



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

**WRIT PETITION NO. 5048/2024
AND
WRIT PETITION NO. 5052/2024**

WRIT PETITION NO. 5048/2024

Abhishek Shankarrao Thakre,
Aged about 45 years, Occ. Agriculture,
R/o. Amdi, Tal. Ghatanji, District Yavatmal

.... **PETITIONER(S)**

// VERSUS //

- (1) **State of Maharashtra,**
Through its Secretary,
Department of Cooperation,
Marketing and Textile, Mantralaya,
Mumbai 400 032
- (2) **Divisional Joint Registrar,**
Co-operative Societies,
Amravati, District Amravati
- (3) **District Deputy Registrar,**
Co-operative Societies,
Yavatmal, Tal. & District Yavatmal
- (4) **Agricultural Produce Market Committee,**
Ghatanji, Through its Secretary,
Tah. Ghatanji, District Yavatmal

- (5) **Nitin Ashokrao Kothari,**
Chairman, Agricultural Produce Market Committee,
Ghatanji, Tah. Ghatanji, District Yavatmal

.... RESPONDENT(S)

WITH

WRIT PETITION NO. 5052/2024

Ashish Suresh Lonkar,
Aged about 45 years, Occ. Agriculture,
R/o. Shirol, Tal. Ghatanji, District Yavatmal

.... PETITIONER(S)

// **VERSUS** //

- (1) **State of Maharashtra,**
Through its Secretary,
Department of Cooperation,
Marketing and Textile, Mantralaya,
Mumbai 400 032
- (2) **Divisional Joint Registrar,**
Co-operative Societies,
Amravati, District Amravati
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Co-operative Societies,
Yavatmal, Tal. & District Yavatmal
- (4) **Agricultural Produce Market Committee,**
Ghatanji, Through its Secretary,
Tah. Ghatanji, District Yavatmal
- (5) **Nitin Ashokrao Kothari,**
Chairman, Agricultural Produce Market Committee,
Ghatanji, Tah. Ghatanji, District Yavatmal

.... RESPONDENT(S)

Shri Sunil Manohar, Senior Advocate a/b Shri Y.N. Sambre,
Advocate for the Petitioner(s)
Shri D.V. Chauhan, Government Pleader a/b Ms. D. Charlewar,
AGP for the Respondent/State
Shri A.M. Ghare, Advocate for the Respondent No. 4
Shri C.S. Kaptan, Senior Advocate a/b Shri R.V. Gahilot,
Advocate for the Respondent No. 5

CORAM : M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON :- FEBRUARY 26, 2025
JUDGMENT PRONOUNCED ON :- APRIL 07, 2025

JUDGMENT:-

(1) **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Senior Counsel and Counsel for the respective parties.

(2) Since Writ Petition No. 5048/2024 is treated as lead Petition, the facts and contentions stated in the said Writ Petition are set out for adjudication of the issue involved in both the Petitions and they are being decided by this common judgment.

(3) The Petitioner has challenged the order dated 22/08/2024 passed by the Respondent No. 3 – District Deputy Registrar, Co-operative Societies, Yavatmal under Section 17 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (hereinafter referred to as “the said Act”) thereby removing the Petitioner from the post of Member of the Agricultural Produce Market Committee (hereinafter referred to as “the APMC”), Ghatanji for the alleged misconduct.

(4) The facts giving rise for filing of the present Writ Petitions are as under:-

(5) On 18/12/2023, several farmers had brought their produce for auction sale at the APMC, Ghatanji, Dist. Yavatmal, however, the traders were insisting on purchasing the produce at a price much less than the Minimum Support Price (hereinafter referred to as “the MSP”) declared by the Government. The Petitioner along with one Shri Lonkar received calls from the farmers regarding such illegalities being committed by the traders with the help of the Secretary,

APMC. According to the Petitioner, the Petitioner, Shri Lonkar and one Akbar Tanwar rushed to the APMC, Ghatanji so as to establish a dialogue with the traders, however, the traders having support of the Secretary, APMC, refused to grant MSP and left the auction. Enraged by the conduct of the traders, the farmers called for a strike and Rasta Roko andolan. On the same evening, a meeting was conducted before the Tahsildar, Ghatanji, who after hearing all concerned including delegate of agriculturists, directed that appropriate action be taken against the traders insisting to buy produce at rate less than MSP. The Secretary, APMC, instead of taking appropriate action, had put the entire blame upon the Petitioner, Shri Lonkar and one Shri Akbar Tanwar and wrote a letter to the Chairman, APMC regarding action to be taken against them. It is alleged that though the alleged incident took place on 18/12/2023, after 2 days, a complaint was registered by the Respondent No. 4 against the Petitioner, Shri Lonkar and Shri Tanwar at Police Station, Ghatanji.

(6) According to the Petitioners, on 03/01/2024, the Respondent No. 5 - Chairman, APMC issued Show Cause

Notice to the Petitioner, Shri Lonkar and Shri Tanwar. Against the said Show Cause Notice, they submitted their reply to the allegations levelled against them. On 27/01/2024, in the Monthly General Meeting, the Market Committee passed a Resolution bearing No. 6 against the Petitioner and Shri Lonkar to initiate Proceedings under Section 17 of the said Act, whereas the Proceedings against Shri Tanwar were adjourned *sine die* on the ground that he had cooperated to restart the auction after the strike was called by the farmers.

(7) According to the Petitioner, on 02/02/2024, the Respondent Nos. 4 and 5 preferred an Application under Section 17 of the said Act before the Respondent No. 3 for removal of the Petitioner from the Market Committee, APMC, Ghatanji. On 01/04/2024, the Respondent No. 3 issued Show Cause Notice to the Petitioner. The Petitioner submitted his reply to the Show Cause Notice issued by the Respondent No. 3. On 02/07/2024, the Petitioner and Shri Lonkar preferred a Revision Petition before the Respondent No. 2 against the Proceedings initiated against them. The Respondent No. 2, on the same day, stayed the Proceedings before the Respondent

No. 3. On 09/07/2024, the Respondent No. 4 preferred a Writ Petition before this Court, however, this Court refused to interfere with the order passed by the Respondent No. 2 and directed him to pass the order within two weeks. According to the Petitioners, in the meanwhile, due to political influence exerted by the Respondent No. 5, the charge as Divisional Joint Registrar, Cooperative Societies, Amravati was taken away from Smt. Bharswadkar and handed over to Shri Pravin Fadnis. On 25/07/2024, the Respondent No. 2 finally disposed of the Revision Petition, however, refused to decide the same on merits and relegated the matter back to the Respondent No. 3, however, with a direction that the Petitioner be granted an opportunity of hearing. As per the Petitioner, he submitted his say along with a copy of the police report and various statements recorded by the police machinery exonerating the Petitioner and Shri Lonkar from the false allegations levelled by the Respondent Nos. 4 and 5.

(8) According to the Petitioners, on 22/08/2024, though several legal and valid arguments were made by him, the Respondent No. 3, without assigning any reasons as to how the

misconduct is proved against the Petitioner and as to why such serious and extreme action of removal of membership shall be allowed against the Petitioner, removed the Petitioner from being a Member of the APMC, Ghatanji. The said order of removal of the Petitioner is the subject matter of challenge in the present Writ Petition.

(9) Shri Sunil Manohar, learned Senior Counsel for the Petitioner submitted that the Respondent No. 3 removed the Petitioner as a Member of the APMC, without any positive and reliable evidence connecting the Petitioner in instigating the farmers for calling a strike. It is submitted that the Respondent No. 3 has failed to appreciate that the queries raised by the Petitioner and Shri Lonkar cannot be treated as a misconduct inasmuch as the said Act and Rules framed thereunder itself empowers or rather entrust the Members of the APMC with a duty to assure payment of MSP to the farmers. It is further submitted that the impugned order does not even consider the provisions of the said Act and Rules framed thereunder mandating the Members of the APMC to assure that the farmers receive MSP as declared by the Government.

He, therefore, prays that the impugned order be quashed and set aside.

(10) Shri Sunil Manohar, learned Senior Counsel for the Petitioner, in support of his contentions, relied on the following citations:-

(a) Sharda Kailash Mittal vs. State of Madhya Pradesh & others, (2010) 2 SCC 319;

(b) Ravi Yashwant Bhoir vs. District Collector, Raigad & others, (2012) 4 SCC 407; and

(c) Baburao Vishwvanath Mathpati vs. State of Maharashtra & others, 1996(1) Mh.L.J. 366;

(11) *Per contra*, Shri D.V. Chauhan, learned Government Pleader for the Respondent/State has submitted that the Petitioner had not any lawful obligation to protect the rights and interest of the farmers. In the present case, the registration of C.C.I. was started from 14/12/2023 and within 8 to 10 days the purchase from C.C.I. was to be started. The said fact was

known to the Petitioner and the other agriculturists, that they would get the minimum support price. The Petitioner, being the Director and also holding post of Chairman of the APMC, was having the knowledge about the procedure and no complaint of agriculturist was registered with the APMC, Ghatanji. The Petitioner provoked the agriculturist for strike and thus the Petitioner did not perform any lawful obligation and has committed misconduct. It is submitted that the farmers had not raised any grievance that the traders are deliberately exploiting the farmers by paying money less than the MSP declared by the government. It is submitted that Shri Lonkar has also sold cotton on 18/12/2023 and he has not lodged any complaint with the APMC. Most of the submissions/allegations made by the Petitioner in the body of the Petition are denied by the Respondent Nos. 1 to 3.

(12) It is contended that this shows that the Petitioner, by taking undue advantage of his Directorship, tried to defame the APMC. Further, the Petitioner, being public servant, misused his official position and also misdirected the agriculturists, therefore, the APMC has taken the resolution

against Petitioner for removal of Petitioner and the decision taken by the Committee is correct and proper. In the present case, it is found that the APMC, Ghatanji, before making recommendation, gave opportunity of hearing to the Petitioner.

(13) Learned Government Pleader submitted that in Section 29 of the APMC Act, the powers and duties of the Market Committee have been given and there is a provision for conciliation, if any dispute arose in the APMC. When any dispute arose, then it is the legal duty of the Directors to resolve the dispute. In spite of this provision and facts of the case, it is found that the Petitioner has not resolved the issue and deliberately stopped purchasing of the cotton by doing illegal act. The Petitioner failed to perform his duties, and therefore, the Respondent No. 3 came to the conclusion that, it is necessary to remove the Petitioner as a member of APMC Ghatanji, and therefore, order impugned is just and proper and he prays for dismissal of the Writ Petition.

(14) Shri D.V. Chauhan, learned Government Pleader, in support of his contentions, relied on the judgment in the case of **Indian Overseas Bank vs. I.O.B. Staf Canteen Workers' Union & another, (2000) 4 SCC 245.**

(15) Shri A.M. Ghare, learned Counsel for the Respondent No. 4 submitted that the present petition, as framed and filed, is not tenable in the eyes of law. It is submitted that undisputedly, the Petitioner had filed a Revision under Section 43 before the Divisional Joint Registrar, Cooperative Societies, Amravati against the Proceedings in furtherance to the Resolution passed by the Respondent No. 4 towards the removal of the Petitioner under Section 17 of the said Act. It is submitted that in the accompanying Stay Application, an interim order of stay was granted in favour of the Petitioner which was challenged by the Respondent No. 4 by virtue of Writ Petition No. 4092/2024, wherein this Court directed the Authority to decide the main Revision itself in a time bound manner. It is submitted that the learned Authority, on 25/07/2024, dismissed the Revision filed by the Petitioner, vacated the stay granted in favour of the Petitioner and

directed the Petitioner to appear before the Respondent No. 3 for further Proceedings. It is submitted that the order dated 25/07/2024 passed by the Respondent No.2, dismissing the Revision filed by the Petitioner holding that same is not maintainable, is not challenged by the Petitioner before any Court and it has attained finality. The allegation of farmers making representation on 15/07/2024 and seeking action against the traders, is nothing but an after-thought on part of the Petitioner. The said representation is made nearly seven months of the alleged incident, i.e. on 18/12/2023, this itself demonstrate that such representation is sponsored by the Petitioner. The Petitioner was found responsible for sabotaging the on going auction of cotton on 18/12/2023 and was proceeded accordingly by the Executive Committee Members of the Respondent No. 4, A.P.M.C.

(16) Learned Counsel for the Respondent No. 4 submitted that the allegations made by the Petitioner against the Respondent No. 4 in the body of the Petition are false and are made without verifying the facts. It is submitted that the impugned order passed by the Respondent No. 3 is a speaking

order and adequate reasons are given by the Respondent No. 3 while passing the order. In fact, being a Member of the A.P.M.C. it was duty of the Petitioner to see that the auction of cotton should be completed smoothly. If some farmers had approached the Petitioner complaining the rate, then it was the duty of the Petitioner to put such complaint in writing with the A.P.M.C. and not to provoke the people to close down the ongoing auction. It is submitted that the impugned order is just legal and proper and there is no jurisdictional error committed by the Respondent No. 3, hence, he prays for dismissal of the Writ Petition.

(17) Shri A.M. Ghare, learned Counsel for the Respondent No. 4, in support of his contentions, relied on the following citations:-

(a) Hindurao Dnyanu Shirtode & another vs. State of Maharashtra & others, 1998(3) Mh.L.J. 622; and

(b) Misc. Civil Application No. 814/2023 in Writ Petition No. 24/2023 (Sachin Balchand Gaidhane & others vs. Shailesh Davduji Gabhane & others) passed by this Court;

(18) Shri C.S. Kaptan, learned Senior Counsel for the Respondent No. 5 submitted that the Petitioner has made allegations against the Respondent No. 5 for the acts which he has performed in the official capacity. It is submitted that the Petitioner and other two members of the Executive Committee of the Respondent No. 4 - APMC committed certain indecent acts which not only amounted to misconduct in the discharge of the duties as a Member of the Executive Committee, but it was also disgraceful. The Petitioner and his accomplices have committed illegal acts, stopped marketing of agricultural produce in the yard and instigated some elements to cause disruption in the Proceedings and also caused Rasta Roko andolan which conduct was not only illegal but it was causing public disorder. It is submitted that some of the members of Market Committee expressed that these acts were disgraceful and amounts to misconduct in performance of duties as manner of the Market Committee and hence they requested the Respondent No. 5 to take action against the Petitioner. It is submitted that the members of the Respondent No. 4 - APMC considered the matter and the explanation submitted by the Petitioner and decided to initiate action against the Petitioner

and his accomplices by majority of 10 members against 6 members. It is submitted that by passing the Resolution dated 27/01/2024 ,the majority Members of the Executive Committee of the Respondent No. 4 - APMC desired to initiate Proceedings under Section 17 of the said Act before appropriate Authority. Such a decision cannot be said to be arbitrary or illegal.

(19) Learned Senior Counsel for the Respondent No. 5 submitted that the impugned order passed by the Respondent No. 3 is reasoned and based upon the appreciation of material available on record. It is submitted that, the Petitioner was given full opportunity to submit his case. It is submitted that, the view taken by the Respondent No. 3 is proper and plausible. It is also submitted that the Respondent No. 3 has exercised the jurisdiction which is conferred upon him under the said Act. It is submitted that the Petitioner is not disputing the incidence held on 18/12/2023 and his participation and presence therein. In the circumstances, the scope of interference is very limited and hence, he prays that the present Petition is liable to be dismissed with costs.

(20) Shri C.S. Kaptan, learned Senior Counsel for the Respondent No. 5, in support of his contentions, relied on the following citations:-

(a) **Hari Vishnu Kamath vs. Syed Ahmad Ishaque & others, (1954) 2 SCC 881;**

(b) **Bhagwan Pandurang Khedekar & another vs. State of Maharashtra & others, 2023 SCC OnLine Bom 3081; and**

(c) **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal & others vs. M/s. Gopi Nath & Sons & others, 1992 Supp (2) SCC 312**

(21) Heard all the parties, considered the impugned order and judgment relied on by the respective parties. The present petition is filed challenging the order dated 22/08/2024 passed by the District Deputy Registrar, Co-operative Societies Yavatmal under Section 17 of the APMC Act removing the petitioner as a member of the APMC for misconduct. The petitioner was removed as a member Director of the APMC Ghatanji. The Secretary of the APMC Ghatanji informed to the

Chairman of APMC Ghatanji that on 18.12.2023, there were around 350 carts having cotton for sale were present. There was purchase and sale of cotton was going smoothly through private cotton traders duly licensed. Cotton near about 100 to 150 carts was duly sold through auction. At around 12 a.m., the Director of APMC, Abhishekh Thakre, Ashish Lonkar, Akbar Tanvar reached at the place where auction was going on. They asked to the Secretary APMC that why cotton is being sold below Minimum Support Price. So also they questioned that whatever price fixed in auction why the same rate should not be confirmed at ginning. They have also raised question that why at auction place, the cotton in the vehicle should not be inspected and graded before sending the cotton in ginning. They alleged that there is difference and deduction of Rs.500/- to Rs.700/- in the rate of cotton being sold to ginning. The agriculturists are being cheated at the hands of cotton traders.

(22) It is contended in the said communication dated 20.12.2022 that the present petitioners are taken a stand that unless these issues are not resolved till then there will not be any auction of cotton. Secretary along with license commission

agent and traders tried to convince that there is no substance in any of the issue raised by the Petitioner. The license traders contended that nowhere in the APMC in district of any APMC is having such a large entries of agriculturists for selling cotton. It is also contended by the traders that as per the practice which was followed to continue and it is claimed that since last 12 years, the petitioners are having experience of working of APMC.

(23) It is further alleged that the petitioner is also executing transaction for purchase of agriculture product and, therefore, he is well aware about all information. Therefore traders were not willing to work under these oppressive terms and conditions. It is further written in communication that in spite of this, Petitioners along with Shri Akbar Tanvar have taken insisting stand that unless these questions are resolved there will not be any auction of cotton. As auction procedure was halted, the agriculturists taken aggressive stand. It is also alleged that as sale purchase of cotton by auction was closed, the agriculturist has taken aggressive stand. The agriculturist also closed down the road of Ghatanji-Parva State Highway.

There was meeting conducted at Tahsil Office Ghatanji. The petitioner was provided with copy of minutes of meeting. In view of Clause 6 of the said letter, the APMC was directed in view of the question raised by the petitioner that there should not be any sale purchase of cotton below the Minimum Support Price. It was also directed to the APMC that the rate fixed at the time of auction should not be reduced.

(24) In respect of this specific direction instead of taking steps as per direction of the Tehsildar issued in Meeting dated 18.12.2023 (Annexure-B page 46), on 03/01/2024 show cause notice was issued by the Chairman of APMC Ghatanji to the Petitioner. Similar show cause notice was also issued to Sk. Akbar Tanwar. The show cause notice was duly replied. It was duly informed to the Chairman that after the said incident, the Tehsildar called a meeting on the same day wherein the Assistant Registrar, Secretary of APMC, another agriculturists and the Petitioner were present. It is contention of the Petitioner that as the agriculturists were aggrieved due to not getting them Minimum Support Price therefore, it was necessary to satisfy the agriculturists and that is why he was

insisted to solve the problem of the agriculturists. There is no misconduct at all in taking efforts to get the agriculturists Minimum Support Price, in fact, it is the duty of the representatives of the agriculturists to see that they will get Minimum Support Price. Similar is the reply filed by the Ashish Lonkar and Akbar Tanwar. On 27.01.2024, the APMC Ghatangi conducted a meeting. In the said meeting it was resolved that the petitioners committed misconduct and they are liable for action under Section 17 of the APMC Act. However, the explanation given by the Akbar Tanwar kept pending on the ground that subsequently he helped to convince the traders to regularize the auction. Accordingly, the Chairman and Secretary filed a Petition before the District Sub-Registrar Co-operative Society, Yavatmal under Section 17 of the APMC Act. It is brought to the notice before the Members in the said meeting that the Assistant Secretary of Deputy Chief Minister called for explanation on phone from the District Sub-Registrar Co-operative Society, Yavatmal. In the Petition filed before the District Sub-Registrar Co-operative Society, same facts were reiterated. In the said Petition. It is alleged that the respondents by misusing their power stopped the auction on

18.12.2023 and instigated the agriculturists for “Rasta Roko” and interfered in the proceedings of Committee and defamed the Committee and derelicted in duties acted negligently and committed illegal act. For this reason, it is held that the Petitioner not eligible to remain as Director. Therefore, passed a Resolution by majority after compliance of Section 17 of the APMC Act. Prayed for declaration and for passing order that respondents therein are liable to be disqualified as Directors.

(25) Upon receipt of said application, the District Sub-Registrar Co-operative Society, Yavatmal directed the Petitioners herein to remain present on 15.04.2024 for personal hearing. Accordingly, the petitioners herein submitted their written submissions wherein it is specifically denied that there is any misconduct on the part of the petitioners. Moreover, it is also requested to the learned District Sub-Registrar Co-operative Society, Yavatmal that if the Authority gone to verify the truth what had happened on that day, authority may call the record of 100 to 150 vehicles of which it is alleged that auction was smoothly going on and also called for the record of 150 vehicles after the agitation of agriculturists, it would make

clear that how much is the difference in the prices given for the cotton for initial 150 vehicles and the cotton in the 150 vehicles which was sold after the agriculturists agitation. It is also made clear that there is no question of any misconduct specifically when it is the duty of the Directors, Secretary and President to solve the problems of the agriculturists to get them MSP. The District Sub-Registrar Co-operative Society, Yavatmal vide order dated 22/08/2024 invoking his power under Section 17 of the APMC Act, allowed the Application of the APMC Ghatanji and the Petitioners were removed from the membership of the APMC Ghatanji.

(26) After perusal of the impugned order dated 22/08/2024 which runs in more than 27 pages, it appears that the District Sub-Registrar Co-operative Society, Yavatmal passed the order without application of mind. In the above Enquiry, he has not called for the sale receipts of the cotton sold on the day of incident i.e. on 18.12.2023. He has not confirmed about the Minimum Support Price on the day of auction and what was the rate the cotton was being sold. He has also not verified whether the cotton was graded at the place

of auction or it was graded at Ginning factory. It was alleged by the agriculturists that they used to get amount after deduction of Rs.500/- to Rs.700/- from the Ginning factory. If the gradation done on the place of auction, there is no any variance in the rate given in the auction and by the Ginning Press. It was incumbent on the Authority below/Respondent No.3 to call for record of the date of incident about receipts of sold cotton so as to come to the conclusion whether there was any fraud played by the traders against the agriculturists. The observation in para 4 of his findings that it is not seen that Tehsildar has conducted meeting with the delegation of agriculturists in respect of "Sakhali Uposhan", in fact, there was a meeting conducted on 18.12.2023, in that regard a letter was issued by the Tehsildar on 30.01.2024 to the Petitioner. As per this letter, oral instructions were given to the Assistant Registrar, Co-operative Society and the Secretary of the APMC was directed to take care that there shall not be any purchase of cotton below the MSP. So also, the traders cannot reduce the rate fixed at the time of auction. As such, no consideration appears to be given to the root cause that whether agriculturists were given MSP by the traders.

(27) Learned Counsel for the Respondents raised an objection that all 10 Members of APMC, Ghatanji are the necessary parties. However, in my considered opinion the Members of the APMC are not necessary party as the Members themselves in the individual capacity never applied for any such action. The Members of APMC are not necessary parties for the reason as what is being questioned is not the individual decision by each of the APMC Member in the meeting regarding disqualification of the Petitioner, but it was collective decision by the Members. Therefore, individual Member of the APMC are neither necessary nor proper parties.

(28) Learned Senior Counsel for the Petitioner also relied on ***Baburao Vishwvanath Mathpati*** (supra), wherein in para 90 held as under :

“Section 55-A of the Maharashtra Municipal Councils Act, 1965, empowers the State Government to remove the President of a Municipal Council for “misconduct in discharge of his duties or neglect of or incapacity to perform his duties or for being guilty of any disgraceful conduct”. This provision sufficiently entails civil consequences and attaches stigma to the President and

therefore to remove a President on these grounds the order must be founded on strong grounds. From this viewpoint the word 'neglect' as used in the section must be understood from the gravity of the charges. There should be flagrant disregard of duties so as to call for removal of the President under Section 55-A. Thus, applying the golden rule of construction of statutes which has been recognised by the Apex Court, it can be said that the word "neglect" has a connotation as 'gross', 'wilful', 'intentional' or 'culpable' neglect. The word 'neglect' has therefore a different connotation that the word 'negligence'. ”

(29) Learned Counsel for the Respondent No.4 relied on **Hindurao Dnyanu Shirtode** (supra) in support of his contention that “Persons who had proposed and passed the motion of no-confidence nor joined as parties to the writ petition, on this point the petition is not maintainable on the ground of non-joinder of necessary parties”. However, the facts are distinguishable in the said matter and the facts involved in the present matter. This ground is raised for the first time in the Petition. In the said matter no-confidence motion was proposed and was passed at the instance of five Members of the Panchayat. Neither of them are impleaded in the petition as these members have a direct interest in the subject matter of

the petition. In case the no-confidence motion is set aside their interest would be vitally affected as their no-confidence motion would be set aside without affording them an opportunity of being heard. In the present matter, the Chairman of APMC as well as APMC through its Secretary are party to the petition and it was already discussed it is a collective and not an individual decision. Therefore, interest of other members is duly protected by adding Chairman and Secretary of the APMC as party respondents. Moreover, complaint is filed by Chairman and Secretary of APMC. Interest of members supporting removal cannot be adverse to the complainant.

(30) So far as misconduct is concerned, the plea that price lessor than MSP was being paid by the traders as directed by the APMC. The Petitioner has obligation to ensure that MSP should be given to the agriculturists. Supporting the grievance of non payment of MSP is actually upholding the law and that are no stretch of imagination it can be termed as 'misconduct'. While acting as a Director, protect the interest of traders but finally he has to ensure protection of the interest of the agriculturists too. The oral directions issued by the Tehsildar in

meeting on the same day thereby directing the traders to ensure payment of Minimum Support Price as well as the complaint by certain agriculturists also support the action. That apart, the Resolution dated 27/01/2024 does not indicate that any material being considered that in fact the MSP was being paid to agriculturist and therefore, plea by the Respondent was without substance. However, nothing appears to have been placed before the Committee and it was considered. The only allegations by the traders is that as per the practice which was followed the same practice is being followed. However, nobody has made any concrete statement with supporting evidence. As such, whether the demand of the Petitioner for taking immediate action for payment of MSP is valid or without substance cannot be concluded.

(31) Learned Senior Counsel for the Petitioner relied on ***Sharda Kailash Mittal*** (supra), wherein the Hon'ble Apex Court in para 24 and 26 held as under :

“24. In a democracy governed by rule of law, once elected to an office in a democratic institution, the incumbent is entitled to hold the office for the term for which he has been elected unless his elections is set aside by a

prescribed procedure known to law. Removal from such an office is a serious matter. It curtails the statutory term of the holder of the office. A stigma is cast on the holder of the office in view of certain allegations having been held proved rendering him unworthy of holding the office which he held.

26. There are no sufficient guidelines in the provisions of Section 41-A as to the manner in which the power has to be exercised, except that it requires that reasonable opportunity of hearing has to be afforded to the office bearer proceeded against. Keeping in view the nature of the power and the consequences that flows on its exercise it has to be held that such power can be invoked by the State Government only for very strong and weighty reason. Such a power is not to be exercised for minor irregularities in discharge of duties by the holder of the elected post. The provision has to be construed in strict manner because the holder of office occupies it by election and he/she is deprived of the office by an executive order in which the electorate has no chance of participation.”

(32) Learned Senior Counsel for the Petitioner also placed reliance on **Ravi yashwant Bhoir** (supra), wherein the Hon’ble Apex Court in para 36 held as under :

“36. In view of the above, the law on the issue stands crystallized to the effect that an elected

member can be removed in exceptional circumstances giving strict adherence to the statutory provisions and holding the enquiry, meeting the requirement of principles of natural justice and giving an incumbent an opportunity to defend himself, for the reason that removal of an elected person casts stigma upon him and takes away his valuable statutory right. Not only the elected office bearer but his constituency/electoral college is also deprived of representation by the person of his choice.”

In the said Judgment, the Hon'ble Apex Court relied on ***P. Ramanatha Aiyar's Law Lexicon***, Reprint Edn. 1987, page 821 wherein it defines “misconduct” as under :

“The term ‘misconduct’ implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word ‘misconduct’ is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness, negligence and unskilfulness are transgressions of some

established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite. Misconduct in office may be defined as unlawful behaviour or neglect by a public officer, by which the rights of a party have been affected."

Thus it could be seen that the word 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve...."

(33) Learned Government Pleader for respondent State relied on ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers Union and Anr.*** (supra), in support of his contention

that the learned Single Judge in exercising writ jurisdiction by liberally re-appreciating the evidence and drawing conclusion of his own on pure questions of fact, unmindful, though aware fully that he is not exercising any appellate jurisdiction over the awards passed by a Tribunal presided over by a Judicial Officer. The Hon'ble Apex Court held in para 17 as under :

“17.On being taken through the findings of the Industrial Tribunal as well as the order of the learned Single Judge and the judgment of the Division Bench, we are of the view that the Industrial Tribunal had overwhelming materials which constituted ample and sufficient basis for recording its findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seem to be unexceptionable. The only course, therefore, open to the Writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of re-assessing the evidence and arriving at findings of one's own, altogether giving a complete go-bye even to the facts specifically found by the Tribunal below.”

(34) However, facts in the referred citations is distinguishable. It is specifically observed by the Hon'ble Apex Court that the Industrial Tribunal had overwhelming material which constituted ample and sufficient basis for recording the findings, as it did, and the manner of consideration undertaken the objectivity of approach adopted and reasonableness of findings recorded seems to be unexceptionable.

However, in the present matter the whole proceeding is silent about what was the MSP on that day of incident and at what rate the cotton was purchased containing in 150 carts prior to incidents.

(35) Learned Senior Counsel for the Respondent No.5 relied on ***Hari Vishnu Kamath*** (supra) in support of his contention that writ of certiorari can be issued for correcting errors of jurisdiction, however in the said judgment itself in para 24 held as under :

“24. Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under

which it could be issued. The question has been considered by this Court in Parry & Co. v. Commercial Employees' Association, (1952) 1 SCC 449, Veerappa Pillai v. Raman and Raman Ltd. and Others (1952) 1 SCC 334, Ibrahim Aboobaker v. Custodian General (1952) 1 SCC 798 and quite recently in T. C. Basappa v. T. Nagappa (1954) 1 SCC 905. On these authorities, the following propositions may be taken as established:

24.1. *Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it.*

24.2. *Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.*

24.3. *The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well settled and are not in dispute.*

(36) Learned Senior Counsel for the Respondent No.5 also relied on ***Bhagwan Pendurang Khedekar*** (supra), judgment of this Court wherein reliance is placed in the case of ***Syed Yakoob Vs. K. S. Radhakrishnan***, reported in ***AIR 1964 SC 477***, wherein the Hon'ble Apex Court held as under :

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the

appreciation of evidence cannot be reopened or questioned in writ proceedings.”

(37) Learned Senior Counsel for the Respondent No.5 also placed reliance on ***H. B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal*** (supra), wherein the Hon’ble Apex Court in para 8 held as under :

“8. But here what was assailed was the correctness of findings as if before an appellate forum. Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.”

However, in the present matter, this Court come to the conclusion that the Authority below failed to exercise jurisdiction vested in and to call for material documents which would have been thrown light what the exact position on the day of incident.

(38) Moreover, the facts are different in the present matter. The District Sub-Registrar has not gone into the root cause of the incident and has not verified the material evidence to come to the conclusion that there was any misconduct on the part of the Petitioners. He has not appreciated the fact that traders were not ready to sale as per the conditions and terms by the Petitioners which is a legitimate expectation to grant Minimum Support Price and settlement. At the place of auction itself gradation has to be decided and there should not be any variance after taking cotton to Ginning Press by deduction of price. The Minimum Support Price which was approved by the Government, below that there cannot be any sale conducted. There is no whatsoever possible explanation given by the Respondents to keep the decision in respect of Shri Akbar Tanwar pending.

(39) As such, there was no evidence at all before the Respondent No.3 to come to the conclusion that there was any 'misconduct' in discharge of their duties or neglect of or incapacity to perform their duties or for being guilty of any disgraceful conduct as held in **Baburao Vishwvanath Mathpati** (supra) that removed a person from its post on the ground the order not been founded on strong grounds, from this view point the word "misconduct" as used in the section must be understood from the gravity of the charges. Thus, applying the golden rule in construction of statutes which has been recognized by the Hon'ble Apex Court it can be said that the word "misconduct", "neglect", has a connotation as 'gross', 'wilful', 'intentional' or 'culpable', 'misconduct' or 'neglect'.

(40) After perusing the documents it also reveals that the Petitioners were insisting to resolve the issue of Minimum Support Price before further auction is conducted. However, the traders were not agreed and was insisting to sale cotton as per practice which was followed these years. Nowhere the stand of the APMC, Ghatanji that they were purchasing the cotton as per Minimum Support Price fixed by the

Government. As the agriculturists were aggrieved due to not getting them the Minimum Support Price, they complained to the Petitioners and it was found necessary being a Director of APMC to satisfy the agriculturists therefore they insisting to solve the problems of the agriculturists. In my considered view, there is no misconduct at all in taking efforts to get the agriculturists Minimum Support Price in fact, it is the duty of the representatives of the agriculturists under the provision of APMC Act to see that the agriculturists will get Minimum Support Price. If the APMC would have been able to show that on the day of incident also the cotton was purchased for Minimum Support Price in respect of 150 carts of which the cotton was purchased, there would have been reason to say that there was misconduct. However, nothing is placed on record before the learned Authority below by the APMC in support of their stand. So far as “Rasta Roko” agitation by the agriculturists is concerned, the Petitioners cannot be held to be liable if the President and Secretary immediately after grievance made by the Petitioners to have taken steps there would not have been any such necessity to the agriculturists to call “Rasta Roko” agitation. In fact, there is no question of

defamation of APMC if anybody agitating for provisions under APMC Act to be followed that may not be termed as 'misconduct' of such a gravity to remove the person from his office.

(41) As such, in my considered opinion the learned District Sub-Registrar Co-operative Society, Yavatmal passed the impugned order without there being any supporting evidence. It would be unjust to declare that the Petitioners have committed misconduct. The Petitioners were insisting on to resolve the issue of payment not being paid as per the MSP. Thus, the impugned order is liable to be set aside. In view of that, I pass the following order :

(i) Both the Writ Petitions are **allowed**.

(ii) The orders dated 22/08/2024 passed by the Respondent No. 3 – District Deputy Registrar, Co-operative Societies, Yavatmal under Section 17 of the APMC Act thereby removing the Petitioners from the post of Member of the Agricultural Produce Market Committee, Ghatanji for the alleged misconduct is hereby quashed and set aside.

(iii) The Respondents are hereby directed to restore the Petitioners to their original office as Directors/Members of APMC, Ghatanji as they were then before passing the impugned orders.

Both the Writ Petitions stand disposed of in the above terms. No order as to costs.

(M.S. JAWALKAR, J.)

At this juncture, learned Counsel for Respondent Nos.4 and 5 request to suspend the effect and operation of this order for another four weeks.

To grant a fair opportunity, the effect and operation of the order is stayed for another four weeks.

(M.S. JAWALKAR, J.)