

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 16003 of 2017**

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AMRATBHAI LILABHAI DESAI & 6....Petitioner(s)
Versus
STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR VC VAGHELA, ADVOCATE for the Petitioner(s) No. 1 - 7

ADVANCE COPY SERVED TO GP/PP for the Respondent(s) No. 1

MR PK JANI, AAG with MS MANISHA L. SHAH, GP with Mr.Niraj Ashar, AGP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE S.G. SHAH

Date : 25/09/2017**CAV ORDER**

1. Heard learned advocate Mr.V.C. Vaghela for the petitioners, learned Additional Advocate General Mr. P. K. Jani with learned Government Pleader Ms.Manisha L. Shah assisted by Mr.Niraj Ashar, learned AGP for the respondent – State and learned advocate Mr.Dipen Desai for private respondent Nos.4 to 11 who appeared as caveator. Perused the record.
2. The petitioner herein are Chairman, Vice Chairman and few Members of the Siddhpur Agriculture Produce Market Committee (For

Short `SAPMC') whereas respondent No.1 is State and respondent No.2 is Director of the concerned department being Agriculture Market and Rural Finance, respondent No.3 is Inquiry Officer and Joint Registrar (Commerce) of the Cooperative Societies Department, whereas, private respondent Nos.4 to 11 are concerned with the affairs of SAPMC. The petitioners have challenged the order dated 19.8.2017 by respondent No.1 whereby as provided under Section 46 of the Gujarat Cooperative Societies Act (For short `Act') superseded the elected body of SAPMC and appointed District Registrar and Deputy Director of Cooperative Societies, Patan as Administrator of SAPMC. Therefore, it is alleged by the petitioners that there is clear and prima facie case in their favour when respondents have superseded the elected body contending that this is nothing but a bias and political decision to take revenge against the success of rival political party, when party in government could not win the election, which is only because of non support of public and voters to the party in power in government. Therefore, because of their power in government, the defeated party had passed the impugned order. Though such reasons and ground may look and seems to be attractive,

the Court has to decide the issue after considering rival submissions. For the purpose, entire facts and rival submissions need to be scrutinized.

3. It is undisputed fact that petitioners and private respondents are agriculturist and petitioners are elected members of Managing Committee of Defendant in the election held in the year 2015, whereby, petitioner No.1 was elected as Chairman and No.2 as Vice Chairman. A dispute regarding financial and voters list is ongoing and it is pending before the Hon'ble Supreme Court of India. It is contended by the petitioner that meanwhile on 4.10.2016, 8 persons have filed an application before the Competent Authority alleging that present committee of Defendant has committed persistent default and, therefore, requested the authorities to initiate inquiry under Section 44 of the Act. It is alleged that the Inquiry Officer has, under political dictate, without hearing the petitioners submitted his report dated 4.2.2017 holding that petitioners are guilty. Therefore, a show cause notice under Section 46 of the Act was issued to the petitioners on 23.2.2017 calling upon the petitioners to explain that why the committee of SAPMC be

not superseded for the allegations levelled in such show cause notice. Thereupon, petitioners have filed Special Civil Application Nos.5307 and 5308 of 2017 challenging the inquiry report dated 4.2.2017 under Section 44 and show cause notice dated 3.2.2017 under Section 46 of the Act. Both such petitions were disposed of by this Court by order dated 10.2.2017 with some directions. It is further submitted that in compliance of such directions petitioners had appeared before the Authority on 15.3.2017 and requested the respondent No.1 to provide all documents on which the inquiry officer has relied while confirming the report under Section 44 of the Act.

4. It is further submitted that no documents were provided thereafter till 20.5.2017 when petitioner has again submitted one application disclosing factual details and claiming that they could not respond to show cause notice in absence of such documents. On 2.6.2017, respondent No.2 has provided some documents enabling the petitioner No.1 to file a reply before the competent authority on 5.6.2017. It is also contended that petitioner Nos.2 to 6 have requested for extending an opportunity to hear them on

2.6.2017 so also on 5.6.2017. Thereupon, respondent No.2 had issued notice to the petitioner Nos.2 to 6 to submit their statement on 23.6.2017. The petitioners have submitted their reply on 4.8.2017 and asked for further time to make oral submissions but respondents have, instead of granting time for making oral submissions passed the impugned order on 19.8.2017 and, therefore, petitioners have sought indulgence of this Court for appropriate Writ or direction to quash and set aside such order dated 19.8.2017 as being illegal, arbitrary and against the principle of natural justice with interim relief to stay the operation and implementation of such order dated 19.8.2017.

5. Based upon above referred factual details, it is submitted by the petitioners that the action of the respondent authorities are absolutely malafide and arbitrary and that allegations against the present petitioners are for such cause which were not decided by the present committee but decision of the previous committee and present committee has merely executed the order of previous committee and, therefore, they cannot be held liable or responsible. In addition to one such ground, in fact there are in all several

irregularities for which impugned order is passed. Therefore, petitioners have tried to emphasize that they are not responsible for any such misconduct and, therefore, impugned order super-ceding or suspending the elected body is illegal and needs to be quashed. In addition to factual details which are termed as irregularities by the respondents, the petitioners have contended that pursuant to direction by this Court vide judgment and order dated 10.3.2017 in Special Civil Application Nos.5307 and 5308 of 2017 that respondents have not followed the direction while challenging the impugned order of this Court and failed to comply with the provisions of Sections 44 and 45 of the Act.

6. As against that, the respondent – State has come forward with a specific allegations that there are several material irregularities committed by the Executing Committee of SAPMC whereby they have not only safeguarded their own interest but acted against the interest of all the members of the SAPMC and, therefore, considering the seriousness and graveness of the allegations against the SAPMC, they have no option but to initiate appropriate proceedings against the petitioners and during such proceedings a

competent authorities has taken a decision to supersede the petitioners – committee and, therefore, when there is clear evidence available to confirm the misdeeds by the petitioners, then, respondents have no option but to pass impugned order.

7. In addition to factual details narrated hereinabove, the petitioners have contended that provision of law does not permit the petitioner to pass the impugned order, more particularly, when documents called for by the petitioners are not provided by the respondents.
8. Whereas, respondents have relied upon the factual details regarding misdeeds of the petitioners from the report of inquiry which is part of the record.
9. In view of such rival submissions, we have to first verify the details of different misdeeds and to determine that those misdeeds are sufficient for passing impugned order so as to supersede the elected committee and to appoint an Administrator for SAPMC.
10. There are several irregularities but in all seven main irregularities considered by the

respondents while super-ceding the SAPMC. They are as under: -

1. Though the provision of law and government circulars are very much clear to confirm that management of APMC should be done so as not to increase the total expenditure above 40% of budgetary provision of the APMC, the petitioners have spend more than required fund only by paying the arrears under the pretext of revision pay scale to its staff. All such details are discussed in detail in report dated 4.2.2017 by the Joint Registrar (Commercial); copy of which is produced at Annexure 'D.' The report shows that without considering the factual details and applicability of particular pay scale, the petitioners have increased the salary of several employees and released the arrears and, thereby, utilized huge fund of the SAPMC. The report further confirms that while paying the arrears unnecessary more amount is paid to some of the employees and, therefore, it was ordered to be recovered from them. For arriving at such conclusion,

the Joint Registrar has relied upon the Audit Report. Therefore, when Auditor has said that the petitioners have travelled beyond the Rules for making payment to its employees the Joint Registrar has no option but to rely upon Audit Report.

As against that, only defence by the petitioners are to the effect that the decision to increase the pay scale was taken by previous committee and they have simply implemented it. Such pretext cannot be accepted for the simple reason that even if previous committee has taken a decision while executing such decision existing committee shall certainly verify the propitiatory and implication of any such decision, more particularly, when it involves financial liability. However, this is not the sole irregularity and, therefore, it cannot be said that such irregularity is not sufficient to take steps under the Statute.

2. In addition to general revision of pay scale and payment of

arrears at once which increased a huge financial liability as discussed in previous paragraph, the retiring Secretary of SAPMC namely; Manubhai Patel was paid 10% charge allowance from the year 2002 till 2013 though he was getting the same salary of Secretary as an In-charge Secretary. Thus, when a person is placed in charge of any particular post he is entitled to charge allowance only if he is drawing salary of his cadre but if he was awarded the salary of higher cadre charge of which is handled by him then, there would be no payment of charge allowance. Therefore, such payment is illegal and thus petitioners have committed irregularity in making huge payment to its Secretary. Therefore, Joint Registrar has to decide for recovery of such excess payment as it is due to irregularity at the end of the petitioners.

3. Similarly, all the staff of the SAPMC had been given revised pay scale and in all Rs.22,00,000/- (Rupees twenty two lacs only) were

paid to the staff towards arrears, whereby, total expenditure of the SAPMC has crossed the limit of 40% since total cost has gone upto 48% only for such administration purposes and, thereby, by making huge payment to all staff and some irregular payment to some of the staff for their benefit, petitioners have not bothered to spend such amount for the benefit of the Members of the APMC who are agriculturist and for whose benefit all such APMCs are formed.

4. Similarly, some staff members were paid cash amount against leave encashment against the provisions of law, inasmuch as, employees are entitled to en-cash only 15 days Earned Leave in two years and not more than that. However, none bothered to verify all such facts. It also results into irregularity whereby there is financial loss to the APMC.

5. In constructing water tank, way bridge and paver block also, there was clarity that APMC has carried out only small work for benefit of its

Members being agriculturist and majority amount has been spent in making payment to the staff and contractors to some other work than betterment of members.

6. There was irregular appointment of daily wager and ad-hoc employees. Though it is contended that there was no such appointment, the fact remains that even if such appointment on daily basis or ad-hoc appointment was for limited purpose, it amounts to irregularity.

7. There was irregularity in recruitment process also whereby instead of publishing notice for recruitment in a well known newspaper like Divya Bhaskar, Sandesh or Gujarat Samachar, it was published in a local newspaper namely; Nibhav Dainik so as to appoint the person of their choice. Though it is contended by the petitioners that pursuant to objection by the respondent, they have not completed such recruitment process, the fact remains that petitioners have attempted to appoint the person of

their choice and the recruitment process certainly proves material irregularity and illegality. Therefore, when recruitment notice was not published properly that itself is a proof of material irregularity.

8. Even appointment of Secretary was not in accordance with law and Rules are being ignored while selecting the Secretary of SAPMC and than he was paid huge amount though he is not entitled to it.

9. While dealing with the properties of the SAPMC, care has not been taken to protect the right of the APMC over the property and some of the properties were allotted to the near and dear of the Chairman and Vice Chairman. Therefore, even if such dispute was resolved after some litigation and may not be in force on the date of the impugned order, it certainly amounts to irregularity because even for safeguarding the right over the property of APMC, APMC has to spend huge amount.

10. Though Civil Suits were filed before the Patan Court to recover the huge amount of the APMC from concerned defendant including few members of the APMC, when such suit was dismissed for want of prosecution, the petitioners have instead of filing appeal in time though conveyed by the Registrar to do so, failed to take action in time and, thereby, frustrated the rights of the APMC in recovering huge amount from the wrong doors. This is also done because such suit is against one of the present petitioner and, therefore, if that suit is decreed, he has to deposit huge amount of APMC and hence to safeguard their own skin, they have agreed to commit loss to the tune of Rs.52,00,000/- (Rupees Fifty Two Lacs Only) to the APMC. It is submitted by the respondents that therefore the Administrator has to prefer an appeal with an application to condone the delay in filing such appeal before the High Court. The relevant documents to that effect are referred by the learned AAP which are taken on record. Those documents simply confirm the factual details and

filing of appeal before the High Court but it results into confirmation that there was non-action on the part of the petitioners in safeguarding the rights of the APMC which can certainly be termed as irregularity.

11. There is also irregularity in utilization of official vehicle of APMC by its Office Bearers when one car had run more than 72000 kilometers in a year without disclosing the purpose in the log book and it was clear that it has been used for travelling for pilgrimage purpose and also used for the either attending litigation or for the concerned advocate of the APMC and on every alternate date, vehicle had travelled from Siddhpur, Ahmedabad, Gandhinagar or Patan without disclosing the purpose for such travelling. Details of such travelling was also disclosed in such report and expenditure of diesel and other cost is shown as Rs.1,51,000/- (Rupees One Lac Fifty One Thousand Only). This clearly shows that there is material financial irregularity in managing the APMC.

12. The total expenditure of salary and administration has crossed 40% which is against the Rules.

13. There is irregularity in dealing with the applications for licence and its renewal so also increasing litigation expenditure unnecessarily.

14. Considering the pendency of litigation regarding result of Election before the Hon'ble Supreme Court of India, though the Elected Committee may not be entitled to take policy decision, several policy decisions were taken.

15. Again there is dispute regarding the issuance of licence in name of different Cooperative Societies.

16. One another dispute is also regarding irregularities with licence at the time of Election.

17. There is huge expenditure for

sumptuary / complimentary allowance. Factually it is disclosed that in the year 2015-16 such expenditure was less than Rs.4,00,000/- for hospitality allowance, whereas, miscellaneous expenditure was more than Rs.4,00,000/- as against expenditure for the development of agricultural was less than Rs.4,00,000/-. Thereby, the unwarranted expenditure was more than Rs.7,00,000/- against expenditure for the purpose of agriculturist was less than Rs.4,00,000/-. However, in the year 2016-17, the expenditure for hospitality allowance was about 1.64 lacs whereas miscellaneous expenditure was Rs.1.9 lacs against the expenditure for development of agricultural being Rs.1.64 lacs. Thereby, against the unwarranted expenditure of approximately 3.64 lacs, the expenditure for real purpose was only Rs.1.64 lacs. Thereby, more money has been spent for unwarranted expenditure and so far as balance sheet is concerned against the income of Rs.2,83,51,793/-, the expenditure which should not be more than 40% was Rs.2,45,09,838/- i.e. more than 95%.

Therefore, it certainly amounts to material irregularity amongst which only administration expenditure is more than 48%.

18. Against the rule, the licence was issued for the trading of fruit and vegetables and thereby there was irregularity in allotting few shops and creating undue imbalance and selectiveness in Election proceedings because of licence to unwarranted traders.

11. Amongst all such eighteen irregularities, when petitioners have submitted that no further action is required for all such irregularities, even thereafter, so far as 7 irregularities are concerned, it cannot be rectified or pardoned and, therefore, during hearing only those seven irregularities are highlighted. However, in any case, even if few irregularities, out of total 18 irregularities are proved and could not be rectified then it would certainly amounts to material irregularities empowering the competent authorities to initiate proceedings against the petitioners.

12. Such seven irregularities for which impugned order is passed is explained and taken care in impugned order dated 19.8.2017 which are:

(1) Non-compliance of statutory provisions of Act and Rules and non compliance of all directions under Sections 44 and 45 even if repeated intimation,

(2) Irregularity in recruitment,

(3) In not taking care of Civil Suit Nos.32 and 33 of 2004 and getting it dismissed for want of prosecution and, thereafter, in not preferring an appeal within limitation though intimated to do so.

(4) Misuse of vehicle.

(5) Spending more than 40% income of the APMC, whereas so far as other two serious issues with regard to

(6) granting of licences to

several cooperative union and

(7) removing two Directors so as to create majority in their favour, are concerned, it is stated in impugned order that since both these issues are subjudice though it amounts to material irregularity it is not advisable to take decision on such issue.

However, in any case for the rest of the irregularities which are material in question the competent authorities has passed impugned order under Section 46 of the Act.

13. Thereby, though factual details are very much clear to show that there are material irregularities for which competent authority has to initiate the proceedings as per the law, the petitioners have emphasized that pursuant to judgment and order dated 10.3.2017 in Special Civil Application Nos.5307 and 5308 of 2017, the respondent shall strictly follow the provision of Sections 44 and 45 of the Act before proceedings further and that they have failed to do so. For the purpose, it would be

appropriate to refer Sections 44, 45 and 46 of the Act, which reads as under: -

44. POWER TO HOLD INQUIRY: -

(1) The Director may of his own motion, himself or by an officer authorised by him, inspect or cause to be inspected the accounts of a market committee or hold an inquiry in to the affairs of a market committee.

(2) When the affairs of a market committee are inquired into, all members, officers and servants of the committee shall furnish such information and produce such documents in their possession, relating to the affairs of the committee, as the Director or the officer may require.

(3) The Director and the officer shall have the power to summon and enforce the attendance of members and officers of the market committee and to compel them to give evidence and to produce documents by the same means and as far as possible in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure, 1908.

(4) The Director or, as the case may

be, the officer may require the market committee either as a result of the inquiry or otherwise to do a thing or to abstain from doing a thing which the Director or the officer considers necessary for the purposes of this Act, and to send a written reply to him within a reasonable time, stating whether the aforesaid requisition is complied and in case it is not complied, stating its reason for not complying with the requisition.

45. POWER OF DIRECTOR TO PROVIDE FOR PERFORMANCE OF DUTIES IN DEFAULT OF MARKET COMMITTEE: -

(1) Where the Director on a complaint made to him or otherwise is satisfied that a market committee has made default in performing any duty imposed on it by or under this Act, he may fix a period for its due performance.

(2) If the duty be not performed within the period so fixed, the Director may appoint a person to perform it, and may direct that the expense of performing it and the reasonable remuneration of such person shall be forthwith paid by the committee.

(3) If the expense and remuneration be not so paid, the Director may make an order directing the bank in which any moneys of the committee are deposited or the person in charge of any place of security in which the moneys of the committee are deposited to pay such expense and remuneration from moneys standing to the credit of the committee in such bank or in the hands of such person or such moneys as may from time to time be received from or on behalf of the committee by way of deposit by such bank or person; and such bank or person shall be bound to obey such order. Every payment made pursuant to such order shall be efficient discharge for such bank or person from all liability to the committee in respect of any sums so paid by it or him.

46. SUPERSESSSION OF MARKET COMMITTEE: -

(1) "If in the opinion of the State Government a market committee is not competent to perform or persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, the State Government may, by notification in the Official Gazette, supersede such market committee :Provided that before issuing a

notification under this sub-section, the State Government shall give a reasonable opportunity to the market committee for showing cause why it should not be superseded and shall consider the explanation and objections, if any, of the market committee.

(2) Upon the publication of a notification under sub-section (1) superseding a market committee the following consequences shall ensue, namely:-

(i) all the members as well as the Chairman and Vice-Chairman of the market committee shall as from the date of such publication be deemed to have vacated their respective offices.

(ii) The State Government may at its discretion, either order that a new market committee be constituted under section 11 or make such arrangements for carrying out the functions of the market committee, as it may think fit ; and

(iii) all the assets vesting in

the market committee shall, subject to all its liabilities, vest in the State Government.

(3) If the State Government makes an order under clause (ii) of subsection (2), it shall transfer the assets and liabilities of the market committee as on the date of such transfer, to the new market committee constituted under section 11 or to the person or persons, if any, appointed for carrying out the functions of the market committee, as the case may be.

(4) If the State Government does not make such an order, it shall transfer all the assets of the market committee which remain after the satisfaction of all its liabilities, to the State Agricultural Produce Markets Fund constituted under section 34. The Director shall utilize such assets for such object in the area as he considers to be for the benefit of the agriculturists in that area."

Bare reading of above provision makes it clear that though Section 44 and 45 are prior

to Section 46 under the Chapter VIII and thereby though it is to be followed while considering the jurisdiction and authority under Section 46 by the competent authorities and though there is specific direction in order dated 10.3.2017 in Special Civil Application No.5307 of 2017 and allied matters to follow the provisions of Sections 44 and 45 before proceeding further under provision of Section 46 it cannot be said that for passing any order under Section 46, there must be strict compliance of order under Sections 44 and 45. To that extent, direction in order dated 10.3.2017 needs to be recollected wherein paragraph 5 reads as under: -

"5. However, at present when respondents have issued show cause notice under Section 46 of the Agricultural Produce Market Committee Act, considering that against such show cause notice, petitioners can certainly represent their case before the competent authority, it seems that, at this stage, these petitions are practically pre-mature and do not required to be entertained, as such and, therefore, it has been disposed of but with following directions;

(1) The respondents shall consider both these petitions as representation and reply by the petitioners to the show cause notice issued by them.

(2) Petitioners may also file fresh and separate reply in detail, if they so desire.

(3) The competent authority shall strictly follow the provisions of Section 44 and 45 of the Agricultural Produce Market Committee Act before proceeding further, in any manner whatsoever, in deciding the issue which is raised by them in show cause notice dated 23.02.2017.

(4) Since there is no proper compliance of Sub-Section (4) of Section 44 and 45 of the Agricultural Produce Market Committee Act by the respondents before issuing show cause notice, therefore, if at all decision by the competent authority is against petitioners then in that case, respondents shall not execute the order till 15 days after serving it to the petitioners to represent their case."

14. Therefore, irrespective of above observations, this Court has directed the respondent to first follow the provision of Sections 44 and 45 before proceeding further in the case of show cause notice issued under Section 46. Therefore, in compliance of such directions, respondents have already called upon the petitioners to rectify their misdeeds and by letter dated 17.6.2017 called upon the petitioners to remain present before the Registrar of Cooperative Societies on

23.6.2017 to submit their statement as well as written or oral submissions and conveyed that to collect all relevant documents from the concerned Offices with a list of all details of all eighteen irregularities which are discussed hereinabove. The authorities has also recorded a statement of Jashvantbhai Prabhudasbhai Patel wherein though factual details are explained, the fact remains that there is no explanation so as to confirm that there was no irregularities at all in any manner whatsoever. On the contrary, the statement confirms that there are several irregularities though it is tried to explain that decision on all such irregularities were taken by previous committee and present committee has simply executed it. But in any case, when previous committee is not in existence and thereby when present committee in In-charge of the APM, it is the present committee which has to be careful to see that there is no irregularity and that even there is any improper decision by previous committee then present committee shall take care of such irregularity by not executing such orders or decisions which are either irregular on day one or results into irregularity on the date of its execution.

15. So far as compliance of provision of sub Section (4) of Section 45 as referred in judgment dated 10.3.2017 is concerned, suffice to say that there is prima face evidence on record to confirm that respondents have extended a reasonable opportunity to the petitioners to rectify their irregularities when by letter dated 30.5.2016 it was conveyed to the Chairman of SAPMC to file appeal at the earliest. Copy of such letter is produced by learned AAG which is to be taken on record with first page of cause title of suit Nos.32 of 2004, which confirms that present petitioner No.2 is defendant No.1 in such suit whereas statement of Jashvantbhai Prabhudasbhai Patel referred hereinabove is petitioner No.4. Therefore, it becomes clear that present petitioners have allowed a suit by SAPMC filed by SAPMC against them to be dismissed for want of prosecution because now they are elected Vice Chairman of SAPMC and this is certainly a material irregularity, inasmuch as in such suit SAPMC has claimed Rs.52,00,000/- (Rupees Fifty Two Lacs Only) from the defendants.

16. It is contended by the learned AAG that now District Registrar has to prefer a First Appeal which is numbered as First Appeal

(Stamp) No.961 of 2017 before this Court because there is delay in filing such appeal. It is also submitted that if such suit is allowed then petitioner No.2 herein would have to pay huge amount to SAPMC and, therefore, they have intentionally allowed the Civil Court, Patan to dismiss the suit for want of prosecution by remaining absent or by not adducing evidence or in any case, by not proceeding further in the suit in accordance with law.

17. If we peruse the provision of Section 44 to 46, it becomes clear that **Section 44 under Chapter VIII regarding Control over APMC is dealing with power to hold inquiry.** Bare reading of the Section makes it clear that the Director may of his own motion, either by himself or by an officer authorized by him, inspect or cause to be inspected the accounts of a market committee or hold an inquiry of an affair of the marketing committee. During such inquiry, all members, officers and servants of the committee shall furnish such information and produce such documents in their possession, relating to the affairs of the committee, as the Director or the officer may require. The Director and

Officer shall have the power to even summon and enforce the attendance of marketing committee and to compel them to give evidence and to produce documents and thereby having same power of Civil Court as provided by the Code of Civil Procedure, 1908. The Director or the Officer, as the case may be, may require the market committee either as a result of the inquiry or otherwise to do a particular thing or to abstain from doing a particular thing which they consider necessary for the purpose of this Act and to call for written reply within a reasonable time.

Whereas, **Section 45 is regarding Power of Director to provide performance of duties in default of market committee** whereby when such authorities are satisfied that the APMC has made default in performing any duty imposed on it imposed by it under this Act, may fix a period for its due performance and if the duty is not performed within the period so fixed, the Director may appoint a person to perform it, and may direct the expense of performing it and reasonable remuneration of such person shall be forthwith paid by the committee. In case of non payment of such

expenses and remuneration may make an order directing the Bank to make payment of such amount in which any money of the committee is deposited or from any similar securities.

Whereas, **Section 46** is though in the same chapter, it is regarding **Supersession of market committee** wherein there are ample and wide power vested with the State Government that if in the opinion of the State Government, a marketing committee is not competent to perform or persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, the State Government may, by notification in the *Official Gazette*, supersede such market committee only with one proviso that before issuing such notification, the State Government shall give a reasonable opportunity to the market committee for showing cause that why it should not be superseded and shall consider the explanation and objections, if any, of the market committee.

18. Thereby the only condition for passing order under Section 46 is to afford a reasonable opportunity to show cause and to consider the

objections and explanation and nothing more. Therefore, when respondents have followed the provisions of Sections 44 and 45 by calling the petitioners to rectify their errors and called upon them to show cause by a show cause notice and then considered their objections and explanation which are discussed in the impugned order, there is clarity that the statutory provision has been properly followed and, therefore, there is no substance in the submission that because of judgment and order dated 10.3.2017 in Special Civil Application No.5307 and 5308 of 2017, the impugned order cannot sustain.

19. The record shows that there was intimation to the respondents to rectify their error and when they fail to do so, there is compliance of provision of Sections 44 and 45. The record shows that at least in the case of irregularity in recruitment, the direction under Sections 44 and 45 has been obeyed by the petitioners but it would not rescue them because of several other irregularities. It is also obvious that pursuant to report dated 5.1.2004, there is specific intimation to the petitioners to rectify their irregularities but they have failed to do so. All relevant papers to that effect produced by the learned

AAG are to be taken on record.

20. The respondents are relying upon the decision in the case of **Gautambhai Devshankar Dave v. State of Gujarat reported in 2004(1) GLH 603** which confirms that even violation of principle of natural justice will not per se sufficient for holding that particular order is invalid and that the Court is required to examine the decision making process of the authority in the totality of the facts, circumstances and evidence on record and the Court is not expected to examine the reasons of the authority as if sitting in appeal, since such position in law is well settled. It is also held that if there is no jurisdictional error in the impugned order nor is there any error apparent on the record of the authority, since High Court does not sit as an Appellate Authority, interference with pure findings of fact and appreciation of evidence on record, even different view may be possible is unwarranted.
21. Therefore, when market committee was found persistently defaulter in performing the duties imposed on it by the Act or under the Act and also by not following due procedure coupled with administrative improprieties and

thereby abused its power to entail financial loss, the order under Section 46 cannot be vitiated. It is further held that mis-use of the vehicle is also material irregularity. For all such determination, the Division Bench of this High Court has relied upon the following passage from the decision in the case of Homi Jehangir Gheesta v. Commissioner of Income Tax reported in 1961 (41) ITR 135 by Hon'ble Supreme Court of India.

"Applying the aforesaid tests if the order of the authority is read as a whole it becomes clear that the authority had considered every material fact for and against the petitioners; and the pros and cons of the evidence have been considered; and the authority has not taken into consideration any irrelevant matters nor is the order based on any conjectures, surmises or suspicions. In the circumstances, it would not be permissible to examine the order of the authority sentence by sentence so as to discover a minor lapse or an incautious observation on which an issue of law can be hanged.

23 Thus, it can be seen that if an order is based on several grounds some of which are not in existence or irrelevant, even then it can be sustained if the Court is satisfied that the authority would have passed the order on the basis of other relevant and existing grounds , and the exclusion of the irrelevant and non-existent grounds could not have affected the final outcome. In the present case, it is not possible to find out any ground which

can be stated to be non-existent or irrelevant and hence even on facts the aforesaid decision cannot come to the aid of the petitioners."

It cannot be ignored that petitioner therein namely; Gautambhai Devshankar Dave is one of the defendant in Civil Suit Nos.32 of 2004.

22. Respondents are also relying upon the decision in the case of **Varvabhai Nathabhai Rabari v. State of Gujarat reported in 2003(1) GLR 97** wherein also it is held that scope of judicial scrutiny and review in such cases is restricted to procedural aspect on point of principles of natural justice or where order is so perverse. Therefore, when there were defaults in financial irregularities, the Division Bench has dismissed the petition challenging the superseding APMC, Patan.

23. Whereas, petitioner is relying upon the decision in the case of State of **Madhya Pradesh v. Sanjay Nagayach reported in 2013 (7) SCC 25** wherein it is held that a legally elected Board of Directors cannot be put out of office by an illegal order. However, it is with reference to the Madhya Pradesh Cooperative Societies Act and removal of

Director of District Cooperative Central Bank wherein the provision is to the effect that before removal of direction, there must be '**consultation**' of RBI and, therefore, it was held that meaningful and effective consultation with RBI under Section 53(1) second proviso means furnishing copy of reply filed by the Board of Directors of Bank to various charges and allegations levelled against them to RBI as well as action proposed by Joint Registrar after considering said reply submitted by Board of Directors and, thereafter views expressed will be relevant material for Registrar / Joint Registrar to decide that whether elected body be superseded or not. In the reported case, when Joint Registrar fails to follow such provision of consultation of RBI, the Hon'ble Supreme Court has explained that what the word consultation means and concluded that when there is no consultation, the order of superseding APMC is to be quashed. Therefore, the first line of Head Note that '**legally elected body cannot be put out of office by an illegal order**' is to be read properly on two counts; (1) that the order must be illegal and in the present case when there is no provision for consulting any authority

like RBI and as discussed hereinabove then order cannot be termed as illegal and when State Government has ample powers based upon their opinion to supersede the committee with the only condition of fair and reasonable opportunity and consideration of reply, I do not see any substance or reason in the petition either to grant interim relief or to keep this matter pending hereinafter for further hearing since now it does not require any further scrutiny after present order.

24. In view of above facts circumstances, there is no substance in the petition and, therefore petition stands dismissed. Thereby, Interim Relief is also refused.

(S.G. SHAH, J.)

* Kotecha

FURTHER ORDER

Learned advocate Mr.V.C. Vaghela for the petitioners is requesting to continue the protection granted in the earlier petition being Special Civil Application Nos.5307 and 5308 of 2017. However, when there is no Interim Relief or any protection granted in this matter till date, there is no question

of extending any protection a fresh when petition was dismissed on merits after considering all rival submissions. In any case, protection if any granted in earlier petition cannot be extended in such petition and, therefore, such request is rejected.

(S.G. SHAH, J.)

* Kotecha