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

30 WRIT PETITION NO.10642 OF 2022

MOHAMMAD IQBAL NISARHUSEN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS
….
Mr P. R. Nangare, Advocate for petitioner;
Mr P. K. Lakhotiya, A.G.P. for respondents/State

**CORAM : RAVINDRA V. GHUGE
AND
SANJAY A. DESHMUKH, JJ.**

DATE : 9th November, 2022

PER COURT:

1. Respondent No.4 is a formal party. No relief is sought against Respondent No.4.

2. A peculiar cause of action has been brought before us by the petitioner. He had approached the Divisional Joint Registrar, Nashik under Section 41A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short ‘the 1963 Act’), for challenging his dismissal from service, pursuant to the departmental enquiry, on 19/09/2018. Vide order dated 21/03/2022, respondent No.3 concluded that the said authority does not have the jurisdiction under Section 41A and it

would be respondent No.2 / Director of Marketing, Maharashtra State, Pune, who is empowered to exercise jurisdiction under Rule 104 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short 'the 1967 Rules'). Respondent No.3 declared that the petition was not maintainable under Section 41A of the 1963 Act.

3. Considering the Rules 102, 103 and 104 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967, the petitioner approached respondent No.2 by preferring Appeal No.25/2022. By an order dated 14/06/2022, respondent No.2 held that the powers under Rule 104 were delegated to respondent No.3 by the Government Notification dated 05/09/1981 and refused to entertain the appeal. Vide order dated 26/08/2022, respondent No.3 declined to consider the said appeal on the ground that, he had already dealt with the said appeal under Section 41A and respondent No.2 can considered the said appeal under Rule 104.

4. We have considered the submissions of the learned Advocate for the petitioner and the learned A.G.P. on behalf of the respondents.

5. Section 41A of the 1963 Act reads as under :-

“[41A. Powers of the Director to prohibit execution of resolution passed or order made by Committee, etc.

(1) The Director may, on his own motion, or on report or complaint received by him, by order, prohibit the execution of a resolution passed or order made by the Committee or its Chairman or Vice-Chairman or any of its officer or servants of the Market Committee, if he is of the opinion that such resolution or order is prejudicial to the public interest or is likely to hinder efficient running of the business in any market area, principal market yard or sub-market yard or is against the provision of this Act or the rules or bye-laws made thereunder.

(2) Where the execution or further execution of a resolution or order is prohibited by an order made under sub-section (1) and continuing in force, it shall be the duty of the Committee, if so required by the Director, to take any action which the Market Committee would have been entitled to take, if the resolution or order had never been passed or made and which is necessary for preventing the Chairman or Vice-Chairman or any of its officers or servants from doing or continuing to do anything under such resolution or order.]”

6. Rule 104 of the 1967 Rules reads as under :-

“104. Appeal.

(1) Any person aggrieved by an order imposing any of the penalties referred to in rule 102 may, subject to the provisions of this rule, appeal to Director; and any such person aggrieved by the order of the Director may appeal to the State Government.

(2) No appeal shall except for sufficient cause, be entertained after the expiry of 30 days from the date of communication in writing of the order which is appealed against.

(3) Every appeal shall be made in the form of a petition in writing, and shall unless the appellate authority otherwise directs, be presented in person or sent by post.”

7. Considering the language used in both the provisions reproduced above, it is apparent that Section 41A pertains to the powers of the Director to prohibit the execution and operation of a resolution passed or an order made by a Committee. In the instant case, the petitioner has been chargesheeted vide the chargesheet dated 06/04/2018. Since allegations were levelled against him, a departmental enquiry was conducted and after issuing a show cause notice, on 11/09/2018, proposing the punishment of dismissal from service, the petitioner was dismissed from service by way of a punishment vide order dated 19/09/2018. A day prior thereto, the petitioner had approached the Labour Court, Ahmednagar, by preferring Complaint (ULP) No. 18/2018. The Labour Court had granted ex-parte ad interim protection, restraining the employer from issuing an order of punishment. Before the said order could be served upon the employer, the

petitioner was dismissed from service on 19/09/2018. Subsequently, he had withdrawn the said Complaint.

8. Be that as it may, the controversy before us is, as to whether the authority exercising powers under Rule 104, could deal with the case of the petitioner. The petitioner contends that, he does not desire to approach the Labour Court for challenging his dismissal from service. Rule 104 indicates entertaining an appeal filed by a person aggrieved by an order imposing any of the penalties referred to in Rule 102 of the 1967 Rules. Rule 102 enlists the following penalties :-

"*102 Penalties.*

The following penalties may, for good and sufficient reasons, be imposed upon any officer or servant of a Market Committee, namely,-

(i) censure,

(ii) withholding of increments or promotions including stoppage at an efficiency bar,

(iii) reduction to a lower post or a time-scale or to a lower stage in a time-scale,

(iv) recovery from pay of the whole or part of any pecuniary loss caused to Market Committee by negligence or breach of orders,

(v) suspension,

(vi) removal from the service of the Market Committee which does not disqualify him from future employment, or

(vii) dismissal from the service of the Market Committee which ordinarily disqualifies him from future employment.

(viii) Withdrawal of privileges, if any."

9. Under Rule 103 of the 1967 Rules, an order of dismissal, removal or reduction in rank, can be passed. It would be apposite to reproduce Rule 103 hereunder :-

"103. Order of dismissal, removal or reduction.

(1) No person who is in the service of a Market Committee shall be dismissed, removed or reduced in rank except by an order made in that behalf, and except after an inquiry in which he has been informed in writing of the charges against him and opportunity of being heard in respect of those charges is given, and where it is proposed, after such inquiry to impose on him any such penalty until he has been given a reasonable opportunity of making representation on the penalty proposed, but only on the evidence adduced during such inquiry, and resolution recommending the penalty proposed has been passed by the Market Committee by two thirds majority of the members of the Market Committee:

Provided that, this rule shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on criminal charge; or
(b) where the Market Committee is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold such inquiry.

(2) If in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in sub-rule (1), the decision of the Market Committee, subject to the decision of the Director in appeal, shall be final."

10. In view of the above and considering the law laid down in **Agricultural Produce Market Committee, Pathardi Vs. Rohidas Dadasaheb Gite**, in Writ Petition No.1759/2012, decided on 25/07/2013, we are of the view that, it would be appropriate for respondent No.2 to exercise powers under Rule 104.

11. The learned A.G.P. points out that, respondent No.2 declined to exercise his powers under Rule 104, for the reason that the State Government, vide Notification dated 05/09/1981, has delegated the powers to respondent No.3 to entertain an appeal under Rule 104.

12. In the light of the submissions of the learned A.G.P., we called upon him to point out, as to whether the the 1963 Act or the 1967 Rules enable respondent No.2 or the State to delegate the powers vested in respondent No.2 to deal with the appeals under Rule 104, to respondent No.3. Since no such provision was pointed out before us and as respondent No.3 has sated in the impugned order dated 26/08/2022, that the said authority had already dealt with the matter of the petitioner under Section 41A of the 1963 Act, it would be inappropriate on the part of the said authority to consider the same issue under Rule 104.

13. This petition stands allowed. Respondent No.2 shall decide the appeal of the petitioner bearing Appeal No.25/2022, dated 06/06/2022, on it's own merits, by following the due procedure laid down in law. Respondent No.2 would issue notices for hearing, to the petitioner as well as the contesting respondents and decide the said appeal after granting an adequate opportunity of hearing to all the contesting parties.

(SANJAY A. DESHMUKH, J.) **(RAVINDRA V. GHUGE, J.)**

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