IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6623 OF 2024

M.S. Siddhant Trading Company,
Through its Proprietor Mr. Laxmiraman
Narayandas Bhutada, Age 61 years,
Occ. Business, R/o. Shivneri Gate,
Market Yard, Plot No.1 situated at
Survey No. 182, 141/2 Latur,
Tq. and Dist. Latur.

.. PETITIONER

Versus

1. The State of Maharashtra
Through its Secretary,
Cooperative and Textile Department,
Mantralaya, Mumbai – 32.

2. The Hon'ble Minister State of Maharashtra
Cooperative and Textile Department,
Mantralaya, Mumbai – 32

3. The Director of Agricultural Marketing,
Maharashtra State Pune, 3rd Floor, New Central
Building, Pune 411 001.

4. Agricultural Produce Market Committee
Through its Secretary, Market Yard, Latur
Dist. Latur 413 512.

5. M/s. Gagan Hariprasad Malpani,
Proprietor, Arti Gagan Malpani,
Market Yard, Latur.

.. RESPONDENTS.

Mr. V.D. Sapkal, Senior Advocate i/b. Mr. S.R. Sapkal
with Mr. O.R. Waghule, Advocate for petitioner
Mr. A.S. Shinde, AGP for respondent Nos. 1 to 3.
Mr. A.N. Irpatgire, Advocate for respondent No.4.

CORAM : S.G. CHAPALGAONKAR, J.
DATE : 2ND JULY, 2024.

JUDGMENT :-

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned advocates for the parties.

The petitioner impugns the order dated 28.6.2024 passed by Honourable Minister for Cooperation, Mantralaya, Mumbai in Appeal No. 12 of 2024.

2. Mr. V.D. Sapkal, learned Senior Advocate submits that the petitioner is a proprietary firm engaged in the business of wholesale of agricultural produce and cattle fields at Market Yard, Latur. In the year 2012, the petitioner stood guarantor to respondent No.5 and filed undertaking that in case respondent No.4 keeps outstanding dues of agriculturists, he shall make it good. In the year 2023, the petitioner was served with a show cause notice demanding outstanding amount towards respondent No.5 since he defaulted payment to 42 Commission Agents. The petitioner being the guarantor, was asked to clear the dues. Even an action under the Agricultural Produce Market Committee Act, 1963 (Hereinafter referred to as, “the APMC Act” for sake of brevity) read with Rule 20(1)(a) APMC Rules of 1967 was proposed. The petitioner replied to the show cause notice dated 28.12.2023, denying that he is guarantor for respondent No.5 and that he did not recommend renewal of licence to him. In spite of such reply, respondent No.4 issued attachment notice dated 30.1.2024 against the petitioner.

3. The petitioner invoked the remedy of appeal under Section

52B of the APMC Act by filing appeal before the Director of Agricultural Marketing, Maharashtra State, Pune. Consequently, his appeal came to be allowed vide order dated 16.5.2024 thereby setting aside the attachment notice dated 30.1.2024. Aggrieved thereby, APMC filed second appeal under Section 52B of the APMC Act before the Honourable Minister for Cooperation, who allowed appeal by setting aside the order of Director of Marketing and restored the attachment notice dated 30.1.2024.

4. Mr. Sapkal, learned Senior Advocate would submit that Section 52-B of the APMC Act provides appeal against the order passed by the Market Committee, to the Director of Marketing. However, once the Director decides the appeal such decision shall be final in terms of sub-clause (3) of Section 52-B. He would, therefore, submit that the respondent APMC, could not have filed second appeal under self same provision before the Honourable Minister against the appellate order passed by the Director of Marketing as there is no provision of a Second Appeal. According to Mr. Sapkal, Honourable Minister has wrongly assumed appellate jurisdiction under Section 52-B, against the appellate order passed by the Director. Therefore, he urges to quash and set aside the impugned being without jurisdiction.

To buttress his submissions, he relies upon the reported judgments of this Court in case of ***Ravindra Arvind Bande vs. Vijay Manohar Bande reported in 2023(3) AIR Bom.R. 488*** and ***Bhaisaheb Deshmukh and others vs. The Director of Marketing dated 9.10.2012 in W.P. No. 6246 of 2012 (Aurangabad).***

5. Per contra, Mr. A.S. Shinde, learned AGP and Mr. A.N.

Irpatgire learned Advocate appearing for respondent No.4 submits that, in fact, the petitioner could not have invoked the appellate remedy under Section 52B of APMC Act before the Director of Marketing. The appeal instituted by petitioner before the Director of Marketing itself was not maintainable. They would also submit that respondent APMC had challenged the order passed by the Director of Marketing. Therefore, in terms of sub-clause(1)(b) of Section 52B, the State Government is empowered to deal with the appeal. It was the first appeal filed on behalf of respondent APMC. Hence, no jurisdictional error can be found in the impugned order passed by the Honourable Minister.

6. Having considered the submissions advanced by learned advocates appearing for respective parties and after going through the record tendered into service before this Court, it is apparent that petitioner had filed appeal under Section 52B of the APMC Act before the respondent No.3 - Director of Marketing against the order passed by respondent No.4 – Market Committee. The said appeal was allowed, thereby setting aside the attachment notice dated 30.1.2024 issued by respondent No.4. It is pertinent to note here that the Director of Marketing exercised his appellate jurisdiction conferred under Section 52B. Apparently, Section 52B provides remedy of appeal in terms of clause 1A of Section 52B, against any order passed by the Market Committee. For the purpose of ready reference, Section 52B is reproduced herein under :-

"52B. **Appeal.**

(1) Save as otherwise provided elsewhere in this Act, any person aggrieved by a decision taken or order passed under any of the provisions of this Act may prefer an

appeal :-

(a) to the Director where such decision is taken or order is passed by the Market Committee, its Chairman, Vice- Chairman, Secretary or any other officer empowered to exercise the powers of the director,

(b) to the State Government, where such decision is taken or order passed by the Director.

(2) An appeal under Sub-section (1) shall be made within a period of thirty days from the date of the decision or order appealed against.

(3) The order passed in the appeal by the Director or the State Government, as the case may be, shall be final."

7. A bare reading of clause (3) of Section 52B would make it clear that the order passed in appeal by the Director or the State Government, as the case may be, shall be final. The plain reading of the aforesaid clause shows that finality is given to the order passed in appeal under Section 52B. There appears no provision for a second appeal. Section 52B has been interpreted by this Court in the matters of Bhaisaheb Deshmukh and Ravindra Bande and Ravindra Bande (supra), after taking survey of relevant provisions under the APMC Act, this Court observed in para. 19 to 22, as under :-

"19. Section 52B is in the nature of a residuary provision providing for an appeal against a decision taken or order passed under the provisions of the Act, 1963 to the Director, where such decision is taken or order is passed by the Market Committee and its office bearers and officials, and to the State Government where such decision is taken or order is passed by the Director. Sub-section (3) of Section 52B however

declares that the order passed in appeal by the Director or the State Government, as the case may be, shall be final.

20. A conjoint reading of the provisions contained in Section 9 *and* Section 52B *of the Act would indicate that Section 52B(1) starts with a saving clause by using an expression, "save as otherwise provided elsewhere in this Act". Evidently, on a plain reading, it becomes abundantly clear that the right of appeal conferred by Section 52B is subject to the provisions contained in the Act, 1963. If an appeal is expressly provided by any other provisions of the Act, 1963, as in the case of a decision to grant or renew a licence, or cancel or suspend a licence under* Section 9 *of the Act, the resort to the residuary provisions of appeal under* Section 52B *of the Act is impermissible.*

21. The matter can be looked at from another perspective. The provisions contained in Sub-section (3) of Section 52B can also be construed as a provision which otherwise restricts the right of appeal conferred by Sub-section (1) of Section 52B. It ordains that an order passed by the Director or the State Government in appeal, shall be final. If the intention of the legislature was to provide an avenue of second appeal against the order passed by the Director in exercise of the appellate power under Section 9(b) or Section 52B(1)(b), the legislature would not have conferred finality to the order passed by the Director in appeal.

22. A clear distinction is thus discernible in the availability of remedy of appeal. If the order is passed by the Director (Marketing) in exercise of original jurisdiction an appeal to the State Government is statutorily provided for. However, where an order is passed by the Director in exercise of the Appellate power an element of finality is attached to such order. In substance, the scheme of the Act, 1963, which emerges from a conjoint reading of the provisions contained in Section 9 and Section 52B of the Act, is to provide one appeal against the order of granting or renewing a licence, or cancelling or suspending the licence and no more.

8. Considering the aforesaid observations, the legal position has been crystallized to the effect that, order passed in exercise of appellate jurisdiction by the Director of Marketing cannot be further challenged in appeal before the State Government. In present case Honourable Minister gave nelson's eye to the objection regarding maintainability of appeal raised on behalf of the petitioner.

9. In view of above, this Court holds that the impugned order passed by the Honourable Minister is "***coram non judice***" and deserves to be quashed and set aside, being without jurisdiction**.** However, the respondent Market Committee shall be at liberty to avail appropriate remedy as permissible in law, in case it desires to challenge the order passed by the Director of Marketing. Hence, the following order :-

: O R D E R :

[A] The writ petition is partly allowed;

[B] The impugned order dated 28.6.2024, passed in Appeal No. 12 of 2024, by the Honourable Minister for 'Cooperation', is quashed and set aside;

[C] Respondent No.4 Market Committee shall be at liberty to take up appropriate remedy as permissible in law, in case it desires to challenge subject order passed by the respondent No.3 – Director of Marketing.

[D] Rule made absolute in above terms. No costs.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-