

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 4339 OF 2021

Hanuman Trading Company, Akola and Ors.

Vs.

Director Marketing, Directorate of Marketing, Maharashtra State, Pune and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Dr. Mrs. R.S. Sirpurkar, Advocate for petitioners.
Mr. R.D. Bhuihar, Advocate for respondent Nos.2 & 3.
Mr. S.P. Bhandarkar, Advocate for respondent No.4.

CORAM : MANISH PITALE J.
DATE : 25.04.2022.

By this petition the petitioners are aggrieved by an order dated 16.09.2021, passed by the respondent No.1, Director (Marketing), whereby an appeal filed by respondent No.4 under Section 52-B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963, has been allowed and a direction is given to the District Deputy Registrar of Co-operative Societies, Akola, to enquire into the complaint submitted by the petitioners before the respondent No.2 – Agricultural Produce Market Committee(APMC), Akola, regarding alleged amount to be recovered from respondent No.4.

2. In the present case the petitioners had initiated proceedings under Section 10 of the aforesaid Act, alleging that the respondent No.4 had illegally undertaken transactions of sale and purchase of agricultural produce with the petitioners and that substantial amounts were recoverable from the respondent No.4. The said proceedings were initiated before the respondent No.3 – APMC under the provisions of the said Act. On 11.06.2021, the APMC passed an order directing the respondent No.4 that it should pay the amounts due to the petitioners. It was found that the respondent No.4 had failed to make such payments, which were indeed due the petitioners in pursuance of the activity of sale and purchase of agricultural produce under the provisions of the said Act.

3. Aggrieved by the said order dated 11.06.2021, passed by the respondent No.2 - Agricultural Produce Market Committee (APMC), the respondent No.4 filed an appeal under Section 52-B of the said Act before the respondent No.1 – Director (Marketing). By the impugned order, the appeal stood allowed in the aforesaid manner and the District Deputy Registrar of Co-operative Societies was directed to conduct fresh enquiry.

4. This Court issued notices in the present writ petition on 28.10.2021, for final disposal and the respondents entered appearance through counsel.

5. Mrs. Renuka Sirpurkar, learned counsel appearing for the petitioners, submitted that by its very nature, the proceeding undertaken by the respondent No.2 - APMC in pursuance of which the order dated 11.06.2021 was passed, was summary in nature. It was found, on the basis of the material available on record, that the respondent No.4 was indeed liable to pay the amounts to the petitioners. It was submitted that observations made in the impugned order demonstrate that the fresh enquiry proposed to be undertaken by the District Deputy Registrar of Co-operative Societies, would be influenced by the findings of fact rendered in favour of respondent No.4 and against the petitioners, as also against the respondent No. 2 - APMC concerning its record. Therefore, it was submitted that the impugned order deserved interference. On a specific query put to the learned counsel as regards the provisions under the aforesaid Act, whereby the respondent No.1 could have directed the District Deputy Registrar of Co-operative Societies, to

undertake fresh enquiry, reliance was placed on Section 32A of the said Act.

6. The learned counsel appearing for the petitioners handed over an additional affidavit in respect of subsequent developments, which was taken on record. By the said affidavit, it was brought to the notice of this Court that a complaint has been filed against the respondent No.4 before the respondent No.1, placing on record the fact that the respondent No.4 had undertaken activities of sale and purchase of agricultural produce in the absence of a license. On this basis, action was sought against respondent No.4. On the said complaint filed against respondent No.4 at the behest of petitioner No.7, the respondent No.1 has already issued notice to respondent No.4. In this backdrop, it was submitted that during the pendency of the enquiry before the District Deputy Registrar of Co-operative Societies, if the impugned order was to be upheld, there ought to be a prohibition on the respondent No.4 from undertaking further activities of sale and purchase of agricultural produce.

7. On the other hand, Mr. Bhandarkar, learned counsel appearing for respondent No.4,

submitted that the impugned order did not deserve interference, for the reason that the respondent No.1 - Director (Marketing) found discrepancies in the records of respondent APMC and hence, fresh enquiry was certainly warranted in the facts and circumstances of the present case. It was submitted that therefore, the impugned order did not deserve to be interfered with.

8. Reliance was placed on Sections 10 and 40 of the aforesaid Act to indicate that the respondent No.1 was justified in authorizing the District Deputy Registrar of Co-operative Societies to undertake enquiry to ascertain the truth of the matter.

9. Mr. Bhuibhar, learned counsel appeared on behalf of respondent Nos.2 and 3 i.e. APMC and its Secretary, while Mr. K.L. Dharmadhikari, learned Assistant Government Pleader appeared on behalf of respondent No.1.

10. This Court has perused the impugned order. It appears to be a detailed order taking into consideration the material available on record. Although, the order dated 11.06.2021, passed by the

respondent – APMC may be in pursuance of proceedings that are expected to be summary in nature, when substantial liability was being foisted on respondent No.4, proper consideration of the material on record was necessary. In the process of analyzing the rival contentions of the parties, the respondent No. 1 – Director (Marketing) has made certain observations in the impugned order. Such observations do reflect upon the records maintained by the APMC itself and it appears that the respondent No.4 made allegations against the respondent – APMC in the context of the amount claimed to be recoverable from respondent No.4. After making such observations, the respondent No.1 has allowed the appeal and directed the District Deputy Registrar of Co-operative Societies to undertake the fresh enquiry. Considering the fact that respondent No.1 appears to be satisfied about the necessity to undertake fresh enquiry and a substantial sum of money is claimed to be recoverable from respondent No.4, this Court is of the opinion that interference in the impugned order is not warranted. Such a fresh enquiry would bring out the truth of the matter.

11. Nonetheless, the observations made in the order passed by the respondent No.1 may cause prejudice, not only to the petitioners but to the respondent – APMC also. It would have been sufficient for the respondent No.1 to have rendered findings regarding the inadequacy of material to foist such a liability on respondent No.4 and the necessity for a fresh enquiry into the matter, but such observations appear to be unwarranted. In fact, such observations may influence the authority to which the matter is now sent for fresh enquiry.

12. This Court is satisfied that under the provisions of the said Act, be it Section 32-A or Sections 10 and 40 of the said Act, such an enquiry could be directed by the respondent No.1 for ascertaining the truth of the matter. An Officer authorized by the respondent No.1 – Director (Marketing), would indeed be entitled to and empowered under the provisions of the said Act to undertake such a detailed enquiry. The apprehension expressed on behalf of the petitioners that such an enquiry being conducted by the District Deputy Registrar of Co-operative Societies might be inappropriate and that a Senior Officer of the level of the Registrar ought to conduct such an enquiry,

appears to be misplaced, for the reason that as per the direction given in the impugned order, a fresh enquiry is expected to be undertaken.

13. This Court is clear that the process of fresh enquiry has to start on a clean slate and that there is no question of the District Deputy Registrar of Co-operative Societies being influenced by the observations made in the impugned order.

14. As regards, the subsequent event brought to the notice of this Court, since the respondent No.1 has already issued notice to respondent No.4 in the context of the complaint made by petitioner No.7, as regards the necessity to prevent the respondent No.4 from undertaking any further activities of sale and purchase of agricultural produce, in the light of the allegation that he did not have license even during the relevant period concerning the dispute, this Court is of the opinion that the matter now is in the domain of respondent No.1, who is expected to proceed further in accordance with law. The petitioner No.7 would be at liberty to pursue the said complaint before respondent No.1 in that regard.

15. In view of the above, the writ petition is disposed of by confirming the direction in the impugned order for a fresh enquiry by the District Deputy Registrar of Co-operative Societies. But, it is made clear that during the course of such enquiry, the District Deputy Registrar of Co-operative Societies shall proceed strictly in accordance with law and in consonance with the principles of natural justice, without being influenced by any of the observations made in the impugned order passed by respondent No.1.

16. Considering the nature of contentions raised before this Court, it would be in the interest of justice that the enquiry is expedited by the District Deputy Registrar of Co-operative Societies.

JUDGE

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