

(2019) 05 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 302 Of 2019

Suresh Martandro Kapgate And Ors

APPELLANT

Vs

District Deputy Registrar And Ors

RESPONDENT

Date of Decision : 04-05-2019

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963
— Section 7(1), 9, 29, 45(1)
Maharashtra Agricultural Produce And Marketing (Development And Regulation) Rules,
1967 — Rule 6(5)(b), 33, 100(5)
Constitution Of India, 1950 — Article 227

Citation : (2019) 05 BOM CK 0031

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : A. M. Ghare, S. M. Ghodeswar, H. Khedikar, D. V. Chauhan, O. A. Ghare, A. R. Deshpande

Judgement

A.S. Chandurkar, J

1. Rule. Heard finally with the consent of the learned Counsel for the parties.
2. The petitioners who are members of the Executive Committee of the Agricultural Produce Market Committee, Lakhani are aggrieved by the order of supersession passed under Section 45(1) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short, the said Act).
3. The facts giving rise to the present writ petition are that the petitioners are the elected members of the Market Committee since 30-.09.-2015. On the basis of certain complaints made by the respondent No.2 herein, the District Deputy Registrar issued a show cause notice to the petitioners under provisions of Section 45(1) of the said Act calling upon the petitioners as to why action for superseding the Market Committee under Section 45(1) of the said Act should not be taken. In the show cause notice explanation on the following aspects was sought:

(a) Various items valued at Rs.1,44,550/- had been purchased pursuant to Resolution No.4(8) of the Market Committee dated 25.06.2014. These purchases were effected without permission of the Director of Marketing which was required to be obtained as per Circular dated 04.03.2010.

(b) Though the applications for renewal/issuance of licenses was made by six traders including the respondent No.2, the said licenses were not renewed on account of which appeals were required to be filed by the aggrieved parties. An order was passed on 30.09.2016 directing renewal of those licenses, but those licenses had not been renewed. There was deliberate disobedience of those orders by the Market Committee.

(c) Despite office order dated 27.08.2015 in the matter of complying with provisions of the Right to Information Act, 2005 the Market Committee had not taken necessary steps and therefore there was breach of the provisions of the Right to Information Act, 2005.

(d) Without obtaining permission of the Director of Marketing and in breach of the provisions of Rule 100(5) of the Maharashtra Agricultural Produce and Marketing (Development and Regulation) Rules 1967, the Market Committee had engaged employees on daily wages which was not permissible.

4. The petitioners on 29.03.2017 gave a reply to the aforesaid show cause notice in which it was stated that:-

(a) The purchase of furniture and other items was effected during the tenure of the earlier Market Committee. It was also not necessary to obtain sanction in respect of the purchases effected and the items purchased were within the amounts sanctioned as per communication dated 21.10.2010.

(b) As the order dated 30.09.2016 was challenged by filing an appeal in view of Resolution dated 21.10.2016, there was no deliberate non-compliance of the said decision. Since the appeals were pending, the licenses were granted subject to their outcome.

(c) In view of the orders passed by the State Information Commissioner, Aurangabad in relation to Parbhani district on 15.01.2015, the provisions of the Right to Information Act, 2005 were not applicable to the Market Committee and therefore under that belief the compliance was not made.

(d) Engagement of employees on daily wages was not for a period exceeding six months. Directions issued under Rule 100(5) of the said Rules were being followed.

Pursuant to the aforesaid reply as given, the District Deputy Registrar in terms of Section 45(1) of the said Act sought the opinion of the State Marketing Board. The Directors of the Marketing Board in its meeting dated 01.06.2017 opined that the explanation given by the petitioners to the show cause notice was not found to be very satisfactory and therefore the Marketing Board was in

agreement with the action proposed to be taken by the District Deputy Registrar under Section 45(1) of the said Act. On that basis on 13.07.2017, a communication was issued on behalf of the Marketing Board to the District Deputy Registrar.

5. Thereafter on 31.10.2017, the District Deputy Registrar issued another communication to the State Marketing Board in which it was stated that after receipt of the communication dated 13.07.2017 with the passage of time and in view of certain subsequent developments, the prevailing situation was being forwarded for fresh consideration. According to the District Deputy Registrar item (a) as proposed in the show cause notice dated 20.02.2017 was related to the term of the earlier Executive Committee and therefore the same should be deleted. As regards item (b) it was stated that current licenses were issued to the traders named therein and therefore the grievance in that regard did not now survive. In so far as the item (c) is concerned it was stated that in the light of the judgment of the High court in Writ Petition No.6633/2017 dated 10.10.2017 steps had been taken to comply with the directions issued under the Right to Information Act, 2005. As regards item (d) it was stated that while engaging employees on daily wages, their services were not availed for a period exceeding six months and therefore there was no breach of the provisions of Rule 100(5) of the said Rules. The daily wagers were engaged considering the exigency of the work and the amounts spent on the daily wagers was without obtaining due permission. It was stated that the proceedings that were closed on 03.05.2017 by the erstwhile District Deputy Registrar for passing orders ought to be re-opened and in the light of the comments and observations now made the Marketing Board ought to take fresh decision in the matter.

6. Thereafter by resolution dated 07.04.2018 the Marketing Board considered the request as made by the District Deputy Registrar along with the comments as offered. It was stated that though the matters pertaining to non-compliance with the provisions of the Right to Information Act, 2005 and issuance of traders' licences had been sorted out, since the Executive Committee had not followed the necessary directions, it was liable for action. It was accordingly resolved that the earlier opinion given by the Marketing Board on 13.07.2017 was being maintained. In the light of this opinion of the Board the District Deputy Registrar by his order dated 27.04.2018 passed an order under Section 45(1) of the said Act in respect of each item as under:

(a) The breach as committed in the matter of purchase of furniture pertained to the earlier Executive Committee.

(b) There was breach of the orders issued in the matter of issuance of licenses to traders for which the Executive Committee was responsible.

(c) Though compliance was made with the directions issued under the provisions of the Right to Information Act, 2005, belatedly, there was breach of directions issued. The compliance was made after issuance of directions.

(d) There was breach of the Circulars and instructions issued under Rule 100(5) of the said Rules.

Thus in the light of the fact that the Executive Committee was not functioning in the manner required by law, the District Deputy Registrar superseded the Executive Committee under Section 45(1) of the said Act and appointed an Administrator thereon. Being aggrieved, the petitioners have challenged the said order.

7. Shri A. M. Ghare, learned Counsel for the petitioners in support of the writ petition made the following submissions:

(a) The respondent No.1 - District Deputy Registrar erred in directing supersession of the Market Committee under Section 45(1) of the said Act. Referring to the show cause notice dated 20.02.2017, it was submitted that it was based on four points. The first point with regard to purchase of furniture related to the tenure of the earlier body with which the petitioners were not concerned. The District Deputy Registrar in the impugned order had also found that the said matter pertained to the tenure of the earlier body and had not based its order on that aspect. The second point on which the show cause notice was issued was in the matter of non-renewal of traders license/non-grant of fresh licenses under the provisions of the said Act. According to the show cause notice, the concerned traders were required to file appeal under Section 9 of the said Act in which orders were passed on 30.09.2016. Despite that, the licenses had not been renewed. It was submitted that since the order dated 30.09.2016 was the subject matter of challenge in proceedings before the Divisional Joint Registrar, there was a delay in implementing that order which was not intentional. On the contrary, since the adjudication of the appeals was delayed, licenses had been renewed subject to final orders in those proceedings. According to him, point No.2 did not warrant action of supersession. The third point on which the show cause notice was issued was with regard to the application of the provisions of the Right to Information Act, 2005 (for short, the Act of 2005) to the Market Committee. He submitted that the Market Committee had relied upon an order passed by the State Information Commission at Aurangabad dated 15.01.2015 that the provisions of the Act of 2005 did not apply to a Market Committee. In fact, after Writ Petition No.6633/2017 preferred by the Market Committee was decided, there was necessary compliance with those directions. The fourth point on which the show cause notice was issued was the violation of the provisions of Rule 100 (5) of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 (for short, the said Rules). Though it was alleged that in view of Rule 100(5) of the said Rules and the Circular dated 3-1.01.-2009, no recruitment/engagement of any employee could be made, the Committee had engaged the services of daily wagers in view of exigency of the works to be done. According to him, no employee was engaged even on daily wages for a period exceeding six months. The Circular dated 03.11.2009 was in respect of revised pay scales and it was

not material in the present context.

It was thus submitted that none of the points referred to in the show cause notice were of such nature that warranted the action of supersession under Section 45(1) of the said Act.

(b) That pursuant to the show cause notice dated 20.02.2017 the petitioners had given a reply thereto on 29.3.2017. Thereafter in terms of the provisions of Section 45(1) of the said Act, the State Marketing Board had agreed with the course of action suggested by the District Deputy Registrar. As the concerned District Deputy Registrar who had heard the petitioners was thereafter transferred, a fresh communication was issued by the incoming District Deputy Registrar on 31.10.2017 in view of the hearing conducted by him. In that communication reference was made to various compliances as made but despite that the State Marketing Board continued with its earlier opinion on the basis of which the order of supersession came to be passed. It was submitted that since consultation was a continuing process, the subsequent communication dated 31.10.2017 issued by the District Deputy Registrar was also required to be taken into consideration by the State Marketing Board. He placed reliance on the decision in *Indian Administrative Service and others vs. Union of India and others* 1993 Supp 1 SCC 730, *State of Madhya Pradesh and others vs. Sanjay Nagayach and others* (2013) 7 SCC 25 and *State of Jammu and Kashmir vs. A. R. Zakki and others* 1992 Supp. 1 SCC 548 in that regard.

(c) Supersession of the Market Committee was warranted only if there was persistent failure in the performance of duties by the Market Committee or any member thereof and such duties ought to be under the provisions of the said Act. In the present case the compliance sought of the provisions of the Act of 2005 were not the duties imposed under the provisions of the said Act. Further there could be wilful disregard of any instructions issued by the State Government that would warrant such drastic action. In the present case there was no material whatsoever either to indicate any persistent default in the performance of duties nor was there any wilful disregard of an instructions issued by the State Government. It was thus submitted that in the absence of the requirements of Section 45(1) of the said Act being satisfied the action of removal was not warranted. Moreover in the light of the law laid down in *Ravi Yashwant Bhoir vs. District Collector, Raigad and others* (2012) 4 SCC 407, the proceedings ought not to have been entertained at the behest of respondent No.2 who was not an aggrieved party.

(d) As regards grant of licenses, it was submitted that there was no actual loss suffered by any of the parties in the matter of grant of licenses. There were no malafides brought on record that with any ulterior motive, the issuance of licenses was deliberately delayed. Reference was made to the provisions of Section 7(1) and Section 9 of the said Act in that regard.

It was thus submitted that the impugned order superceding the Market

Committee being contrary to Section 45(1) of the said Act was liable to be set aside.

8. Shri S. M. Ghodeswar, learned Assistant Government Pleader for respondent Nos.1,4 and 5 and Shri H. Khedikar, learned Counsel for the respondent No.2 who had initiated the proceedings by filing the complaint against the Market Committee supported the impugned order. It was submitted by Shri H. Khedikar that in the matter of renewal of licenses the same ought to have been done by the Market Committee but the licenses were not renewed/issued for no justifiable reason. Referring to Rule 6(5)(b) of the said Rules, he submitted that it was for the Secretary of the Market Committee to issue such licenses and there was no need of passing any resolution in that regard. He referred to the communication dated 19-6-2017 issued by the respondent No.2 to the respondent No.1 in that context. As regards applicability of the provisions of the Act of 2005 to the Market Committee, the learned Counsel referred to the decision in *A. P. M. C. Arvi vs. Meghraj* 2011(1) Mh.L.J. 668 to urge that the provisions of the Act of 2005 were applicable to local Authorities which included the Market Committee. The petitioners had entered office on 30.09.2015 and there was no reason for them to prolong the compliance with the provisions of the Act of 2005. Reference was made to the communication dated 27.08.2015 by the Director of Marketing wherein intimation was given in respect of appointment of Information Officers as well as the appellate Authority. As regards breach of the provisions of Rule 100(5) of the said Rules it was submitted that said provisions had been violated by the petitioners. According to him, the engagement by the Market Committee of various employees was for a period exceeding six months and hence the violation in that regard was duly brought on record. He referred to the provisions of Section 29 of the said Act to indicate the powers and duties of the Market Committee as well as the provisions of Rule 33 of the said Rules in the matter of collection of fees, charges and receipts therefor. He thus submitted that all points raised in the show cause notice were valid and removal of the entire Executive Committee was justified.

(b) There was prior consultation with the State Marketing Board and despite the fact that the District Deputy Registrar on 31.10.2017 had sought further opinion from the State Marketing Board, the earlier opinion given by the Board was maintained. According to him, it was not necessary for the District Deputy Registrar to have again sought the opinion of the State Marketing Board especially when it had already expressed its opinion on 01.06.2017. He relied upon the observations of the Division Bench in *Rajendra Pundlikrao Deore and others vs. State of Maharashtra and others* 2019 SCC OnLine Bombay 102, *A. P. M. C. Dharni and others vs. District Deputy Registrar, Co-operative Societies, Amravati* 1986 Mh.L.J. 374, *Appasaheb Sheshrao Chavan and others vs. State of Maharashtra and others* 2000 (1) BCR 657 and *Abhishek Shankarrao Thakre vs. District Deputy Registrar* 2015(2) AIR Bombay R 794 in that regard. It was also urged that the State Marketing Board had not been impleaded as a respondent in the writ petition and the same was a relevant aspect.

9. Shri O. A. Ghare, learned Counsel for the respondent No.3 and Shri A. R. Deshpande, learned Counsel for the respondent Nos.6 to 13 supported the submissions as made on behalf of the petitioners.

10. I have heard the learned Counsel for the parties at length and I have also gone through the material placed on record. It can be seen that the District Deputy Registrar initially on 20.02.2017 issued a show cause notice to the members of the Market Committee under Section 45(1) of the said Act calling upon them to show cause as to why the Market Committee should not be superseded. Four grounds on which the show cause notice was issued were:--

(a) Purchase of furniture worth Rs.1,44,550/- in terms of resolution dated 25.06.2014. It was stated that the permission of the Director of Marketing was necessary, but the same was not obtained for that purpose.

(b) Licenses of about six traders were not renewed/issued as a result of which those parties had to file appeals under Section 9 of the provisions of the said Act. Order dated 30.09.2016 was passed in those appeals, but the licenses were not issued.

(c) Necessary compliance with the provisions of the Act of 2005 had not been shown to have been done.

(d) Daily wagers had been engaged without obtaining permission of the Director of Marketing and the same was in breach of Rule 100(5) of the said Rules.

In response to aforesaid show cause notice, the petitioners on 29.03.2017 gave a reply thereto. It was stated that:-

(a) The purchase of furniture was undertaken by the earlier Executive Committee of which the petitioners were not members.

(b) Against order dated 30.09.2016, a revision application had been filed before the Divisional Joint Registrar as resolved by the Market Committee. Since there was delay in adjudication of those proceedings, the licenses had been renewed/issued subject to outcome of those proceedings.

(c) The Market Committee had relied upon an order passed by the State Information Commission at Aurangabad on 15.01.2015 that the provisions of the Act of 2005 were not applicable. Under bonafide belief, the provisions of the Act of 2005 were not implemented.

(d) No daily wager had been engaged for a period exceeding six months and there was no breach of the provisions of Rule 100(5) of the Rules.

11. In the light of this reply given by the petitioners, the entire material in the form of the show cause notice and the reply thereto were forwarded to the State Marketing Board. In its meeting held on 01.06.2017, the Board agreed with the opinion as formed by the District Deputy Registrar and observed that further steps may be taken in accordance with law. In the light thereof said resolution

was brought to the notice of the District Deputy Registrar on 13.07.2017 by issuing a communication in that regard. Thereafter on 25.10.2017 in response to a notice issued by the District Deputy Registrar on 17.10.2017, the petitioners brought to the notice of the District Deputy Registrar that as regards item (b) of the show cause notice, the licenses had been renewed as per resolution dated 27.02.2017. As per item (c) of the show cause notice it was stated that Writ Petition No.6633/2017 in the matter of implementation of the provisions of the Act of 2005 was pending with the High Court. As regards item (d) it was stated that no employee had been engaged on daily wages for the period exceeding six months and there was no breach of Rule 100(5) of the said Rules.

12. It appears from the record that the erstwhile District Deputy Registrar who had issued show cause notice and had heard the petitioners was thereafter transferred and the incumbent District Deputy Registrar conducted fresh hearing on 26.10.2017. In that hearing he considered the additional reply dated 25.10.2017 that was submitted by the petitioners. He therefore brought to the notice of the State Marketing Board the following aspects on 31.10.2017:

(a) The notice with regard to purchase of furniture pertained to the tenure of the earlier Executive Committee and that item was therefore not found relevant.

(b) It was noticed that licenses for the current year had been renewed with regard to six traders on 27.02.2017 and this fact was noted during the course of hearing.

(c) As regards compliance with provisions of the Act of 2005, Writ Petition No.6633/2017 that was preferred before the High Court was decided on 10.10.2017 and necessary compliance with the provisions of the Act of 2005 was seen to have been done as per the report of the Market Committee dated 17.10.2017. That issue was therefore adjudicated.

(d) It was noticed that ten employees were working with the Market Committee while implementing various schemes. Care was taken by the Market Committee that excess employees were not engaged for the period exceeding six months. It was necessary for the Market Committee to implement schemes with regard to purchase of crops and hence services of such temporary employees was necessary. It was thus stated that these aspects be considered while taking decision.

The aforesaid observations were forwarded to the State Marketing Board with a request to the Board to consider the same in the context of the action proposed.

The State Marketing Board on 07.04.2018 took into consideration the communication dated 31.10.2017 and reiterated its earlier opinion that was conveyed on 13.07.2017 in response to the earlier information that was forwarded to it on 01.06.2017.

13. After receiving the response from the State Marketing Board as stated above, the District Deputy Registrar on 27.04.2018 in the impugned order made the

following observations:

(a) The purchase of furniture was related to the earlier Executive Committee and hence, the same did not warrant any action.

(b) In the matter of renewal/issuance of licenses, the six traders filed an appeal under Section 9 of the said Act to challenge the non-grant of licenses. The said appeal was allowed on 30.09.2016 and thereafter on 27.02.2017 the Market Committee had renewed licenses. Action in this regard had been taken after issuance of the show cause notice.

(c) The Market Committee was informed to comply with the provisions of the Act of 2005. According to the Market Committee, it had filed Writ Petition No.6633/2017 in that regard. The said writ petition was decided on 10.10.2017 and the compliance was shown to have been made after issuance of the show cause notice.

(d) Reference was made to the letter dated 03.11.2009 issued by the Director of Marketing and despite that ten employees were engaged on daily wages. Though it was the stand of the Market Committee that no employee was engaged for the period exceeding six months, the same itself indicated that the employees were engaged for the period lesser than six months and hence there was breach of the said Circular and directions.

On this basis the District Deputy Registrar concluded that action under Section 45(1) of the said Act was liable to be taken and accordingly superseded the Market Committee.

14. The aforesaid indicates that the show cause notice was issued on 20.02.2017 which was replied to on 29.03.2017 after which opinion of the State Marketing Board was obtained on 01.06.2017. The concerned District Deputy Registrar who had initiated the said action and who had heard the complainants came to be transferred and hence no further steps were immediately taken pursuant to the said show cause notice. The provisions of Section 45(1) of the said Act require the Authority directing such supersession to grant an opportunity of rendering an explanation to the Market Committee or member as the case may be before any order is passed. It is in the light of these provisions that the incumbent District Deputy Registrar thought it fit to grant necessary opportunity of hearing to the Market Committee in the light of the fact that after the reply was received to the earlier show cause notice, the proceedings had been closed for passing orders and in the meanwhile the concerned District Deputy Registrar had been transferred. Pursuant to the hearing conducted by him on 26.10.2017, the District Deputy Registrar with a view to consult the State Marketing Board conveyed his opinion in the matter to it on 31.10.2017. This communication was in continuation of the exercise of granting an opportunity to the Market Committee of rendering an explanation. It is to be noted that the action of supersession is based on the opinion as formed by the competent Authority and the competent Authority is required to give an opportunity to the Market

Committee or any member concerned before passing the order of supersession. The steps taken by the incumbent District Deputy Registrar of granting an opportunity of hearing on 26.10.2017 in the light of the fact that the District Deputy Registrar who had issued the show cause notice had closed the proceedings on 03.05.2017 after which he was transferred appears to be in tune with the principles of natural justice. Though it was submitted on behalf of the respondent No.2 that such exercise by the incumbent District Deputy Registrar was not warranted in the facts of the present case, in the light of the fact that after the proceedings were closed on 03.05.-2017 the then District Deputy Registrar had been transferred, the incumbent District Deputy Registrar did not commit any error in giving a fresh look to the matter and thereafter seeking opinion of the State Marketing Board. In these facts, it is found that the District Deputy Registrar was justified in granting an opportunity of hearing to the petitioners on 26.10.2017 and thereafter forwarding all material along with his comments to the State Marketing Board on 31.10.2017.

15. Prior consultation with the State Marketing Board has been held to be mandatory as it is the requirement of the proviso to Section 45(1) of the said Act and such consultation should be effective in nature. The learned Counsel for the petitioners is justified in relying upon the observations of the Hon'ble Supreme Court in State of Jammu and Kashmir (supra) wherein it has been observed that consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. In Indian Administrative Service Association (supra), it was observed that consultation is a process that requires meeting of mind between the parties involved in the process of consultation on the material facts and points arising to evolve a correct or atleast a satisfactory solution.

In the present case it is seen that after the District Deputy Registrar on 31.10.2017 forwarded the entire material available with him to the State Marketing Board and sought its final opinion, the State Marketing Board took into consideration its earlier opinion dated 16.05.2017 and the letter dated 31.10.2017 issued by the incumbent District Deputy Registrar and thereafter opined that the view expressed by the State Marketing Board on 13.07.2017 was not being changed. It is thus, seen that after considering the views expressed by the earlier District Deputy Registrar and the opinion of the incumbent District Deputy Registrar, the State Marketing Board preferred to continue with its earlier opinion as expressed on 13.07.2017 warranting action to be taken against the Marketing Board. No fault therefore can be found with this view as expressed by the State Marketing Board as it has taken into consideration the views of the District Deputy Registrar given on 16.05.2017 and 31.10.2017 while forming its opinion.

16. The only question therefore that now remains for consideration is whether the action of supersession was warranted in the aforesaid facts. Under Section

45(1) of the said Act, a Market Committee or any Board thereof is liable to be superseded or removed as the case may be if it is found that such body or person is not competent to perform or persistently makes default in performing duties imposed on it or him by or under the Act or abuses its powers or there is wilful disregard of any instructions issued by the State Government or any officer duly authorized by it in this behalf. The action of supersession or removal as the case may be is a drastic action by which the elected body is sought to be removed and hence such powers have to be exercised in exceptional circumstances. It has to be seen that a case in that regard has been made out. As observed in Ravi Yashwant Bhoir (supra) an elected person is entitled to hold office for the term for which he has been elected. An elected person has been put on a higher pedestal as against the government servant and therefore the decision taken must show that the Authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer who is sought to be removed. Such removal casts a stigma upon such party and also takes away his valuable statutory rights.

17. In the context of Section 45(1) of the said Act and the causes for supersession stated therein if the charges mentioned in the show cause notice are perused it can be seen that no action has been taken on the first charge which is at item (i) as it related to the earlier Executive Committee. With regard to the second charge of non renewal/issuance of licenses, it was the case of the Market Committee that the order dated 30.09.2016 directing issuance of such licenses had been challenged by filing an appeal but despite that on 27.02.2017 by passing a resolution those licenses were granted. The show cause notice is dated 20.02.2017 while the licenses have been issued on 27.02.2017. The District Deputy Registrar in his opinion dated 31.10.2017 has also noted that there was a compliance in this regard and it can be seen that said compliance was within a period of one week from issuance of the show cause notice. Moreover, there is nothing on record to indicate that in mala fide manner the order dated 30.09.2016 was challenged and despite directions issued the same were not complied. The charge with regard to non renewal/issuance of licenses does not indicate to any persistent default in performing the duties imposed or wilful disregard to any instructions issued by the State Government or any officer duly authorized by it. Necessary compliances having been done within a period of one week which even according to the District Deputy Registrar was sufficient as per the communication dated 31.10.2017. This charge is not of such a nature that could answer the requirement of Section 45(1) of the said Act.

As regards item (c) in the matter of complying with the provisions of the Act of 2005, it is seen that in the reply to the show cause notice, the Market Committee had stated that it had gone by the order passed by the State Information Commission dated 15.01.2015 that the provisions of the Act of 2005 were not applicable to the Market Committee. It is found that Writ Petition No.6363/2017 had been preferred by the Market Committee in this Court and that writ petition was dismissed on 10.10.2017. Pursuit of a legal remedy without any additional

material to indicate that such pursuit was tainted with oblique motives cannot be viewed with suspicion. By the time the matter was examined by the District Deputy Registrar on 26.10.2017, he had noted that the directions issued for complying with provisions of the Act of 2005 had been followed. There is nothing on record to indicate any persistent default or wilful disregard to any instructions as issued.

In so far as item (d) is concerned, reference in the show cause notice has been made to a Circular dated 03.11.2009 and the provisions of the Rule 100(5) of the said Act. In so far as Rule 100(5) of the said Act is concerned, the same precludes any new post being created or any appointment to any post (not being a temporary or officiating appointment to any post for a period not exceeding six months) being made. The Circular dated 03.11.2009 deals with applying revised pay scales to employees of the Market Committee. In clause (6) thereof it has been stated that the Market Committee should not engage employees on daily wages and if the same is done, it would not be approved. The Market Committee through its Secretary and Directors would be responsible. The Circular dated 3-11-2009 has to be read along with Rule 100(5) of the said Rules inasmuch as the Circular cannot provide for something which either the statute or the rules made thereunder do not provide. The Circular is merely in the nature of an administrative guideline and is entitled to weightage to that limited extent. Rule 100(5) of the said Rules prevents engagement of temporary employees for a period of exceeding six months. In the show cause notice, no such details have been given and reference had been made to engagement of daily wagers.

There is no allegation that such engagement exceeds period of six months which is prohibited by Rule 100(5) of the said Rules. In the opinion of the District Deputy Registrar dated 31.10.2017 it has been clearly observed that for implementation of the various schemes with regard to purchase of crops, some employees were engaged on daily wages. Reference is also made to the communication issued by the State Marketing Board itself that necessary arrangements be made at the purchase center by the Market Committee by making temporary arrangements. In absence of there being any material to indicate breach of the provisions of Rule 100(5) to show engagement of temporary employees exceeding a period of six months action under Section 45(1) of the said Act on the ground that there was any persistent default or wilful disregard to any instructions is not made out. In the impugned order, the only observation made is breach of Circular dated 03.11.2009 of not engaging daily wagers. As noted above this Circular has to be read along with provisions of Rule 100(5) of the said Rules which prohibits temporary engagement for the period exceeding six months. In fact, it has been observed by the District Deputy Registrar in the impugned order that as the Market Committee engaged temporary workers even though for a shorter period than six months, the same resulted in the breach of the Circular thus warranting action. In other words, the Committee has been found guilty of violating Circular dated 03.11.2009 while Rule 100(5) of said Rules permits temporary engagement of workers but for a

period upto to six months. Thus, in absence of any breach being shown of Rule 100(5) of the said Rules, it cannot be said that any ground under Section 45(1) of the said Act had been made out.

18. In that view of the matter, it is found that after issuance of the show cause notice on 20.02.2017, the proceedings for supersession could not be immediately taken to their logical end for which the petitioners cannot be blamed. After re-opening of the proceedings and grant of hearing by the incumbent District Deputy Registrar, it was noted by him that few of the grounds on which action was proposed did not then survive as necessary compliance was made. As regards item (d), it was found that there was breach of the Circular dated 03.11.2009 that prohibited engagement of temporary employees while on the other hand Rule 100(5) of the said Rules permits such engagement but for a maximum period of six months. The aforesaid therefore does not indicate there being any persistent default being made by the Market Committee or there being wilful disregard to any directions issued by the Authorities. A harsh action of supersession of an elected body in the absence of such case being made out is therefore unwarranted. In view of the fact that the impugned order has been passed by taking into consideration irrelevant aspects and as the ingredients of Section 45(1) of the said Act have not been shown to have been satisfied in the light of the material on record when considered along with the opinion of the District Deputy Registrar dated 31.10.2017, a case for interference under Article 227 of the Constitution of India has been made out and the impugned order is liable to be set aside.

19. Accordingly, the order dated 27.04.2018 passed by the District Deputy Registrar superseding the Market Committee is set aside. The said Market Committee is restored to office.

Rule is made absolute in aforesaid terms with no orders as to costs.

At this stage, the learned Counsel for the respondent No.2 seeks stay of this judgment. His request is opposed by the learned Counsel for the petitioners on the ground that by virtue of interim orders the petitioners are continuing as Members of the Executive Committee of the Market Committee. This judgment would come into operation on expiry of period of eight weeks from today.