

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.12453 OF 2022
WITH CIVIL APPLICATION NO.1023 OF 2023
WITH CIVIL APPLICATION NO.1606 OF 2023
IN WRIT PETITION NO.12453 OF 2023**

1. Shrimantrao Nivruttirao Gangane
Prop. Pooja Traders,
Age: 60 years, Occu: Business,
R/o. Yogeshwari Nagari, Ambajogai, Dist. Beed

2. Sadashiv Angadrao Phapal
Prop. Sadashiv Angadrao Phapal
Age: 53 years, Occu: Business
R/o. Khadakpura, Ambajogai, Dist. Beed

3. Baliram Nagorao Somwanshi
Prop. Baliram Nagorao Somwanshi
Age: 49 years, Occu: Business
R/o. New Mondha, Ambajogai, Dist. Beed

4. Nitin Madhukarrao Thombre
Prop. Nitin Madhukarrao Thombre
Age: 32 years, Occu: Business
R/o. Adarsh Colony, Ambajogai, Dist. Beed

... Petitioners

Versus

1. The State of Maharashtra
Through it's Secretary
Agricultural Market and Co-operation Department,
Maharashtra State, Mantralaya, Mumbai

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

3. The District Deputy Registrar,
Co-operative Societies, Beed

4. The Agricultural Produce Market Committee,
Ambajogai, Tq. Ambajogai, Dist. Beed

5. The Taluka Deputy Registrar/Assistant Registrar
Ambajogai, Tq. Ambajogai, Dist. Beed

... Respondents

...
 Mr. S. G. Dodya, Advocate for the Petitioners
 Mr. Ajeet B. Kale, Advocate for Applicant in CA No.1023/2023
 Mr. Avinash N. Irpatgire, Advocate for Applicant in CA No.1606/2023
 Mr. P. K. Lakhotiya, AGP for Respondent Nos.1 to 3 & 5
 Mr. Ravibhushan P. Adgaonkar, Advocate for Respondent No.4
 ...

CORAM : MANGESH S. PATIL &
 S. G. CHAPALGAONKAR, JJ.

RESERVED ON : 16.02.2023

PRONOUNCED ON : 03.03.2023

JUDGMENT : [PER S. G. CHAPALGAONKAR, J.]

1. The petitioners approaches this Court under Article 226 of the Constitution of India with the following prayers :

“B. By way or writ of certiorari or any other writ or order in the like nature the said impugned show cause notice bearing outward no.Panan/KUBS/5373 and 5374 dated 23-11-2022 issued by the respondent no.3 District Deputy Registrar Co-operative Society, Beed with the said report the Scrutiny Committee dated 17-11-2022 appointed by respondent no.3, may kindly be quashed and set aside.

C. By way or writ certiorari or any other writ or order in the like nature the said letter issued by the respondent no.2 Director of Marketing, Pune bearing outward letter no.5358/2021 dated 15-12-2021 may kindly be quashed and set aside.”

2. The petitioners contend that they are the Traders dealing in Adat sale purchase within the jurisdiction of respondent no.4 - Agricultural Produce Market Committee, Ambajogai, District Beed (hereinafter referred to as ‘Committee’ for short]. The trading licences are issued to them by respondent no.4 - Committee. It has been lastly renewed for the market year 2022-2023 under Resolution No.5 dated 19.05.2022. They have been served with a show-cause notice dated 23.11.2022 issued by respondent

no.3 – District Deputy Registrar purported to be under Rule 6 (4) of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 [hereinafter referred to as ‘APMC Rules, 1967’ for short].

3. The show-cause notice states that during the year 2017-2018, the licences were issued by respondent no.4 - Committee without requisite documents. Further the Traders who were never engaged in trading activities during the year 2016-2017 were granted licence renewal de-hors APMC Rules, 1967. It has been further stated that respondent no.2 – Director of Marketing, Pune has issued instructions dated 15.12.2021 to take an action against such licence holders. The show cause notice further stipulates that the High Court passed order dated 30.06.2022 for implementation of the instructions dated 15.12.2021 issued by respondent No.2 and to initiate action under Section 8 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 [hereinafter referred to as ‘the APMC Act’ for short] and especially sub-sections 2 & 3 read with Rule 6 (4) of APMC Rules, 1967. The show-cause notice refers to a report of Scrutiny Committee dated 17.11.2022.

4. The petitioners contend that respondent no.3 – District Deputy Registrar has no jurisdiction to issue the show-cause notice, since Section 8 of APMC Act empowers respondent No.5 committee to initiate action in case licence is obtained by misrepresentation or fraud. Once licence is issued, under Rule 6 (4), it remains in force for market year or for three market years, as the case may be. It is further contention of the petitioners that the show-cause notice nowhere alleges willful misrepresentation or fraud against the petitioners. The show-cause notice merely states that the petitioners have not traded during the market year 2016-2017. However, no particulars of such allegations are specified. During currency of the licence no allegation of fraud, misrepresentation or even non-carrying of the trading activity are made. The show-cause notice is, therefore, liable to be quashed and set aside.

5. Learned advocate Mr. Dodya appearing for the petitioners vehemently submits that the show-cause notice is liable to be quashed and set aside since respondent no.3 has no jurisdiction to issue such notice under APMC Act or Rules framed thereunder. He would submit that the trading licence has validity of only one year. Though the present licence has been issued in favour of the petitioners in the form of renewal, it is a fresh licence issued on year to year basis. He invited our attention to the forms and formats relating to the licences and the procedure.

6. He would submit that the Supreme Court of India in the matter of **Mohanlal Chandulal Sarai Vs. State of Maharashtra & Anr.** reported in **1993 Mh.L.J. 365** held that the licence can be revoked only on the basis of material which was available prior to the date of renewal of such licence. Further relying upon the judgment in the case of **N. S. Shethna Vs. Vinubhai Harilal Panchal** reported in **AIR 1967 SC 1036**, he would submit that when licence is renewable every year, the renewal of license can be regarded as a fresh licence and show-cause notice for revocation in respect of renewed licence cannot be issued on the basis of lapses during the period of earlier licence. He would further submit that the impugned show-cause notice has been issued on the basis of complaint made by third parties. The intervenors who have filed the civil applications have no legal right to oppose the prayers in the writ petition.

7. Learned AGP appearing for respondent nos. 1 to 3 and 5 submits that there is growing tendency of obtaining the licences only for the purpose of elections. Such persons never participate in the trading activity. The licences of such holders can be cancelled in exercise of powers under Rule 6 (4) of APMC Rules, 1967. He would submit that respondent no.2 – Director of Marketing, Pune had issued the instructions under his communication dated 15.12.2021 to the Market Committees to take appropriate actions to curb this menace. He would submit that Writ Petition No.6654/2022 was filed by Mr. Dharmraj Birgad & Anr. raising the grievance that in pursuance of the

directions dated 15.12.2021 issued by respondent no.2 - Director of Marketing, no further action is taken by APMC and even APMC has not reacted to the said communication. This Court after taking cognizance of the grievance in Writ Petition No.6654/2022, issued directions to respondent no.2 to exercise his powers under Sub-Sections 2 & 3 of Section 8 APMC Act and take appropriate action under Rule 6(4) of APMC Rules, 1967. He would submit that petitioners are challenging the show-cause notice, they are at liberty to file their reply and raise all the objections, including the jurisdiction of respondent no.3 to issue such notice. He would further submit that if action taken in pursuance of such show-cause notice, the petitioners would have remedy to challenge the orders by filing an appeal. There are no grounds to invoke jurisdiction of this court under Article 226 of the Constitution of India.

8. Learned advocate Mr. Ajeet B. Kale and learned Advocate Mr. Avinash. N. Irpatgire appearing for applicants in Civil Application No.1023/2023 and Civil Application No.1606/2023 seeking intervention submit that in pursuance of the directions of this Court in Writ Petition No.6654/2022, the action has been initiated. The Director of Marketing has powers to issue necessary directions to pursue object of the Act. The show-cause notice issued by him is legal and proper.

9. We have considered the submissions advanced by the learned Advocates appearing for the respective parties. It appears that under directions of this Court in Writ Petition No.6654/2022, the action has been initiated by respondent no.3 and show-cause notices are issued to the Traders on the basis of inquiry report. The petitioners are challenging those show-cause notices dated 23.11.2022 issued by respondent no.3 - District Deputy Registrar. The petitioners are also assailing the communication dated 15.12.2021 issued by respondent no.2 – Director of Marketing, Pune. The petitioners are trying to make out the case that the respondent no.3 has no jurisdiction to initiate the action under the provisions of Rule 6(4) of AMPC

Rules, 1967. According to the petitioners, such powers are vested with Taluka Deputy Registrar or Assistant Registrar of Co-operative Societies under notification dated 05.09.1981 issued by respondent no.1. The petitioners contends that once licence is renewed, the powers under Rule 6 (4) are not available.

10. At this stage reference to observation of the Supreme Court of India in the matter of **M/s Radha Krishan Industries Vs. The State of Himachal Pradesh & Others**, reported in (2021) SCC Online SC 334 is necessary. The parameters governing the exercise of writ jurisdiction by the High Court in presence of an alternate remedy are discussed. It is held that the High Court has discretion not to entertain the writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person. Similarly, when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

11. In light of the aforesaid observations, we are not inclined to go into all the aspects at this stage. It is open for the petitioners to raise all contentions by replying the show-cause notice. It is for respondent no.3 to examine all the contentions raised in the reply and take appropriate decision in accordance with the provisions of Act and Rules. Any decision taken by respondent no.3 could be susceptible to the appeal under Section 52B of the APMC Act before the Competent Authority. In that view of the matter, it would not be appropriate for this Court to interfere under Article 226 of the Constitution of India. The contention of the petitioners that their right to carry profession under Article 19 (1) (g) of the Constitution of India would be curtailed, cannot be accepted at the stage. The petitioners are simply

facing a show-cause notice. The respondents would be under statutory obligation to examine the reply submitted by the petitioners, including objection regarding jurisdiction of authority to initiate proposed action under show-cause notice.

12. In that view of the matter, we relegate the petitioners to file their reply to the show-cause notice and direct respondent no.3 to consider the objection of the petitioners in accordance with the Act and Rules, including the objection as to jurisdiction to issue the show-cause notice and pass the further orders. Since we have not touched the merit of the matter, all the contentions are expressly kept open. Accordingly, writ petition is disposed of subject to the directions as above.

13. In view of disposal of writ petition, civil applications also stand disposed of.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

Sameer