

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

WRIT PETITION NO. 894 OF 2021

- PETITIONERS:** 1] Prakash Sevakdas Patil,
aged : Adult, Occ. Agriculturist,
R/o. Mandavgarh, Post – Sewagram
Tah and Dist. Wardha
- 2] Sharad Deoraoji Zhod
aged : Adult, Occ. Agriculturist,
R/o. Shivnagari, Sawangi (Meghe)
Tah and Dist. Wardha
- 3] Vijay Gajanan Bandewar
aged : Adult, Occ. Agriculturist,
R/o. Lelwadi, Rashtrabhasha Road,
Wardha, Tah and Dist. Wardha

...VERSUS...

- RESPONDENT:** 1] State of Maharashtra,
Through District Deputy Registrar,
Cooperative Societies, Wardha,
Tahsil and Dist. Wardha
- 2] Wardha Agriculture Produce Marketing
Committee, Wardha, through its
Secretary, R/o. Hinganghat Road,
Wardha, Tahsil and District : Wardha
- 3] Maharashtra State Agriculture Produce
Marketing Board, Pune, through it's
Executive Director, R/o. Plot No. R-7.
Market Yard, Gultekadi, Pune-411037

AND

WRIT PETITION NO. 1181 OF 2021

- PETITIONERS:** 1] Arvind s/o Bapuraoji Bhusari
aged : Adult, Occ. Agriculturist,
R/o. Salod, Post – Salod
Tah and Dist. Wardha
- 2] Sau. Vaishali Anilrao Umate
aged : Adult, Occ. Agriculturist,
R/o. Mhasala, Tah and Dist. Wardha

...VERSUS...

- RESPONDENT:** 1] State of Maharashtra,
Through District Deputy Registrar,
Cooperative Societies, Wardha,
Tahsil and Dist. Wardha
- 2] Wardha Agriculture Produce Marketing
Committee, Wardha, through its
Secretary, R/o. Hinganghat Road,
Wardha, Tahsil and District : Wardha
- 3] Maharashtra State Agriculture Produce
Marketing Board, Pune, through it's
Executive Director, R/o. Plot No. R-7.
Market Yard, Gultekadi, Pune-411037

Shri Adwait S.Manohar, Advocate for Petitioner in WP No.894/2021.
Shri T.U.Tathod, Advocate for Petitioner in WP No.1181/2021.
Ms. T.Khan, AGP for Respondent No.1 in both petitions
Mr. S.K.Bhoyar, Advocate for Respondent No.2 in both petitions
None for respondent No.3

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/11/2021.

[Common Judgment]

1] Heard Mr. Manohar, learned counsel for the petitioner in Writ Petition No. 894/2021 and Mr. Tathod, learned counsel for the petitioner in Writ Petition No. 1181/2021, Ms. Khan, learned AGP for respondent No. 1 and Mr. Bhoyar, learned counsel for respondent No.2. Mr. R.D.Sarode, learned counsel for respondent No. 3 is absent.

2] **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned counsels appearing for the parties.

3] The petitions challenge the order dated 18.01.2021 passed by the respondent No. 1 passed under the provisions of Section 45(1) of the Maharashtra Agriculture Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “the APMC Act”) whereby the petitioners who were the members of the Sub-Committee of respondent No. 2, have been disqualified for a period of six years on account of having violated the provisions of Section 29 of the APMC Act and Clause 7 of the bye-laws.

4] Mr Mahonhar, learned counsel for the petitioners contends that the impugned order, though mentions the violation in regard to Section 29 of the AMPC Act, in fact Section 29 provides for the duties of the Market Committee and though under Section 30, those can be delegated to the Sub-Committee, the functioning of the such Sub-Committee has to be under the superintendence, guidance and control of the Market Committee. He further submits that, in the functioning of the Market Committee, the role of the Secretary assumes importance, as the primary responsibility and duty of the Secretary is to verify the requirements for grant of license, as in this case the Sub-Committee was constituted for the grant of license, and after verifying such documents to his satisfaction regarding the compliance of the requirements as prescribed therein, to place such documents before the Sub-Committee for approval or disapproval. Inviting my attention to the explanation given by the Secretary of the Sub-Committee dated 07.09.2020 (page 81), he submits that the Secretary has categorically made a statement that he had verified the entire documents as required to be submitted by a person for grant of license and the absence of signature upon the agreement to be submitted by a third party, giving a guarantee on behalf of the

applicant seeking grant of license was on account of inadvertence on his part as well as his subordinates. He further submits, that the agreements submitted did not disclose that the guarantor namely Manohar Nasre, had already stood as a guarantor for more than three persons in the matter of grant of a license and it is because of this suppression, that the said action remained unnoticed and the application was processed and placed before the Sub-Committee. The Sub-Committee placing reliance upon the assertion of the Secretary of having verified the compliance of the requirement of the documents for grant of license, had approved the grant of a license to Mr. Prashant Gandghadharrao Jagtap, who was the applicant in the matter. Thereafter nothing happened for more than a period of four months and it is on the complaint of 17 commission agents, that the notice under Section 45(1) of the APMC Act was issued.

5] Learned counsel for the petitioner further by inviting my attention to the language of Section 45(1) of the APMC Act submits that the provision contemplates an enquiry by the State Government to arrive at an opinion that a member of a Market Committee is not competent to perform or persistently makes default in performing the duties imposed upon him, or abuses his powers or wilfully

disregards any instructions issued to him, which enquiry would require the recording of a finding and conclusion in respect of the above aspect. Pointing out to the impugned order, learned counsel for the petitioners submits that except for a general assessment as made in the last para of the order, there is no finding altogether regarding the above aspect. Merely stating that there is a violation of bye-law No.7 or Section 29 of the APMC Act by itself would not be sufficient compliance regarding the requirement of an enquiry as contemplated by Section 45(1) of the APMC Act. Learned counsel thereafter submits that the action of grant of license by the Market Sub-Committee was approved by the General Body Meeting dated 30.1.2020 and such approval, would indicate the conformation of the action of the Market Sub-Committee and though action has been taken against the Sub- Committee, no action has been taken whatsoever against the Secretary or for that matter, against the General Body. He further submits that respondent No. 2 has proceeded in the matter on the directions of the State Marketing Board, which was not required in view of the proviso to Section 45(1) of the APMC Act, as the same would come into picture only if the supersession of the Market Committee was proposed and

not otherwise. A further submission is made that no loss whatsoever is caused to any agriculturist and it is only the question of 17 commission agents not being paid their commission on account of transactions being done with the said Prashant Gangadharrao Jagtap, that the petitioners have been singled out and made a scape goat, whereas it was open for the commission agents to file appropriate proceeding for recovery of their dues, which was in fact initiated and was going on. He therefore submits that looking at the matter with any angle, the impugned order cannot be sustained on the touchstone of the law as applicable therefor to the facts as prevailing on record and is therefore, required to be quashed and set aside.

6] Mr. Tathod, learned counsel adopts the argument of Mr. Adwait Manohar, learned counsel for the petitioner.

7] Ms. Khan, learned AGP raises an objection that revision under Section 43 of the APMC Act was available and the petitioners should be relegated to such a remedy. She further submits that the petitioners have been found guilty of the conduct violative of Section 29 of the APMC Act, as well as Clause 7 of the bye-laws and

therefore, this was an action which necessitated an enquiry being initiated, which was so initiated, in which the petitioners have been found guilty. She justifies the impugned order contending that the reasons as are recorded therein would satisfy the requirement of law.

8] Mr. Bhoyar, learned counsel for Respondent No.2 adopts the argument of Ms. Khan, learned AGP for respondent No.1.

9] A perusal of Section 29 of the APMC Act would indicate the powers and duties of the Market Committee, which by virtue of Section 30 of the APMC Act can be delegated to a Sub-Committee. However, the functioning under such delegation is not an independent action of such Sub-Committee, but is subject to the superintendence, guidance, direction and control of the Market Committee. The petitioners herein were admittedly members of the Sub-Committee for grant of license. The delegation therefore has to be viewed in the above sense of not being an independent action, but an action which is subject to the control of the Market Committee. Therefore any action on part of the Sub-Committee would constitute an action on part of the Market Committee itself under Section 29 of the APMC Act.

10] In so far as Section 45(1) of the APMC Act is concerned, the enquiry has to be conducted and the enquiry has to demonstrate the satisfaction regarding incompetency to perform duties, persistently making defaults in performing the duties imposed or abuse of the powers and wilful disregard of instructions. The question is whether a single act alleged against the Sub-Committee would constitute incompetency of the Committee in performing the functions delegated to it or would constitute a persistent default or abuse of the powers. The answer in my considered opinion has to be in the negative. A singular act of default out of multiple acts performed by the Committee, cannot reflect upon the competency of the Sub-Committee. The expression “persistent default” would mean a series of acts and not a single act. There is no allegation against the Sub-Committee regarding abuse of powers or disregard to any instruction. Thus the actions attributed to the Sub-Committee do not fall within the expression of Section 45(1) of the APMC Act, considering which the issuance of the notice itself was infirm. That apart, what needs to be seen is that the action of the Sub-Committee has been approved and confirmed by the General Body as indicated in the explanation, and so also in the

extract of the minutes of the meeting dated 30.01.2020 which has not been considered at all by the Respondent No. 2 while passing the impugned order. Though Ms. Khan, learned AGP by inviting my attention to the provisions of sub-section (4) of Section 27-A, submits that the requirement of such confirmation is not spelt out therein, however, what is to be noted is that the meeting in which the said action of the Sub-Committee issuing license was approved was of the General Body meeting of the APMC, as against which Section 27-A of the APMC Act contemplates the annual general meeting of the Market Committee.

11] In so far as the plea regarding alternate remedy as raised by the learned AGP under Section 43 of the APMC Act is concerned, it is necessary to note as rightly submitted by Mr. Manohar, learned counsel for the petitioner that the power under Section 45(1) of the APMC Act is vested in the State Government to be exercised and even if it is delegated to an authority, which in this case is the District Deputy Registrar/Respondent No.1, the power continues to be that of the State Government and not otherwise and therefore, in my

considered opinion the alternate remedy as claimed would not be available.

12] The impugned order while recording the reasons for taking the action against the petitioners, merely records that the petitioners have defaulted in the duties imposed upon them by Section 29 of the APMC Act and bye-law No.7, however, it does not discuss the requirement of Section 45(1) of the APMC Act, nor records its satisfaction in that regard. Considering the above position, in my considered opinion, the impugned order cannot be sustained. The same is therefore, quashed and set aside. Rule is therefore made absolute in above terms. No order as to costs.

JUDGE

Rvjalit