



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

WRIT PETITION NO. 4619 OF 2023

Shree Ganesh Commodity
Through its Proprietor,
Shri Aniruddha Kailash Kakde
Aged 19 years, Occu: Business,
R/o Ward No.2, Yashwant Colony,
Bachelor Road, New Arts College,
Wardha - 442 001.

PETITIONER

Versus

1. Wardha Agricultural Produce Market
Committee, Wardha,
Through Administrator,
Office: Near Vinoba Bhave Flyover,
Shivnagar, Hinghanghat Road,
Wardha
Email: am_wardha@msamb.com
2. The Secretary,
Wardha Agricultural Produce Market
Committee, Wardha,
Office: Near Vinoba Bhave Flyover,
Shivnagar, Hinghanghat Road,
Wardha
3. Assistant Registrar,
Co-Operative Societies,
Tah. Wardha Office at Rathi Building,
Nagpur Road, Wardha
Tah. & District Wardha.

RESPONDENTS

WITH

WRIT PETITION NO. 7121 OF 2023

M/s Kakde Brothers,
Through its Proprietor,
Shri Aniruddha Kailash Kakde
Aged 19 years, Occu: Business,
R/o Ward No.2, Yashwant Colony,
Bachelor Road, New Arts College,
Wardha - 442 001.

PETITIONER

Versus

1. Wardha Agricultural Produce Market
Committee, Wardha,
Through Administrator,
Office: Near Vinoba Bhave Flyover,
Shivnagar, Hinghanghat Road,
Wardha
Email: am_wardha@msamb.com
2. The Secretary,
Wardha Agricultural Produce Market
Committee, Wardha,
Office: Near Vinoba Bhave Flyover,
Shivnagar, Hinghanghat Road,
Wardha
3. Assistant Registrar,
Co-Operative Societies,
Tah. Wardha Office at Rathi Building,
Nagpur Road, Wardha
Tah. & District Wardha.

RESPONDENTS

Mr. A.M. Deshapande, Advocate a/w Mr. P.R. Agrawal, Advocate
for the Petitioner/s.

Mr. S.K. Bhoyar, Advocate for the Respondent Nos. 1 & 2.

Mr. Piyush Pendke, AGP for the Respondent No.3/State.

CORAM : BHARAT P. DESHPANDE, J.

DATED : 13th MARCH, 2024

ORAL JUDGMENT :-

Heard.

2. Rule. Rule is made returnable forthwith.

3. Heard finally with the consent of the learned
counsels for the respective parties.

4. The petitioner applied for grant of license of
trading/commissioning with Agricultural Produce Market
Committee (for short "APMC"), however the concerned
Authority/Administrator, rejected both the applications only on
the ground that the father and mother of the petitioner are due

to pay the market fee to APMC with regard to the their trading license issued earlier and for that purpose recovery proceedings are already filed.

5. The petitioner filed an appeal against the said order, however by the impugned orders dated 21.03.2023/ 09.03.2023, the first Appellate Authority while accepting the contentions raised by the Administrator, rejected the appeal.

6. Mr. Deshpande, learned counsel for the petitioner, would submit that the grant of license is dealt with under Section 7 of the Maharashtra Agricultural Produce Marketing (Development and Regulation Act, 1963 (for short the “Act of 1963” hereinafter) and same is regulated by Rule 6 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short the “Rules of 1967” hereinafter). He would submit, that the grant or refusal of such license is regulated only on the aspects as mentioned in the Rule i.e. (i) considering the solvency certificate, (ii) cash security or bank guarantee or third person’s guarantee if a solvency certificate is not produced, (iii) capacity for providing adequate

equipment for smooth conduct of the business and finally (iv) the conduct of the applicant, is also needs to be considered.

7. Mr. Deshpande, learned counsel for the petitioner, further submits that both the orders passed are by completely ignoring the powers under Section 7 of the Act of 1963 and Rule 6 of the Rules of 1967 and travelling beyond it by directing the petitioner to clear the dues of his father and mother in connection of the separate license for which the recovery proceedings are already pending in the Court. He submits, that such procedure for rejection of the applications is beyond jurisdiction of the concerned authority.

8. Mr. Borkar, learned counsel for the respondent Nos. 1 and 2/APMC, would submit that the applications filed by the petitioner were considered by the concerned Authority and he himself by letter dated 03.11.2022 agreed to pay the dues of his parents for the purpose of considering the said applications and in case the license is granted to him.

9. However, Mr. Borkar, learned counsel for the respondent Nos. 1 and 2/APMC, has fairly considered that the

reasons disclosed in the impugned orders for rejection of the applications are not available with the concerned Authorities as provided under Section 7 of the Act of 1963 and Rule 6 of the Rules of 1967.

10. For the purpose of proper understanding, Section 7 of the Act of 1963 reads as thus:-

“7. Grant of licences

(1) Subject to rules made in that behalf, a Market Committee may, after making such inquiries as it deems fit, grant or renew a licence for the use of any place in the market area for marketing of the agricultural produce or for operation therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehousemen or in any other capacity in relation to the marketing of agricultural produce, or may, after recording its reasons in writing thereof, refuse to grant or renew any such licence:

[Provided that, if the Market Committee fails to grant or renew or refuse a licence within a period of sixty days from the date of receipt of the application therefore, the licence shall be deemed to have been granted or renewed as the case may be.]

(2) Licences may be granted under sub-section (1) in such forms, for such periods, on such terms and conditions and restrictions (including any provisions for prohibiting brokers and commission agents from acting in any transaction both as buyer or seller, or on behalf of both the buyer and seller, and also provision for prohibiting brokers from acting in any transaction except between a trader and trader, in respect of agricultural produce other than poultry, cattle, sheep and goats and such other agricultural produce as may be prescribed, and for prescribing the manner in which and the places at which auctions of agricultural produce shall be conducted and the bids made and accepted and places at which weighment and delivery of agricultural produce shall be made in any market or market area) and on payment of fees, not being in excess of such maxima as may

be prescribed [Provisions may also be made for exempting any class of persons from payment of such fees on such terms and conditions as may be prescribed.]

(3) Notwithstanding anything contained in sub-sections (1) and (2), any trader who desires to operate in more than one market area, may apply to such authority or officer notified by the State Government for grant or renewal of licence with such details, as may be prescribed. Such applications shall contain the names of the Agricultural Produce Market Committees in which the applicant trader wants to operate and the authority or officer granting such licence shall incorporate in the licence the names of such Agricultural Produce Market Committees in which concerned trader shall be entitled to operate. The person applying for licence to operate in more than one market area, shall be required to pay the licence fee at such rate, as may be prescribed, to the concerned authority or officer and such fee shall be shared in the manner prescribed, between such authority or, as the case may be, officer and the Marketing Committees which are covered under the said licence.]

(4) (a) Notwithstanding anything contained in sub-sections (1), (2) and (3) of this section, any person desiring to trade on Electronic trading platform shall obtain certificate of registration as a trader, from such authority as may prescribed in this behalf.

(b) The application for registration under clause (a) shall be made online and in such manner as may be prescribed.

(c) Digitally signed certificate of registration shall be issued by Competent Authority in the Form as may be prescribed.

(d) Notwithstanding anything contained in clause (a) to (c) of this sub- section, the Competent Authority may, for reasons to be recorded in writing, refuse to grant or renew a certificate of registration for carrying out trade to any person, who in its opinion, is found to have acted in a manner detrimental to online trading, or, if the person has not traded for more than six months without any valid reasons, or has exhausted his dynamic cash credit limit with the bank or has failed in online payments of seller, buyer, Commission agent, supervision cost, market fee and any other payments under the Act, rules and bye-laws. If any,

registration is not granted or renewed the applicant shall be informed of the same giving the reasons therefor and the registration fee, if paid, shall be forfeited to the market fund or to the State Government, as the case may be.

(e) The Certificate of Registration for electronic trading shall be valid in respect of the person in whose name that is issued and shall not be transferable.

(f) Certificate of registration shall be liable for suspension or cancellation if there is-

(i) breach of any rules meant for transparency and price discovery in a fair manner; or

(ii) over-trading above the available cash credit limit by fraudulent means; or

(iii) refusal or deceitfully declining making online payments on real time basis for commodity traded and other payments under the Act, rules and bye-laws.

(g) Every certificate of registration so granted or renewed shall be in force for a period of three years from the date of granting or renewing Certificate.

(h) Each Market Committee and Private Market having electronic trading platform shall publish the list of all the certificate of registration online for traders having registration for using E-trading platform of the market.”

11. Similarly, the procedure provided under Rule 6 of the Rules of 1967, which read thus:-

“6. Licenced trader, broker and commission agent

(1) Any person desiring to use any place in a market area for marketing of any declared agricultural produce or for operating therein as a trader, commission agent or broker, shall make an application in writing to the Director in the form prescribed by him (where a Market Committee has not

yet started functioning) and in any other case, in the Form prescribed by byelaws for a licence or for renewal thereof, as the case may be, to the Market Committee along with the fee prescribed by the byelaws, if any, but not being in excess of Rs. 100 per market year and shall supply the following information, namely; -

(a) solvency certificate required by the Director or prescribed by byelaws;

or

(b) cash security or bank or third person's guarantee required by the Director or prescribed by byelaws.

*[(c) ***]*

(2) On receipt of any application together with the proper amount of the fees, if any, and information referred to in sub-rule (1), the Director, or as the case may be, Market Committee may, subject to the provisions of rule 5 and this rule, after, satisfying himself or itself on the following points, grant the applicant a licence in Form I, or, as the case may be, renew it in that Form (such licence being issued or renewed, except, in a case where it is granted by the Director, under the signature of the Chairman), namely:-

(a) (i) solvency certificate;

(ii) cash security or bank's or third person's guarantee, if a solvency certificate is not produced;

(iii) capacity for providing adequate equipment for smooth conduct of the business;

(iv) conduct of the applicant;

*[(v) * * *]*

(b) in the case of renewal of a licence, also whether [on the basis of a statement to be furnished by the licensee showing the business transacted and the amount of dues paid or payable to the Market Committee in the last preceding market year) the applicant has traded or not in the market area or whether the person has overtraded:

Provided *that, no licence shall be issued to any applicant unless he executes an agreement in the form approved by the Director agreeing to abide by the provisions*

of the Act, these rules and the bye laws.

(3) The Director or as the case may be, the Market Committee may grant one single licence in respect of the principal market, subsidiary market and in respect of any other place in the market area or to operate as such trader, commission agent or broker may grant separate licences in respect thereof, to enable a trader, a commission agent or broker, to operate as such trader, commission agent or broker, as the case may be.

(3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), any trader desiring to operate in more than one market area, shall make an application in writing to the Director in FORM 1A for grant of a licence or for renewal thereof, as the case may be, along with the licence fee of rupees [one hundred] per market area.

(3B) On receipt of an application together with the fee, the Director shall record the date of receipt thereof on such application and shall complete an inquiry, as he deems fit and after satisfying himself on the points provided in sub-clauses (i) to (iv) of clause (a) of sub-rule (2), grant the applicant trader a licence in FORM 1B, or as the case may be, renew it.

(3C) The licence holder shall inform the date on which he would commence the business in a particular market area to the concerned Agricultural Produce Market Committees. The licence holder shall pay the market fees as per rule 32 and cost of supervision as per rule 34A to the concerned Market Committees on the quantum of agricultural produce purchased in the respective market areas.

(3D) The name of such trader shall appear in the voters list of only such market committee and he shall be eligible to contest the election of only that market committee in whose market area he normally resides.

(4) Notwithstanding anything contained in sub-rule (2), the Director, or as the case may be, the Market Committee may for reasons to be recorded in writing refuse to grant or renew a licence to any person, who in his or its opinion, is not solvent or in the case of renewal of licence, if the person has not traded in the market area for more than a week

without valid reasons or who had committed any act, or abstained from carrying out his normal business, with the intention of willfully obstructing, suspending or stopping the marketing of declared agricultural produce in the market area and in consequence thereof, the marketing of declared agricultural produce in the market area, the marketing of any such produce had been obstructed, suspended, or stopped. If any licence is not granted or renewed the applicant shall be informed of the same and the reasons therefore and the licence fee, if paid, shall be refunded to the applicant.

(5) (a) On receipt of the application for grant or for renewal of the licence, the Market Committee shall record the date on such application with an entry in the register prescribed in this behalf, and shall complete the inquiry, as deemed fit and shall dispose of such application, within thirty days of its receipts.

(b) When the licence is deemed to have been granted to the applicant, or renewed, as the case may be, under section 7 of the Act, the secretary of the market committee shall issue the licence to the applicant.

(5A) An application for renewal of a licence shall be made before [28th or 29th February, as the case may be, every year]. It shall be competent for the Market Committee to accept an application made after the aforesaid date on payment of a late fee at the rate of 10 per cent of the licence fee per day of default.

(6) The licences shall be valid for the persons in whose names they are issued and shall not be transferable. Licences shall also be liable for suspension or cancellation for a breach of these rules; and the licensee shall be informed of such suspension or cancellation and the reason therefor.

(7) Every licence so granted or renewed shall be in force for a market year or for three market years, as the case may be, on payment of proportionate fees;

***Provided** that in the case of grant or renewal of a licence for three years, such grant or renewal shall be subject to the production by the licensee of a statement showing the business transacted and the amount of dues paid or payable to the Market Committee, in the last preceding market year and verification thereof by the market committee.*

(8) Each Market Committee shall maintain a

register in such form as the Director by general special order, may specify in this behalf containing names of all commission agents, traders and brokers licenced under these rules.”

12. The grant or refusal of license is no doubt is available with the concerned Authority, however it is necessary for the concerned Authority to decide such applications within the powers available with it. If the Authority travels beyond such powers and reject the applications on extraneous grounds, the same cannot be considered as within jurisdiction.

13. Rule 6 of the Rules of 1967 as quoted above clearly provides that the application filed for grant of license is required to be considered on the points as mentioned in the sub Rule 2(a). At this stage, it is necessary to note that the rejection of the applications could be only on four grounds which are mentioned therein i.e. (i) solvency certificate, (ii) cash security or bank's or third person's guarantee if a solvency certificate is not produced, (iii) capacity for providing adequate equipment for smooth conduct of business and lastly (iv) the conduct of the applicant. Thus, the rejection of the applications cannot be considered beyond such parameters. Secondly, the fact remains that the license granted in favour of the parents of the petitioner

are separate and independent. For that purpose, the recovery proceedings are already pending. The petitioner who is major and entitled to carryout his own business, cannot be deprived of his right to get license only because the existing dues of his parents and more specifically when recovery proceedings are pending against them. Even otherwise such ground is not available to the concerned Authority.

14. Mr. Borkar, learned counsel for the respondent Nos. 1 and 2/APMC, would submit that apart from the grounds mentioned in the impugned orders, it appears that the petitioner filed the said applications by giving guarantee of his father who is already considered to be having dues to be paid to the APMC. Such contention of the learned counsel for the respondent Nos. 1 and 2/APMC cannot be looked into in absence of any material and more specifically in absence of any findings to that effect by the concerned Authority.

15. In view of the above findings, both the impugned orders are hereby quashed and set aside. However, the directions could be issued to the concerned Authority to decide

the applications filed by the petitioner in both these matters afresh and in accordance with law as discussed above. The petitioner is permitted to produce the solvency certificate to the satisfaction of the concerned Authority. The applications filed by the petitioner are restored. The concerned Authority to consider such applications within a period of one month from today by allowing the petitioner to submit fresh security for solvency as the case may be.

16. The Petition is accordingly **allowed**.

17. Rule is made absolute in the above terms. No costs.

18. The parties shall act on the authenticated copy of this judgment.

19. Pending application/s, if any shall stand disposed of accordingly.

(BHARAT P. DESHPANDE, J.)