

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3727 OF 2022**

Laxmikant s/o Mahadeorao Lad
Age: 50 years, Occu.: Agricultural &
Vice President, Agriculture Produce Market
Committee, Kaij,
Tq. Kaij, Dist. Beed. ..Petitioner

Versus

1. The State of Maharashtra,
Through Secretary,
Marketing Department
Maharashtra State, Mantralaya,
Mumbai-32.
2. District Deputy Registrar,
Cooperative Societies, Beed,
Tq. & Dist. Beed.
3. Administrator, Shri. R. M. Mote,
Assistant Registrar, Cooperative Societies,
Kaij, Tq. Kaij, Dist. Beed.
4. Agriculture Produce Market Committee,
Kaij, Tq. Kaij, Dist. Beed,
Through its Secretary. ..Respondents

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Mr. V. D. Salunke, Advocate for the Petitioner.
Mr. A. R. Kale, AGP for Respondent Nos.1 to 3.

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**WITH
CIVIL APPLICATION NO.4146 OF 2022
IN
WRIT PETITION NO.3727 OF 2022**

1. Bhagwat Shankarrao Sonawane,
Age: 48 years, Occu.: Agriculture,
R/o Sarni (Anand), Tq. Kaij, Dist. Beed.
2. Balasaheb Pandharinath Borde,
Age: 65 years, Occu.: Agriculture &
Business, R/o Gotegaon, Tq. Kaij,
Dist. Beed. ..Applicants

Versus

1. Laxmikant s/o Mahadeorao Lad
Age: 50 years, Occu.: Agricultural &
Vice President, Agriculture Produce Market
Committee, Kaij,
Tq. Kaij, Dist. Beed.
2. The State of Maharashtra,
Through Secretary,
Marketing Department
Maharashtra State, Mantralaya,
Mumbai-32.
3. District Deputy Registrar,
Cooperative Societies, Beed,
Tq. & Dist. Beed.
4. Administrator, Shri. R. M. Mote,
Assistant Registrar, Cooperative Societies,
Kaij, Tq. Kaij, Dist. Beed.

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Mr. N. B. Khandare, Advocate for the Applicants.
Mr. V. D. Salunke, Advocate for Respondent No.1.
Mr. A. R. Kale, AGP for Respondent Nos.2 to 4.

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**CORAM : R. D. DHANUKA &
S. G. MEHARE, JJ.**

DATED : 07th APRIL, 2022.

ORAL JUDGMENT (Per R. D. Dhanuka, J.):-

1. Rule. Rule is made returnable forthwith.
2. Mr. Kale, learned A.G.P. for respondent nos.1 to 3 waives notice. No reliefs are sought against respondent no.4 in this petition.
3. By this petition filed under Article 226 of the Constitution of India, the petitioner prayed for Writ of Certiorari for quashing and setting aside order dated 21.02.2022 passed by respondent no.2 under Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and

Regulation) Act, 1963 (hereinafter referred to as 'the Act, 1963').

4. It is the case of the petitioner that, the Committee consists of 18 members of respondent no.4 was elected. On 28.08.2017 two elected Directors made a complaint to respondent no.2-District Deputy Registrar against newly elected Managing Committee and requested to supersede the Managing Committee. The petitioner submitted explanation on the said complaint made by two elected Directors. It is the case of the petitioner that, District Deputy Registrar was satisfied with the said explanation and did not take any action.

5. The District Deputy Registrar issued a notice under Section 40 of the Act, 1963 on 10.10.2019 seeking explanation from the said Committee members. The Committee members filed their explanation in response to the said notice on 17.08.2021. Around 21.02.2022 the District Deputy Registrar passed an order thereby dissolving the existing Managing Committee headed by the petitioner and appointed Administrator on respondent no.4. It is the case of the petitioner that, on 28.02.2022, Administrator appointed by the State Government on 21.02.2022 itself served the said order on the Secretary of respondent no.4 and immediately took custody of the records of respondent no.4-APMC saying that he had taken over the charge.

6. On 14.03.2022 the petitioner had filed this Writ Petition for various reliefs.

7. Mr. Salunke, learned counsel for the petitioner invited our attention to some of the Exhibits annexed to the petition and would submit that, on the basis of the allegations in the complaint making stale allegations against the previous Committee by one of the political leader, the State Government passed an order superseding entire Committee of respondent no.4. Next submission of the learned counsel for the petitioner is that though the tenure of the said Committee of respondent no.4 had expired at the same time, the Administrator could not have taken the so called charge from the Secretary of the said Committee. He submits that, Administrator ought to have followed the procedure prescribed under the provisions of the Act, 1963 for taking charge and could not have collected papers/records from the Secretary of the said Committee. In support of these submissions, the learned counsel for the petitioner placed reliance on the judgment of the Division Bench of this Court in a case of **Babasaheb Apparao Akat and Others Vs. State of Maharashtra and Others** reported in 2010 (2) Bom. C.R. 578 and more particularly paragraph nos.6 and 9.

8. It is submitted that, the apprehension of the petitioner is that, since the State Government has superseded the Market Committee under Section

45(1) of the Act, 1963, the member of the erstwhile Committee would be deliberately disqualified and would be made ineligible to be re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee till the expiry of the period of six years from the date of order of their removal.

9. Mr. Kale, learned A.G.P. for the State on the other hand submits that, even if, the entire Committee is superseded under Section 45(1) of the Act, 1963, the Committee members would not be disqualified under Section 45(2)(a) of the Act, 1963. He submits that, only if an individual member of the Committee would have removed under Section 45(1) of the Act, 1963, only such member would have disqualified under Section 45(2)(a) and not entire Committee.

10. In so far as the issue raised by the learned counsel for the petitioner that Administrator could not have collected the record from the Secretary of the erstwhile Committee is concerned, the learned A.G.P. strongly placed reliance on Section 45(2)(a) and would urge that, since all the members of the Market Committee are deemed to have vacated their office, there is no question of handing over the charge separately by the members of the Committee. He submits that, in any event, the Administrator has already taken charge from the Secretary of the said Committee.

REASONS AND CONCLUSIONS:

11. It is not in dispute that, the tenure of the erstwhile Committee of respondent no.4 has come to an end. However, on the basis of the complaint made by political leader, the State Government has passed the impugned order thereby superseding the erstwhile Managing Committee of respondent no.4. The said order of supersession is impugned in this petition on various ground.

12. A perusal of Section 45(1) read with Section 2(a) of the said Act, 1963 makes it clear that, the said provisions provide for two eventualities. The power can be exercised by the State Government for supersession of the entire Committee or for removal of one or more members of the said Committee. It is thus clear beyond reasonable doubt that, if any member is removed out of the said Committee before expiry of the tenure of the Committee, vacancy having arisen out of removal of such member can be filled in by the Government as contemplated under Section 45(1) of the Act, 1963. Only such member who is removed from the Committee under Section 45(1) suffers disqualification under Section 45(2)(a) of the Act, 1963.

13. If the entire Committee is superseded under Section 45(1), the disqualification prescribed under Section 45(2)(a) will not apply to the entire Committee. In our view, the entire

Committee which is a body of Committee members cannot be considered as disqualified from contesting elections or from being re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee till the expiry of the a period of six years as prescribed under Section 45(2)(a) of the Act, 1963. In our view, the apprehension of the petitioner that, upon supersession of the Committee by the State Government under Section 45(1) would disqualify all the members of the Committee under Section 45(2)(a) has no merit. The learned A.G.P. also does not canvass that, if the Committee is superseded, all the members of the Committee would stand disqualified under Section 45(2)(a) of the Act, 1963.

14. In so far as the issue as to whether the charge is handed over to the Administrator by the Committee or not, Mr. Salunke, learned counsel for the petitioner strongly placed reliance on the judgment of the Division Bench of this Court in a case of **Babasaheb Apparao Akat and Others Vs. State of Maharashtra and Others** (supra). In paragraph no.6 of the said judgment this Court while interpreting Section 15-A of the Act, 1963 has held that, on expiry of the term of the Committee, in absence of extension of term, consequences under Section 15-A ought to follow. Indubitably, Section 15-A does not contemplate automatic cessation of the office of the members of the Committee whose

term has expired. It postulates that the Competent Authority is obliged to take recourse to the said provision and pass appropriate order.

15. It is held that, until such order is passed, in law, the actions of the Committee whose term has expired would still be valid and binding as if taken by duly elected Committee. The members of the Committee, shall, as from the date specified in the order, cease to hold and vacate their offices as members, by virtue of Section 15A(a)(a) of the said Act, 1963. In paragraph no.9 of the said judgment this Court rejected the argument advanced by learned Government Pleader that, the Administrator had taken charge of the Committee. It is held that, taking over charge of the office and affairs of the Committee is a matter of moment and a formal event which has to be completed by adhering to the process of formal taking over and handing over of the keys and records of the Committee. That procedure was not followed in the facts of that case. This Court accordingly held that, the charge in law still continued with the present Committee which was in office at the relevant time.

16. There is a dispute between the petitioner on one hand and respondent nos.1 to 3 on the other hand as to whether charge is handed over by the erstwhile Managing Committee to the Administrator or not. It is the case of the respondent no.3-

Administrator that, he has taken charge from the Secretary of erstwhile Committee of respondent no.4. On the other hand, it is the case of the petitioner that, even if, Administrator was appointed rightly, the Administrator ought to have called upon the erstwhile Committee to hand over the charge.

17. In our view, the principles laid down by the Division Bench of this Court in a case of **Babasaheb Apparao Akat and Others Vs. State of Maharashtra and Others** (supra) would apply to the facts of this case. We are not inclined to accept the submissions of the learned A.G.P. that in view of the supersession of the Committee under Section 45(1) of the Act, 1963, more particularly 45(2)(a), upon supersession of the Market Committee, since from the date of such order the members of the Market Committee shall be deemed to have vacated their office, charge is deemed to have been automatically handed over to the Administrator or to the new Committee.

18. In our view, even if, the entire Committee is superseded by the State Government under Section 45(1) of the Act, 1963, though upon supersession of the Market Committee, all the members of the market Committee shall be deemed to have vacated their office cannot be construed to mean that, the charge held by the Committee prior to the date of supersession is deemed to have been handed over to

the Administrator or to the new Committee. The Administrator thus would not have taken charge without following the requisite procedure under the provisions of the said Act, 1963.

19. Be that as it may, in view of the fact that, the tenure of the erstwhile Committee of respondent no.4 has to come to an end and the respondent nos.1 to 3 have proposed to hold fresh election in near future, we direct the erstwhile Committee of respondent no.4 to hand over the charge of the management as well as all the records of respondent no.4 to the Administrator within one week from today.

20. In view of the fact that, the tenure of the erstwhile Committee has come to an end and fresh election is proposed to be held, we do not propose to go into the merits of the order passed by the State Government superseding the market Committee under Section 45(1) of the Act, 1963 as the same is academic.

21. Since the learned counsel for the petitioner on instructions states that, the charge will be handed over to the Administrator by his client on behalf of himself and all the Committee members of the erstwhile Committee of respondent no.4, we direct respondent no.3-Administrator to remain present in the office of the respondent no.4 Committee with documents which were handed over by

the Secretary of respondent no.4 on 12.04.2022. We direct the Committee members of erstwhile Committee of respondent no.4 through the petitioner herein to collect those documents from the Administrator and at the same time hand over those documents and charge to the Administrator on the same day.

22. It is made clear that, if the Administrator hands over those documents collected from the Secretary of respondent no.4 to the petitioner herein, petitioner for himself and on behalf of the other Committee members, on the appointed date, shall hand over the documents and charge to the Administrator as directed in the earlier paragraph of the order immediately.

23. Writ Petition is allowed in the aforesaid terms.

24. Rule is made absolute accordingly. No Order as to costs. In view of disposal of Writ Petition, Civil Application No.4146/2022 does not survive and is accordingly disposed of.

25. Parties to act on authenticate copy of this order.

(S. G. MEHARE)
JUDGE

(R. D. DHANUKA)
JUDGE