IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.312 OF 2022

. Agricultural Produce Market Committee
Chalisgaon, Tq.Chalisgaon, Dist.Jalgaon,
Through its I/c. Secretary,
Satish Raje Sambhaji Patil,
Age: 35, Occu.: Service. ..Petitioner

VERSUS

1. The State of Maharashtra
Through its Principal Secretary,
Co-operation, Textile & Marketing
Department, Mantralaya,
Mumbai -32.

2. The Director of Marketing,
Maharashtra State, Pune.

3. The Joint Registrar,
Co-operative Societies,
Nashik Division, Nashik.

4. Jagdish Raghunath Londhe
Age: 41 years, Occu.: Service
(Now terminated)
R/o. Pimpalwad Nikumbh,
Post.Malshevage, Tq.Chalisgaon,
Dist.Jalgaon. ..Respondents

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Advocate for Petitioner : Shri Umesh Gite h/f. Shri M.S.Deshmukh
AGP for Respondent Nos.1 to 3 : Shri S.N.Morampalle
Advocate for Respondent No.4 : Shri P.B.Shirsath

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CORAM : M.G.SEWLIKAR, J.

RESERVED ON : 4th August, 2022
PRONOUNCED ON : 22nd August, 2022

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of

the parties, petition is taken up for hearing for final disposal at the admission stage.

2. Petitioner is an Agricultural Produce Market Committee (APMC), Chalisgaon, constituted as per the provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963.

3. Facts in nutshell are that respondent No.4 was recruited as Secretary of the petitioner APMC vide order dated 2nd January, 2016. Respondent No.4 indulged in misconduct and committed grave illegalities. Therefore, petitioner issued show cause notice dated 31st March, 2018 and sought explanation of respondent No.4. The charges levelled against respondent No.4 are (i) in regards to the non-renewal of weight scale and illegal recovery of fines, (ii) without permission of the Chairman and Directors, withdrawal of amount of Rs.1,12,368/- towards difference in pay scale, (iii) recovery of fines for the weight scale from the pocket of respondent No.4, (iv) deficiencies in the Audit Report for the year 2014-2015 and 2015-2016, which were conducted during his tenure and those deficiencies were not removed on time and exhibited negligence in his duties. Respondent No.4 tendered reply which was found unsatisfactory and therefore, respondent No.4 was placed under suspension vide order dated 16th April,

2018.

4. According to the petitioner, the charges levelled against respondent no.4 are serious. Therefore, petitioner decided to hold departmental enquiry against respondent No.4. Accordingly, on 27th April, 2018, charge-sheet was served on respondent No.4 and twelve charges were levelled against him. Respondent No.4 filed reply dated 4th May, 2018 vide which he denied the charges. Petitioner appointed Enquiry Officer vide order dated 30th May, 2018.

5. Enquiry Officer conducted enquiry in free and fair manner by following principles of natural justice. Respondent No.4 was given opportunity to cross-examine the witnesses and was also given opportunity to lead the evidence. The petitioner APMC was represented by its employee. Respondent No.4 represented himself before the Enquiry Officer. Enquiry Officer found that charges at Sr. Nos.1 to 6 and 9 were proved. Accordingly, Enquiry Officer submitted his report on 31st July, 2018. Respondent No.4 was served with the copy of the enquiry report on 6th August, 2018. Respondent No.4 was called upon to give his explanation. Respondent No.4 tendered his explanation on 20th August, 2018. According to the petitioner, charges against respondent No.4 were serious and therefore, petitioner decided

to terminate the services of respondent No.4. Accordingly, his services were terminated by order dated 1st September, 2018.

6. Being aggrieved by the said order, respondent No.4 preferred appeal bearing No.111 of 2018 before the learned Divisional Joint Registrar, Co-operative Societies, Nashik. The learned Joint Registrar, respondent No.3, found that the enquiry was conducted in free and fair manner. Principles of natural justice were followed and respondent No.4 was given opportunity to cross-examine the witnesses. Respondent No.3 by its Judgment and order dated 13th May, 2019 was pleased to reject the appeal filed by respondent No.4.

7. Respondent No.4, being aggrieved by the order dated 13th May, 2019, preferred appeal before the Hon’ble Minister, Co-operation, Textile and Marketing Department, Maharashtra State, Mumbai. The Hon’ble Minister was pleased to allow the appeal by his Judgment and order dated 14th October, 2021 and thereby quashed and set aside the order passed by the Enquiry Officer and confirmed by respondent No.3. This order is impugned in this writ petition.

8. Respondent No.4 filed affidavit-in-reply. He denied all the charges levelled against him. According to respondent No.4, the

Enquiry Officer appointed by the petitioner was an Advocate, who conducted the enquiry and submitted the report. During the pendency of the enquiry, respondent No.4 made a specific request for engaging an Advocate to represent him. The Enquiry Officer refused his request. The Enquiry Officer hurriedly finished the enquiry and submitted report on 31st July, 2018. According to him, the petitioner did not obtain approval from the Director of Marketing before issuing the order of termination. This act is in violation of Clause-5 of the Circular dated 7th January, 2013 as well as Rule 100(6) of the Rules, 1967. It is further alleged that witness Prashant Dilip Magar, who is Cashier of Market Committee has clearly admitted that his pay fixation was placed before him and it was verified by him. After his verification, amount of Rs.1,12,368/- was withdrawn by him by cheque under the signature of the Chairman of APMC. According to him, the charge was that he had taken this amount towards difference of his pay and was not that the said amount was misappropriated by him. On 13th April, 2018, the APMC directed him to deposit the amount of Rs.1,12,368/- and accordingly, on 19th April, 2018, the same was deposited by him with the APMC.

9. It is further alleged in the affidavit-in-reply that witness Prashant Bhaskar Pawar has admitted in his cross-examination that there were weight of only one ton available with the Market

Committee and in the monthly meeting dated 27th January, 2017, amount of Rs.44,000/- towards fine was deposited by respondent No.4 in person. The Chairman of the APMC had admitted his guilt and showed readiness to deposit the amount of fine by letter dated 7th January, 2017. According to him, the Audit Report was for the period of 2014-2015, which pertains to the period before his joining. When he got knowledge of deficiencies in the Audit Report, he corrected those deficiencies. No financial loss was caused to the petitioner APMC by his actions.

10. The petitioner APMC filed its re-joinder and repeated all the allegations as have been made in the writ petition.

11. I have heard Shri M.S.Deshmukh, learned counsel for the petitioner, Shri S.N.Morampalle, learned AGP for respondent Nos.1 to 3 and Shri P.B.Shirsath, learned counsel for respondent No.4.

12. Shri Deshmukh, learned counsel for the petitioner submits that the Hon'ble Minister has come to a wrong conclusion that the principles of natural justice have not been followed. He submitted that according to the Hon'ble Minister, since the Enquiry Officer was an Advocate, services of an Advocate ought to have been made available to respondent No.4. According to

the Hon’ble Minister, denial of service of Advocate to respondent No.4 amounts to violation of principles of natural justice. He submits that these observations of the Hon’ble Minister are incorrect. According to him, Rule 26 of the Agricultural Produce Purchase and Sale (Regularization) Act provides that it is the discretion of the Enquiry Officer to permit the legal assistance to the delinquent. He submits that Rule 26 provides that without permission of the Enquiry Officer, legal assistance cannot be made available to the delinquent. In the case at hand, legal assistance was not provided by the Enquiry Officer. Presenting Officer was a Junior Clerk. Therefore, there was no question of making legal assistance available to the delinquent.

13. Learned counsel for the petitioner further submitted that sanction was not necessary to be obtained from Director of Marketing, Pune. He submitted that the Rules do not require termination of respondent No.4 without prior permission of the Director of Marketing. He submitted that there is only a Circular to that effect and the Circular cannot override the Rules. According to the learned counsel for the petitioner, principles of natural justice were followed. Respondent No.4 was permitted to cross-examine the witnesses and he was also permitted to lead the evidence. He submitted that the Hon’ble Minister decided the appeal on the basis of the material which was not pleaded in

the appeal. He placed reliance on the case of *Hindustan Unilever Limited Vs. Prashant Pralhadrao Nayse [2019 (4) Mh.L.J. 173]* for the proposition that when Rules do not provide for representation by an Advocate or Lawyer, delinquent cannot seek assistance of Lawyer as of right. He submits that there is no absolute right of being represented by a Lawyer except recognized by the Rules. He submitted that the delinquent cannot seek representation by an Advocate unless Rules specifically confer such a right. He submitted that, therefore, the order of the learned Minister is contrary to law and needs to be set aside. He also placed reliance on the case of *Maharashtra State Market Committees' Co-operative Federation Ltd., Pune Vs. The State of Maharashtra and Others [Writ Petition No.7720 of 2013, decided on 21st October, 2013]*. He placed reliance on paragraph No.9 in which it is held thus:

> *"9. We have already quoted Sub-section (1) of Section 35 of the said Act. Sub-section (1) of Section 35 of the said Act empowers the Market Committees to employ its own staff. The second proviso provides that the second Respondent Board shall prepare a list of the persons to be appointed as Secretaries and it shall be binding on the Market Committees to appoint a person as its Secretary from the list of persons prepared by the second Respondent. Thus, the plain reading of Sub-section (1) of Section 35 of the said Act shows that the power to appoint a Secretary vests in the concerned Market Committee. Only restriction on the power*

to appoint Secretary is that the Market Committee will have to choose one of the candidates from the list prepared by the 2nd Respondent Board."

14. He submitted that since the petitioner APMC is the appointing authority, no sanction of the Director of Marketing is needed.

15. Shri Shirsath, learned counsel for respondent No.4 submitted that petitioner had engaged an Advocate as an Enquiry Officer. Therefore, legal assistance ought to have been given to respondent No.4. He further submitted that charges levelled against respondent No.4 are twelve in number. However, in the show cause notice, only nine charges were levelled against respondent No.4. He submitted that the charges, which were not levelled against respondent No.4 in the show cause notice, have been added in the charge-sheet. He further submitted that respondent No.4 had legally withdrawn the money. It was arrears of pay fixation. He submitted that in the cross-examination witness has admitted that he had verified the bill and the cheque was signed by the Chairman. He submitted that when the bill was verified by the witness, who is an Accounts Officer, the question of misappropriation does not arise. He had legally withdrawn the said amount. He further submitted that respondent No.4 was asked to deposit the entire amount of

Rs.1,12,368/- and accordingly he deposited the amount. Therefore, there was no question of misappropriation. According to the learned counsel for respondent No.4, respondent No.4 was directed to deposit the amount on account of the dispute of weight scale. He had deposited the said amount. Thus, he was penalized for the alleged misconduct on account of weight scale. However, in the charge-sheet, he is again charged for the same offence. He submitted that three charges are not proved. The Enquiry Officer has not given reasons for his conclusion that the charges are not proved. He has only mentioned that the charge is not proved. He further submitted that principles of natural justice have not been followed. He further submitted that respondent No.4 is an empanelled Secretary, therefore, as per the Circular of the Government, sanction of Director of Marketing was required. Since the sanction was not obtained, termination is bad in law. He further submitted that the termination was not in accordance with Rules. Some of the members of the Committee had not approved the termination of respondent No.4. Even then the decision to terminate respondent No.4 was taken which is grossly in violation of the Rules. He submitted that therefore, the order of the Hon'ble Minister is correct and no interference is warranted.

16. I have given anxious consideration to the submissions of the learned counsel of both sides.

17. Charges against respondent No.4 were thus:

(i) Respondent No.4 did not work in accordance with Rule 106 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and the Rules, 1967.

(ii) Respondent No.4 did not inspect electronic weight scale within the time limit on account of which APMC was fined.

(iii) Since respondent No.4 did not carry out repairs of electronic weight scale, the electronic weight scale broke down on account of which the agriculturists had resorted to protest. News in that regard was flashed in the newspapers, which damaged the image of the APMC.

(iv) On 27th February, 2018, respondent No.4 withdrew amount of Rs.1,12,368/- by cheque by misguiding the Chairman of the APMC and the Administration and without obtaining prior permission of Managing Committee this amount was deposited on 19th April, 2018 because of which he lost confidence of the APMC.

(v) Respondent No.4 did not remove objections raised in the Audit Report within the prescribed period.

(vi) Respondent No.4 made changes in financial statements and did not keep the accounts on time and did not submit all the statements punctually.

(vii) On 31st March, 2017 at 06:38 p.m., respondent No.4 collected some documents and the file of pink colour and had carried it in yellow bag. He had misplaced the documents which could have been used against him as evidence.

(viii) Respondent No.4 does not place reports and the notes on time in regard to various subjects, on account of which APMC could not take decision on time.

18. Except charge of misappropriation, none of the other charges are so serious as to entail punishment of dismissal from service.

19. So far as charge of misappropriation is concerned, the charge does not indicate that respondent No.4 was not entitled to this amount. The charge also does not show that this amount was not legally due to respondent No.4 and even then he withdrew this amount. The charge is that he withdrew this amount by misguiding the Chairman and the Administration and without obtaining prior permission of the Managing Committee. This charge is as vague as it could be. When the charge is vague, enquiry gets vitiated on that count only. From the charge, it cannot be made out that respondent No.4 has been charged with misappropriation. The charge indicates that respondent

No.4 has committed procedural irregularities. As indicated earlier, it is not the case of the petitioner APMC that respondent No.4 was not legally entitled to withdraw this amount. If he had not been legally entitled to withdraw the amount and still he had withdrawn the amount, it could have been said that it was a case of misappropriation. However, the charge indicates that respondent No.4 did not obtain prior permission for withdrawing this amount. Therefore, it cannot be said that respondent No.4 has committed misappropriation. Even if it is held that charge of withdrawing the amount without permission is proved, punishment of termination is grossly disproportionate.

20. Another charge is about the fine, which was required to be paid by the petitioner APMC for want of inspection of electronic weight scale by respondent No.4. It is pertinent to note that respondent No.4 was asked to deposit fine amount of Rs.44,000/- and he did deposit that amount. So far as the alleged misconduct is concerned, respondent No.4 was already penalized by directing him to pay the amount of fine. For the same misconduct, he cannot be punished twice. Therefore, learned counsel for respondent No.4 is right in submitting that respondent No.4 has been penalized twice for the same misconduct.

21. It is pertinent to note that petitioner APMC engaged a

Lawyer as Enquiry Officer. Thus, the petitioner APMC hired the services of an expert, who has legally trained mind. Naturally, respondent No.4 also ought to have been permitted to engage a Lawyer. It is well settled that justice should not only be done but should appear to have been done. It is correct that Rule provides discretion to the Enquiry Officer whether to grant legal assistance to the delinquent. But the exercise of discretion should be judicious and not capricious. When the petitioner APMC has availed services of Lawyer as Enquiry Officer, who is expert in the field, it is in-comprehensible as to why the services of Lawyer were denied to respondent No.4. Therefore, principles of natural justice were violated. In the case of *Hindustan Unilever Ltd.* (supra), this Court held thus;

> “9. A perusal of the aforesaid clauses of the Model Standing Orders and the agreement, would show that it is nowhere provided that a delinquent employee would be entitled to be represented by an advocate/lawyer. In fact, it is specifically provided that the delinquent employee would be represented by a co-employee from the very unit in which he/she is working. The Hon'ble Supreme Court in the case of Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi (supra) after discussing the question of delinquent employee being represented by a legal practitioner, has held that there is no absolute right of being represented except as such recognized by standing orders. The Hon'ble Supreme Court has held in the aforesaid judgment

specifically in para 17, as follows:-

> "*17. It is, therefore, clear from the above case-law that the right to be represented through counsel or agent can be restricted, controlled or regulated by statute, rules, regulations or Standing Orders. A delinquent has no right to be represented through counsel or agent unless the law KHUNTE specifically confers such a right. The requirement of the rule of natural justice insofar as the delinquent's right of hearing is concerned, cannot and does not extend to a right to be represented through counsel or agent. In the instant case the delinquent's right of representation was regulated by the Standing Orders which permitted a clerk or a workman working with him in the same department to represent him and this right stood expanded on Sections 21 and 22 (ii) permitting representation through an officer, staff-member or a member of the union, albeit on being authorised by the State Government. The object and purpose of such provisions is to ensure that the domestic enquiry is completed with despatch and is not prolonged endlessly. Secondly, when the person defending the delinquent is from the department or establishment in which the delinquent is working he would be well conversant with the working of that department and the relevant rules and would, therefore, be able to render satisfactory service to the delinquent. Thirdly, not only would the entire proceedings be completed quickly but also inexpensively. It is, therefore, not correct to contend that the Standing Order or Section 22(ii) of the Act conflicts with the principles of natural justice.*"

22. Undoubtedly, it is not an absolute right of the delinquent to be represented by a Lawyer. Rules also confer discretion on the Enquiry Officer whether to grant legal assistance to the delinquent. However, the petitioner APMC thought it necessary to engage the services of a Lawyer as Enquiry Officer. This does go to show that the petitioner APMC was of the opinion that the charges were serious and those could be dealt with by an Advocate. When the charges are serious, naturally engagement of a Lawyer for representing the delinquent becomes absolutely essential. Therefore, principles of natural justice were violated, which vitiates the enquiry.

23. Moreover, appointment of Enquiry Officer is also not in accordance with the Rules. Rule 26 of the Agricultural Produce Purchase and Sale (Regularization) Act provides that for holding enquiry APMC can appoint Chairman, Vice Chairman or any member of the APMC as an Enquiry Officer. It further provides that without prior permission of the Enquiry Officer, the delinquent would not be entitled to engage the services of a Lawyer. Thus, the Rules provide that Enquiry Officer can be a Chairman, Vice Chairman or any member of the APMC. However, the petitioner APMC engaged services of a Lawyer for holding enquiry. The Rules do not provide that an outsider can be appointed as Enquiry Officer. Thus, the appointment of the

Enquiry Officer is itself against the Rules and therefore, the enquiry on this ground also gets vitiated.

24. Thus, for the reasons discussed above, even on merits, petitioner APMC has no case. Principles of natural justice have been violated. Appointment of Enquiry Officer is against the Rules. Therefore, I do not find that the Hon'ble Minister committed any error in passing the impugned order. Petition is, therefore, devoid of any substance. Hence, it is dismissed. No order as to costs.

25. Rule is discharged.

(**M.G.SEWLIKAR**)
JUDGE

Later on:-

26. Shri Umesh Gite, learned counsel holding for Shri Mahesh Deshmukh, learned counsel for the petitioner submits that interim relief was operating till the decision of this petition. He requests for extension of interim relief for a period of two weeks.

I do not find any substance in this submission. Request is rejected.

(**M.G.SEWLIKAR**)
JUDGE

SPT