

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3317 OF 2021

Shrikant s/o Shrikishan Miniyar,
Proprietor, Govind Dal Mill, Murum,
Age : 54 years, Occu. Business,
R/o Murum, Tq. Omerga,
District Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Co-operation, Marketing and
Textile Department, Mantralaya,
Mumbai-32
2. The Assistant Registrar,
Cooperative Societies, Omerga,
District Osmanabad
3. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Chairman
4. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Secretary
5. Mahesh Viresh Gavhane,
Age : 38 years, Occu. Agril.,
R/o Murum, Tq. Omerga,
District Osmanabad

RESPONDENTS

AND

WRIT PETITION NO. 3318 OF 2021

Sau. Manoranjana Vitthalrao Patil,
Proprietor of Sau. M.V. Patil Adat Shop,
Age : 52 years, Occu. Business,

R/o Murum, Tq. Omerga,
District Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Co-operation, Marketing and
Textile Department, Mantralaya,
Mumbai-32
2. The Assistant Registrar,
Cooperative Societies, Omerga,
District Osmanabad
3. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Chairman
4. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Secretary
5. Mahesh Viresh Gavhane,
Age : 38 years, Occu. Agril.,
R/o Murum, Tq. Omerga,
District Osmanabad

RESPONDENTS

AND

WRIT PETITION NO. 3319 OF 2021

Ganesh s/o Laxmikant Miniyaar,
Proprietor of L.S. Miniyaar,
Age : 32 years, Occu. Business,
R/o Murum, Tq. Omerga,
District Osmanabad

PETITIONER

VERSUS

1. The State of Maharashtra,
through the Secretary,
Co-operation, Marketing and

Textile Department, Mantralaya,
Mumbai-32

2. The Assistant Registrar,
Cooperative Societies, Omerga,
District Osmanabad
3. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Chairman
4. Agricultural Produce Market Committee,
Murum, Tq. Omerga,
District Osmanabad,
through its Secretary
5. Mahesh Viresh Gavhane,
Age : 38 years, Occu. Agril.,
R/o Murum, Tq. Omerga,
District Osmanabad

RESPONDENTS

Mr. N.B. Khandare, Advocate holding for Mr. R.R.Chandak,
Advocate for the petitioner in Writ Petition Nos.3317/2021 and 3319/2021
Mr. M.P. Tripathi, Advocate for the petitioner in Writ Petition No.3318/2021
Mr. K.B. Jadhavar, A.G.P for respondent Nos.1 and 2
Mr. V.D. Sapkal, Senior Advocate for respondent Nos.3 and 4
Mr. N.K. Chaudhari, Advocate holding for Mr. S.M. Gaikwad,
Advocate for respondent No. 5

CORAM : MANGESH S. PATIL, J.

DATE OF JUDGMENT RESERVED	: 10.08.2021
DATE OF JUDGMENT PRONOUNCED	: 13.08.2021

COMMON JUDGMENT :

Heard.

2. Rule in all the petitions. Rule is made returnable forthwith. The

learned Advocates and the learned A.G.P. for the respective respondents waive service. With the consent of both the sides, the petitions are heard finally at the stage of admission.

3. Since all these matters arise out of similar orders passed by invoking the provisions of Section 8 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “APMC Act”) and since the common questions of facts and law arise, these are being disposed of by this common judgment.

4. Though the learned Senior Advocate and the learned Advocates for the parties have argued the matters extensively on all fours, the only question that arises for determination is as to if a Secretary of the Agricultural Produce Market Committee (“APMC”, for short) alone can pass an order in exercise of the powers under the provisions of Section 8 (1A) of the APMC Act and suspend the trading licence.

5. The facts, which are relevant for determination of this dispute and which, in my considered view, are sufficient to dispose of the Writ Petitions, can be summarized as under:

. Owing to a complaint filed by respondent No. 5 on the ground that the petitioners, who are the duly licensed traders, have indulged in some malpractice, the respondent No.2, who is stated to be constituted as a Director under the APMC Act, directed necessary steps to be taken by the

Secretary of the APMC – respondent No.4. In turn, respondent No. 4 – Secretary, by the order dated 31.05.2019, cancelled the trading licences. The petitioners challenged these orders in appeals under Section 9 of the APMC Act before respondent No.2. Respondent No.2, by the order dated 11.09.2019, allowed the appeals and quashed and set aside the orders passed by respondent No.4. Respondent No.5 challenged the orders of respondent No.2 before the State Government styling his appeal to be one under Section 9 (b) of the APMC Act. By the impugned orders, the learned Minister allowed the appeals, quashed and set aside the orders passed by respondent No.2 and restored the order passed by respondent No.4 regarding cancellation of the licences. Hence, these Writ Petitions.

6. I have carefully considered the rival submissions of the learned Advocates for the parties as also perused the papers. As is pointed out above, admittedly, in purported exercise of the powers under Section 8(1A) of the APMC Act, respondent No.4, who happens to be the Secretary of the APMC, has passed the orders cancelling the petitioners' licences. It is, therefore, apt to reproduce the provision, which reads thus :

8. Power to cancel or suspend licences.

(1) Subject to the provision of sub-section (3), a Market Committee may, for reasons to be recorded in writing, suspend or cancel a licence—

(a) if licence has been obtained through wilful misrepresentation, or fraud ;

(b) if the holder thereof or any servant or any one acting on his behalf with his express or implied permission, commits a breach of any of the terms or conditions of the licence ;

(c) if the holder of the licence in combination with other holders of licences commits any act or abstains from carrying out his normal business in the market with the intention of wilfully obstructing, suspending or stopping the marketing of agricultural produce in the market area in consequence where the marketing of any produce has been obstructed, suspended or stopped ;

(d) if the holder of the licence has been adjudged an insolvent, and has not obtained his discharge ; or

(e) if the holder is convicted of any offence under this Act.

(1A) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-section (3), the Chairman and Secretary of a Market Committee acting jointly may, for reasons to be recorded by them in writing, by order suspend a licence for a period not exceeding 15 days for any reason for which a Market Committee may suspend the licence under sub-section (1).

(2) Notwithstanding anything contained in sub-section (1), but subject to the provisions of sub-section (3), the Director may, for reasons to be recorded in writing by order suspend or cancel any licence granted or renewed under this Chapter.

(3) No licence shall be suspended or cancelled under this section, unless the holder thereof, has been given a reasonable opportunity to show cause against such suspension or cancellation.

7. The petitioners are questioning the power of respondent No. 4 – Secretary alone to pass an order cancelling or suspending the licences. Suffice for the purpose to observe that as can be gathered from the wording of sub-section (1A) of Section 8 of the APMC Act, the power has been delegated jointly to the Chariman and the Secretary of a Market Committee. When the Legislature, in its wisdom, has in so many words specifically

delegated these quasi-judicial powers to be exercised under this provision by the Chairman and the Secretary of a Market Committee, one need not delve much before concluding that since in the matters in hand, respondent No.4 acting alone, has ventured to exercise the power and it has not been exercised jointly with the Chairman of the Market Committee, he had certainly exceeded the jurisdiction in passing the orders cancelling the petitioners' licences.

8. Mr. V.D. Sapkal, learned Senior Advocate for respondent Nos.3 and 4 endeavoured to demonstrate that subsequent to the passing of the order by respondent No.4 – Secretary, the action was ratified by the Market Committee on the very next day by passing an appropriate resolution. He would strenuously submit that under sub-section (1) of Section 8 of the APMC Act, the Market Committee has the power *inter alia* to cancel a licence. He would, therefore, submit that the illegality, if any, in the order passed by respondent No.4 – Secretary stood rectified by subsequent ratification by the Market Committee.

9. I am afraid, the submission of the learned Senior Advocate is not legally tenable. When the Legislature, in its wisdom, has delegated the quasi-judicial power to be exercised by the specified authorities jointly, it has to be exercised in the same manner as is expected by the Legislature and not otherwise. To repeat, when sub-section (1A) of Section 8 requires the power to suspend the licence to be exercised jointly by the Chairman and the

Secretary, the latter alone could not have legally exercised that power.

10. Though the Market Committee has power under sub-section (1) of Section 8 of the APMC Act to cancel or suspend a licence, it does not have a power to ratify a quasi-judicial power to be exercised by the authorities under sub-section (1A).

11. If at all the respondent APMC intends to invoke the power under sub-section (1) of Section 8 of the APMC Act, it may have to undertake that exercise independently. However, it does not have the power to ratify any order passed under sub-section (1A) of Section 8. Needless to state that it may have to resort to appropriate proceeding to invoke such a power under Section 8(1) and the petitioners may have a right to participate in that proceeding. However, that is not the matter in dispute in the present proceedings, which are restricted to the challenge to the orders passed by respondent No.4 in his capacity as Secretary of the Market Committee under the provisions of Section 8 (1A) of the APMC Act. Since the orders passed by him were not passed jointly with the Chairman of the Market Committee, for this reason alone, those are clearly without jurisdiction and illegal. If that be so, the impugned orders passed by the learned Minister restoring those orders overlooking such error going to the root of the jurisdiction, also cannot stand the scrutiny of law.

12. Suffice for the purpose to observe that since I am disposing of

these Writ Petitions only on the ground of the jurisdiction of respondent No. 4 – Secretary to cancel or suspend the licences of the petitioners alone, I am not touching the other issues being raised by the petitioners regarding opportunity of being heard having not been extended to them or otherwise and the competence of the learned Minister to sit over in an appeal under Section 9 (b) of the APMC Act. Obviously, those issues have now become inconsequential.

13. In the result, the impugned orders are liable to be quashed and set aside.

14. The Writ Petitions are allowed in terms of prayer clause (B).

15. Needless to state that it will always be open for the APMC, if it thinks fit, to invoke the powers under Section 8 (1) of the APMC Act. It is further made clear that nothing is being expressed touching the facts in controversy, resorting to which the petitioners' licences were sought to be cancelled/suspended.

16. The Rule is accordingly made absolute in all these Writ Petitions.

[MANGESH S. PATIL]
JUDGE

