

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

WRIT PETITION NO. 4395 OF 2021

Minaxi W/o Nilesh Wasnik

-- Petitioner

Vs.

Director of Marketing, Maharashtra State
and others

-- Respondents

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.M. Ghare, Advocate for Petitioner
Mr. K.L. Dharmadhikari, AGP for Respondent Nos.1 & 2
Mr. S.S. Paliwal, Advocate for Respondent No.3
Mr. R.M. Bhangde, Advocate for Respondent No.4

CORAM : MANISH PITALE, J.

DATE : 12th APRIL, 2022

By this writ petition, the petitioner has challenged order dated 21/10/2021, passed by the respondent No.1- Director of Marketing, whereby the respondent No.2 has been appointed as Secretary of Respondent No.3 – Agricultural Produce Market Committee, Tumsar, District Bhandara (hereinafter referred to as APMC).

2. The petitioner claims that she has been functioning as Incharge Secretary of APMC since the year 2017 and that the impugned order has been passed by the Director (Marketing) in the backdrop of a proposal moved by the

respondent No.4 himself as Joint Secretary of APMC, wherein certain facts were not brought to the notice of respondent No.1 – Director of Marketing.

3. While issuing notice on 05/11/2021, this Court directed the parties to maintain status quo, as a consequence of which, the petitioner has continued functioning as Incharge Secretary of the APMC.

4. In the present case, the respondent No.4 claimed to be the senior-most employee and hence entitled to appointment as Secretary of the APMC, as the rule of seniority is being followed in such appointments. According to the respondent No.4, this Court in the judgment and order dated 18/10/2019, passed in the case of **Vilas Gunwant Pundkar Vs. The State of Maharashtra and others in Writ Petition No.1980/2018 and connected petitions**, has recognized the rule of seniority for appointment to the post of Secretary of APMC. On the basis of such claim, the respondent No.4 has canvassed that he is entitled to the post of Secretary of APMC.

5. Heard learned counsel for rival parties. Mr. Ghare, learned counsel has appeared on behalf of the petitioner. Mr. K.L. Dharmadhikari, learned Additional Government Pleader has appeared on behalf of respondent Nos.1 and 2. Mr. Paliwal, learned counsel has appeared on behalf of

APMC through the Administrator and Mr. Rahul Bhangde, learned counsel has appeared on behalf of the respondent No.4.

6. A perusal of the documents on record shows that in the year 2015, a resolution was passed by the then elected body of the APMC, recommending respondent No.4 for appointment to the post of Secretary APMC. It appears that the Director (Marketing) did not pass an effective order appointing respondent No.4 in the post of Secretary of APMC, as a result of which he continued to be Incharge Secretary of APMC. Thereafter, there appears to have been some rift between the then elected body of the APMC and respondent No.4, as a consequence of which a resolution dated 20/07/2017, came to be passed, taking away the charge of Secretary of the APMC from the respondent No.4. It appears that the petitioner thereafter was given the charge of Secretary APMC.

7. Consequently, on 22/07/2017, the Chairman of the then elected body of APMC sent a letter to respondent No.1 – Director (Marketing) that in view of the aforesaid resolution passed by the elected body taking away the charge of Secretary of APMC from respondent No.4, the earlier proposal dated 22/06/2015, recommending the respondent No.4 for appointment on the post of Secretary, APMC, stood withdrawn.

8. It appears that thereafter the petitioner was made Incharge Secretary of the APMC. It is an admitted position that an Administrator came to be appointed on the APMC. Thereafter, on 01/10/2021, the respondent No.4 sent a communication to the respondent No.1 – Director (Marketing), as the Joint Secretary of the APMC. In the said communication, the respondent No.4 referred to the earlier resolution dated 15/06/2015, passed the elected body recommending his appointment as Secretary of the APMC and thereupon, the respondent No.4 stated that he was fully qualified for being appointed as Secretary and that considering that he was the senior-most employee, he was entitled to be promoted to the post of Secretary of APMC. Request was made for issuance of an order of appointment of respondent No.4 as Secretary of APMC. It is in pursuance of the said communication sent by the respondent No.4 that the impugned order dated 21/10/2021, was passed by the Director (Marketing), appointing the respondent No.4 as Secretary of APMC.

9. The learned counsel appearing for the petitioner submitted that there have been subsequent developments in the matter and the Joint Director (Marketing), by letter dated 28/02/2022, directed the District Deputy Registrar of Co-operative Societies to enquire into an allegation that the respondent No.4 had misused the letterhead of the APMC to

issue the aforementioned communication dated 01/10/2021, which led to the respondent No.1 passing the impugned order. In pursuance of the said communication, the District Deputy Registrar has submitted a report dated 10/03/2022, to the respondent No.1, stating that the respondent No.4 under his own signature had recommended his appointment as Secretary to APMC and that the resolution passed by the then elected body in July 2017, as also the consequential communication sent by the Chairman of the then elected body on 22/07/2017, were not placed before the respondent No.1 by the respondent No.4. The learned counsel appearing for the petitioner submitted that the aforementioned material clearly indicated that the impugned order was unsustainable.

10. Mr. Paliwal, learned counsel appearing for the respondent No.3 - APMC through the Administrator submitted that the respondent No.4 could not have bypassed the authority of the Administrator for issuing the letter dated 01/10/2021 and that on this short ground the impugned order deserved to be set aside.

11. Mr. Bhangde, learned counsel appearing for respondent No.4 submitted that there is no dispute that the respondent No.4 is the senior-most employee and hence, he is entitled for appointment to the post of Secretary of APMC. It was submitted that once the then elected body ceased to exist and the Administrator had taken over, the

resolution passed by the then elected body and the consequential letter dated 22/07/2017, issued by the Chairman of the then elected body were rendered meaningless. It was submitted that the communication dated 01/10/2021, was indeed issued by the respondent No.4 as Joint Secretary of the APMC and there was no question for misuse of letterhead and bypassing the authority of the Administrator, so long as the proposal sent by the communication dated 01/10/2021, requested the respondent No.1 to act in accordance with law and to appoint the senior-most person i.e. respondent No.4 as Secretary of the APMC.

12. Mr. K.L. Dharmadhikari, learned Additional Government Pleader has appeared on behalf of the respondent Nos. 1 and 2.

13. This Court has perused the documents on record. There is no dispute about the fact that the then elected body of the APMC had indeed passed a resolution on 15/06/2015, recommending appointment of respondent No.4 as Secretary of the APMC. This resolution did not fructify into an order of appointment and instead the respondent No.4 continued as Incharge Secretary of the APMC. Subsequently, on 20/07/2017, the aforementioned resolution was passed by the then elected body resolving to withdraw the recommendation made in favour of the respondent No.4, for the reason that there was an apparent rift between the then elected body,

particularly, its Chairman and the respondent No.4, who was functioning as incharge Secretary. In pursuance of the said resolution, the Chairman of the then elected body issued the letter dated 22/07/2017, to the respondent No.1, formally withdrawing the recommendation made in favour of respondent No.4 in June, 2015.

14. After the Administrator took over the APMC and during the period when the petitioner was admittedly functioning as Incharge Secretary of the APMC, the respondent No.4 issued the aforesaid communication dated 01/10/2021, recommending himself for being appointed as the Secretary of APMC, claiming that he was duly qualified and since he was admittedly the senior-most employee, he was entitled for appointment as the Secretary of APMC. It is significant that in the said communication, the respondent no.4 did refer to the resolution passed by the then elected body, dated 15/06/2015, recommending his appointment as Secretary of the APMC, but, the respondent No.4 did not refer to the subsequent resolution dated 20/07/2017, passed by the then elected body and the consequent letter dated 22/07/2017, issued by the Chairman of the then elected body, withdrawing the aforesaid recommendation. This Court is not in agreement with the contentions raised on behalf of the respondent No.4 that since the elected body has ceased to exist and Administrator has taken over, the resolution dated 20/07/2017, and consequential

communication dated 22/07/2017, had become irrelevant and they were not required to be placed before the respondent – Director (Marketing). A perusal of the impugned order dated 21/10/2021, passed by the respondent No.1 indeed shows that there is no reference to the aforesaid resolution of the then elected body dated 20/07/2017 and consequential letter dated 22/07/2017, issued by the Chairman to the respondent No.1 withdrawing the earlier recommendation made in favour of respondent No.4. It is in ignorance of the said developments that the respondent No.1 – Director (Marketing) issued the impugned order appointing the respondent no.4 as Secretary, APMC. Therefore, this Court is of the opinion that the impugned order is rendered unsustainable, apart from the fact that in the changed scenario where the Administrator has taken over the APMC, any move to appoint Secretary of the APMC ought to be routed through the Administrator.

15. Allegations have been made against the respondent No.4 to the effect that letterhead of the APMC was misused by the said respondent for issuing communication dated 01/10/2021. This Court is of the opinion that the allegation of misuse of letterheads appears to be far-fetched. The only allegation that can perhaps be made against the respondent No.4 is that he suppressed the aforesaid resolution dated 20/07/2017, passed by the then elected body and the consequential letter dated 22/07/2017, issued by the

Chairman, withdrawing the earlier recommendation made in favour of the respondent No.4.

16. Be that as it may, the aforesaid suppression of documents pertaining to the year 2017 was later brought to the notice of the respondent No.1, which led to the direction to the District Deputy Registrar for conducting the enquiry into the matter and the report dated 10/03/2022, appears to have been submitted by the District Deputy Registrar. This Court refrains from making any comment on the subsequent developments. Nonetheless, in view of the aforesaid facts, the impugned order is found to be unsustainable and accordingly, it deserves to be set aside.

17. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside.

18. In view of the fact that as on today, the APMC is still functioning with only an Incharge Secretary, the functions being performed by the petitioner herein, it would be appropriate that steps are taken for appointment of Secretary to the APMC. The Administrator of the respondent No.3 - APMC is directed to make recommendation for appointment to the post of Secretary, strictly in accordance with law within a period of three weeks from today before the respondent No.1 - Director (Marketing). Upon receipt of such proposal, the respondent

No.1 – Director (Marketing) shall take decision also strictly in accordance with law, within a period of three weeks of receipt of such proposal.

19. The writ petition stands disposed of in above terms.

JUDGE