



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

WRIT PETITION NO.3350 OF 2024

Shivchandra Tejrao Tayade,

Aged about 56 years,

Occupation : Chairman, APMC,

Malkapur, R/o Warkhed,

Tahsil Malkapur,

District Buldhana.

... **Petitioner**

Versus

1. **The Collector, Buldhana,**
District Buldhana.
2. **The Sub-Divisional Officer,**
Malkapur, Tq. Malkapur,
District Buldhana.
3. **The District Deputy Registrar,**
Co-operative Societies, Buldhana,
District Buldhana.
4. **Agricultural Produce Market Committee,**
Malkapur, through its Secretary,
Tahsil Malkapur,
District Buldhana.
5. **Sahebrao Shaligram Patil,**
Aged about 54 years,
Occupation : Member, APMC,
Malkapur, R/o Vivra, Tahsil Malkapur,
District Buldhana.

- 6. Shrikrushna Purushottam Khapote,**
Aged about 58 years,
Occupation : Member, APMC,
Malkapur, R/o Aland, Tahsil Malkapur,
District Buldhana.
- 7. Vijay S/o Nivrutti Sathe,**
Aged about 52 years,
Occupation : Member, APMC,
Malkapur, R/o Dasarkhed,
Tahsil Malkapur, District Buldhana.
- 8. Bhagwan S/o Pandurang Chopade,**
Aged about 55 years,
Occupation : Member, APMC,
Malkapur, R/o Ghirni, Tahsil Malkapur,
District Buldhana.
- 9. Nago S/o Arjun Rane,**
Aged about 48 years,
Occupation : Member, APMC,
Malkapur, R/o Harankhed,
Tahsil Malkapur, Distriict Buldhana.
- 10. Nandabai Bhagwan Patil,**
Aged about 49 years,
Occupation : Member, APMC,
Malkapur, R/o Vajirabad,
Tahsil Malkapur, District Buldhana.
- 11. Preeti Nitin Narkhede,**
Aged about 45 years,
Occupation : Member, APMC,
Malkapur, R/o Vadaji,
Tahsil Malkapur, District Buldhana.

12. Madhukar Haribhau Fase,

Aged about 54 years,
Occupation : Member, APMC,
Malkapur, R/o Hingna Kazi,
Tahsil Malkapur, District Buldhana.

13. Sanjay S/o Sadashiv Kajale,

Aged about 52 years,
Occupation : Member, APMC,
Malkapur, R/o Wakodi,
Tahsil Malkapur, District Buldhana.

14. Dhyandeo Pandurang Waghode,

Aged about 58 years,
Occupation : Member, APMC,
Malkapur, R/o Jambhuldhaba,
Tahsil Malkapur, District Buldhana.

15. Pravin Shantaram Kshirsagar,

Aged about 50 years,
Occupation : Member, APMC,
Malkapur, R/o Nimkhed,
Tahsil Malkapur, District Buldhana.

16. Sunilkumar Bhikulal Agrwal,

Occupation : Member, APMC,
Malkapur, R/o Near Bonde Ata Chakki,
Chalis Bigha, Malkapur,
Tahsil Malkapur, District Buldhana.

17. Kundan Ghanshyamdas Chandak,

Occupation : Member, APMC,
Malkapur, R/o Near Police Station,
Nandura Road, Malkapur,
Tahsil Malkapur, District Buldhana.

18. The Tahsildar,

Malkapur,

Tq. Malkapur, District Buldhana.

... **Respondents**

Shri N.S. Khubalkar with Shri R.D. Karode, Counsel for Petitioner.

Shri S.M. Ghodeswar, Assistant Government Pleader for Respondent Nos.1 to 3.

Shri A.M. Ghare, Counsel for Respondent Nos.4, 5, 9 to 11, 15 and 16.

Shri Harish D. Dangre, Counsel for Respondent Nos.6, 7, 8, 12 to 14 and 17.

CORAM : NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE : AUGUST 30, 2024

ORAL JUDGMENT (PER NITIN W. SAMBRE, J.) :

1. **RULE.** Heard finally by consent of the learned counsel appearing for the parties.

2. The challenge in this petition is to the resolution of no-confidence motion passed against the petitioner in the special meeting held on 31-5-2024 whereby the petitioner is unseated from the post of the Chairman of the respondent No.4- Agricultural Produce Market Committee (APMC).

3. The facts necessary for deciding the petition are as under :

(i) The petitioner was elected as the Director of the respondent No.4- APMC from the Co-operative Societies Constituency, which was notified under Rule 68 of the Maharashtra Agricultural Produce Market Committee (Election to Committee) Rules, 2017 (hereinafter referred to as 'the APMC Rules of 2017) on 4-5-2023.

(ii) The petitioner was elected as the Chairman of the respondent No.4-APMC in the meeting dated 20-5-2023.

(iii) A requisition was submitted by the respondent Nos.5 to 17, who are the members of the respondent No.4-APMC, to the respondent No.1-Collector informing their intention to move and pass the no-confidence motion against the petitioner on 21-5-2024.

(iv) Under the provisions of Section 23-A of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as 'the APMC Act') and the rules framed thereunder, the no-confidence motion is required to be considered.

(v) Accordingly, a requisition dated 21-5-2024 was moved, which was addressed to the respondent No.1-Collector, proposing the resolution of no-confidence motion against the petitioner. The said notice, which was received by the respondent No.1-Collector on 21-5-2024, was duly signed by the members of the respondent No.4-APMC, who are party-respondents to the petition.

(vi) The respondent No.1-Collector, in exercise of the powers under sub-sections (3) and (4)(a) of Section 23A of the APMC Act authorized the respondent No.2-Sub-Divisional Officer, Malkapur to conduct the meeting of the no-confidence motion.

(vii) As a sequel of above, the respondent No.2-Sub-Divisional Officer caused a notice dated 22-5-2024 on all the private respondents and also the members of the APMC, thereby convening the special general body meeting on 31-5-2024 at 11 a.m. under his chairmanship.

(viii) The petitioner, feeling aggrieved by such notice, raised an objection on 21-5-2024 to the respondent No.1-Collector stating that in the capacity of Chairman of the APMC, he has carried out the administration of the said statutory body in accordance with law. He has claimed that the notice of no-confidence motion is moved with an illegal intention. It is

further claimed by him that for a period of two years from the date of election as the Chairman of the APMC, i.e. 20-5-2023, the no-confidence motion cannot be passed.

(ix) Another representation was moved by the petitioner to the respondent No.18- Tahsildar on 31-5-2024, i.e. on the date of the meeting, claiming that (a) the notice of convening the meeting by the respondent No.2-Sub-Divisional Officer is illegal, (b) the respondent No.1-Collector has authorized the respondent No.2-Sub-Divisional Officer to preside over the special meeting, (c) the respondent No.2-Sub-Divisional Officer, in turn, has authorized the respondent No.18-Tahsildar to preside over the meeting, and (d) under sub-section (4) of Section 23A of the APMC Act, if the powers are vested in the Sub-Divisional Officer to preside over the meeting, the Sub-Divisional Officer cannot preside over such special meeting and as such the meeting be deferred.

(x) In spite of the above, the respondent No.18- Tahsildar presided over the meeting, wherein a resolution of no-confidence motion came to be passed by thirteen of the members as against two. The same has prompted the petitioner to approach this Court.

4. While questioning the resolution of the no-confidence motion passed on 31-5-2024, Shri N.S. Khubalkar, learned counsel appearing for the petitioner, would urge that the resolution impugned is not sustainable in law, as the same is passed contrary to the very scheme of Section 23A of the APMC Act. According to him, the Collector under Section 23A of the APMC Act has authorized the Sub-Divisional Officer. Once the Sub-Divisional Officer is authorized by the Collector to preside over the meeting, in the absence of express powers under the statute, the respondent No.18-Tahsildar ought not to have presided over the meeting.

5. So as to substantiate the aforesaid contentions, Shri Khubalkar has drawn support from the provisions of Section 23A(3) and (4) of the APMC Act so as to claim that it is the respondent No.2-Sub-Divisional Officer and not the respondent No.18-Tahsildar, who can preside over the meeting. According to him, even if the Sub-Divisional Officer has proceeded on leave and the charge of the said post is given to the respondent No.18-Tahsildar, the Tahsildar, in view of the orders of the Collector, ought not to have presided over the meeting, as he was never authorized by the Collector specifically to preside over the special meeting.

6. So as to substantiate the aforesaid contentions, Shri Khubalkar would draw support from the judgment in the matter of *Rukhmina Rajesh Dange Versus Kailash Natthuji Pawar and others*, reported in 2019 (3) ABR 731. He would urge that the *pari materia* provisions under the Maharashtra Village Panchayats Act, 1959 were considered by the learned Single Judge of this Court in the aforesaid judgment. Accordingly, Paragraphs 7 and 8 of the said judgment read thus :

“7. Under provisions of Section 33 of the said Act the procedure for election a Sarpanch has been laid down. Section 33(2) of the said Act prescribes that such meeting has to be called by the Collector and an officer appointed by the Collector is required to preside over such meeting. There is no power conferred on the delegatee of the Collector to further subdelegate that authority to any other officer for presiding over such meeting. In the present case the Additional Collector in exercise of powers under Section 33(2) of the said Act authorised the Tahsildar to hold the meeting for electing the Sarpanch. Thereafter on 01/08/2018 the Collector delegated those powers in favour of the Circle Officer and directed

him to preside over said meeting. This sub-delegation by the Tahsildar in favour of the Circle Officer is without authority of law and beyond the scope of powers conferred by Section 33(2) of the said Act. To that extent the finding recorded by both the Authorities that the meeting held 09/08/2018 which was presided over by the Circle Officer was against the provisions of Section 33(2) of the said Act is a correct finding.”

“8. The question to be considered is whether in the facts of the present case despite holding that the present case despite holding that the meeting was conducted in breach provisions of Section 33(2) of the said Act, the election of the petitioner is liable to be set aside. It is not in dispute that in the said meeting the petitioner as well as respondent No.1 were the two contestants for the post of Sarpanch. No objection was raised either by the petitioner or the respondent No.1 or any of the members of the Grampanchayat to the conduct of the meeting by the Circle Officer or his presiding over the same. In the election that was held the petitioner secured seven votes while the respondent No.1 secured four votes. The petitioner was then declared elected after which for the first time the respondent No.1 raised a dispute as to the competence of the Circle Officer to conduct the meeting.”

7. In addition to above, Shri Khubalkar would draw support from the judgment of the Apex Court in the matter of *Hari Chand Aggarwal Versus The Batala Engineering Co. Ltd. and others*, reported in AIR 1969 SC 483, so as to claim that if the statute empowers an act to be done in a particular way, then it has to be done in that way alone. He would claim that once the Collector has authorized the Sub-Divisional Officer, it was the Sub-Divisional Officer who should have exercised the powers and not the respondent No.18- Tahsildar. To substantiate his contention, he would place reliance on Paragraph 10 of the said judgment, which reads thus :

“10. Apart from these considerations we see no reason to deviate from the normal rule that the expressions or words which have been used in the notification must be read as such and not in any other manner unless the context requires that the latter course should be followed. In the present case the words “District Magistrate” could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued under Section 10(2) of the Code that the Additional District Magistrates can be said to have been empowered to exercise the powers of the District Magistrates. The reasons which prevailed with the Nagpur Court and which have already been summarised adequately meet the contrary view that the Additional District Magistrate should be held to be competent to act under Section 29 of the Act even though the Nagpur case was one of detention.”

8. In addition to above, Shri Khubalkar would also draw support from the Full Bench judgment of the Madhya Pradesh High Court in the matter of *Girja Shanakar Shukla Versus Sub-Divisional Officer, Harda and others*, reported in *AIR 1973 MP 104*, so as to substantiate his claim that an officiating person cannot exercise the power which can be exercised by the person who is regularly posted on the substantive post. He would also draw support from Paragraphs 38, 39, 40 and 41 of the said judgment, which read thus :

“38. In my view, the distinction between an officer holding a particular post and an officer holding the current charge of that post is much greater than between an officer holding a particular post and another office invested with all the powers attached to that post. An order appointing a particular officer to hold current charge of the duties is an administrative order intended to clothe such an officer with all administrative powers which have no statutory basis. An officer appointed to hold the current charge of the duties of a higher post

cannot exercise the statutory powers attached to that post unless there is a statutory provision to this effect.”

“39. In the instant case such a statutory provision exists and, therefore, the Sub-Divisional Officer who was placed in current charge of the duties of the Collector was competent to function as Collector within the meaning of Section 55 of the Act. The word “Collector” has not been defined in the Act. We may, therefore, refer to the definition of the ‘Collector’ in the Madhya Pradesh General Clauses Act as also the provisions of the Madhya Pradesh Land Revenue Code. In sub-section (6) of Section 2 of the Madhya Pradesh General Clauses Act, the Collector has been defined to mean the Chief Officer in charge of the revenue administration of the district. Where a Sub-Divisional Officer is placed in current charge of the duties of the Collector, he is, in my view, for the time being the Chief Officer in charge of the revenue administration of the District and as such a Collector within the meaning of the aforesaid provision in the General Clauses Act. As such he would be competent to function as a Collector under Section 55 of the Act. I may also here refer to Section 26 of the Madhya Pradesh Land Revenue Code. The said section provides that if the Collector is disabled from performing his duties the officer who is temporarily placed in charge of the current duties of the Collector shall be held to be the Collector under this Code until the State Government appoints a successor. In my view the disability contemplated by this section must be construed liberally as inability to perform the duties for any reason whatsoever. Therefore, if the Collector is for the time being on leave and is, therefore, unable to perform the duties of his office the officer appointed to hold current charge of the duties of the Collector in his absence shall be the Collector for the purpose of the Code. In this case it appears that the Collector being on leave the Sub-Divisional Officer was appointed to hold current charge of the duties vide order dated 15th July, 1971 (Annexure H). He was, therefore, competent to perform the functions of the Collector under Section 55 of the Act.”

“40. I would like to make it clear that but for the aforesaid statutory provisions the Sub-Divisional Officer placed in charge of the duties would not be competent to exercise the statutory powers conferred on the Collector under Section 55 of the Act. I am of the opinion that where statutory powers are conferred on a particular officer those powers cannot be exercised by an officer holding current charge of the duties of such office and the distinction between rank and functions is not of much consequence in this connection. In other words, officer holding current charge of the duties of a post can merely perform the administrative functions but not the statutory functions pertaining to the post. With great respect, I am unable to agree with the contrary view expressed in 1971 MPLJ 609 = (1971 Lab IC 896). There are numerous administrative functions attached to each post which require no statutory sanction. An officer holding the current charge of the duties of the post is competent to exercise only such functions.”

“41. When a particular officer is mentioned in a particular statutory provision, it is that officer alone who can exercise the statutory powers or functions conferred on him. An officer who is placed merely in charge of the current duties of the post cannot be equated with an officer holding that post in the absence of any other statutory provision to this effect.”

9. Shri Khubalkar would also draw support from the Division Bench judgment of this Court in the matter of *Dinesh S/o Sheshrao Thakre Versus Collector, Nagpur District, Nagpur and others*, reported in 2014(1) Mh.L.J. 460, so as to claim that once the jurisdiction is conferred on the Collector under Section 23A of the APMC Act, it is for the Collector to take further steps as stipulated under sub-section (3) of the said Act for convening the special

meeting. He would urge that in the absence of there being any specific order in favour of the respondent No.18- Tahsildar, the exercise of the power by the respondent No.18 is illegal. He would claim that the act of convening the meeting by the respondent No.18- Tahsildar is without there being any express statutory power.

10. As against above, Shri S.M. Ghodeswar, learned Assistant Government Pleader appearing for the respondent Nos.1 to 3, would urge that the meeting of no-confidence motion is convened and passed by the Competent Officer. So as to substantiate the same, he would urge that no doubt the power to convene the meeting and for that purpose giving authorization, vests in the Collector. According to him, in exercise of the power under the provisions of Section 23A(3) of the APMC Act, the respondent No.2-Sub-Divisional Officer was authorized by the respondent No.1- Collector to convene and preside over the meeting. So as to substantiate the said contention, Shri Ghodeswar would draw support from the order of the respondent No.1-Collector passed on 31-5-2024 in exercise of the power under sub-sections (3) and 4(a) of Section 23A of the APMC Act. In addition to this, Shri Ghodeswar, on facts, would urge that the Sub-Divisional Officer in exercise of the power under sub-section (3) of Section 23A of the said Act issued a notice thereby convening the

special meeting for consideration of the no-confidence motion against the petitioner on 31-5-2024. Shri Ghodeswar, from the language of the authorization issued by the Collector under Section 23A(3) and (4)(a) on 21-5-2024, would urge that the powers are vested by statutory fiction in a post and not a person occupying such post. As such, he would claim that officer occupying the post of Sub-Divisional Officer is entitled to exercise the power pursuant to the authorization issued by the respondent-Collector for not only convening but also presiding over the special meeting for consideration of no-confidence motion against the petitioner, who was holding the post of the Chairman of the respondent No.4-APMC.

11. Shri Ghodeswar has produced the original record of the meeting and also the order of the Collector thereby sanctioning the leave of the then Sub-Divisional Officer in exercise of the power under Rules 9(22) and 50(2) of the Maharashtra Civil Services (Leave) Rules, 1981. According to him, the respondent No.1-Collector, as per the service rules, has handed over the charge of the said post to the respondent No.18-Tahsildar. He would urge that the Tahsildar, who was also manning the post of Sub-Divisional Officer in view of above arrangement, has presided over the meeting. According to him, the Tahsildar in such an eventuality exercises the

same statutory and official powers as are vested in the Sub-Divisional Officer. So as to substantiate the aforesaid contentions, Shri Ghodeswar would rely on the judgment of the Apex Court in the matter of *Padmini Singh Versus State of Assam and others*, reported in (2018) 10 SCC 561, particularly Paragraphs 10 to 13, which read thus :

“10. It may be noted that a ground has been taken in this appeal before us that the beneficiary, namely, Respondent 6, had attended the meeting. On a perusal of the judgment of the learned Single Judge, we do not notice that any such assertion was made. The entire discussion, as we find, relates to what is meant by the Deputy Commissioner by his communication dated 17-2-2014 and further, regarding the delegation of authority to the BDO to preside over the meeting. The ultimate conclusion that has been recorded by the learned Single Judge is expressed in para 22 of the judgment which reads thus : (SCC OnLine Gau)

“22. In view of the above discussions, the resolution adopted expressing no confidence against the petitioner is set aside and declared null and void. But the matter does not rest here. This Court cannot remain oblivious of the fact that a requisition for no-confidence motion was given against the petitioner and expression of no confidence was negated for procedural irregularities as mentioned above and, therefore, this Court will be failing in its duty in exercising power under Article 226 of the Constitution of India if this Court does not direct the petitioner to hold a meeting to decide the no-confidence motion brought against her.”

“11. Interpreting Section 15 of the Act, the Division Bench opined that the Deputy Commissioner has not acted as

provided under Section 15. The Resolution passed on 31-3-2014 which has been brought on record as Annexure P-6 records that Respondent 6 was present in the meeting and signed. In such a situation, the issue that emerges for consideration is whether the ultimate resolution of the meeting could have been discarded.”

“12. To appreciate the said aspect, it is appropriate to reproduce the content of the resolution. It reads thus:

“The meeting is presided over by Shri Kishore Baruah, BDO, Barkhola Development Block as per the Assam Panchayat Act, 1994. At the outset of the meeting BDO asked the Members any opinion if they have. They replied that they want voting, then by secret ballot voting is done. Ballot box is open at 1.30 p.m. After opening the ballot box as found 9 Gram Panchayat Members cast their votes for no-confidence motion and 1 Gram Panchayat Member cast vote against the no-confidence motion. As per Assam Panchayat Act 2/3rd (Section 15) majority of the total Gram Panchayat members should cast votes either in support of no-confidence motion or against the no-confidence motion. In this connection 2/3rd i.e. 7 members out of 10 members required. But after opening ballot box, it is found that 9 Gram Panchayat Members cast vote in favour of no-confidence motion and 1 Gram Panchayat Member cast vote against the no-confidence motion. As a result of which Rita Rani Dusad, President, Masughat Gram Panchayat lost her Presidentship and as per Act, Vice President, Masughat Gram Panchayat will act and perform and function as i/c, President, Masughat Gram Panchayat for the time being.”

“13. From the foregoing, it is quite vivid that the meeting was held to discuss the motion of no-confidence. Respondent 6 who was a beneficiary attended the meeting and voting had taken place. It is well settled in law that a mandatory provision of law requires strict

compliance but there are situations where even if a provision is mandatory, non-compliance would not result in nullification of the act. There are certain exceptions. One such exception is, if a certain requirement or condition is provided in a statute for the benefit or interest of a particular person, the same can be waived by him if no public interest is involved. The ultimate result would be valid even if the requirement or condition is not performed. We are disposed to think that in the obtaining fact situation, no public interest was affected. The BDO presided over the meeting and everyone knew that the meeting was called for passing a resolution either in favour of or against the no-confidence motion. Respondent 6 knowing fully well participated in the meeting and the resolution was passed against her. After losing in the voting process, the assail was made to the procedure of calling the meeting. We are inclined to think, had Respondent 6 not participated in the meeting, the matter would have been absolutely different. Having participated, it has to be held that Respondent 6 had waived the condition precedent.”

12. According to Shri Ghodeswar, a similar issue based on the *pari materia* provisions came up for consideration before this Court in the matter of *Shailesh S/o Devduji Gabhane Versus The Collector, Bhandara, and others* in Writ Petition No.24 of 2023 decided on 10-11-2023 under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Shri Ghodeswar, while drawing support from Paragraphs 5, 9 and 10 in the aforesaid judgment, would urge that once the petitioner has lost the confidence of majority of the members of the APMC, who

have elected him, hence, he is not entitled to continue in the office – may be for whatsoever reasons. According to him, neither the reasons are necessary to be narrated in the notice of no-confidence motion nor the communication of the same.

13. Shri Ghodeswar would claim that the office of the Chairman is occupied by the petitioner in an undemocratic way and following the very same principle, the petitioner is sought to be unseated, as the will of the majority of the elected members shall prevail. According to him, once the petitioner has failed to demonstrate the prejudice caused to him in the matter of convening and presiding over the meeting by the Tahsildar, who was also Incharge Sub-Divisional Officer, the petitioner cannot claim any benefit so as to continue on the elected post. Shri Ghodeswar has sought to rely on the judgment of the Apex Court in the matter of *K. Narasimhiah Versus H.C. Singri Gowda and others*, reported in *AIR 1966 SC 330*, particularly Paragraphs 10 and 20 thereof. According to him, apart from above, the issue is squarely covered by the Division Bench judgment of this Court in the matter of *Sopanrao Onkarrao Sathe Versus State of Maharashtra and others*, reported in *2010(6) Mh.L.J. 334*. He would draw support from Paragraphs 8, 9, 10, 11, 12 and 13 of the said judgment so as to substantiate his contention that once the petitioner

has lost the confidence of the majority of the elected members, he has no authority to continue in the office, even for a minute. Shri Ghodeswar would also try to substantiate his contention from the aforesaid judgment that the petitioner has failed to demonstrate the prejudice caused to him and that being so, the petition is liable to be dismissed.

14. Shri Ghodeswar would also urge that if the provisions of Section 23A of the APMC Act, which are reproduced below, are perused, it can be noticed that it is a complete code in itself.

“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 authorised 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.”

Section 23A of the APMC Act can be termed as a code in itself, there is no necessity of external assistance to interpret the said provision. Shri Ghodeswar would claim that there is neither any ambiguity nor contradiction in the said provision and that being so, the claim put-forth by Shri Khubalkar, learned counsel for the petitioner, that the In-charge Sub-Divisional Officer ought not to have exercised the power is without any legal basis. He would draw support from the doctrine of legislation by reference and not by incorporation. He would claim that the said principle can be applied to the facts and the legal provisions which are relevant for deciding the case in hand. He would claim that the public importance in such an eventuality is paramount so also the will of the majority is to prevail, which is duly honoured by the respondent-Authorities while

conducting the special meeting, which was presided over by the In-charge Sub-Divisional Officer.

15. Shri A.M. Ghare and Shri H.D. Dangre, learned counsel appearing for the respective private respondents, would support the contentions raised by the learned Assistant Government Pleader. Shri Dangre would urge that the petitioner has failed to demonstrate not only the prejudice caused to him, particularly when the majority of the elected members are against him, but also he has sought to continue in the office of the Chairman in a most undemocratic way. He would draw support from the provisions of the Maharashtra Civil Services (Leave) Rules, 1981 so also the mandate prescribed under the provisions of Section 23A of the APMC Act.

16. Similarly, Shri Ghare would urge that the powers of the respondent No.2- Sub-Divisional Officer are exercised by the respondent No.18- Tahsildar, as the Sub-Divisional Officer proceeded on leave, which was duly sanctioned by the respondent No.1- Collector. According to him, the authorization under Section 23A of the APMC Act by the respondent No.1-Collector was not in favour of a person, but it was in favour of the designation/post of the respondent No.2-Sub-Divisional Officer.

Even if the respondent No.2-Sub-Divisional Officer has proceeded on leave by an official order in view of the provisions of the Maharashtra Civil Services (Leave) Rules, 1981, the same stood vested in the respondent No.18-Tahsildar and for all practical purposes, the respondent No.18-Tahsildar exercises the powers of the post of the respondent No.2-Sub-Divisional Officer. Merely because the respondent No.18-Tahsildar was the In-charge Sub-Divisional Officer, that will not make the proceedings or the conduct of the meeting illegal, as the powers of the Sub-Divisional Officer exercised by the respondent No.18-Tahsildar in the case in hand are not illegal by virtue of the aforesaid provisions.

As such, the counsel for the respondents have sought dismissal of the petition.

17. In the backdrop of the controversy narrated hereinbefore, we need to understand the scheme of the APMC Act. Section 2 of the said Act defines various terms and clause (j) defines 'Market Committee' constituted for a market area under Section 11. The said provision neither defines the 'Sub-Divisional Officer' nor 'the Chairman of the APMC'.

18. Section 11 of Chapter III provides for Establishment of Market Committees, Section 12 for Incorporation of Market Committees and Section 13 for Constitution of Market Committees.

19. Section 13 provides for Constitution of Market Committees to be of the members who are referred to in the said Section.

20. Section 19 deals with the Election of Chairman and Vice-Chairman and subject to subject-section (2) of Section 13, it mandates that every Market Committee shall be presided over by a Chairman, who shall be elected by the Committee from among its elected agriculturist members.

21. Section 23A contemplates Motion of no-confidence against Chairman or Vice-Chairman. Sub-section (2) of the said Section provides for a requisition for convening a special meeting for consideration of no-confidence motion to be signed by not less than one-half of the total number of members, excluding the members who have no right to vote and to be submitted to the Collector, intimation of which is required to be given to the Director of Agricultural Marketing. The term 'Director' is defined under clause (f) of Section 2 of the APMC Act. Upon receipt of such requisition, the Collector, within fifteen days from the date of receipt of requisition, is duty-bound to convene a special meeting of the

Committee for consideration of no-confidence motion against the Chairman. Under sub-section (4)(a), for consideration of the resolution in the special meeting, the Collector is required to preside over or the officer authorized by him in this behalf.

22. In case the resolution of no-confidence is passed by 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, the Chairman shall cease forthwith to be the Chairman of the APMC.

23. As far as the factual matrix of the case at hand, it is not in dispute that the motion of no-confidence was passed against the Chairman, i.e. the petitioner, by more than two-thirds of the total number of members. It is also not in dispute that the requisition was duly submitted to the Collector, who, in turn, authorized the Sub-Divisional Officer to preside over the meeting.

24. If we consider the aforesaid issue in light of the law laid down by the Apex Court, this Court is required to be sensitive to the judgments which are already referred to in the foregoing paragraphs.

25. Shri Khubalkar has relied on the expression of no-confidence being illegal for procedural irregularities as mentioned in the

aforesaid factual matrix. The fact remains that the Collector, under clause (4)(a) of Section 23A, inserted by amendment of 1984 in the statute book, delegated the power to the Sub-Divisional Officer. The fact remains that the Sub-Divisional Officer proceeded on leave and as such the respondent-Collector has approved the charge of the Sub-Divisional Officer to be given to the Tahsildar and sanctioned the leave of the Sub-Divisional Officer.

26. It is the case of the petitioner that under Section 23A(4)(a) of the APMC Act, the Collector on his own or through his authorized officer can proceed over the meeting. Accordingly, the meeting for consideration of no-confidence motion which was scheduled on 31-5-2024 should have been either presided over by the Collector himself or the Sub-Divisional Officer. It is claimed that the Tahsildar has presided over the meeting in spite of there being no specific authorization under Section 23A(4)(a) of the APMC Act issued by the Collector. It is claimed that the Tahsildar presided over the meeting for the reason that the authorized officer, viz. the Sub-Divisional Officer, went on leave for a period from 29-5-2024 to 31-5-2024. Such leave of the Sub-Divisional Officer who was authorized by the Collector to preside over the special meeting was sanctioned by the competent authority vide order dated 29-5-2024.

In such an eventuality, there should have been either special authorization in favour of the Tahsildar or else the Collector should have presided over the meeting. So as to substantiate the aforesaid contention, it is canvassed before us that the charge of the post of Sub-Divisional Officer was given to the Tahsildar only for administrative purpose and for financial management, viz. drawing and disbursement. As such, the restricted charge given to the Tahsildar does not amount to an authorization under Section 23A(4)(a) of the APMC Act. It is also urged that a timely objection was raised before the commencement of the meeting dated 31-5-2024.

27. For the said purpose, the petitioner has drawn support from the judgment referred to in the foregoing paragraphs.

28. For the purpose of convenience, it is necessary to refer to the order of sanctioning leave and the charge being handed over to the Tahsildar. We have already referred to hereinabove that the charge was handed over to the Tahsildar vide order of the Collector dated 29-5-2024. The Collector, who is the competent authority to sanction the leave in exercise of the power under Rules 9(22) and 50(2) of the Maharashtra Civil Services (Leave) Rules, 1981, sanctioned the leave from 29-5-2024 to 31-5-2024.

29. During the period of leave of the Sub-Divisional Officer, so as to perform the administrative duties, the charge was handed over to the respondent No.18-Tahsildar, including the power of drawing and disbursement. The said fact can be inferred from the order dated 29-5-2024, referred to above.

30. The fact about the charge of the post of the Sub-Divisional Officer was handed over to the Tahsildar by the order of the Collector was not a fact in dispute.

31. It is also borne out of the record, which is also not disputed by the petitioner, that the motion of no-confidence was passed in the special meeting held on 31-5-2024 with three-fourth of the majority. As such, we are required to deal with the legal issue, which is sought to be canvassed, viz. if the authorized person to preside over a special meeting contemplated under Section 23A(4)(a) of the APMC Act proceeds on leave, whether the in-charge holder can exercise the same power in absence of there being a specific authorization.

32. A similar situation came up for consideration before the Division Bench of this Court in the matter of *Sopanrao Onkarrao Sathe Versus State of Maharashtra and others*, reported in 2010(6) Mh.L.J. 334. While dealing with the issue as to whether an

in-charge person can be said to be exercised the powers under the Statute, which are not specifically conferred on him by name, the following observations are made in paragraphs 6, 7, 8 and 9 :

“6. Now, the power to remove a member conferred by Section 45 of the Act conferred on the State Government is undisputedly conferred on the District Deputy Registrar, under a general order dated 5-9-1981 issued under Section 58 of the Act. Section 2(f-1a) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act defines 'District Deputy Registrar' as follows:

"2 (f-1a) "District Deputy Registrar" means the District Deputy Registrar of Co-operative Societies appointed under the Maharashtra Co-operative Societies Act, 1960.”

“7. According to learned Counsel for the petitioner since the person who has signed the notice is in fact not appointed as a District Deputy Registrar but is in fact appointed as a Assistant Registrar under the provisions of the Maharashtra Co-operative Societies Act, 1960, he has no authority to issue show-cause-notice. The argument tantamounts to contending that an Assistant Registrar cannot hold charge of the post of a Deputy Registrar because the A.P.M.C. Act defines District Deputy Registrar to mean a District Deputy Registrar appointing under the Maharashtra Co-operative Societies Act.”

“8. We do not find any merit in this contention since the delegation of powers clearly contemplates that notice should be issued by a District Deputy Registrar and we find that the notice has in fact been issued by a District Deputy Registrar. It does not make any difference to the situation in law that the person who is holding the charge of the post of the District Deputy Registrar is a Assistant Registrar, who under an administrative order dated 25-5-2010 has been appointed to hold the additional charge of the post of the District Deputy

Registrar who is on leave. Merely because an officer other than the District Deputy Registrar or lower in rank of the District Deputy Registrar has been empowered by the Government to hold the post of the District Deputy Registrar, the action is not vitiated on any count since the impugned action is nonetheless by the District Deputy Registrar. We also note that there is no challenge to the order directing the Assistant Registrar to hold charge of the post of the District Deputy Registrar.”

“9. It was, however, contended by the learned Counsel for the petitioner that reference to District Deputy Registrar in the A.P.M.C. Act can only mean reference a District Deputy Registrar of the Co-operative Societies, who is appointed under the Maharashtra Co-operative Societies Act and therefore, excludes a Assistant Registrar. We have no doubt that the term 'District Deputy Registrar' only means 'District Deputy Registrar of Co-operative Societies' and not any other officer. A lot depends or whether in the A.P.M.C. Act the term 'District Deputy Registrar' has been incorporated or whether the said term appears on a flick of legislature by reference (to the Maharashtra Co-operative Societies Act). If it is a case of legislation by reference then the law requires one to refer to the provision of the Maharashtra Co-operative Societies Act for determining who should be upgraded as a District Deputy Registrar with reference to the provision of the later Act in the circumstances contemplated by that Act. Thus the question who can be a District Deputy Registrar contemplated by the A.P.M.C. Act will have to be answered with reference to who can be a District Deputy Registrar under the Maharashtra Co-operative Societies Act. If another officer such as an Assistant Registrar can be temporarily appointed to hold the post of the Deputy Registrar the act of such an officer will be the act of a District Deputy Registrar. Section 3 and Section 3A of the Maharashtra Co-operative Societies Act, 1960, which are relevant in this regard, read thus :

"3. Registrar [and his subordinates]

The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar with such designations, and in such local areas or throughout the State, as it may specify in that behalf, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar. They shall be subordinate to the Registrar, and subordination of such persons amongst themselves shall be such as may be determined by the State Government.

3A. Temporary vacancies

If the Registrar or a person appointed to assist such Registrar is disabled from performing his duties or for any reason vacates his office or leaves his jurisdiction or dies, then -

(a) in the case of the Registrar, the Additional or Joint Registrar, in the office of the Registrar, and

(b) in the case of a person appointed to assist the Registrar, the senior most officer holding the next higher post, in the respective office,

shall, unless other provision has been made in that behalf, hold temporarily the office of the Registrar or, as the case may be, of the person appointed to assist the Registrar in addition to his own office and shall be held to be the Registrar or the person appointed to assist the Registrar under this Act, until the Registrar or the person appointed to assist the Registrar resumes his office, or until such time as the successor is duly appointed and takes charge of his appointment."

Thus, in the hierarchy established by the said provisions an Assistant Registrar can temporarily hold the office of the District Deputy Registrar vide (b) one.”

33. The fact remains that the order of the Collector sanctioning leave in favour of the regular Sub-Divisional Officer and the charge being handed over to the Tahsildar is not a bone of contention in the present petition. What is sought to be canvassed is that the charge is qualified to the extent of only administrative and financial work.

34. In absence of there being specific challenge to the order, the fact remains that the Maharashtra Civil Services (Leave) Rules, 1981 contemplated the charge on temporary basis to be exercised by the Tahsildar of the post of Sub-Divisional Officer in its entirety and not in restrictive manner. At least, we are unable to infer from the record that there was any such intention on the part of the Collector while giving charge of the post of Sub-Divisional Officer to the Tahsildar.

35. As such, the word referred to the person authorized under Section 23A(4)(a) of the APMC Act has to be read as the person who is put into temporary charge of the post of Sub-Divisional Officer, in whose favour the authorization to preside over the meeting was issued by the Collector. Even the perusal of the authorization issued

under Section 23A(4)(a) does not speak of the authorization being given in favour of a person, but the same was by designation.

36. Paragraphs 10, 11, 12 and 13 of the aforesaid judgment in *Sopanrao Onkarrao Sathe's* case are worth referring, which read as under :

“10. It is noteworthy that the A.P.M.C. Act does not incorporate term District Deputy Registrar from the Maharashtra Co-operative Societies Act but it refers to the later for the meaning of the said term. The case is thus clearly one of legislation of reference and not by incorporation. In fact, the term is not defined under the Maharashtra Co-operative Societies Act either, only the term Registrar is dealt with vide Section 3. The definition of 'District Deputy Registrar' does not define that term to mean a 'District Deputy Registrar' appointed as such under the provisions of the Maharashtra Co-operative Societies Act. The statutory scheme thus clearly involves legislation by reference and not by incorporation. In the case of Mahindra & Mahindra Ltd. vs. Union of India and another, reported at 1979(2) SCC 529, the Supreme Court has had to say thus in paragraph No.8 :

"8. ...It ignores the distinction between a mere reference to or citation of one statute in another and an incorporation which in effect means bodily lifting a provision of one enactment and making it a part of another. Where there is mere reference to or citation of one enactment in another without incorporation, Section 8(1) (General Clauses Act, 1897) applies and the repeal and reenactment of the provision referred to or cited has the effect set out in that section and the reference to the provision repealed is required to be construed as reference to the provision as re-enacted. Such was the case in the Collector of Customs vs.

Nathella Sampathu Chetty and New Central Jute Mills Co. Ltd. vs. Assistant Collector of Central Excise. But where a provision of one statute is incorporated in another, the repeal or amendment of the former does not affect the latter. The effect of incorporation is as if the provision incorporated were written out in the incorporating statute and were a part of it. Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporation statute. ..."

"11. Keeping in mind the above doctrine of interpretation of Statues, we find that reference to District Deputy Registrar under the Maharashtra Co-operative Societies Act, 1960 in Section 2(f-1a) of the Act is legislated by reference and not by incorporation and thus the provisions of the Maharashtra Co-operative Societies Act, 1960 including Section 3 and 3A and the changes made therein, whether legislative or merely administrative will apply. The in-charge Assistant Registrar will have to be treated as District Deputy Registrar in the fact situation."

"12. Learned Counsel for the petitioner relied on the decision of the Supreme Court in the case of Ajaib Singh vs. Gurbachan Singh and others, reported in AIR 1965 SC 1619, wherein the Supreme Court while dealing with a case of preventive detention held that Additional District Magistrate though conferred with powers of the District Magistrate under the Code of Criminal Procedure or any other law for the time being in force does not thereby become entitle to act as a

District Magistrate since he remains officer who is below the rank of a District Magistrate. This decision, however, is arrived at under a different statutory scheme, which clearly contemplated that the authority empowered by the Rules to detain shall not be lower in rank than that of a District Magistrate (vide Section 15 of the Defence of India Act, 1962). The said decision is of no assistance to the petitioner.”

“13. Learned Counsel for the petitioner further relied on the decision of the Supreme Court in the case of Hari Chand Aggarwal vs. The Batala Engineering Co. Ltd. and others, reported in AIR 1969 SC 483. We find that this decision also does not assist the petitioner since it arose under entirely different statutory scheme and the Supreme Court observed that though the words 'District Magistrate' could not possibly be read as Additional District Magistrate and it is only by resorting to the notification issued under Section 10(2) of the Code of Criminal Procedure that the Additional District Magistrates can be said to have been empowered to exercise the powers of the District Magistrates (vide paragraph No.10).”

37. A similar issue was considered by the Apex Court while construction of Article 311 of the Constitution in the matter of *Parshotam Lal Dhingra Versus Union of India*, reported in 1957 SCC OnLine SC 5.

38. The Apex Court while dealing with a similar issue has observed in the aforesaid judgment that the appointment on a permanent post may be substantive or on probation or on an officiating basis. A substantive appointment to a permanent post in public service confers normally a substantive right to the post, as such person is

entitled to hold a lien on the post. An appointment to the permanent post in Government service on probation means, as in the case of a person appointed by a private employer, that the servant so appointed is taken on private basis. In case, if such person is found unsuitable, his services can be terminated by notice.

39. An appointment to officiate in a permanent post is usually made when the incumbent substantively holding that post is on leave or the permanent post is vacant as no substantive appointment has yet been made to that post. Such an officiating appointment comes to an end on the return of the incumbent substantively holding the post from leave in the former case or on a substantive appointment being made to that permanent post in the latter case or on the service of a notice of termination as agreed upon or as may be reasonable under the ordinary law. Article 311 does not distinguish between persons who are permanent in nature, persons who officiate in a permanent post or in a temporary post as the latter classes of servants require the constitutional protection. There is nothing in the language of Article 311 to indicate that the Constitution makers intended to make any distinction between the two classes. The only distinguishing factor is, persons who are merely officiating in the posts cannot be said to “hold” the post contingently for they perform

the duties assigned to the said posts. Relying upon the observations in the above referred decision, it can be interpreted that Article 311 makes no distinction between the two classes viz. persons who are permanent in nature, persons who officiate in a permanent post or in a temporary post, both of which are within its protections and persons who are officiating in the posts perform the duties which are attached to the said post. (Emphasis supplied)

40. Likewise, the Apex Court in the case of *State of Madhya Pradesh and Another Versus Laxmishankar Mishra* reported in (1979) 2 SCC 270 has considered the question as to the nature of duties discharged by a person who is put in charge of the post or is officiating on such post. Though the facts of the case are different as it relates to Head Master/Principal working as an in-charge Principal, however, the observations made therein are worth consideration. Paragraph nos. 9, 10 and 11 are relevant which read as under:

“9. Mr Gambhir, learned Counsel for the petitioner urged that the expression: “should have worked on the post for a minimum period of 7 years in the same institution” would, in the context of the rule and the consequences flowing from it, mean only a substantive post on which the Head Master/Principal was confirmed and the confirmed holder of the substantive post for a period of 7 years would be entitled to absorption as envisaged by Rule 3(b). On a pure grammatical construction of the expression it would indisputably appear that the person claiming to be absorbed must have worked on the post of Head

Master/Principal of a High/Higher Secondary School for a minimum period of 7 years. Emphasis is on the experience gained by working on the post of Head Master/Principal. A person incharge of the post also works and discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post. While examining the relative positions of confirmed Deputy Engineers and Officiating Deputy Engineers in S.B. Patwardhan v. State of Maharashtra [(1977) 3 SCC 399 : 1977 SCC (L&S) 391 : (1977) 3 SCR 775] this Court observed that the officiating Deputy Engineers discharge identical functions, bear similar responsibilities and acquire an equal amount of experience in the respective assignments. Viewed from this angle, the confirmed holder of a substantive post would be discharging the functions attached to the post and when some one is placed in that very post in an officiating capacity or directed to hold charge of the post, he would be required to perform the duties and discharge the functions of the post rendering identical service. If the rule expressly did not make any differentiation between the person working as a confirmed holder of substantive post and an incharge or officiating holder of the post, is there anything in the expression itself which by necessary implication excludes service in any other capacity except as a confirmed Head Master/Principal in a substantive post? A confirmed holder of a substantive post may look tautologous because one can only be confirmed in the substantive post.

10. Now, every High School or Higher Secondary School must of necessity have the post of Head Master/Principal and it was nowhere suggested that there would not be a post of Head Master/Principal. If that would mean that there was always a substantive post of Head Master/Principal it may be that the confirmed holder of the post may be away and not in a position to discharge the duties and some one may be appointed in an officiating capacity or may be directed to hold charge but nonetheless such holder of the post will have to perform duties and discharge functions attached to the post.

11. Further, the emphasis in the expression is on working on the post meaning thereby performing the duties and discharging the functions assigned to the post and not the capacity in which the post is held. Confirmation in a post being one of the glorious uncertainties of service as observed by this Court in S.B. Patwardhan case, it is rational to believe that the framers of the rule did not want to attach any importance to the capacity in which the post is held but the emphasis was on working on the post meaning thereby discharging the duties and performing the functions assigned to the post.”

The Apex Court in the preceding decision by placing reliance on the judgment in the matter of *S.B. Patwardhan v. State of Maharashtra*, reported in **(1977) 3 SCC 399** has laid down that a person officiating on the post would discharge identical functions and bear similar responsibilities as even a confirmed holder discharges the functions attached to the post and if someone else is placed on that very post in an officiating capacity he would be required to perform the duties and discharge the functions of the post.

41. Further, the fact remains that no-confidence motion has been passed against the petitioner by more than two-third of the total number of members. The petitioner has failed to demonstrate the prejudice caused to him particularly when the majority of the elected members are against him.

42. Even in terms of Rule 13 of Maharashtra Civil Services (Leave) Rules, 1981 the duties of government servant absent on leave has to

be discharged by another government servant ordinarily from same station or district and there cannot be a vacancy or vacuum in such a case. It has to be inferred by virtue of the forgoing decisions that the Tahsildar officiating on the post of Sub-Divisional Officer pursuant to the order of the Collector thereby sanctioning leave in favor of the regular Sub-Divisional Officer and the charge being officially by express order handed over to him was responsible to discharge the same functions as are attached to the post of Sub-Divisional Officer. In view of the same, Tahsildar presiding over the special meeting whereby the impugned resolution of no-confidence motion came to be passed was just and proper after following the due procedure of law as contemplated under Section 23A of the APMC Act.

43. For the aforesaid reasons, the petition lacks merit and the same is dismissed. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)