



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

WRIT PETITION NO. 3841 OF 2025

1. Shri Ahmed Karim Bhai Sheikh,
Aged about 70 yrs, R/o. Ward No.1,
Madarsa Jaiswal, Buti Bori, Nagpur,
Tahsil & District : Nagpur.
2. Shri Kishor S/o. Keshavrao Palandurkar,
Aged about 65 yrs, R/o. Plot No.33,
Kali Mata Mandir Road, Near Ganesh
Mandir, Gokul Nagar, Uppalwadi, Nagpur,
Tahsil & District : Nagpur.

.... **PETITIONERS.**

// VERSUS //

1. State of Maharashtra,
through its Secretary,
Ministry Department of Co-operation,
Madam Cama Road, Mantralaya,
Mumbai -32.
2. The Divisional Joint Registrar,
Co-operative Societies, Nagpur,
Tahsil & District : Nagpur.
3. The District Deputy Registrar,
Co-operative Societies, Nagpur,
4. The Special Investigation Team,
through its Chairman, Collector,
Nagpur, Tahsil & District : Nagpur.
5. The Agricultural Produce Marketing
Committee, Nagpur, through its
Secretary, having its office at Pandit
Jawaharlal Nehru Yard, Kalamna,
Nagpur – 440 035.

.... **RESPONDENTS.**

Shri Sunil Manohar, Sr. Advocate a/b Shri A.M.Ghare, Advocate for Petitioners
Shri D. V. Chauhan, Sr. Advocate & G.P. a/b. Shri N.S. Rao, AGP & Shri
Chaitanya J.Dhruv, Advocate for the respondent Nos.1 to 4.
Shri A.S.Akbani, Advocate for Respondent No.5.

CORAM :ANIL S. KILOR AND VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 05/08/2025

DATE OF PRONOUNCING THE JUDGMENT : 10/09/2025

JUDGMENT : (Per : Anil S. Kilor, J)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. By the present writ petition the petitioners are challenging the Government order dated 18/07/2025 passed by the respondent No.1 appointing a Special Investigating Team (SIT) for investigation into certain issues referred to therein relating to functioning of respondent No 5 market committee.
4. The brief facts of the present case are as follows :

It is the case of the petitioners that they are the executive committee members of the respondent No.5-Agricultural Produce Market Committee, Nagpur (hereinafter referred to as "Market Committee"), who got elected in the general elections held in the month

of October 2021.

5. Thereafter, the petitioner No.1 got elected as a Chairman of the respondent-Market Committee from amongst the elected executive committee members.

6. The respondent No.5-Market Committee is a statutory body constituted under the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “the Act of 1963”). It was established for Nagpur Tahsil in the year 1974 and Nagpur (Rural) declared to be the market area. The activities of market committee were done at different places in Nagpur namely at Santra Market, Bakra Mandi and Cotton Market areas.

7. The Nagpur Improvement Trust allotted land for consolidation of the markets at one place at Kalmana area of Nagpur city.

8. In the year 2009 the respondent-Market Committee constructed 20 shops at Orange and Fruit Market, 14 Shops at Chilly Market and 10 shops at Potato and Onion Market i.e. total 44 shops in its market yard at Kalmana.

9. The said shops were allotted on the terms and conditions as stipulated by the Director of Marketing, Pune, while granting permission for allotment. The allotment was made by way of auction.

10. One Shri Sanjay Wadhwani, a broker, having licence in Mirchi Bazar, lodged a complaint with the Hon'ble Chief Minister alleging malpractices in the auction process.

11. Thereupon, the Director of Marketing vide communication dated 17/03/2017 directed the respondent No.3 to conduct enquiry in relation to the complaint and submit his report. Then the respondent No.3, on 27/03/2017, appointed a Five Members Committee to inquire into the allegations made in the complaint.

12. The Enquiry Committee then submitted its report, on 06/07/2017.

13. At the relevant time, the Administrator was managing the affairs of the respondent-Market Committee, who submitted reply on 14/09/2017 to the report and thereby tried to canvass how the findings given by the Enquiry Committee are incorrect and unwarranted and based on presumption.

14. The Respondent No.2 thereafter on 04/10/2017 issued show cause notice, stating that the District Deputy Registrar, Nagpur by its communication under reference has requested for cancellation of auction and allotment of shop, therefore why process of conducting allotment of shops should not be cancelled.

15. Thereafter, the respondent No.2 by its order dated 07/04/2018 cancelled the allotment of the shops.

16. Feeling aggrieved by the aforesaid decision of the Respondent No.2 and communication issued by Respondent No.5, the auction purchasers/Traders to whom shops were allotted filed Writ Petition No.2359/2018 before this Court.

17. This Court vide judgment dated 07/02/2024 allowed the writ petition partly by quashing and setting aside the order passed by Respondent No.2 and remanded the matter back to the Respondent No.2 to take appropriate decision.

18. After remand, the matter is now pending before the respondent No.2 for order.

19. Then another complaint came to be made by one of the Members of Legislative Assembly of State of Maharashtra, that the Respondent No.5 had not collected cess from the Traders of Bakra Mandi, resulting huge monetary loss to the State.

20. On such complaint, 'Three Members Committee' headed by Shri P.L. Khandagale was constituted. The said committee submitted its report on 25/08/2023.

21. The Respondent No.1, thereupon, vide its order dated 07/05/2025 directed the Director of Marketing, Pune, to take action in accordance with the Act of 1963. In view of the same, the Respondent No.5 issued notice to the license holders/Traders at Bakara Mandi that why their licenses should not be terminated/suspended?

22. Feeling aggrieved by the directives of Director of Marketing and communication issued by Respondent No.5, the Traders filed Writ Petition No.3058/2025. This Court vide its order dated 19/06/2025 granted stay in the said matter.

23. Thereafter, one of the Members of Legislative Assembly of State of Maharashtra raised a "Legislative Assembly Question" (LAQ) alleging illegalities in the functioning of the Market Committee.

24. Thereupon, the Respondent No.1, on 18/07/2025, issued the impugned Government Order, appointing "Special Investigation Committee" for inquiring: (A) whether any loss is caused to State in view of Shri Khandagale committee report? (B) Whether in view of report of Shri A.D. Patil, employees/executive committee members have committed any misappropriation while making allotment of shops? (C) To inquire over all working of Market Committee?

Hence, this petition.

25. We have heard the learned counsel for the respective parties.

26. Shri Sunil Manohar, learned Senior Advocate has argued that the whole action is orchestrated to browbeat the political reasons. The APMC is the local authority, constituted under the statute it is an autonomous body having limited control of the State Government. Therefore, interference of the State is restricted to the extent the power of control given under the statute, more particularly in Chapter-VIII of the Act of 1963.

27. It is contended that, neither Section 40 nor Section 43 of the Act of 1963 contemplates 'Special Investigation Team' (SIT). It is submitted that, under Section 40 of the Act of 1963 the Director has complete power of superintendence over the APMC on behalf of the Government, whereas, under Section 43 of the Act of 1963 a very limited power is given to the Government and i.e. limited to take corrective measures.

28. It is argued that, the impugned action is nothing but cutting down the democracy. The Government cannot override the legislature. In the present matter, the Government is seeking to invoke its naked police powers, without due authority or justification under the law. To preserve the democracy, such action cannot be permitted.

29. It is argued that, no doubt, the autonomy given to the Market Committee is subject to control of the State but such control is to the extent as expressly stated in the statute and not beyond the same, otherwise it would amount to allowing the Government to exercise the absolute power.

30. The learned counsel for the petitioners, in support of his arguments, has relied upon the judgments of the Hon'ble Supreme Court of India in the cases of *Paul Manoj Pandian ..vs.. P. Veldurai*, reported in (2011) 5 SCC 214 and *State (NCT of Delhi) ..vs.. Union of India*, reported in (2018) 8 SCC 501.

31. Shri D.V. Chauhan, learned Senior Advocate and Government Pleader argues that if the whole Act is considered it will reveal that the State retains the supervisory power to look into the affair of the Market Committee and while using such supervisory powers there is no prohibition under the law to constitute Fact Finding Committee.

32. It is argued that to achieve object of the Act, the State would not sit as silent spectator even on noticing gross illegality on the part of the Market Committee.

33. It is submitted that if the purpose of the Act is to extend benefits to the agriculturists and the Act is enacted for the benefits of the

farmers, the Government has control and power over the Market Committee to see that the said purpose and object is to be achieved and for such purpose if the Fact Finding Committee is appointed the petitioner shall not shy of facing such Fact Finding Committee which is otherwise in their interest also.

34. It is argued that this is not a political action but just to achieve the object and purpose of the Act, therefore, the Government has every power under Article 162 of the Constitution of India in such matters to act accordingly in public interest. The learned Government Pleader, in support of his arguments, has relied on the following judgments of the Hon'ble Supreme Court of India :

- i) *Paul Manoj Pandian ..vs.. P. Veldurai*, reported in (2011) 5 SCC 214;
- ii) *State of M.P...vs.. S.K.Dubey*, reported in (2012) 4 SCC 578;
- iii) *Madhukar Sadbha Shivarkar..vs..State of Maharashtra*, reported in (2015) 6 SCC 557;

35. In light of the rival submissions, we have perused the record and authorities cited by the respective parties.

36. The Hon'ble Supreme Court of India in the case of *State (NCT of Delhi)* (supra), has observed that our Constitution, in its grandness, resolutely embraces the theory of "checks and balances". This concept of

checks and balances, in turn, gives birth to the principle of "constitutional objectivity". The Constitution expects the organs of the State adorned by high constitutional functionaries that while discharging their duties, they remain alive to the allegiance they bear to the Constitution. Neutrality, as envisaged under the constitutional scheme, should guide them in the performance of their duties and functions under the Constitution. This is the trust which the Constitution reposes in them.

37. The Hon'ble Apex Court further held that the essence of constitutionalism is the control of power by its distribution among several State organs or offices in such a way that they are each subjected to reciprocal controls and forced to cooperate in formulating the will of the State.

38. It is observed that the Founding Fathers expected that constitutional functionaries who derive their authority from the Constitution shall always remain sincerely obeisant to the Constitution.

39. It is further held that the Constitution of India is an organic document that requires all its functionaries to observe, apply and protect the constitutional values spelt out by it. These values constitute the constitutional morality, This makes the Constitution of India a political document that organises the governance of Indian society through

specific functionaries for requisite ends in an appropriate manner. The constitutional culture stands on the fulcrum of these values.

40. It is noted further that the element of trust is an imperative between constitutional functionaries so that Governments can work in accordance with constitutional norms. It may be stated with definiteness that when such functionaries exercise their power under the Constitution, the sustenance of the values that usher in the foundation of constitutional governance should remain as the principal motto. There has to be implicit institutional trust between such functionaries.

41. Having considered a constitutional objectives and what the Constitution expects from the organs of the State adorned by the high constitutional functionaries while discharging their duties, we revert back to the facts of this case.

42. It is to be noted that the respondent No.5 is an autonomous body, having control of the Government over it. The provisions of the Act of 1963, however, restrict and limit such control to the extent as expressly stipulated and stated under the Act, which we will discuss in the later part of this judgment.

43. At this stage, we will first deal with a question whether the respondent No.1 is justified in appointing SIT. Thereafter, we will

examine the question, whether the State has power to appoint SIT under the provisions of the Act of 1963 or in exercise of powers given under Article 162 of the Constitution of India.

44. It is evident from the record that the basis for constitution of SIT is the Assembly Question, raised by the local MLA Shri Krushna Khopde, in the assembly.

45. The transcription of the discussion on such Assembly Question is placed on record by the State. The Assembly Question mainly raises two issues for seeking action against the respondent- Market Committee. The said issues are;

(i) the report submitted by Five Men Committee under the chairmanship of Shri A.D. Patil, District Special Auditor, dated 23/07/2017; and

(ii) the report submitted by Khandagale Committee on 25/08/2023.

46. These two reports allegedly depict misappropriation of huge amount by the respondent-Market Committee and further illegality and irregularity committed in functioning of the Market Committee.

47. From the above referred two reports, it is evident that both the

inquiries were made under the provisions of the Act of 1963. These two inquiries were made on complaints of one Shri Sanjay Wadhwani and a local MLA.

48. The issues, on which these inquiries were made and reports were submitted, were raised by way of 'Assembly Questions', which prompted the Government to appoint the SIT.

49. It is important to note here that the complaint of Shri Sanjay Wadhwani was in respect of the illegality committed in allotment of shops constructed by the respondent-Market Committee at Orange and Fruit Market, Chilli Market, Potato and Onion market. The total 44 shops were allotted by the respondent-Market Committee, the illegality was alleged in allotment the same by Shri Sanjay Wadhwani.

50. The said complaint gave a cause to the Government to appoint a Five Men Committee, headed by Shri A.D. Patil, District Special Auditor. The said committee submitted its report on 23/07/2017, which was made the basis for cancellation of allotment of shops, by the respondent No.2-Divisional Joint Registrar, Co-operative Societies, Nagpur, vide its order dated 07/04/2018.

51. Such cancellation of the shops was the subject matter before this Court in Writ Petition Nos.2432 of 2018 and 2359 of 2018 filed by the

auction purchaser of the said shops.

52. This Court partly allowed the said writ petitions and by quashing and setting aside the order of cancellation of shops, remanded the matter to the Divisional Joint Registrar for consideration. The present status of the said matter is that it is pending for passing the order.

53. However, at this stage, it would be beneficial to refer to the findings recorded by this Court while quashing and setting aside the order of cancellation of the allotment of shops. The observations are as follows:

"29. From the above referred observations, it is evident that the word "call" contemplates some action or application of mind before calling for the record. It cannot be equated with mechanical, clerical or ministerial act of calling for the record of all the proceedings irrespective of the fact whether they are required or not for the purpose specified in the Section. It requires conscious application of mind on the part of the Competent Authority qua particular proceedings. However, the record is not to be called for merely satisfying the curiosity or for storing. It has a purpose behind it and not for roving enquiry, but is expected to exercise judicial or quasi-judicial power.

30. ...

31. In the matter at hand, the show cause notice issued to the petitioners sufficiently depicts that it was issued on recommendation of the District Deputy Registrar to cancel the allotment of the shops in question. There is no positive act on the part of the Divisional Joint Registrar, Cooperative Societies from which it can be gathered that the respondent No.2 has applied his mind independently before exercising the powers under Section 43 of the Act of 1963. It is apparent on the face of the record and the show cause notice that the respondent No.2 acted in a mechanical and clerical manner. It is further evident from the show cause notice that the respondent No.2

did not reach to any definite conclusion on the basis of the report that the matter requires exercise of powers under Section 43 of the Act of 1963.

32. Interestingly, though the respondent No.2 has exercised the powers under Section 43 of the Act of 1963 he never called for the proceedings of the Market Committee to examine the same. The original record which is produced by the respondent No.2 does not show any order calling record and proceedings of APMC in relation to the shops in question, but the whole reliance has been placed on the observations made in the report submitted by the Five Men Committee appointed by the District Deputy Registrar, which is not envisaged under Section 43 of the Act of 1963.

33. The record produced before this Court shows that when a request was made by the petitioners for supply of copy of the reply filed by the APMC before the Enquiry Officer as it was not available on record. The respondent No.2 neither rejected the said request nor allowed it and closed the matter for orders

34. Thus, it is apparent that the petitioners were not supplied copy of the reply of the APMC filed before the Enquiry Officer.

35. It is evident from the record that in the enquiry under Section 117 of the Rules of 1967 the petitioners were not allowed to participate and behind their back the enquiry was conducted. In that view of the matter, it was binding on the respondent No.2 to supply all the documents, which were submitted before the Enquiry Officer and which were the basis of the enquiry report. In the present matter, admittedly, the copy of the reply of APMC filed before the Enquiry Officer was not supplied to the petitioners.”

54. The another complaint, which was the part of the Assembly Question, was made by the local MLA, alleging that the respondent No.5 had not collected the cess from the Traders of the Bakra Mandi, resulting into huge monetary loss to the State.

55. On such complaint, Three Members Committee headed by Shri P.L. Khandagale was constituted. The said committee submitted its report on 25/08/2023.

56. Thereupon, the show cause notices were issued to the licence holders/Traders at Bakra Mandi, as to why their licences should not be terminated/suspended ?

57. Feeling aggrieved by the show cause notices, the licence holders/Traders at Bakra Mandi approached this Court by filing Writ Petition No.3058 of 2025. This Court on 19/06/2025 passed the following order :

“Heard.

2. The counsel for the petitioners Mr. Parchure has brought to our notice a communication dated 30th May, 2025, wherein directions were issued on an enquiry in which there is no participation of the petitioners although they are the stakeholders. As such, the impugned order directing the cancellation of their licences on temporary basis is in contravention of the minimum requirement of hearing of the petitioners herein. Although, the remedy to the petitioners is available under law but for the aforesaid observation, we are inclined to grant stay in terms of prayer Clauses (iii) and (iv).

3. Issue notice to the respondents, returnable on 17th July, 2025.

4. Ms. Mayuri Deshmukh, learned Assistant Government Pleader waives service of notice for respondent No.1.

5. Mr. Rafique Akbani, learned counsel waives service of notice for respondent No.2.”

58. From the above referred discussion, there is no element of doubt that both the issues, which were part of the Assembly Question and the reason for appointing SIT, are *sub judice*. It is important to note at this stage that during the discussion in the House on the said Assembly Question, the Hon'ble Minister categorically made a statement that no further inquiry is required, as the inquiries have already been conducted.

59. In the circumstances, it is required that the State shall give justifiable reason for appointing SIT, particularly, when the Hon'ble Minister opined that no further inquiry is required and further both the issues are *sub judice*. In the impugned Government order appointing SIT, no such justification or any valid reasons are given.

60. Moreover, the SIT consists of the Collector, District Superintendent of Police and the Divisional Joint Registrar of Cooperative Societies. Considering the provisions of the Act of 1963 and the powers as regards the control of the State Government and the Director over the Market Committee, the respondent No.1 ought to have justified as to why such SIT is headed by the Collector and a member of it is the District Superintendent of Police. The same has not been justified by the State.

61. Thus, in the above referred facts and circumstances at the first place, it can be said that the Government has failed to justify the reason for appointing the SIT.

62. Moving to the next question, whether the appointment of such SIT can be made under the provisions of the Act of 1963 or in exercise of executive powers under Article 162 of the Constitution of India.

63. The Act of 1963 was enacted to develop and regulate the marketing of agricultural and certain other produce in the market areas and the markets including private markets and farmer-consumer markets to confer powers upon the Market Committees to be constituted in connection with or acting for the purposes connected with such markets, to establish Market Fund for purposes of the Market Committees and to provide for purposes connected with the matters aforesaid.

64. No doubt as argued by the learned GP that the State has a general control over the Market Committee, but such control must be exercised strictly in terms of Article 162 of the Constitution of India.

65. It is a settled law that all governmental orders must comply with the requirement of the statute as also constitutional provisions and it is binding upon all the constitutional functionary that they must act and function within a constitutional limit.

66. The Hon'ble Supreme Court of India, in the case of ***Paul Manoj Pandian*** (supra), has observed thus:

"47. Once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to prescribe in the same field by an executive order. However, it is well recognized that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the Executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate Legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State."

67. The Hon'ble Supreme Court of India in the case of *State of M.P.* (supra), has observed thus :

"31. Subject to the provisions of the Constitution, the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. This is what is provided in Article 162 of the Constitution. In other words, the executive power of the State executive is coextensive with that of the State Legislature.

32. In Sant Ram Sharma this Court negated the arguments advanced on behalf of the appellant therein that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the rules already framed. The Court stated: (AIR p. 1914, para 7)

"7. ... It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point the Government can fill up the gaps

and supplement the rules and issue instructions not inconsistent with the rules already framed."

The above legal position has been followed and reiterated by this Court time and again.

33. The Constitution Bench of this Court in Lalit Mohan Deb said: (SCC p. 867, para 9)

"9. It is true that there are no statutory rules regulating the selection of assistants to the selection grade. But the absence of such rules is no bar to the administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject."

In Union of India v. Central Electrical & Mechanical Eng. Service (CE&MES) Group 'A' (Direct Recruits) Assn., CPWD, this Court held that the executive instructions could fill in gaps not covered by the rules but such instructions cannot be in derogation of the statutory rules."

68. In light of the above referred observations, if the provisions of the Act of 1963 are considered, it is evident that the Chapter-VIII empowers the Director as well as the State Government to exercise control over Market Committee. Since it is a special statute and has specified the powers to be exercised by the Director and the State Government, a restriction is imposed to act and exercise such control within the four corners of the Act. The Act does not give wide and unrestricted powers to the State Government or any other authority under the Act, beyond the scope of the provisions of the Act of 1963.

69. Thus, in excessive exercise of powers by the State Government, would amount to cut down the democracy. The Government cannot be allowed to exercise such unrestricted absolute powers.

70. The power given to the Directors and the Government for checks and balances under the Act of 1963 is to protect the essence of the Act and not to allow the Government to use the absolute powers. Therefore, neither the particulars of complaint nor the nature thereof can empower the Government or the authority to exercise absolute control over the APMC. If this is allowed, it would defeat the very object and purpose of the Act.

71. It is an admitted fact that earlier two inquiries were made under the provisions of the Act of 1963. The issues related with such inquiries were the issues raised in the Assembly Question and which is the basis for appointment of SIT.

72. The fact that earlier two inquiries were conducted on the same issues under the provisions of the Act of 1963, makes it clear that the statute has empowered the State of Maharashtra as well as Director to make inquiry, which the State wants to do through SIT.

73. Thus, it can be said that since Sections 40 and 43 occupy the field, it will not be open to the State Government in exercise of its executive powers given under Article 162 of the Constitution of India, to appoint SIT for the purpose as prescribed under the Statute.

74. In the circumstances, we have no hesitation to hold that the

Government neither has power to appoint such SIT beyond the expressed powers given under the Act of 1963, more particularly, under Chapter-VIII of the Act of 1963 or to appoint SIT for the purpose as appointed in the present matter in exercise of executive powers given under Article 162 of the Constitution of India.

75. The judgment cited by the learned GP in the case of *Madhukar Sadbha Shivarkar* (supra) is of no help to the State, as it is distinguishable on facts.

76. Accordingly, we pass the following order:

- i) The Writ Petition is **allowed**.
- ii) The order dated 18/07/2025 passed by respondent No.1- State Government constituting Special Investigation Team, is hereby quashed and set aside.

Rule is made absolute accordingly. No order as to costs.

(VRUSHALI V. JOSHI, J)

(ANIL S. KILOR, J)