

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.8091 OF 2021
WITH**

**CIVIL APPLICATION NO.7981 OF 2021
IN
WRIT PETITION NO.8091 OF 2021**

1. Bapurao S/o Madhavrao Patil,
Age : 55 years, Occu: Chairman,
R/o Murum, Tq. Omerga,
Dist. Osmanabad.
2. Basavraj S/o Mailarai Karbhari,
Age : 52 years, Occu: Vice Chairman,
R/o. Jewali, Tq. Lohara,
Dist. Osmanabad.
3. Basavraj S/o. Annarao Patil,
Age : 42 years, Occu: Member
R/o. Kothali, Tq. Omerga,
Dist. Osmanabad.
4. Govind S/o. Vitthal Patil,
Age : 47 years, Occu: Member
R/o. Kantekur, Tq. Omerga,
Dist. Osmanabad.
5. Mahadev S/o. Basavanappa Tengale,
Age : 53 years, Occu: Member
R/o. Jewali, Tq. Omerga,
Dist. Osmanabad.
6. Dagadu S/o. Sadhu Gaikwad,
Age : 53 years, Occu: Member
R/o. Kader, Tq. Omerga,
Dist. Osmanabad.
7. Dhanraj S/o. Govindrao Jadhav,
Age : 40 years, Occu: Member
R/o. Kader, Tq. Omerga,
Dist. Osmanabad.
8. Shridevi Manik Birajdar,
Age : 54 years, Occu: Member
R/o. Kesar Jawalga, Tq. Omerga,
Dist. Osmanabad.
9. Mangaltai W/o Revan Lamjane,
Age : 58 years, Occu: Member
R/o. Supatgaon, Tq. Omerga,
Dist. Osmanabad.

10. Saybanna S/o. Shivayya Hirmukhe,
Age : 42 years, Occu: Member
R/o. Bhusani, Tq. Omerga,
Dist. Osmanabad.
11. Vijaykumar S/o. Sadashiv Sonkatle,
Age : 42 years, Occu: Member
R/o. Yenegur, Tq. Omerga,
Dist. Osmanabad.
12. Shyamsundar S/o. Shivbasappa Torkade,
Age : 50 years, Occu: Member
R/o. Jewali, Tq. Omerga,
Dist. Osmanabad.
13. Pramod S/o. Vishwanath Muralikar
Age : 46 years, Occu : Member
R/o. Murali, Tq. Omerga,
Dist. Osmanabad.
14. Chandba @ Chandpayasha Shukatali Shaikh
Age : 55 years, Occu: Member
R/o. Belamb, Tq. Omerga,
Dist. Osmanabad.
15. Dhanraj S/o. Kashinath Mangrule,
Age : 48 years, Occu: Member
R/o. Murum, Tq. Omerga,
Dist. Osmanabad.
16. Ayub Ibrahim Masuldar,
Age : 53 years, Occu : Member,
R/o. Murum, Tq. Omerga,
Dist. Osmanabad.
17. Chandrakant Shidaram Gaikwad,
Age : 48 years, Occu: Member
R/o. Murum, Tq. Omerga,
Dist. Osmanabad.

... PETITIONERS

VERSUS

1. The State of Maharashtra,
through its Secretary
Co-operation Marketing & Textiles
Department, Mantralaya Fort,
Mumbai – 32.
2. The Maharashtra State
Marketing Board,
Plot No.7, Market yard,
Gultekdi, Pune
through its- Executive Director.

3. The District Deputy Registrar,
Co-operative Societies,
Osmanabad, Tq. & Dist. Osmanabad.
4. The Assistant Registrar,
Co-operative Societies,
Omerga, Tq. Omerga,
Dist. Osmanabad.
5. Mr. P.L. Shahapurkar [Administrator],
The Additional Assistant Registrar,
Co-operative Societies,
Omerga, Tq. Omerga,
Dist. Osmanabad.
6. The Agricultural Produce Market
Committee, Murum,
Tq. Omerga, Dist. Osmanabad.

... RESPONDENTS

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Advocate for Petitioners : Ms. Pradnya S. Talekar i/b. Mr. L.C. Patil
Govt. Pleader for respondent Nos. 1, 3 and 4 : Mr. D.R. Kale
Advocate for the Applicant in CA : Mr. A.G. Talhar
Advocate for respondent No.2 : Mr. P.S. Dighe
Advocate for respondent No.5 : Mr. K.B. Jadhavar
Advocate for respondent No.6 : Mr. B.B Bhise h/f. Mr. N.R. Pawade

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CORAM : **MANGESH S. PATIL, J.**
Reserved on : **31.08.2021**
Pronounced on : **24.09.2021**

JUDGMENT :

Heard. Rule. The Rule is made returnable forthwith. Mr. Kale learned Government Pleader waives service for respondent Nos. 1, 3 and 4. Mr. P.S. Dighe learned advocate for respondent No.2, Mr. K.B. Jadhavar learned advocate for respondent No.5 as also learned advocate Mr. B.B. Bhise holding for Mr. N.R. Pawade waive service for the respondent No.6. At the request of the parties, the matter is heard finally at the stage of admission.

2. The petitioners are questioning legality of the order passed by the respondent No.3 District Deputy Registrar under Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (herein after the Act) dated 26.07.2021 thereby superseding the Market Committee at Murum, Tq. Omerga, District Osmanabad of which the petitioners were the Chairman, Vice Chairman and Members.

3. The petitioners were elected on 19.02.2016 for a term of 5 years. By a specific order dated 17.03.2021 by invoking the powers under Section 14(3) of the Act, the State Government extended its term for a period of six months because of the pandemic. The intervenor who himself is an agriculturist lodged several complaints with the State Government complaining about the mismanagement of the respondent No.6 Market Committee by the petitioners. The respondent No.3 District Deputy Registrar issued a show cause notice to them on 13.05.2019. He also constituted a three member committee to inquire into the allegations. Even before any such inquiry was held the respondent No.3 District Deputy Registrar issued a second show cause notice dated 09.09.2019. Some of the petitioners responded by tendering explanation. After concluding the hearing the respondent No.3 District Deputy Registrar forwarded a proposal to the respondent No.2 which is a Board constituted under Section 39A for consultation, as is contemplated under Section 44 of the Act. The respondent No.2 Board by its communication dated 11.05.2021 conveyed its approval. By the impugned order the respondent No.3 District Deputy

Registrar concluded that there were several misdeeds and violations of the provisions of the Act and by the impugned order under Section 45(1) directed suspension of the petitioners' Committee.

4. Following were the charges levelled against the petitioners which were inquired into and have been held to be proved, in the impugned order :

- i) The petitioners' Committee failed to take appropriate steps for preventing sale of agricultural produce below Minimum Support Price (MSP) and thereby committed breach of the provisions of Section 32(d) of the Act and Rule 94 (d)(2) of the Rules framed thereunder.
- ii) The petitioners' Committee failed to take effective steps to prevent recovery of prohibited trade allowance and thereby violated Section 39 of the Act and even failed to take steps after they were put to notice as is required by Section 40 (1) (e), about existence of such practice.
- iii) The petitioners' committee failed to initiate action against the erring agents who were indulging in illegal practice in violation of the provisions of the Act and the Rules framed thereunder and instead allowed the Secretary of the respondent No.6 Market Committee to initiate such action when he was not empowered to do so and thus were guilty of violating the provisions of Section 8, Section 32 (a) of the Act

and Rule 94 (d)(3) of the Rules.

- iv) The Petitioners' Committee failed to take disciplinary action against the Secretary of the Respondent No.6 Committee in spite of specific instructions having been issued to it under Section 40 (1)(e).
- v) Failing to take appropriate steps for implementation of a Government Loan Scheme.

5. The learned advocate Ms. Talekar initiated her submission by endeavoring to demonstrate as to how none of the charges were actually proved and in the absence of which neither the respondent No.2 Board could have accorded consent nor could the respondent No.3 District Deputy Registrar have concluded about the charges have been established.

6. However, there is inherent limitation to undertake any scrutiny of the disputed facts while exercising the Constitutional Powers of this Court. This Court cannot go into the factual disputes and would only step in to examine as to if there has been any illegality or otherwise in the decision making process. This Court cannot sit in Appeal and undertake a scrutiny in respect of illegality or otherwise of the impugned order based on the facts. Precisely for this reason, the submission of the learned advocate Ms. Talekar regarding proof or otherwise of the facts which form the basis for passing the impugned order will have to be discarded.

7. Be that as it may, even if one undertakes a cursory scrutiny of the reasons assigned in the impugned order passed under Section 45(1) of

the Act as can be appreciated from the explanation tendered by the petitioners to the show cause notice, I find no hesitation even otherwise, in subscribing to the conclusion drawn by the respondent No.3 District Deputy Registrar about the charges having been duly established. The fact of sale of agricultural produce below MSP was admitted albeit it was sought to be explained by contending that there was no sufficient infrastructure available for gradation of agricultural produce and consequentially an agricultural produce which is of non FAQ quality was required to be traded below MSP. It was also admitted by the petitioners that instead of the Committee initiating any action against the agents, its Secretary initiated such action without there being any power vested in him and the Committee merely ratified such an action of suspending licences of the agents. Such a stand insinuates that the petitioners' Committee itself did not invoke the powers vested in it under Section 8 and 32A of the Act. It also clearly demonstrates that the petitioners admitted the fact that the practice of recovery of trade allowances by the agents was in vogue and action was required to be initiated against the erring agents. Therefore the conclusions drawn by the respondent No.3 District Deputy Registrar are unassailable. These facts are sufficient to reach a plausible conclusion about the main charges having been duly established.

8. The collective effect of such serious charges having been duly proved also clearly brush aside the argument of learned advocate Ms. Talekar regarding the impugned action being disproportionate to the

charges which have been duly proved, needs to be discarded. The learned advocate has relied upon the decision in the case of **Maharashtra Land Development Corporation and Ors. Vs. State of Maharashtra; (2011) 15 SCC 616**, but the petitioners are not entitled to reap any benefit from it.

9. The learned advocate Ms. Talekar would then submit that in the absence of an inquiry under Section 40(1)(b) read with Rule 117 of the Rules, non-compliance of direction under Section 40(1)(e) cannot be a ground for invoking powers under Section 45(1). She would submit that some of the charges deal with non-compliance of the direction under Section 40 (1)(e), however, no inquiry under Section 40(1)(b) was ever held. She would further submit that though the respondent No.3 District Deputy Registrar had directed an inquiry to be held he proceed with the inquiry himself without waiting for any report by the Committee constituted by him. Since no such direction as is required under Section 40 (1)(e) was issued on the basis of any inquiry the petitioners could not have been held guilty. In support of her submission she would place reliance on the decision of **Santosh Vs. District Deputy Registrar, Cooperative Societies and Ors.; 2020 SCC OnLine Bom 159**.

10. Per contra, the learned Government Pleader and the learned advocate Mr. Talhar for the Intervenor would submit that the provision of Section 40(1)(b) and 40 (1)(e) are independent of each other and the former does not regulate the latter. Non-compliance of direction under Section 40(1)(e) in itself is sufficient to invoke the powers under Section

45(1). They would also submit that the decision in the case of **Santosh Vs. District Deputy Registrar** (supra) is based on facts.

11. Section 40 is a part of Chapter VIII of the Act with a title “Control”. It reads thus :

**“CHAPTER VIII
CONTROL**

- 40.** (1) *The Director or any officer authorised by him by general or special order in this behalf, may,—*
- (a) inspect or cause to be inspected the accounts and offices of a Market Committee;*
 - (b) hold inquiry into the affairs of a Market Committee;*
 - (c) call for any return, statement, accounts or report which he may think fit to require such Committee to furnish;*
 - (d) require a Committee to take into consideration,—*
 - (i) any objection which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such Committee; or*
 - (ii) any information he is able to furnish and which appears to him to necessitate the doing of a certain thing by such Committee, and to make a written reply to him within a reasonable time stating its reasons for doing, or not doing such thing;*
 - (e) direct that anything which is about to be done or is being done should not be done, pending consideration of the reply and anything which should be done but is not being done within such time as he may direct.”*

As the caption suggests, the provision lays down the powers vested in the Director to carryout inspection, hold an inquiry, call for returns, accounts, require a committee to take into consideration any objection in respect of anything done or about to be done by the Committee or to furnish information and to direct the Committee pending consideration of the reply to do or not to do something. A minute perusal of these clauses would clearly show that it is a list of powers to be exercised by the Director. Needless to state that which of these powers to be exercised would depend

upon the facts and circumstances of an individual case. The power to hold an inquiry into the affairs of the Managing Committee under Clause (b) is independent of any of the other clauses. Clause (e) contemplates a situation where a Director can issue a direction to the Committee awaiting a reply by it. Therefore to my mind, power to issue direction under Clause (e) is *de hors* and independent of the power to hold an inquiry under Clause (b) and there is no co-relation between the two. The decision in the case of **Santosh Vs. District Deputy Registrar** (supra) does not lay down any ratio and is purely based on facts as obtaining the matter.

12. The learned advocate Ms. Talekar would then assail the impugned order on the ground that there is a violation of the mandate of the proviso to Section 45(1) of the Act as there has been no effective consultation with the respondent No.2 Board. Relying upon the decision in the case of **State of Madhya Pradesh Vs. Sanjay Nagayach and Ors.; (2013) 7 SCC 25**, she would submit that in order of there being an effective consultation not only the show cause notice and supporting documents but even the reply of the delinquent and also the proposed action has to be placed before the Board. She would then submit that the respondent No.2 Board has not considered the show cause notice dated 13.05.2019 report of the Secretary dated 21.05.2019 and 26.06.2019, reply of the Chairman of the Committee, report of the Assistant Registrar, the replies of the petitioners, the additional reply of the petitioners and several such facts and circumstances in the absence of which there was non-compliance of the

mandate of proviso to Section 45(1). She would also rely upon the decision in the case of **Abhishek Shankarrao Thakare and Ors. Vs. District Deputy Registrar, Cooperative Societies, Yavatmal ; 2014 SCC OnLine Bom 1226**.

13. The learned Government Pleader and the learned advocate Mr. Talhar would submit that all the necessary and relevant documents and facts and circumstances were duly considered by the respondent No.2 Board. It has given detailed reasons which weighed with it in according sanction. The proviso to sub-section 1 of Section 45 merely requires a previous consultation as distinguished from sanction. When it has reached a subjective satisfaction, there was no further requirement of reaching any independent conclusion regarding proof or otherwise of the allegations. There was sufficient compliance with the mandate.

14. The importance of effective consultation contemplated by the proviso to Section 45(1) need not be over emphasised and it would suffice to refer to the decision in the case of **State of Madhya Pradesh Vs. Sanjay Nagayach** (supra) particularly paragraph 42 which reads thus:

- “42. Further, we are inclined to give the following general directions in view of the mushrooming of cases in various Courts challenging orders of supersession of elected Committees:*
- 42.1. Supersession of an elected managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.*
- 42.2. Elected Committee in office be not penalised for the short-comings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.*
- 42.3. Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit*

report with regard to incidents which originated when the previous committee was in office.

- 42.4. *Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.*
- 42.5. *Registrar/ Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualify them for standing for election in the succeeding elections. Registrar/Joint Registrar therefore is duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.*
- 42.6. *Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.*
- 42.7. *Public money is not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a co-operative society. Tax payers' money is not expected to be spent for settling those disputes. If found necessary, the same is to be spent from the funds available with the Bank concerned."*

Though these observations pertain to the provision of Madhya Pradesh Cooperative Societies Act and the specific provision contained therein, as has been rightly submitted by the learned advocate Ms. Talekar the above observations would equally apply to the provisions under the Act.

15. So far as the matter in hand is concerned, the communication of the respondent No.2 Board dated 11.05.2021 (Exhibit-E) is annexed with the minutes of the board meeting dated 08.04.2021. It was specifically noted that the Board had examined the charges, scrutinized the petitioners reply and after recording specific observation *qua* each of the charges had undertaken elaborate discussion while concluding that *prima facie* there was

substance in the allegations. As can be noticed from the references in the communication dated 11.05.2021, the respondent No.2 Board had also seen the letters of the respondent No.3 District Deputy Registrar dated 03.03.2020 and 09.09.2019.

16. Independently, as is mentioned herein above, when most of the allegations stood admitted by the petitioners in their replies, the decision of the respondent No.2 Board would be justified even on facts. If the stand of the petitioners constitutes admission of the most of the charges albeit with same riders in the form of some explanation, to my mind, it cannot be said that there was no effective consultation. Therefore they are not entitled to claim any benefit from the decision in the case of **State of Madhya Pradesh Vs. Sanjay Nagayach** (supra). The submission of the learned advocate that there was no effective consultation is liable to be discarded.

17. In this context it would also be fruitful to refer to the decision of this Court in the case of **Tukaram Narayanrao Khandebharad Vs. State of Maharashtra and Ors.; 1998 (1) Mh.L.J. 679**. Bearing in mind the wording of the proviso to Section 45(1) it is quite apparent that it merely use the word 'consult' as distinguished from 'sanction' or even 'approve'. Meaning thereby that though the consultation has to be meaningful and effective, a District Deputy Registrar is not bound by the decision of the Board. This is what has been precisely held by this Court in the case of **Tukaram Narayanrao Khandebharad** (supra) in paragraph No.10 which read thus :

10. *However, we would approach the problem from other angle also. Was it really necessary for the State Marketing Board to give its opinion one way or the other? We feel that the Board was free to express its opinion in any manner. The Board could have even expressed its opposition to the proposal of supersession. Question is, could such refusal be said to be fatal to the ultimate decision on the part of the DDR? Our earnest opinion is that even if the Board had refused to agree with the proposal of supersession, the DDR could still have proceeded ahead with the action, the only requirement being that it had to be shown that the DDR had taken into consideration the opinion of the Board, a body which was bound to be consulted. If the DDR had shown that he was alive to the contrary opinion on the part of the State Marketing Board, and in spite of the same, had decided to proceed, in our view, the process of consultation would still have been complete.*

If such is the state of law, it is not expected of the Board to reach some conclusion either way. It would suffice for the compliance of the consultation being effected that the Board takes a conscious decision by going through all the relevant record. As is demonstrated herein above when all the relevant record was before the Board which in its meeting discussed the issue and forwarded the communication to the respondent No.3 District Deputy Registrar, it cannot be said that there was no effective consultation.

18. The learned advocate Ms. Talekar would then submit that inspection of the office of work of the Market Committee is a *sine qua non* for initiating the action under Section 45(1) and there was no such inspection preceded the impugned action.

19. Though attractive, the submission has no bearing on the matter in hand for the simple reason that, to repeat, most of the allegations were

expressly admitted by the petitioners. Admittedly the agricultural produce was allowed to be traded below MSP, unauthorized trade allowance were allowed to be charged/recovered. No action was initiated against the agents by the Committee. Instead of the Committee its Secretary issued order suspending licences of the agents illegally and petitioners' Committee merely sought to ratify it and which action, admittedly, has been struck down by this Court in several petitions by the agents whose licences were so suspended/cancelled. Meaning thereby that admittedly the petitioners' Committee had not undertaken any exercise of the powers vested in them to regulate and monitor trade of agricultural produce. If, such is the state of affairs, when even without there being any inspection of the office, the petitioners themselves admitted major allegations, no fault can be found with the respondent No.3 District Deputy Registrar in not waiting for the report of the Committee constituted by him to inquire into the allegations. The question here is as to the manner in which the respondent No.3 District Deputy Registrar has invoked the powers under Section 45(1) of the Act. If even without holding any preliminary inquiry he could reach a conclusion about the charges/allegations having been duly established, the submission of the learned advocate Ms. Talekar is not sustainable.

20. Again, the submission of the learned advocate Ms. Talekar that there was violation of principles of natural justice in as much as the additional replies tendered by the petitioners were not forwarded to the respondent No.2 Board is not sustainable. When, admittedly, the initial

replies tendered by the petitioners were already forwarded to the respondent No.2 Board and referred to by it before granting approval, it cannot be said that there is violation of principles of natural justice.

21. The learned advocate Ms. Talekar would then assail the action on the ground that it is politically motivated and *mala fide*, having been taken out at the behest of the intervenor.

22. In my considered view when it comes to the functioning of the Managing Committee constituted under the Act which is promulgated for Development and Regulation of the agricultural produce marketing, irrespective of the motive of the individuals it is the substance which should weigh with the authorities constituted under the Act. If the charges are grave and stand duly established, the motive of the person making a grievance is inconsequential. As is demonstrated herein above where there is substance in the allegations against the petitioners, the impugned order cannot be assailed only on the ground of the allegations of *mala fides* and motives attribute to the intervenor.

23. In view of above, there is no merit in the Writ Petition. It is dismissed. The Rule is discharged. The Civil Application No.7981/2021 is disposed of.

(MANGESH S. PATIL, J.)