



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

WRIT PETITION NO.9189 OF 2024

1. Randhir s/o. Govindrao Pawar,
Age : 48 years, Occ. Agri.,
r/o. Patange Road, Ajay Nagar,
Omerga, Dist. Osmanabad
2. Rajendra s/o. Kishan Talikhede,
Age : 49 years, Occ. Agri.,
r/o. Gogalgaon, Tq. Omerga,
Dist. Dharashiv (Osmanabad)

..Petitioners

Vs.

The District Collector,
Dharashiv (Osmanabad)
and 15 others

..Respondents

Mr.S.S.Gangakhedkar, Advocate for petitioners
Mr.S.J.Salgare, AGP for respondent nos.1 and 16
Mr.A.G.Chaudhari, Advocate for respondent no.2
Mr.P.R.Katneshwarkar, Senior Advocate i/b. Mr.N.R.Pawade, Advocate
for respondent nos.3 to 15

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATED : OCTOBER 23, 2024**

JUDGMENT (PER R.G.Avachat, J.) :-

Rule. Rule made returnable forthwith and heard finally with
the consent of learned counsel for the parties.

2. This petition, under Article 226 of the Constitution of India, has been preferred with the following main relief:-

B. By issuing writ of certiorari or any other directions writ or order in the like nature of writ of certiorari, the impugned notice dated 20.08.2024 and 21.08.2024 issued by the respondent no.1 conveyance special meeting on 27.08.2024 may kindly be quashed and set aside.

3. The petitioners herein are the Chairman and the Vice-Chairman of the Agricultural Produce Market Committee (APMC), Omerga, Dist. Dharashiv (Osmanabad). The requisite number of members moved a no-confidence motion against these petitioners. The District Collector, Dharashiv (respondent no.1), therefore, issued notice dated 20.08.2024 to the Director, APMC, Omerga, and 12 other Directors, Chairman and Vice-Chairman, informing them that a special meeting was convened on 27.08.2024 at 11.00 a.m. The District Collector, thereafter, again issued notice on 21.08.2024 to the District Deputy Registrar, Co-operative Societies, Dharashiv, directing him to issue requisite notice to all the concerned and preside over the meeting, wherein a resolution of no-confidence would be put to vote. Both these notices are under challenge in this Writ Petition.

4. On 26.08.2024, this Writ Petition was moved before learned Single Judge of this Court. Learned Single Judge was pleased to pass the following order:-

1. Leave to correct prayer Clause (B). Amendment to be carried out within a period of three days from today.
2. Heard Mr. Gangakhedkar, learned Advocate appearing for the petitioners.
3. The petitioners seek to challenge notices dated 20.08.2024 and 21.08.2024 issued by respondent no.1-Collector convening special meeting dated 27.08.2024 in terms of Section 23-A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short 'APMC Act, 1963'). Mr. Gangakhedkar would submit that requisition notices for special meeting were not sent to Collector under intimation to Directors. Similarly, Collector has not recorded subjective satisfaction before convening special meeting of Committee. On these two grounds he urges that impugned notices be quashed and set aside. To buttress his submissions he relies upon the judgment of this Court in case of Dinesh s/o Sheshrao Thakre Vs. Collector, Nagpur District, Nagpur, 2014(1)Mh.L.J. 460 particularly he places his reliance on observations appearing in paragraph no.9, which states thus:

“The object behind making a requisition and sending it to the Collector under provisions of sub-section [2] of Section 23A is, that it is for the Collector to arrive at a subjective satisfaction that the requirement of the aforesaid provisions namely that such requisition has been duly signed by not less than half of the total number of members entitled to vote, has been duly complied with. Under sub -section [3] of the aforesaid Section, the Collector has been given a period of fifteen days from the date of receipt of such requisition to convene a special meeting. While considering the provisions of sub-section [2] and sub-section [3] of Section 23A of the said Act, it is clear that the Collector has to act, once such a requisition is made to him, with intimation to the Director. The jurisdiction that has been conferred by the aforesaid section is only on the Collector, and it is he who has to take further steps as stipulated by sub-section [3] of Section 23A in the matter of convening a special meeting.”

4. Perusal of requisition submitted under Section 23-A of the APMC Act, 1963 depicts that it has been signed by in all 13 Directors. In pursuance to the said requisition, the Collector has issued impugned notices. Whether there was compliance of the provisions contained under Section 23-A(2) and (3) of the APMC Act, 1963, needs to be examined. However, for that part proceeding in pursuance of the notices need not be stayed. However, result of such proceeding can be directed to be kept in abeyance till further hearing of this writ petition. Consequently, following order is passed:

ORDER

- a. Issue notice to the respondents, returnable on 23.09.2024. The learned A.G.P waives notice for respondent nos.1 and 16.
- b. In addition to Court notice, the petitioners shall be at liberty to serve other respondents by any other alternate mode as permissible under law and file affidavit of service before the returnable date.
- c. Till the next date of hearing, result of proceeding initiated under impugned notices shall be kept in abeyance.

5. Reading of the aforesaid order would indicate that the grievance of the petitioners was non-compliance of sub-sections (2) and (3) of Section 23A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 ("A.P.M.C. Act", for short) and nothing more.

6. We have heard learned counsel for the petitioners and learned Senior Counsel for the respondent and learned AGP as well. We have also perused the affidavit-in-reply filed by the Assistant Registrar, Co-operative Societies. The affidavit-in-reply would indicate that the requisition letter signed by thirteen members of

APMC, Omerga, for no-confidence motion against the Chairman and Vice-Chairman was moved on 19.08.2024. The requisition was on the requisite stamp paper of Rs.100/-. It has further been submitted in the affidavit-in-reply that on the directions of the District Collector, he verified the same and satisfied himself about due compliance regarding moving of the no-confidence motion. Accordingly, he even made report to the District Collector.

7. In view of the order referred to herein above passed by learned Single Judge, the prayer of the petitioners in this Writ Petition has already been depicted therein. It would, therefore, be necessary to refer Section 23A of the A.P.M.C. Act, which reads thus:-

23A. Motion of no-confidence against Chairman or Vice-Chairman:

(1) A Chairman or a Vice-Chairman shall cease forthwith to be Chairman or Vice-Chairman, as the case may be, if the Market Committee by a resolution passed by a majority of not less than two-thirds of the total number of members (excluding the members who have no right to vote) at a special meeting so decides.

(2) The requisition for such special meeting shall be signed by not less than one-half of the total number of members (excluding the members who have no right to vote) and shall be sent to the Collector under intimation to the Director.

(3) The Collector shall, within fifteen days from the date

of receipt of the requisition under sub-section (2), convene a special meeting of the Committee:

Provided that, when the Collector convenes such special meeting of the Committee, he shall give intimation thereof to the Chairman, or as the case may be, Vice-Chairman and also to the Director.

(4)(a) A special meeting to consider a resolution under sub-section (1) shall be presided over by the Collector or the officer authorized by him in this behalf, but the Collector or such officer or the Director (if present) shall have no right to vote at such meeting.

(b) The members of the Committee who have no right to vote may take part in the discussions, but shall not vote.

(5) If the motion of no confidence is not carried as aforesaid or if the meeting could not be held for want of quorum, no such requisition for considering a fresh such motion expressing want of confidence in the same Chairman or Vice-Chairman shall be made until after the expiry of six months from the date of such meeting.

8. The wording of sub-sections (2) and (3) of Section 23A of the A.P.M.C. Act indicates that intimation of the requisite no-confidence motion shall be given by the Collector to the Director. Proviso to sub-section (3) of Section 23A also mandates that intimation of the special meeting to have been convened, shall be given to the Chairman, or as the case may be, the Vice-Chairman and also the Director. The word “shall” appearing in both the sub-sections was subject of interpretation in the judgment of this Court in the case of **Prabhakar s/o. Kashinath Selokar Vs. State of**

Maharashtra, (Writ Petition No.1429 of 2017 and connected matter, decided on 04.05.2017). The Division Bench in paragraph 6 of the said judgment, observed thus:-

6. The only ground on which both the learned counsel are harping is that the intimation is not given to the Director. In case of K. Narsimha vs. H. C. Singri Gowda and ors. AIR 1966 SC 330 the question fell for consideration before the Lordships of the Honourable Apex Court was as to in such matters what provisions should be construed to mandatory and what provisions should be construed to be directory. Their Lordships of Honourable Apex Court have considered that in such matters the question of prejudice has to be taken into consideration. The party will have to point out that by noncompliance of such provision, prejudice has caused to the party. The petitioners are not in a position to point out what prejudice has been caused to them by either not sending the requisition to the Director or by not sending a copy of notice of the meeting to the Director. In the facts of the present case no prejudice has been caused to the petitioners. We are of the considered view that such provisions will have to be construed as directory and not mandatory. In that view of the matter, the contention of the learned counsel in that regard is without substance.

9. In view of the view taken by the Division Bench in the case of **Prabhakar s/o. Kashinath Selokar** (Supra), we find the petition liable to be dismissed.

10. Learned counsel then placed on record some documents, indicating that the Assistant Registrar/Deputy Registrar, Co-operative Societies, had called the petitioners on the morning of the day on

which the meeting was convened. They put up before him their grievance. The petitioners by his inaction got prejudiced as the authority concerned did not take cognizance thereof.

11. Admittedly, the matter went far ahead. The meeting took place, as scheduled. Voting on no-confidence motion took place, the result whereof has not been declared in view of the order dated 26.08.2024.

12. Since we find no merit in the Writ Petition, the same is liable to be dismissed. Hence, the Writ Petition is dismissed. Rule is discharged. Interim relief stands vacated.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP