IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11218 OF 2019

Mumbai Agricultural Produce
Market Committee, Mumbai ..Petitioner
Versus
The Director of Marketing,
Authority constituted under
APMC Act & Anr. ..Respondents

Mr. N. N. Bhadrashete, for the Petitioner.
Mr. A. P. Vanarase, AGP for the Respondent No.1.
Mr. Atul Damle, Senior Advocate a/w Bernardo Reis i/by Viraj Kandpile, for the Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 24th AUGUST, 2022

P.C.

1. The order impugned is dated 2nd May, 2019 passed by respondent/Director of Marketing in exercise of powers under Section 52B of the Maharashtra Agricultural Produce Marketing (Development & Regulation) Act, 1963 (hereinafter referred as “the said Act” for the sake of brevity).

2. Vide order impugned, the Director of Marketing has issued directions to the petitioner to act in accordance with the provisions of clause 56 of the agreement dated 30th November, 2012. While issuing such directions, the

order of APMC passed on 7th September, 2018 came to be set aside which was subject matter of appeal under Section 52B of the said Act at the behest of respondent/contractor. The respondent/contractor has entered into an agreement dated 30th November, 2012 for the purpose of development of certain structure at the behest of petitioner APMC. Clause 56 of the said agreement provides for arbitration.

3. The respondent/contractor as such approached the petitioner with a request for appointment of arbitrator claiming about existence of dispute in the matter of implementation of the aforesaid agreement.

4. Such prayer was rejected by the petitioner vide order dated 7th September, 2018, which has led to filing of the appeal.

5. The contentions of Mr. N. N. Bhadrashete, counsel appearing for the petitioner are, order impugned goes contrary to the very scheme and object of Section 52B of the Act. So as to substantiate his contentions, he would invite attention of this Court to the recitals in the Agreement dated 30th November, 2012 entered into between the petitioner and the respondent/contractor, so also the nature of communication issued by respondent based on the same and the communication of the

petitioner dated 7th September, 2018. According to him, the communication is based on the claim put forth by the respondent in the matter of implementation of the terms of the agreement referred above and as such, the appeal itself was not maintainable, as the order passed on 7th September, 2018 by the APMC which was questioned in appeal is not arising out of exercise of powers under the Act. He would further urge that even otherwise the Director of Marketing, who is respondent herein has exceeded his jurisdiction by issuing directions to petitioner to act in accordance with clause 56 of the agreement dated 30th November, 2012, as no such power/jurisdiction is vested in the respondent No.1.

6. While countering aforesaid submissions, Mr. Atul Damle, learned senior counsel appearing for respondent No.2 would strenuously oppose the aforesaid contentions. He would urge that the execution of the agreement *inter se* between the petitioner and respondent No.2 pursuant to the approval of respondent No.1 on 30th November, 2012 is not disputed fact. He would further urge that clause 56 of the agreement provides for arbitration in case of existence of any dispute. In such an eventuality, the respondent is left with option of requesting the petitioner to appoint an arbitrator in terms of provisions of clause 56 or in alternate to take recourse to the provisions of Section 11 of the

Arbitration Act. He would further urge that the prayer of the respondent for appointment of arbitrator was turned down vide order dated 7th September, 2018. Such order was passed by the APMC, who are required to conduct themselves in accordance with the above referred regulations and that being so, the remedy of appeal under Section 52B of the Act was very much available. His further contentions are, in view of pendency of appeal, the proceedings taken out by the respondent No.2 under Section 11 of the Arbitration Act were already withdrawn. As such, respondent will be remediless, in case, if the petition is allowed.

7. Learned AGP would support the order impugned and supports the argument of Mr. Atul Damle so as to justify the order impugned.

8. I have appreciated the submissions.

9. The nature of agreement dated 30th November, 2012 *inter se* between the petitioner and respondent No.2, even if is pursuant to the approval of respondent No.1/Director of Marketing, the fact remains that the same cannot be said to be strictly in express exercise of powers under the Act. The said agreement speak of contractual relationship. Existence of arbitration clause in the said agreement is not a fact in dispute.

10. This Court is required to consider whether in the aforesaid background, on refusal of the petitioner to appoint arbitrator, whether Director of Marketing is empowered under Section 52B of the Act to issue mandatory directions to the petitioner to act in accordance with clause 56 of the agreement.

11. If this Court appreciates rival submissions on the aforesaid issue, what can be noticed is, in case, if a party to an arbitration agreement fails to appoint an arbitrator, remedy is provided under the Arbitration Act. The provisions of Section 52B of the said Act, which provides an appeal before the respondent No.1 in relation to orders passed under the Act. Hence, respondent No.1 cannot be said to be clothed with powers to pass orders in contractual matters like one in the present case for issuance of positive directions against the petitioner to act in accordance with particular recitals or conditions of the contract when the claim is arising out of contractual obligation. Such issue needs adjudication in accordance with law.

12. Once there exist special statute which provides for remedy to the petitioner, in my opinion, it cannot be said that the respondent No.1 in exercise of appellate power under Section 52B of the said Act is empowered to issue directions to give effect to certain provisions of

contract.

13. In the backdrop of aforesaid observations, the order impugned is not sustainable. As such, the order impugned dated 2nd May, 2019 passed by the respondent No.1 is hereby quashed and set aside.

14. However, this will not preclude the respondent No.2 from taking recourse to such proceedings as are permissible and available in law for redressal of his grievance in the matter of right accruing out of the contract in question.

[NITIN W. SAMBRE, J.]