, 35A and 35A.1A thereof. It was further submitted that the appeal filed by the respondent no. 4 under Section 52B of the said Act was not maintainable because the order passed by the respondent no. 2 could not be said to be an order passed by the Market Committee, its Chairman, Vice-

Chairman, Secretary or any other officer empowered to exercise the powers of the Director. This aspect, according to the learned counsel for the petitioner, was not considered at all by the respondent no. 1 while passing the impugned order. It was submitted that this aspect went to the very root of the matter, demonstrating that the impugned order was passed without jurisdiction. The learned counsel for the petitioner placed reliance on the judgments of this Court in the case of **Radhakishan Bhaggulal Jaiswal vs. Assistant Collector and Returning Officer for Elections to the Jalna A.P.M.C, Jalna and others 1983 Mh.L.J. 126** and in the case of **Devendra Kashirao Deshmukh vs. Sub-Divisional Officer, Katol and others 1995 (1) Mh.L.J. 716**.

6] The learned AGP appearing on behalf of the respondent nos. 1 to 3 submitted that the impugned order demonstrated that the contentions raised on behalf of the rival parties were taken into consideration and it was found that in the absence of material to show that an election was contemplated, the respondent no. 2 could not have passed the order upholding the objection raised by the petitioner. On the question of maintainability of appeal under Section 52B of the said Act, the learned AGP could not demonstrate how the order passed by the respondent no. 2 could be equated to an order passed by any of the authorities specifically mentioned in the aforesaid provision.

7] As already noted above, none has appeared on behalf of the contesting respondent no. 4, despite service of notice.

8] Upon hearing the learned counsel for the petitioner and having perused the material on record, it needs to be examined whether the appeal filed by the respondent no. 4 under Section 52B of the said Act could be said to be maintainable before the respondent no. 1. The said provision reads as follows:-

“52B. Appeal.

(1) Save as otherwise provided elsewhere in this Act, any person aggrieved by a decision taken or order passed under any of the provisions of this Act may prefer an appeal—

(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman, Vice-Chairman, Secretary or any other officer empowered to exercise the powers of the Director,

(b) to the State Government, where such decision is taken or order is passed by the Director.

(2) An appeal under sub-section (1) shall be made within a period of thirty days from the date of the decision or order appealed against.

(3) The order passed in the appeal by the Director or the State Government as the case may be shall be final.”

9] A perusal of the above quoted provision makes it clear that for an appeal to be filed under the said provision, the order under challenge has to be either an order of the Director or an order passed by the Market Committee, its Chairman, Vice-Chairman, Secretary or any other officer empowered to exercise the powers of the Director. In the

present case, the order made subject matter of challenge in the appeal filed by the respondent no. 4 under Section 52B of the said Act was an order passed by the respondent no. 2 – District Deputy Registrar exercising power under Section 13 (1) (c) of the said Act read with the relevant Rules. Such an order of the respondent no. 2 could certainly not be equated with the orders passed by the authorities specifically mentioned in Section 52B of the said Act.

10] Thus, on this short ground, the impugned order deserves to be set aside, as the respondent no. 1 exercised appellate jurisdiction when the order passed by the respondent no. 2 could not have been made subject matter of challenge in an appeal under Section 52B of the said Act.

11] Be that as it may, a perusal of the material on record and the facts that can be derived therefrom, analyzed in the context of Section 13 (1) (c) of the said Act would show that the order passed by the respondent no. 2 was in consonance with the provisions of the said Act and Rules. This is because Section 13 (1) (c) of the said Act specifically requires that the Co-operative Society which is desirous of sending a representative on the Managing Committee of the Market Committee, has to be doing business of processing or marketing of agricultural produce in the concerned market area. The said position of law has been recognized by the aforementioned judgments relied upon by the learned counsel for the petitioner. The documents on record show that for the years 2014 and 2015, traders license itself was not issued to the respondent no. 4. Therefore, there was no question of the respondent no. 4 – Society having any capacity of doing

business of processing or marketing of agricultural produce. This aspect was taken note of by the respondent no. 2 while passing the order dated 09/03/2016, upholding the objection raised by the petitioner. Therefore, even on facts, there appears to be no error that could be attributed to the order passed by the respondent no. 2.

12] In view of the above, it is found that the impugned order passed by the respondent no. 1 is wholly unsustainable. Accordingly, the writ petition is **allowed** and the impugned order is quashed and set aside. No order as to costs.

JUDGE