



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2950 OF 2024

Sudhir Venunath Nawale and Others ...Petitioners

Versus

The State of Maharashtra & Ors ...Respondents

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Mr. Mahesh Deshmukh a/w Mr. R. R. Karpe, Advocates for
Petitioners

Mr. S. K. Tambe, AGP for Respondent Nos. 1 to 4

Mr. V. D. Hon Senior Advocate i/by Mr. A. V. Hon,
Advocate for Respondent No. 6

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CORAM	: RAVINDRA V. GHUGE & R. M. JOSHI, JJ
RESERVED ON	: APRIL 04, 2024
PRONOUNCED ON	: APRIL 16, 2024

ORDER (PER R. M. JOSHI, J)

1. The Petitioners have filed this Petition seeking direction against the Respondents not to act upon any adverse order in the event passed, in furtherance of notice dated 04.03.2024 issued under Section 45(1) of the Agricultural Produce Market Committee Act (for short '**APMC Act**') by Respondent No. 3, for a period of 15 days from the date of issuance of the said order.

2. It is the case of the Petitioners that they are elected as members of Managing Committee of Respondent No. 5 APMC, Shrirampur on 30.04.2023. It is alleged that Petitioners were elected by defeating the panel headed by the Cabinet Minister from District Ahmednagar. In the first meeting of the Committee of Respondent No. 5, Petitioner No. 1 is elected as Chairman and Petitioners resumed charge of Respondent No. 5 APMC as Directors of the Managing Committee. It is stated that prior to the election, an Administrator was holding charge of Respondent No. 5 and upon complaint, an inquiry was conducted. On being held guilty, Administrator was imposed punishment of reduction of rank to the Secretary. The Divisional Joint Registrar allowed the Appeal filed by the then Secretary. Respondent No. 5 through its in-charge Secretary preferred Appeal along with the said application, however, the Hon'ble Minister refused to stay order dated 15.09.2023 by way interim relief. Hence, Writ Petition bearing no. 14434/2023 came to be filed before this Court, wherein the order dated

15.09.2023 was stayed pending Appeal. Finally, Appeal filed by APMC was rejected by the Hon'ble Cabinet Minister but the said order is interfered with in Writ Petition bearing No. 2256/2024 and Appeal is relegated back for issuance of show cause notice in pursuance of the inquiry report.

3. It is alleged by the Petitioners that since the Petitioners were elected by defeating the panel pitched by the Hon'ble Minister, the Petitioners and the APMC are harassed by causing political interference. According to the Petitioners, though they have not completed one year and even financial audit has been not carried out, Respondent no.3 has issued order on 26.12.2023 and sought inspection of the record without mentioning any period. Respondent No. 5 submitted its report on 16.02.2023 in pursuance to the order dated 26.12.2023. Respondent No. 3 has issued notice under Section 45 ignoring the fact that the Petitioners have not completed one year and even financial year has not completed from the period they

took the charge of the Management of the APMC.

4. It is alleged that show cause notice is issued to the Petitioners as to why the order of supersession shall not be passed and reply is asked on or before 20.03.2024. It is claimed that there are mala fides and immediately after completion of inquiry, an Administrator would be appointed whereby the Petitioners will not get any opportunity to challenge any adverse order passed in pursuant to the show cause notice. It is claimed that in the similar set of facts, the APMC was protected for 15 days in cases of any adverse order is passed and hence, similar prayer is made herein.

5. We have heard the learned Advocates and have considered their written notes of submissions.

6. Learned Counsel for the Petitioners by drawing attention of the Court to the various allegations made in the Petition has sought to expose the mala fide in the action sought to be taken against the Petitioners.

He relied upon the orders/judgments of this Court in Writ Petition Nos. 360/2014, 8680/2013, 13396/2018 and 1837/2002. It is sought to be canvassed that though the protection granted in those judgments is not a law laid down, it has become binding precedent and hence, the Petitioners are entitled for the said relief.

7. The said contention is opposed by learned AGP with submissions that the judgment cited supra cannot be treated as precedent for want of any ratio being decided by the Court therein. It is claimed that the discretion exercised by the Court therein is after taking into consideration the facts and circumstances of that case and hence, it does not become a binding precedent. To support his submissions, he placed reliance on the judgment in case of Secundrabad Club Etc. v. C.I.T.-V Etc, AIR Online 2023 SC 702.

8. The Hon'ble Supreme Court in case of Secundrabad Club Etc (supra) has dealt with issue of what is *ratio decidendi* and observed that:

13. *It is a settled position of law that*

only the ratio decidendi of a judgment is binding as a precedent. In **B. Shama Rao vs. Union Territory of Pondicherry, AIR 1967 SC 1480**, it has been observed that a decision is binding not because of its conclusion but with regard to its ratio and the principle laid down therein. In this context, reference could also be made to **Quinn vs. Leathem, 1901 AC 495 (HL)**, wherein it was observed that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are found. In other words, a case is only an authority for what it actually decides.

14. Reliance could also be placed on the dissenting judgment of A.P. Sen, J. in **Dalbir Singh vs. State of Punjab, (1979) 3 SCC 745**, wherein his Lordship observed that a decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents, every decision contains three basic ingredients:

- (i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the Judge draws from the direct or perceptible facts;

- (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and
- (iii) judgment based on the combined effect of (i) and (ii) above.

For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a judge when giving a judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi.

15. In the leading case of **Qualcast (Wolverhampton) Ltd. vs. Haynes, 1959 AC 743**, it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. A judgment is not binding (except directly on the parties to the *lis* themselves), nor are the findings of fact. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to

draw the same inference as drawn in the earlier case.

9. Though the Counsel for the Petitioners is seeking to place reliance on the various orders passed by this Court, however, we are not inclined to accept his submissions that the said orders lay down any *ratio decidendi* in order to consider same as a binding precedent. A careful perusal of the orders passed therein show that on considering facts of each case, this Court felt it appropriate to protect the Petitioners from adverse order for some period. In absence of statute providing for automatic stay of order passed under Section 45 of APMC Act and also for want of binding precedent, we are unable to accept the claim of Counsel for Petitioners that with passing of various orders, it has become a practice and hence, precedent to pass similar order.

10. There is no dispute about the fact that prior to April, 2023 an Administrator was appointed to Manage Respondent No. 5 APMC. On 30.04.2023 elections took place of the Managing Committee and the Petitioners

were elected as directors thereof. On 13.05.2023, Petitioner No. 1 was elected as Chairman and other elected candidates assumed charge as Directors of Respondent No. 5 – APMC. The Committee is yet to complete even a year of its tenure. Even a term of one financial year has also not been completed and obviously, therefore, there is no audit in respect of accounts of APMC for that period.

11. In the light of these factual aspects, the background assumes importance. Petitioners have claimed that an inquiry was conducted against the then Administrator and punishment was imposed against him of reduction in rank. The Divisional Joint Registrar allowed the said Appeal. Against the said order, further Appeal was filed before the Hon'ble Minister who refused to stay the order dated 15.09.2023 passed by the Divisional Joint Register. This Court in Writ Petition No. 14434/2023 after considering the material fact on record stayed the said order. Thereafter, the Hon'ble Minister rejected the Appeal filed by the APMC, which order came to be interfered with by this Court in

Writ Petition No. 22256/2024 and further action pursuant to issuance of show cause notice were directed to be initiated against the then Administrator. A document placed on record by the Petitioners indicate that on 18.12.2023 a complaint was made to the Hon'ble Minister making allegation against the Managing Committee of APMC, Shrirampur and for dissolution of the same. The Hon'ble Minister directed an inquiry against the Managing Committee members and asked the concerned authority to take action. This order is undated, moreover, there is nothing placed on record before us to ascertain as to whether any supporting material was submitted before the Hon'ble Minister for issuance of such directions.

12. Needless to record that affairs of the Managing Committee in respect of alleged financial irregularities could be pointed out only after conducting an audit. Admittedly, for the period from which Petitioners have taken charge of the Managing Committee, no audit has been conducted. *Prima facie*, we find substance in the contention of the Petitioners

that in order to dissolve the Managing Committee the possibility of show cause notice being issued against them is not ruled out.

13. We thus, cannot ignore peculiar facts and circumstances of the case. In the instant case, Petitioners have not completed one year of assuming the charge as Directors of APMC. There is no audit conducted in order to allege any financial irregularity against the Petitioners. The action against the then Administrator and the various order passed by this Court not approving the orders by the District Deputy Registrar as well as the Hon'ble Minister, gives rise to suspicion in respect of *bona fides* of action proposed against the Petitioners. The Hon'ble Minister also seems to have initiated action against them without *prima facie* ascertaining any other material supporting such allegations. We, therefore, find that apparently there is a reason for the apprehension of the Petitioners that this could be a case of pre-meditated decision of dislodging the Petitioners and appointment of an Administrator.

14. In such circumstances, though we principally hold that there cannot be stay of order as a routine course and a party cannot claim such order as of right, but having regard to the peculiarity of facts of the present case, we find it appropriate to direct Respondents that if any adverse order is passed pursuant to the show cause notice dated 04.03.2024, such order be not implemented for a period of fifteen days.

15. This Writ Petition is disposed off in aforesaid terms.

(R. M. JOSHI, J)

(RAVINDRA V. GHUGE, J)

Malani