

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

WRIT PETITION NO. 3419/2022

Ajay s/o. Madhukarrao Patil, aged 68
years, Occ. Service, R/o. Tawlar, Tq.
Achalpur, Dist. Amravati.

... **PETITIONER**

VERSUS

1. State of Maharashtra, through its Secretary, Department of Co-operation, Mantralaya, Mumbai – 400032.
2. Maharashtra State Agricultural Marketing Federation, Pune through its Chairman, Plot No.R-7, Market Yard, Gultekadi, Pune-411037.
3. District Deputy Registrar, Office at Sahkar Sankul, Kanta Nagar, Amravati-444605.
4. Agriculture Produce Marketing Committee, through its Secretary, Paratwada, Tq. Achalpur, Dist. Amravati-444001.

5. Agriculture Produce Marketing Committee, Paratwada, Tq. Achalpur, Dist. Amravati-444001, through its Administrator and Assistant Registrar, Co-operative Societies, Chandur Bazar, Tq. Chandur Bazar, Dist. Amravati. **(amendment carried as per Court's order dt. 28.11.2022.)**

... **RESPONDENTS**

Mr. S.S. Shingne, Advocate for petitioner.
 Ms. T.H. Khan, AGP for respondent Nos. 1 & 3.
 Mr. A.P. Kalmegh, Advocate for respondent No.2
 Mr. R.G. Kavimandan, Advocate h/f Mr. C.A Babrekar,
 Advocate for respondent Nos. 4 & 5.

<u>CORAM</u>	: <u>VINAY JOSHI, J.</u>
<u>RESERVING THE JUDGMENT ON</u>	: <u>20.12.2022</u>
<u>PRONOUNCING THE JUDGMENT ON</u>	: <u>22.12.2022</u>

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.
3. The challenge in this petition is to the order dated 20.05.2022 passed by respondent No. 3, District Deputy Registrar ('DDR') in terms of Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ('the Act

of 1963') disqualifying the petitioner for the period of six years, from being re-elected, re-appointed, re-nominated, co-opted or re-co-opted as a member of the Committee. The petitioner was disqualified on account of abuse of his powers as a Chairman of the marketing Committee.

4. The facts in brief are that, the petitioner was elected as a member of respondent No. 4, Agricultural Produce Marketing Committee ('APMC') in the election held on 22.08.2015 and was acting as a Chairman of the Committee. The Term of the Committee came to an end on 22.08.2022, on which Administrator was appointed. The entire controversy revolves around the petitioner's entering into compromise and withdrawal of the Regular Civil Appeal No. 106/2016 in the capacity of Chairman of the Marketing Committee.

5. One Agrawal family was the owner of Nazul Plot No. 10/2, Sheet No. 25 admeasuring 25047 sq. ft. The said land was abutting to the land of APMC. Preliminary notification for acquiring said land was issued, however no further steps were taken. The owner of land Smt. Agrawal has filed Regular Civil Suit No. 261/1970 claiming her rights over the land, stating that the land was not acquired. The said suit was disposed without contest.

6. On such background, on 04.12.2003, Smt. Agrawal has filed another civil suit bearing RCS No. 156/2003 against the APMC for the relief of perpetual injunction. She has claimed that though the subject land was not acquired, APMC was raising construction. The said suit was contested by APMC inter alia claiming rights over the subject land by denying the title of plaintiff (Smt. Agrawal). The parties led evidence, on which the Civil Court held that the plaintiff was the owner and possessor of subject land and as there was alleged obstruction, passed a decree of perpetual injunction dated 25.04.2016.

7. Being aggrieved by said judgment and decree, APMC has preferred appeal on 21.06.2016. During pendency of appeal, the petitioner in the capacity of Chairman of the APMC, has entered into agreement with owner Smt. Shantabai Agrawal accepting her claim of ownership and possession of subject plot. Moreover, the petitioner conceded that APMC has no right of whatsoever nature over subject land, and they would not construct and obstruct the subject land. In continuation, the petitioner filed a pursis in the pending appeal along with agreement and withdrew the appeal.

8. One news item was published in the daily news paper "Lokmat" dated 08.02.2022 under caption "Bhukhanda Ghotala". On that basis, respondent No. 3, DDR in exercise of powers under Section

40 (b) of the Act of 1963, has appointed three member Committee for holding inquiry into the matter. On 24.02.2022, the Committee has submitted inquiry report, thereby recording a finding that the petitioner had withdrawn the appeal without authorization. It is stated that no resolution was passed by the APMC authorizing the petitioner to withdraw the appeal and therefore, the act of the petitioner relinquishing rights in respect of subject land by withdrawing appeal is against the interest of APMC.

9. On receipt of inquiry report, respondent No. 3, DDR has issued a notice to the petitioner, on which petitioner appeared. After hearing the petitioner, respondent No. 3, DDR sent a proposal to the respondent No. 2 on 21.03.2022. After receiving communication dated 20.05.2022 from respondent No. 2, DDR has disqualified the petitioner in terms of Section 45(1) of the Act of 1963 from being nominated as a member of Committee for the period of six years.

10. The petitioner has challenged the impugned order on the following grounds:-

- (I) The impugned order is arbitrary and illegal.
- (II) Respondent No. 3, DDR failed to consider the provisions of Section 45 of the Act of 1963.
- (III) Respondent No. 3, DDR without making inquiry as directed by the Inquiry Committee, has passed the impugned

order.

(IV) Respondent No. 3, DDR without satisfying whether land was acquired or not, has mechanically passed the impugned order.

(V) For want of non-compliance of the recommendation made in inquiry report, the impugned action is premature and unsustainable.

(VI) The Inquiry Committee opined that there are no documents about acquisition and therefore, the proceeding ought to have been dropped.

(VII) Respondent No. 3, DDR ought to have considered that earlier suit of the year 1970 was withdrawn by the owner.

(VIII) Respondent No. 3, DDR has failed to consider the the petitioner's submission that he has been authorized by resolution dated 19.12.2003 by the APMC.

(IX) Respondent No. 3, DDR has not dealt with the resolution dated 19.12.2003 while passing order under Section 45(1) of the Act of 1963.

(X) The Authority has not taken into consideration that no prejudice had been caused to the Committee because of withdrawal of the appeal.

(XI) The Authority has not considered that there was no complaint by the other members of the APMC.

(XII) The act of petitioner at the most amounts to misconduct which does not call for the action of disqualification.

(XIII) There was no allegation about persistent default in performing duties.

(XIV) The authority has not opined that the Committee had good cause on merits in the appeal.

11. Besides that the learned counsel appearing for the petitioner has argued some more grounds to impeach the order of disqualification. It is submitted that no loss or prejudice was caused to the Committee by withdrawal of appeal. According to the petitioner, the Authority has not dealt all these objections, and thus, there is denial of natural justice. According to the petitioner, the authority has not recorded a finding as to what loss has been caused to APMC. The petitioner would submit that in terms of Clause 1(i) of Rule 10 of the Maharashtra Agriculture Produce Market Committee (Election to Committee) Rules 2017 ('Rules 2017'), there has to be breach of the Act or the Rule or Bye-laws more than once to attract disqualification. The learned counsel for the petitioner stressed on the ground that in absence of persistent default i.e. default more than once, the action of disqualification is not sustainable.

12. The learned AGP has supported the impugned order by stating it to be proper, legal and in accordance with law. It is submitted that the disqualification is on the ground of abuse of powers which is a separate ground than persistent default. It is submitted that the petitioner has admitted that there was no separate resolution of the Committee authorizing him to withdraw the appeal, thus the act of withdrawal of appeal is illegal. The learned AGP has attracted my

attention towards Clause (xv) to Section 29(2) of the Act of 1963 to contend that it was within the competency of Market Committee to enter into compromise and thus, in absence of Committee's resolution, the act of withdrawal of appeal is nothing, but abuse of the powers. It is submitted that though inquiry report bears recommendation to ascertain whether the subject land was acquired or not, however those recommendations are directory in nature. The respondents relied on news item to contend that there was persistent malpractice at the hands of petitioner Chairman, and thus, the impugned action is well justified.

13. So far as the factual aspect is concerned, there is no dispute that, earlier suit of the year 1970 was withdrawn by Agrawal family as it was premature. Undisputedly, land-owner Smt. Agrawal has filed RCS No. 156/2003 against APMC for the relief of perpetual injunction. The said suit was contested by APMC by filing written statement. Not only that, the petitioner himself has filed an evidence affidavit in resistance of the suit. There is no denial that the petitioner has filed appeal and during pendency, the petitioner entered into compromise memo and withdrawn the appeal. Moreover, the petitioner has not disputed that there was no separate resolution of Committee authorizing him to enter into compromise and withdraw the appeal. In

the background of above admitted facts, the matter needs scrutiny.

14. It is petitioner's contention that on 19.02.2003 under resolution No. 8, Chairman was authorized to look after a proceeding i.e. the proceeding of RCS No. 156/2003 and thus, he has authority to withdraw the appeal. Close examination of resolution dated 19.12.2003, reveals that the same specifically relates to the Regular Civil Suit No. 156/2003 filed by Smt. Agrawal against the Committee. The resolution is to the extent that written statement was prepared and the authority was given to that extent to the Chairman. No stretch of imagination, the resolution can be stretched to the extent of presuming that under said resolution, the petitioner was empowered to withdraw the appeal which was a future event of the year 2006. As a matter of fact, the said resolution was passed during pendency of regular civil suit that too to the extent of contesting the suit. Thus, there is no substance in the petitioner's contention that under said resolution he has been empowered to enter into compromise and withdraw the civil appeal.

15. Section 29 of the Act of 1963 prescribes power and duties of Market Committee. Clause (xv) specifies the powers of Committee to institute or defend or compound a suit. Thus, apparently the power to compromise in the suit vests with the Committee and not with the

Chairman. Since, no resolution was passed by the Committee to withdraw the appeal, the unilateral act of petitioner of withdrawal of appeal at his own is beyond his competence.

16. The learned counsel for the petitioner would submit that in order to attract disqualification, there must be persistent default in performing duties. In other words, he would state that single or isolated act of default would not attract disqualification within the meaning of Section 45(1) of the Act of 1963. In this regard, he relied on the decision of this Court dated 17.11.2021 rendered in case of ***Prakash Sevakdas Patil and others Vs. State of Maharashtra and others*** in Writ Petition NO. 894/2021 with connected petition. No doubt, this Court has held that a single act of default by the Committee/member would not amount to persistent default attracting disqualification. However, in case at hands, disqualification is not on account of persistent default, but on account of abuse of powers. Section 45(1) of the Act of 1963 lays different criteria for disqualification, out of which abuse of powers is one of the independent criteria, therefore, being distinct facts, the above decision would not assist the petitioner in any manner.

17. The learned counsel appearing for the petitioner has submitted that authority has not considered and dealt the petitioner's

contention which amounts to denial of rules of natural justice. To substantiate said contention, petitioner relied on the decision of this Court in cases of *Durgabakshsingh Rampratapsingh Thakur Vs. District Deputy Registrar , Cooperative Societies, Amravati and others, 2019(5) Mh.L.J. 583* and *Abhishek Shankarrao Thakare and others Vs. District Deputy Registrar, Cooperative Societies, Yavatmal, 2016(7) Bom.C.R.557*. It is not in dispute that the authority has issued a show cause notice to the petitioner to which he has duly replied. Not only that, the stand taken by the petitioner in reply has been considered and reproduced in the impugned order. The order indicates (para 3) that there was no resolution of the Committee authorizing the petitioner to file withdrawal pursis in the appeal. It is clarified that in terms of Section 29(xv) of the Act of 1963, the right of withdrawal is vested with the Committee. Therefore, there is no substance in the petitioner's contention that the authority has not considered the erstwhile resolution of the year 2003 amounting to denial of natural justice.

18. It is petitioner's contention that under bonafide belief that there was no merit in the appeal, it was withdrawn for saving expenses. It is submitted that the withdrawal of appeal has not caused prejudice to the Committee and in absence of demonstration of prejudice the impugned action is not maintainable. To substantiate said contention,

the petitioner relied on the decision of this Court in case of *P A. Inamdar Vs. State of Maharashtra and others, 2020(3) Mh.L.J.) 195.*

The said case relates to disqualification under Section 78-A(1) of the Maharashtra Co-operative Societies Act. It prescribes that the alleged act shall be prejudicial to the interest of the Society or its member to attract disqualification. However, the disqualification under Section 45(1) of the Act of 1963 does not lay down a criteria that the act shall be prejudicial to the interest of Committee. Therefore, being distinct facts, the said decision is of no help.

19. In order to impeach the impugned order, the petitioner would contend that in terms of Clause 1(i) to Rule 10 of the Rules 2017, the breach of the act or the rule or bye-laws must be more than once. As a matter of fact, Rule 10 under part-III of the Rules 2017 which pertains to eligibility criteria for becoming a committee member. In other words, in breach of Sub-clause 1 to Rules 10 of the Rules 2017, one cannot become eligible for becoming a member. However, for disqualification, Section 45 of the Act of 1963 does not lay down that the repeated breach is the only essential criteria for disqualification. As stated above, there are other criteria also on which there could be disqualification.

20. It is petitioner contention that the Enquiry Committee has expressed that the Market Committee ought to have verified from the Government Authorities whether the land in question was acquired. The observation of Inquiry Committee is a mere recommendation to the Committee which has no relevance with the disqualification nor it can be treated as prerequisite for disqualification. Admittedly, the petitioner has filed evidence affidavit in RCS No. 156/2003 resisting claim of land owner Agrawal. Thus, he was well aware about the stand of the Committee. The petitioner has filed appeal against the decision of the Civil Court, however, without authorization he has entered into compromise and withdrawn the appeal. Pertinent to note that the document of compromise is though termed as agreement, however it is nothing but one sided acceptance of land owner's claim in toto with further assurance that the Committee will not raise construction or claim any right over said land. Thus, it was not a compromise in real sense as by way of agreement, the Committee gained nothing, but only accepted the claim of land owner which was already decided by the Civil Court. If the petitioner was under bonafide belief that there is no purpose in pursuing the appeal he could have simply withdrawn. There is no need to give in writing to the owner that the APMC has no right over subject land, nor would claim any rights in future nor

construct, which speaks otherwise. There was no reason for the petitioner to execute such agreement with the land owner to make him free from the litigation by giving clean chit. The Act of petitioner squarely false within the ambit of abuse of his power in the capacity of Chairman and thus, it cannot be justified

21. The merits of appeal is not the issue for consideration. The Market Committee may fail or stand on legal touchstone, but issue is of withdrawal of appeal without authorization. It is not a case that the petitioner was not aware about his earlier stand, because in suit he himself has led evidence resisting the suit. The Market Committee has challenged said adverse decision by filing appeal. There is no justification as to how the petitioner alone took u-turn by completely surrendering to the owner by executing an agreement followed by withdrawal of appeal.

22. In substance, the impugned order of disqualification passed by respondent No. 3, DDR is in tune with Section 45(1) of the Act of 1963. Therefore, impugned order calls for no interference, hence writ petition is dismissed. No order as to costs.

23. Rule is discharged in above terms.