



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

WRIT PETITION NO.1829/2020

PETITIONER : Ananta s/o Dadaji Satone,
Aged about – Major, Occupation :
Service, R/o Hinganghat, District Wardha.

...VERSUS...

RESPONDENTS :

1. The State of Maharashtra,
Through its Secretary, Co-operative and
Marketing Department, Mantralaya,
Mumbai : 32.
2. Minister, Cooperative (Marketing),
Mantralaya, Mumbai – 32.
3. Director of Marketing, Directorate of
Marketing, 3rd Floor, Administrative
Building, Pune – 1.
4. Divisional Joint Registrar, Division
Nagpur, Dhanwate Chambers, Annex
Sitabuldi, Nagpur.
5. District Deputy Registrar, Wardha
Kelkarwadi, Arvi Road, Wardha,
Tq. & Distt. Wardha.
6. Agricultural Produce Market Committee
(APMC), through its Secretary, Hinganghat,
District Wardha.
7. The Chariman, Agricultural Produce
Market Committee, Hinganghat, Distt. Wardha.
8. Vitthal s/o Dinbaji Ugemuge,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District Wardha.

9. Ku. Rita Laxmanrao Dhote
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
10. Sunil s/o Madhukarrao Dambhare
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
11. Chantaman s/o Nanaji Nikhade
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
12. Ravindra s/o Pandurang Khewle
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.

Ravindra S/o Pandurang Khewle,
Aged about Major, Occupation Service,
R/o Office of Agricultural Produce Market
Committee, Kangoan, At Post Kangoan,
Taluka Hinganghat, District Wardha.

(Amendment carried out as per Court's
order Dt. 10-12-21)
13. Amol s/o Laxman Mahalle,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
14. Vinod s/o Devidas Bhoyar,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District Wardha.
15. Prashant Siddharth Patil
Age Major, Occ. Service in
Office of Agriculture Produce Market
Committee, Hinganghat, District – Wardha.

16. Ashish s/o Himmatrao Chatur,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
17. Dhanraj s/o Pandurang Kumbhare,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
18. Rajendra s/o Baswant Durge,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
19. Sunil s/o Madhukarrao Chatare,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
20. Satish s/o Maniramji Katwale
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District Wardha.
21. Ramu s/o Janbaji Tumdam,
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District – Wardha.
21. Ku. Jyotsna Bhaurao Kurekar
Age Major, Occ. Service in Office of
Agriculture Produce Market Committee,
Hinganghat, District Wardha.

(Amended as per Hon'ble Court's order
Dt. 16/9/2021)

Mr. S.S. Dhengale, Advocate for petitioner
Mr. I.J. Damle, AGP for respondent Nos.1 to 5/State
Dr. Anjan De, Advocate for respondent No.6
Mr. Sagar Katkar, Advocate for respondent Nos.10, 11, 13, 14, 16 & 17 to 20

CORAM : SACHIN S. DESHMUKH, J.

DATE : 11/07/2025

ORAL JUDGMENT :

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the parties.

2. The petitioner herein raises an exception to the order rendered by the Minister, Cooperation and Marketing in Appeal Nos.107/2019 dated 14/03/2020, by which the appeal presented by the petitioner is dismissed.

3. Mr. Dhengale, learned Counsel for the petitioner has submitted that the petitioner was appointed as an electrician with the respondent – Agriculture Produce Market Committee (APMC). Initially the said appointment of the petitioner was on temporary basis and the same was continued at periodical interval. Eventually, the approval to the services of the petitioner was accorded by the District Deputy Registrar, District Cooperative Societies, Wardha on 25/07/2006, pursuant to the order of the Director under Sub Rule 5 of Rule 100 of the The Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (for short hereinafter referred to “APMC Rules”).

4. Learned Counsel for the petitioner makes a specific reference to Sub Rule 5 of Rule 100 of the APMC Rules that the aspect of creation of post is concerned, the previous approval of the Director is necessary. Referring to said proviso, learned Counsel for the petitioner

has invited attention of this Court to the order of according approval to his services. Thus, it is evident that it is pursuant to the previous approval of the Director, which is restated by the officer of the State i.e. the District Deputy Registrar. Aggrieved by the said order the respondent – APMC has approached to the Director of Marketing Maharashtra by presenting proceedings under Section 43 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short hereinafter referred to “APMC Act”). While objecting the presentation of the proceedings before the Director, it was specifically submitted on behalf of the petitioner herein that the proceedings cannot be entertained under Section 43 as it amounts to review by the same authority. As such, requested not to entertain the appeal. As regards further aspect of non-compliance of the order, even show-cause-notices were served upon the APMC and those were questioned at the instance of individual Directors on numerous occasions and all the petitions presented in that behalf by respective individual Directors were not entertained by this Court with eventual order of withdrawal. As such, he has invited attention of this Court to the orders passed by this Court in Writ Petition Nos.6864/2017, 7082/2018 and 6600/2017.

5. Ignoring the specific objection raised by the petitioner proceedings under Section 43 presented on behalf of APMC were

allowed by the Director of Marketing, Maharashtra State, Pune. Aggrieved by the said order, the petitioner eventually presented an appeal under Section 52 B of the APMC Act before the Minister. The Minister while endorsing the order of the Director ignored the fact that the proceedings under Section 43 ought not to have been presented before the Director and those ought to have been presented before the State under Section 52 B. Since, the order of appointment of the petitioner is pursuant to the order of approval accorded by none other than the Director itself, as such it amounts to review. Ignoring the legal aspect, the appeal presented by the petitioner is dismissed. Reliance is placed on the order rendered by this Court in Writ Petition ***No.6454/2011 (Kaduba Nagorao Mahajan Vs. The Agriculture Produce Market Committee Through Secretary and others)*** dated 23/07/2021.

6. Learned Counsel for the respondents has justified the order by submitting that it was for the APMC to elect either of the remedy which is available under law. Therefore, the said aspect is properly appreciated in its proper perspective at first instance by the Director of marketing while allowing the proceedings presented by the APMC under Section 43 of the APMC Act and endorsement given by the Minister while dismissing the appeal. As such, no interference is called for. In the process, the learned Counsel for the respondents has placed reliance on the judgment of this Court in ***Writ Petition No.2612/2009***

(Balkrishna s/o Shankar Nafde and others Vs. The State of Maharashtra, through its Secretary, Marketing and Cooperation Department, Mantralaya, Mumbai and others) decided on 04/01/2010, more particularly paragraph Nos.32 and 34.

7. Having considered the rival contentions put forth by the petitioner, it would be appropriate to make reference to Rule 100 Sub Rule 5 of the APMC Rules, which makes it abundantly clear that no new post shall be created or any existing post abolished, no appointment to any post shall be made except with the previous approval of the Director. The order according approval to the services of the petitioner as an electrician in the year 2006 makes a specific reference to the communication from the office of the Director. Thus, it sufficiently establishes the fact that the act of according approval to the petitioner's services is only after the necessary approval to that effect by the office of the Director. Nevertheless, the petitioner herein was asserting the claim of regularization since it is a Class-III post. In all, 16 appointments were made by the APMC and pursuant to the necessary approval to that effect from the office of Director of Marketing, the said fact is not disputed. However, the appeal was presented after the approval is accorded by the Joint Director Cooperative Societies on 25/07/2006, whereas the proceedings under Section 43 are taken out in the year 2019.

8. Admittedly, these Class III and Class IV employees are in service from their initial date of appointment, as such a substantial service for more than 15 years is rendered by these employees. This aspect ought to have been taken into account by the Director while entertaining the proceedings under Section 43 of the APMC Act. However, ignoring the challenge which is after substantial lapse of time, nevertheless, as has been rightly pointed out by the learned Counsel for the petitioner that the approval is accorded by the office of the Director, therefore, the proceedings ought to have been presented if at all raising challenge to such approval pursuant to the permission granted by the Director to such appointment. The act of according approval by the Joint Registrar is pursuant to the express permission so granted by the office of the Director of Marketing, as such the proceedings under Section 43 are of revisable nature, could not have been presented before the Director and if at all appeal would be maintainable under Section 52 B (1) before the State Government. To substantiate the said contention, the learned Counsel for the petitioner has rightly placed reliance on the order rendered by this Court in *Writ Petition No.6454/2011(Kaduba Nagorao Mahajan Vs. The Agriculture Produce Market Committee Through Secretary and others)* [supra], wherein this Court has dealt in detail about the scope of proceedings under

Section 43 vis-a-vis Section 52 B of the APMC Act. Paragraph Nos.5 and 6 are reproduced as under :-

“5. It is an admitted position of law, that the revisional powers and appellate powers are two separate and distinct powers. The revisional powers are in fact narrower than an appellate power. The contention, that any proceedings also can be challenged under Section 43, does not appeal to me, for the reason that what is permissible to be challenged under Section 43, is the legality and propriety of a decision or order passed by the Marketing Committee, for which purpose, the proceedings can be called for and examined. It is quite another thing, to say that the proceedings can be called for to be examined vis-a-vis that there can be challenge to the proceedings itself. These are two different things altogether. The language of Section 43, does not indicate, that the proceedings can be challenged, rather only indicates, that the decision or order passed in such proceedings is susceptible to challenge under Section 43.

6. As against this, Section 52 B (1)(a) of the APMC Act, 1963, specifically provides, that where a Market Committee takes a decision, such a decision, is susceptible to appeal, under Section 52 B(1) of the Act of 1963. As pointed out by learned Senior Counsel Mr. Sapkal, the Construction Sub Committee, has been authorized by the Managing Committee, to take an appropriate decision in this regard and therefore, the decision of the Construction Sub Committee, would be the decision of the Managing Committee. That being so, the decision, was clearly susceptible to challenge, under Section 52 B(1) of the APMC Act, 1963. It is axiomatic that when a remedy of appeal is available, the same has to be first invoked and not the revisional power, otherwise the very purpose of an appellate power is rendered nugatory.”

9. So far as the reliance placed by the learned Counsel for the respondents on the judgment of this Court in *Balkrishna Shankar Nafde* (supra) is concerned, the scheme of Section 43 vis-a-vis Section 52 B is considered by this Court. As such, appeal under Section 52 B ought to have been presented before the State.

10. Although the petition presented on behalf of the individual Director has no bearing on the issue but it indicates the attempt of the individual Directors to defy the orders of the District Deputy Registrar, leading to coercive action, as is contemplated under the law.

11. Nevertheless, the APMC has attempted to raise a challenge to the approval which is of the year 2006 in the proceedings under Section 43 after lapse of 15 years. Apart from the aforesaid aspect, the authority according approval, makes a specific reference to Rule 100 Sub Rule 5 of the APMC Rules, which sufficiently establish the previous approval of the Director itself, as such, there was no occasion for the Deputy Director to entertain the proceedings taking recourse to Section 43 and the scope is confined to the decision or order passed by the Market Committee. Here, admittedly the challenge is raised to the decision of according approval to the appointment of the petitioner herein, pursuant to the express permission/approval to that effect by the Director itself.

12. As such, it was not open for the respondent – APMC to take recourse to Section 43 of the APMC Act. Therefore, the order rendered by the Director of Marketing and further by the respondent No.1 deserves to be quashed and set aside. Therefore, the objection of the petitioner about maintainability ought to have been taken into consideration by these authorities. Hence, the writ petition is allowed in terms of prayer clause (a).

13. Rule is made absolute in the aforesaid terms. No order as to costs.

(SACHIN S. DESHMUKH, J.)