

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

WRIT PETITION NO.9135 OF 2020

Prakash S/o Punamchandd Agrawal
Age 44 years, Occ-Business,
R/o Tilak Nagar, Kannad,
Tq.Kannad, Dist.Aurangabad.

.. PETITIONER

VERSUS

- 1] The Agricultural Produce Market Committee
Market Yard, Kannad, Tq. Kannad
Dist.Aurangabad
Through its Secretary.
- 2] Rajendra Kashinath Magar
Age 50 years, Occ-Agri
R/o Hivarkheda (Na), Tq.Kannad
Dist.Aurangabad.
- 3] Mahaveer Shantilal Gangwal
Age 55 years, Occ-Business
R/o Khandsari Parisar, Balaji Nagar
Kannad, Tq. Kannad,
Dist.Aurangabad.
- 4] The District Deputy Registrar
Co-operative Societies,
Aurangabad Division, Aurangabad
Shakti Saahakar Building,
Central Bus Stand Road,
Aurangabad.
- 5] The Joint Registrar
Co-operative Societies
Aurangabad Division,
Aurangabad.

6] The Hon'ble State Minister
for Revenue
Maharashtra State, Mantralaya,
Mumbai.

.. RESPONDENTS

.....

Senior Advocate Mr.R.N.Dhorde i/b Mr.V.R.Dhorde for the petitioner.
Advocate Mr.V.D.Salunke for Respondent no.2.
Government Pleader Mr.D.R.Kale for Respondent State.

.....

CORAM : MANGESH S. PATIL, J.
DATE : 07.01.2021

ORAL JUDGMENT :-

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

2] The petitioner is a Director of the respondent no.1 Agricultural Produce Market Committee registered under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

3] On a complaint filed by the respondent no.2, by the impugned order the Respondent no.4, in exercise of powers under Rule 10(3) has disqualified the petitioner under Rule 10(1)(f) of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017. The petitioner has challenged this order by preferring an appeal under Rule 10(5) before the respondent no.5. Alongwith the appeal he filed application seeking stay to the operation of the order passed by the respondent no.4. By the impugned order the respondent no.5 has refused to grant stay to the operation of the order of respondent no.4 and directed the appeal to be listed for hearing on 7/1/2021

at 3 p.m. i.e. today.

4] The learned Senior Advocate Mr.R.N.Dhorde for the petitioner submits that by manipulating the original Khatavani (Market fees and Supervision fees Register) and misleading the respondent no.4, the impugned order has been obtained. A specific request was made before the respondent no.4 to call for the original Register. In spite of such a request having been made and which request finds place in the impugned order passed by the respondent no.4, he failed to insist for its production, simply on the basis of some other original record i.e. receipts, weighing slips, conclusion has been drawn. In spite of the fact that a specific Register has been provided for and is maintained by the respondent no.1 A.P.M.C., considering the nature of the dispute and the ground for removal of the petitioner, the respondent no.4 failed to exercise the *quasi* judicial powers.

5] The learned Senior Advocate submits that in spite of all such infirmities having been pointed out to the respondent no.5 appellate authority, he has refused to even stay the execution and operation of the order passed by the respondent no.4. Since the precious time has lost, at least now some direction be issued to the respondent no.5 appellate authority to call for and examine the original Market Fees and Supervision Fee Register from the respondent no.1 while deciding the appeal.

6] The learned Senior Advocate further points out that the respondent no.6 who is the Minister is acting behind the curtains and the decisions are being taken by the respondent nos. 4 and 5 which smack of political motivation.

7] The learned Government Pleader submits that the petitioner has unnecessarily made the concerned Minister a party respondent no.6 and the petitioner be directed to delete him.

8] The learned Advocate Mr.VD.Salunke for the respondent no.2 original complainant submits that there is no propriety now in making the allegations being levelled by the petitioner. The matter is subjudice before the appellate authority, he is statutorily obliged to decide the appeal by following the necessary procedure. He has already directed the appeal to be listed today at 3 p.m. for hearing it finally. The petitioner could have made request and solicited the record by filing application before the appellate authority. He also points out that in paragraph no.4 of the impugned order passed by the respondent no.4 there is a specific reference about he having gone through the original Register. In any case, according to the learned advocate, all these issues can be gone into and decided by the appellate authority. Nothing can be prejudged. If the petitioner is keen to seek such record he can make a specific request before the appellate authority and it would be obliged to pass appropriate order thereon. He therefore submits that the Writ Petition does not deserve any consideration on merits.

9] Admittedly, the respondent no.5 appellate authority has posted the appeal for final arguments today at 3 p.m. The petition primarily has been preferred being aggrieved and dissatisfied by the impugned order passed by him whereby he refused to stay execution and operation of the order passed by the respondent no.4 i.e. the original authority. In view of such eventualities, the propriety demands that the appeal is heard and decided finally. There is no propriety now in indulging in any academic scrutiny as to

if the respondent no.5 appellate authority could have granted stay as prayed for by the petitioner.

10] The grievance being made by the petitioner according to the submissions of the learned Senior Advocate Mr.Dhorde that the original Register was not before the respondent no.4 is a matter which cannot be commented upon in this proceeding. Since the parties are already before the appellate forum, the petitioner can very well agitate the issue and raise as many grounds as possible before the appellate Court including the want of original Market Fees and Supervision Fees Register which according to him is manipulated and was not produced before the respondent no.4. Needless to state that even in the appeal before respondent no.5 the petitioner can persist with the request and even can argue the point today while making the submissions before the respondent no.5.

11] Needless to state that whether the original Register was produced before the respondent no.4 or has been manipulated as is being alleged, are the issues which will have to be gone into and decided by the respondent no.5 appellate authority. It is expected that the learned respondent no.5 appellate authority will decide the appeal as expeditiously as possible. So keeping open that avenue to the petitioner to raise such grievance, the Writ Petition is disposed of.

Parties to act on authenticated copy of this order.

[MANGESH S. PATIL, J.]