

(1984) 01 BOM CK 0053

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No's. 1438 and 1821 of 1982

Agricultural Produce Market
Committee, Yavatmal and Others

APPELLANT

Vs

Divisional Jonit Registrar,
Co-opertive Socieites, Amravati
and Others

RESPONDENT

Date of Decision: Jan. 10, 1984

Acts Referred:

- Constitution of India, 1950 - Article 226
- Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 - Rule 97(6)
- Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 - Section 10, 13, 30, 43, 58

Citation: AIR 1984 Bom 269 : (1984) 86 BOMLR 130 : (1984) MhLj 885

Hon'ble Judges: Ginwala, J; Dhabe, J

Bench: Division Bench

Advocate: D.K. Deshmukh, in W.P. Nos. 1438 and 1821 of 1982, for the Appellant; V.V. Naik, Asst. Govt. Pleader (for Nos. 1 and 2) in W.P. No. 1438 of 1982, A.B. Oka, (for No.3) in W.P. Nos. 1438 and 1821 of 1982 and W.M. Sambre, Govt. Pleader (for No.2) in W.P. Nos. 1821 of 1982, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The principal question which falls for consideration in these two petitions is whether the power conferred u/s 43 of the Maharashtra Agricultural Produce Marketing Regulations) Act, 1963 ("the Act " for short) can be exercised to revise the decision of the Board constituted u/s 10 of the Act. Then can therefore be conveniently disposed of by common judgment.

2. In order to appreciate the rival contentions of the parties we may at the outset note a few provisions of the Act and the Rules made there under, namely the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967) ("the Rules" for short). The Act has been put on the Statute Book, as can be seen from its long title, to regulate marketing of agricultural and certain other produce in market areas and markets to be established therefore in the State. For this purpose the State Government has to notify the area called the market area where marketing of the agricultural produce specified by it would be regulated under the provisions of the Act. A principal market has to be established for every market area with one or more subsidiary markets, if necessary. After the area is so notified, subject to certain exceptions no person can use any place in the market area for marketing of the declared agricultural produce or operate in the market area for marketing of the declared agricultural produce or operate in the market area or in any market there under as a Trader, Commission Agent, Broker, etc., in relation to the marketing without or otherwise that in conformity with the terms and conditions of a licence to be granted u/s 7 of the Act. For regulating the marketing of different kinds of agricultural produce in the same market area or any part thereof the State Government has to establish a market Committee which is a body corporate, consisting of a Chairman, Vice Chairman and other members. The Market Committee other than the Bombay Agricultural Produce Market Committee, consists of 18 members, 10 of whom are agriculturists residing in the market area. Seven of them have to be elected by members of the Managing Committee of the Agricultural Credit Societies and Multipurpose Co-operative Societies functioning in the market area and 3 are to be elected by the members of Village Panchayats functioning therein. Out of the 18 members, 3 are to be elected by traders and commission agents holding licence to operate as such in the market area. Section 29 of the Act spells out the powers and duties of the Market Committee. Sub-section (1) thereof inter alia provides that it shall be duty of a Market Committee to implement the provisions of the Act, the Rules and bye-laws made thereunder in the market area and to do such other acts as may be required in relation to superintendence, direction and control of the markets or for regulating marketing of agricultural produce in any place in the market area. Sub-section (2) thereof specified certain powers and duties of the Market Committee. Clause (d) thereof requires the Market Committee to "Provide for settling dispute arising out of any kind of transactions connected with the marketing of agricultural produce and all matters ancillary thereto."

3. If the marketing of agricultural produce is so regulated in a given area, some machinery has to be provided for settlement of disputes between buyers and sellers regarding quality, weight, payment of any agricultural produce or any matter in relation to the regulation of marketing of agricultural produce in that area. This object is achieved by enacting Sec. 10 in the Act. We may reproduce it in extenso :

"10 (1) For the purpose of settling disputes between buyers and sellers, or their agents, including any disputes regarding the quality or weight or payment of any agricultural produce, or any matter in relation to the regulation of marketing of agricultural committee of that area, the Market Committee of that area shall constitute a Board.

(2) The Board shall consist of such number of members, and such number of other persons possessing such qualifications and shall be constituted in such manner and conduct its business in such manner, as may be prescribed. The rules may provide for appointment of arbitrators, payment of fees by parties for the settlement of disputes, and appeal to the Board from their decision. The rules may provide for appointment of arbitrators, payment of fees by parties for the settlement of disputes, and appeal to the Board from their decision. The rules may also provide for consulting persons with technical qualifications or for laboratory analysis for ascertaining the quality of any agricultural produce, the price which may be paid therefore or any other matter relevant to the dispute, and for the payment of fees or charges for such consultation or analysis.

4. This is how the section stands after its amendment by Maharashtra Act No. 39 of 1973. Prior to that sub-section (1) required the Market Committee to constitute the Board "from amongst its members". The last sentence in sub-section (2) has been added by the said Amendment Act. It would, therefore, appear that even though prior to the amendment of this section by the said Amendment Act and Board could be composed only of some of the members of the Market committee, after the amendment of the section it is possible to constitute a Board consisting not only of some of the members of the Market Committee but also of such other persons possessing such qualifications as may be prescribed, subject to the rules to be made by the State Government under sub-section (2) of Section 10 and clause 9c) of the sub-section (2) of section 60 of the Act. The relevant rule in this following terms :

"97. Constitution of Board for settlement of disputes u/s 10 - (1) For the purposes of Section 10. Every Market Committee shall form amongst its members constitute a Board consisting of :-

the Vice Chairman ;

two members elected from the Co-operative Societies" Constituency and one member elected from the Village Panchayat"s Constituency.

two members elected from the Traders Constituency, if the Vice -Chairman is elected from the constituency.

No business shall be transacted by the Boad, unless three members are present.

Every meeting of the Board shall be presided over by the Vice - Chairman and if he be absent, by such one of the members present as may be chosen by the meeting to be the presiding authority for the occasion.

All questions shall be decided by a majority of votes of the members present and voting, the presiding authority having a second or casting vote in all cases of equality of votes.

The decision of the Board on all questions shall be binding on the parties to the dispute.

Every Market Committee shall maintaining a complete record of all disputes in such form as may be laid down in its by-laws. The decision shall be communicated to the parties in writing with reasons therefor."

5. This rule was made in 1967 i.e. prior to amendment of Section 10 in 1973. It seems that this rule has not been correspondingly amended after the amendment of Section 10 so as to include persons other than members of the Market Committee as member of the Board, with the result that at present the Board can be constituted only from amongst members of the Market Committee and none else. Rule 98 deals with settlement of disputes and prescribes the procedure to be followed therefor. It may better be reproduced verbatim:

"98. Settlement of disputes (1) Where any dispute referred to in Section 10 arises between any parties operating in market areas. the Secretary of the Market Committee or any person authorised by the Market Committee in that behalf may, if the parties agree to settle such dispute by arbitration refer the dispute to arbitration and in the absence of any the agreement, to the Board constitute under Rule 97.

(2) Where parties agree to settle the about by recourse to arbitration, each party to the dispute and the Secretary of the Market Committee or any person authorised by the Market Committee in that behalf shall select one arbitrator from the panel of arbitrators appointed under sub-rule (6).

(3) The arbitrators shall. As far as possible, try to reach a unanimous decision; but in case of disagreement, the decision of the majority shall prevail. The decision shall be communicated to the parties in writing with the reasons therefor.

(4) Every dispute shall be decided, as far as possible, on the spot and on the same day.

(5) any party to the dispute aggrieved by the decision of the arbitrators may within seven days of such decision, appeal to the Board. The decision of the arbitrator shall subject to the decision of the Board in appeal, be binding on the parties.

(6) The Director or any officer authorised by him may require a Market Committee to prepare every year a panel of arbitrators consisting of not less than 12 and not more than 15 persons from agriculturists and traders (not being the members of the Market Committee) who are living in or near the market area or doing business in such area. The panel notice board of the office of every market Committee, and at some conspicuous place in the market."

6. It would appear that the Board not only settles a dispute between the parties as an original authority but also functions as an appellate authority against the decision of the arbitrators.
7. Cotton (ginned and unginned) is an agricultural produce within the meaning of Section 2(1)(a) of the Act. Unginned cotton is also known as raw cotton. Since the enactment of the Maharashtra Raw Cotton (Procurement, Processing and Marketing) Act, 1971. Agriculturist cannot sell his raw cotton as an agricultural produce to any one other than the State government. In order to implement the scheme of procurement and processing of raw cotton, the State Government, under the provisions of the Raw Cotton Act, has appointed the Maharashtra State Marketing Federation Limited Which is impleaded as the third respondent in both these petitions, as its chief agent. Section 21-A of the Raw Cotton Act makes it obligatory on the Market committee to designate and maintain centres for procurement of raw cotton under the said Act, known as Collection Centres. Under Rule 7 of the Maharashtra Raw Cotton (Grading and Marketing) Rules, 1972, the Market Committee has to supervise the grading operation in the same manner as it supervises the grading of agricultural produce under any rules made by the State Government under the Act or bye-laws. The markets under the Act are designated as collection centres for the purpose of procuring raw cotton under the cotton procurement scheme. Besides these, collection centres are also opened by Market Committees within their respective market areas, at convenient places. Trade of selling an purchasing such raw cotton is carried out in such markets and collection centres and there is no dispute that such trade is regulated by the provisions of the Act and has to be carried out under the superintendence. direction and control of the relevant Market Committee.
8. The third respondent has established zonal and sub-zonal offices at various collection centres and a Grader is attached to each collection centre who is supposed to be an expert in determining the grade of raw cotton. Raw cotton is divided into five grades according to its quality, namely. (1) super, (2) FAQ (3) Fair (4) X, and (5) Kawadi in that descending order and the cotton fetches its price according to one of these grades as fixed by the State Government. The grading of raw cotton, therefore, plays an important role in the procurement scheme. The tenderer of cotton and the State Government would stand to gain or lose accordidng to the way the cotton is graded. The Grader appointed by the third respondent at the collection centre examines the raw cotton tendered by the agriculturist and determines its grassed and if the tenderer agrees within the decision of the Grader, he is paid the price accordingly. However, if the tenderer does not agree with the decision of the Grader, the dispute with regard to the quality of the cotton tendered has to be resolved under the provisions of the Act and the Rules set out above.
9. By its resolution dated 8-1-1979 the State Government had appointed an Arbitration Committee for each of the collection centres, consisting of 6 persons and

this was done in order to dissolve the dispute quickly on the very day. It seems that there was no provision for preferring an appeal against the decision given by such Arbitration Committee. By its resolution dated 5-12-1981 the State Government slightly modified the composition of Arbitration committee and constituted a dispute settlement committee at the level of sub-zonal offices of the third respondent, as an appellate authority against decision of the Arbitration committee. It would, therefore, appear that the resolution dated 5-12-1981 provided a machinery different from the one under the provisions of the Act and the Rules for deciding the disputes with regard to grading of raw cotton. This resolution came to be challenged in this Court in Writ Petition No. 2841 of 1981 by some of the members of the petition No. 1438 of 1982. This Court on 31-12-1981 granted interim stay with regard to the implementation and operation of the said resolution. That writ petition was admitted on 25-6-1982 and the interim stay was confirmed, with the result that with effect from 31-12-1981 the Arbitration committees and Dispute Settlement Committees constituted under the said resolution stopped functioning and the disputes were to be settled under the provisions of the Act and the Rules, at least in so far as the market area under the sphere of operation of the first petitioner in Writ Petition No. 1438 of 1982, viz. The Agricultural Produce Market committee, Yavatmal is concerned.

10. Writ Petition No. 1438 of 1982 has been presented by the Agricultural Produce Market Committee, Yavatmal and the Board constituted u/s 10 of the Act for that Market Committee as petitioner Nos. 1 and 2 respectively. The Divisional Joint Registrar, Co-operative Societies, Amravati, the State Government and the Maharashtra State Marketing Federating Limited have been respectively impleaded as respondents Nos. 1, 2 and 3. The petitioner Market Committee has opened cotton collection centres at yavatmal. Babulgaon and Kalam besides other places. It seems that on or about 20-3-1982 the sub-zonal manager of the third respondent at Kalam made a complaint regarding alleged mal-practices being indulged in by some of the members of the Arbitration committee and the Dispute Settlement Committee regarding gradation of raw cotton. The District Deputy Registrar, Co-operative Societies, Yavatmal, to whom this complaint seems to have been sent, forwarded it to the first respondent with his confidential letter dated 22-3-1982 with his recommendation for taking action in respect of upgradation of raw cotton by the dispute Settlement Committee at Yagatmal. Pursuant to t6his report from the District Deputy Registrar, the first respondent directed the Chairman and secretary of the petitioner Market Committee to produce all relevant record along with proceeding book of the Board in respect of decisions taken by it in the matter of gradation of raw cotton collected at the collection centres at Yavatmal, Babulgaon and Kalam. The secretary of the petitioner Market committee accordingly produced the relevant record before the first respondent on 20-4-1982. The first respondent requested the Managing Director of the third respondent and the State Government "to arrange for examining the grades of raw cotton through technical experts".

Accordingly a Committee of experts consisting of representative of the Director of Marketing and a representative of the third respondent along with the first respondent visited the cotton collection centres at Yavatmal and Babulgaon on 17th and 18th May, 1982 and examined raw cotton on the spot. The first respondent purported to books in respect of the decisions taken by the board and also applications made by the respective tenderers of cotton for referring their cases to the Arbitration Committee and the Dispute Settlement committee. The first respondent found that the applications were not properly made and filled in and that they were not properly signed and that some of the applications had been signed by persons other than the applicants. On examining the record the first respondent was of the view that the members of the Arbitration committee and the Dispute Settlement Committee had formed a "click and in collaboration with certain group of persons manipulated and managed to sell sub-standard raw cotton of the grade of Kawadi or Zoda to the higher grade of Fair or FAQ quality". The first respondent suspected that these persons might be collecting raw cotton of Kawadi or Zoda quality through their agents at village level at the price guaranteed by the third respondent and sold the same at higher grade by resorting their disputes to the Arbitration committee against the grade given by the Grader and again before the Dispute Settlement Committee against the grade given by the Arbitration committee. Respondent No. 1 also purported to examine some cases as test cases to support this view. He further found that the dispute Settlement Committee against the grade given by the Arbitration Committee. Respondent No. 1 also purported to examine some cases as test cases to support this view. He further found that the Dispute Settlement Committee which is the same as petitioner No. 2, had recorded its opinion regarding grade for cotton under dispute without assigning any reasons therefore as required under sub-rule (s) of Rule 97. He further found that though members of the said committee and Board were not experts, in grading raw cotton, it had not consulted any expert before determining the grade of the disputed cotton. Hence because the Board had not obtained expert opinion and had not recorded its reasons for its decisions and because of the suspicion which the first respondent entertained with regard to the mal-practices indulged into by members of the Board and the tenderers of cotton collusively, the first respondent by his order passed on 25-6-1982 (Annexure B), in exercise of the powers u/s 43 of the Act, "set aside all the decisions taken by the Dispute Settlement Committee of the Agricultural Produce, Market Committee, Yavatmal in upgrading grades of raw cotton in respect of cotton collection centres at Yavatmal, Kalam and Babulgaon". In particular he set aside the proceedings of the Dispute Settlement committee held on 11-12-1981, 25-2-1982, 8-3-1982, 25-3-1982, 1-4-1982 and 14-4-1982 in respect of the cotton collection centre at Yavatmal, the proceedings of the said committee held on 3-2-1982, 23-2-1982, 4-3-1982, 12-3-1982, 3-4-1982 and 16-4-1982 in respect of collection centre at Kalam and the proceedings of the said Committee held on 2-2-1982, 27-2-1982, 11-3-1982, 31-3-1982 and 13-4-1982 in respect of collection centre at Babulgaon. He further ordered that the grade of raw cotton given by the

Arbitration Committee against the decisions of the grader of the third respondent at these centres should be maintained as valid and operative for making payments to the concerned tenderers of cotton. It is this order which is challenged in Writ Petition No. 1438 of 1982.

11. Writ Petition No. 1821 of 1982 has been presented jointly by six individuals who claim to be agriculturists and tenderers of cotton and the Agricultural Produce Market Committee, Yavatmal and its dispute Settlement Board. The three respondents in this petition are the same as those in the earlier petition. This petition is directed against the order passed by the first respondent calling upon the chairman and the Secretary of the Market Committee to produce all the record and proceedings connected with upgradation of Sub-standard raw cotton by the Arbitration Committee and the Dispute settlement Committee (Board?) in respect of collection centre at Yavatmal for the period from 15-4-1982 to 30-6-1982. The first respondent has purported to issue this order in exercise of his power u/s 43 of the Act. The petitioners also challenged the letter dated 10-8-1982 which has been addressed by the third respondent to the sale Purchase co-operative society at Yavatmal, directing it to pay to the tenderers the price on the basis of the grade determined by its Grader and not according to the grade given by the Arbitration Committee of the Dispute settlement Board.

12. The principal and the common contention in both these petitions on behalf of the petitioners is with regard to the power and authority of the first respondent, namely the Divisional Joint Registrar, Co-operative Societies, Amravati, to interfere with the decisions of the Board constituted u/s 43 of the Act, under which the first respondent has purported to exercise his power, does not operate on the decision of the said Board since under it the State Government can call for and examine the proceedings of the Market Committee for the purposes of satisfying itself as to the legality or propriety of any decision or order passed by it under the Act. In this connection it is urged that the Board constituted u/s 10 of the Act is not the same as a Market Committee and is not even a part and parcel of it but is altogether a different entity, though it is composed of some of the members of the Market Committee. It is pointed out that the Board is constituted under Sec. 10 of the Act while the Market committee is constituted u/s 13 of the Act and simply because the Market committee has to constitute the Board from amongst its members, it does not follow that it is appendage of the Market Committee, as it is required to discharge statutory functions under the provisions of the Act and the Rules independent of the Market committee. As a second limb of this contention it is urged by the petitioners that assuming that the decisions of the Board are subject to the revision u/s 34 of the Act, the first respondent at any rate could not exercise this power as delegation of its powers u/s 43 of the Act by the State Government to the first respondent under its notification dated 15-9-1981 in exercise of its power u/s 58 of the Act is not legal and valid inasmuch u/s 58 of the Act, the State Government could delegate its powers either to the director of Agricultural Marketing or to the

first respondent but not to both of them concurrently as is purported to be done under the said notification. In this behalf it is submitted that Section 58 does not permit simultaneous delegation of its power by the State Government on the Director and any other officer and person but permits the delegation to only one of them at a time.

13. In so far as Writ Petition No. 1438 of 1982 is concerned, it is further contended by the petitioners therein that at any rate the first respondents could not have exercised the revisional power u/s 43 of the Act and reversed all the decisions of the Board without giving an opportunity to the tenderers of cotton or the agriculturists who were affected by exercise of this power, since in exercising it respondent No. 1 was not acting administratively but was exercising quasi-judicial power. It is urged that the omnibus order passed by the first respondent without so much as hearing the parties concerned, violated the principles of natural justice and, therefore, was void.

14. The petitions have been contested by the three respondents. Respondent Nos. 1 and 2 have filed joint returns while respondent No. 3 has filed separate returns in both these petitions. In so far as writ petition No. 1438 of 1982 is concerned, which, as stated above, has been presented only by Market Committee and the Board, the third respondent has raised preliminary objection as regards its maintainability. It is submitted that both these petitioners have no locus standi to maintain the petition inasmuch as they are in no manner aggrieved by the impugned order passed by the third respondent and the interest of these two bodies cannot be said to be prejudiced by that order. In short it is contended that these petitioners not being "persons aggrieved", have no locus standi to impugn the order dated 25-6-1982. Secondly it is contended that this petition not being filed in discharge of official function of the Market Committee or the Board, cannot be instituted either by the Chairman or the Vice-Chairman without a proper resolution from the Market Committee authorising them to do so. It is said that the petitioners lack in bona fides in filing the petition as in discharge of their official duties either of them cannot be concerned as to what happens further to the decisions given by them. It is urged that only because some of the members of the petitioners are interested in seeing that the decisions given by the Board should be maintained, that the present petition has come to be filed. It is submitted that an authority which has power to decide a dispute cannot have any grievance about its decision being upset either by the revisional or the appellate authority and that from the very fact that the petitioners have challenged such a decision shows that they were having vested interest in their decisions.

15. In so far as merits of the petitions are concerned, all the respondents are one in urging that the power under S. 43 of the Act extends to revise decision of the Board also as according to them, the Board is nothing but an appendage of the Market Committee since it is not only constituted by the latter but is composed of some of

its members, with the Vice-Chairman of the Market Committee presiding over the deliberations of the Board. It is also contended that Section 58 of the Act is misread by the petitioners and under it the State Government could delegate its powers u/s 43 of the Act to the Director as well as to the Divisional Joint Registrar of Co-operative Societies simultaneously.

16. Before we examine merits of the petitions, we may dispose of the preliminary objection raised by the third respondent. While refuting this preliminary objection the learned counsel for the petitioners submitted that the Agricultural Produce Market Committees constituted under the Act have to safeguard the interests of the agriculturists for whose benefit the Act has been made. It is submitted that the Act is meant to protect the agriculturists while selling their agricultural produce, from exploitation by traders and middle-men and this object is apparent from the composition of the Market Committee where a dominant representation is given to agriculturists. It is argued that if the interest of a large section of agriculturists is affected by any illegal act, in relation to the provision of the Act, the Market Committee, as a representative of the agriculturists, has to take up cudgels on their behalf to set the situation right. It is further urged that if any authority illegally and unauthorisedly encroaches upon the powers and functions of the Board, it has to see that such acts are stopped by taking resort to appropriate remedies. For these reasons it is submitted that the Market Committee and the Board have ample interest in seeing that the impugned order is set aside and the parameters of the power u/s 43 of the Act are well defined for guidance in future. It is also contended that the petition has been validly presented as the Vice-Chairman of the Market Committee has been duly authorised to do so by a resolution.

17. We do not find much substance in the preliminary objection. As seen above, the Act has been made to regulate the marketing of the agricultural and certain other produce in the market areas and the markets to be established therefore in the State. This obviously was required to be done with a view to see that the agriculturists, when they are required to sell their produce, are not duped or cheated by underhand dealings by traders and brokers while purchasing such produce from them in secrecy and not openly under the gaze of some controlling and supervising authority. It is for this reason that out of eighteen members which constitute the Market Committee, ten are agriculturists and only three are from the trading community. The other members of the Market Committee cannot be said to represent the interest of the traders but that of agriculturists, since they are representatives of Co-operative societies, Panchayat Samitis, Village Panchayats, Zilla Parishads and Government Offices. If this be the purpose of establishing Market Committees for each of the market areas, one fails to see why it cannot be said that the Market committee generally represents the interest of the agriculturists and why it should not take up the cause of the agriculturists where it finds that their interests are affected in so far as sale of their agricultural produce is concerned. With the traditional theory of locus standi for maintaining writ petition

being recently expanded to take in its fold public interest litigation, it would be too technical to say that in the abovesaid background the market Committee cannot come forward to set right an injustice which may be caused to the agriculturist class by the unauthorised action on the part of any authority. In the circumstances stated above, it would be taking very narrow view if it is held that the Market Committee has no locus standi to maintain the present petition, if we find that the first respondent has acted without power and jurisdiction in setting aside all the decisions of the Board thus financially causing great loss to the agriculturists who had tendered their cotton and would stand to gain better price if the decisions of the Board had not been so illegally set aside. It might not be possible for the individual agriculturist to move this Court either because he is too poor to afford the expenses or because in his case the stake is not so great as to merit these expenses.

18. The matter can be looked at from another angle also. As we have said above, under sub-section (1) of Section 29 of the Act the Market Committee is charged with duty of doing such acts as may be required in relation to superintendence, direction and control of market areas for regulating marketing of agricultural produce in any place in the market area and it is also charged with the duty to implement the provisions of the Act, the Rules and the bye-laws made thereunder. Now in discharging these duties the Market Committee has to see not only that the marketing of the agricultural produce is done according to the provisions of the Act but it has also to implement the provisions thereof. Now if in discharging all these duties if the Market Committee finds that some authority is departing from the said provisions, it has to set the matter right by taking appropriate steps including legal action. If the market Committee were to turn

19. blind eye and deaf ear to illegalities being committed by any authority in the guise of performing its power under the provisions of the Act, it would be failing in its duty to implement these provisions and in controlling and supervising the regulation of marketing and agricultural produce. We, therefore, find that in a case like the present it becomes duty of the Market Committee to protect the agriculturists from onslaught of an unauthorised action.

20. Coming to the principal question involved in these petitions, the third respondent has purported to pass the impugned orders in exercise of the powers conferred on the State Government u/s 43 of the Act which have been delegated to him by the latter under its notification dated 15-9-1981 acting u/s 58 of the Act. For the present we may assume that this delegation is legal and valid, because if we hold that the power u/s 43 cannot be resorted to even by the State Government to upset the decision of the Board, the question of the delegation of that power would not arise. Let us then see if the power conferred u/s 43 of the Act can be used to revise the decision of the Board constituted u/s 10 of the Act.

21. Section 43 reads as follows:

"43. The State Government may at the Director for the purpose of satisfying itself as to the legality or propriety of any decision or order passed by the Market Committee or the Director under this Act. If in any case, it appears to the State Government that any decision or order or proceedings so called for should be modified, annulled or reversed, the State Government may pass such order thereon as it thinks fit."

22. Reading this section as it is in so far as it is relevant for our purpose, it would appear that it empowers the State Government to call for and examine "the proceedings of any Market Committee". Prima facie, therefore, the State Government cannot call for and examine the proceedings of any body other than the Market committee (except of course that of the Director). Hence unless it is held that the proceedings of the Board are the same as the proceedings of the Market Committee, the State Government would not be in a position to exercise its power in regard to such proceedings. It is for this reason that we have to see if the decision or order passed by the Board is tantamount to the "decision or order passed by the Market Committee" within the meaning of Section 43.

23. The Market Committee like the petitioner Market Committee is constituted u/s 13 (1) of the Act by the process of election and consists of representatives of agriculturists, traders and commission agents, co-operative societies doing business of processing or marketing in the market area, Chairman of the Panchayat Samiti or its representative, President or Sarpanch of local authority or its representative, Extension Officer and Assistant Cotton Extension Officer, It is, therefore, clear that besides agriculturists and traders the Market Committee consists of others also.

24. On the other hand as seen above, the Board is constituted u/s 10 read with Rule 97. In view of Section 10 as it stands after its amendment in 1973, the Board need not consist only of the members of the Market Committee. It is possible for the State Government to amend Rule 97 and provide for inclusion of persons other than members of Market Committee as some of the members of the Board. In other words, the Legislature does not intend ment advanced on behalf of the respondents that the Board is nothing but a part and parcel of the Market Committee because all its members are also members of the latter, loses its force. In this connection it may be pertinent to note that any member of the market Committee cannot be member of the Board. The membership of the Board is restricted to only two categories of the members of the Market Committee, viz. Those of agriculturists and traders. Though Rule 97 (1) (b) speaks of two members elected from the Co-operative Societies Constituency and one member elected from the Village Panchauyat's Constituency, read in the light of Sec. 13 (1) (a) it is evident that these are agriculturist members of the Market committee. Technically any member of the Market Committee other than an agriculturist or trader can be member of the Board only if he happens to be Vice-Chairman of the Market Committee. Such a limited composition of the Board even under the rule as it is at present indicates that the Board is not intended to be part of the Market Committee unlike its sub-committees.

25. It may be noted in this context that Section 30 of the Act does make provision empowering a Market Committee to appoint one or more sub-committees consisting of one or more of its members including co-opted members and to duties as it may think fit to do. Now if the legislature thought that settlement of disputes between buyers and sellers was function of the Market Committee it would not have enough to say that the Market Committee should arrange to settle such disputes either itself or through a sub-committee, particularly when the legislature has u/s 30 specifically empowered Market Committee to appoint sub-committees and delegate to them its functions. In short, if the legislature intended that the Board should function as a sub-committee of the Market committee, Section 10 would not have found place in the Act. The only function assigned to a Market Committee in relation to the Board is to constitute it in the manner prescribed. Once that is done, the Board has to function as provided in Rule 97 while conducting the Business of settling disputes. The only duty which the Market Committee is required to perform in the matter of settlement of "disputes is to maintain a communicate decisions thereon to the connected parties. (see sub-rule (6) of Rule 97). But that is only ministerial function.

26. All this leads to the inevitable conclusion that the Board is a body entirely independent of the Market Committee in performing its functions and discharging its duties and its decisions cannot be termed as decisions of the Market Committee within the meaning of Section 143 of the Act. If that is so, obviously the State Government cannot interfere with a decision of a Board in exercise of its power under under that section.

27. In the view we take it is not necessary to examine the other contention urged on behalf of the petitioners. However, since we have heard learned counsel at length we may as well record our decision on them too. In so far as the "question of validity of the action on the part of the State Government in simultaneously delegating its same power on more than one person is concerned, it may be noted that the State Government under its notification dated 15-9-1981 published in the official gazette on 17-9-1981 has delegated its power u/s 43 on the "Director as well as on the Divisional Joint Registrar of Co-operative Societies. Relying on the phraseology in section 58 and particularly on the words "the Director or any other officer or person" it is urged that the delegation of the same power can be only to one of them but not to two or all of them at the same time. In this connection emphasis is laid on the word "or" in the expression quoted above. It is submitted that this word cannot be read to mean "and" and use of it is designed to give choice of one of the three persons. It is also submitted that the legislature has used the word "or" it would not mean that the powers could be delegated to any one or more of the three persons simultaneously. On the other hand such a provision could be interpreted to mean that the powers were to be delegated to all of them jointly and not severally. In our opinion the word "or" has been used to indicate that powers could be delegated severally to these persons. There is nothing in the language of Section 58 to indicate

that the legislature intended that State Government should delegate its power to one only. We, therefore, do not find that the said notification in so far as it relates to the delegation of power u/s 43 to the Director and Joint Divisional Registrar of Co-operative Societies is not invalid on this count. In our view, u/s 58 State Government is competent to confer any of its power on more than one person severally. Concurrent exercise of power is not unknown to law. However, since we have held that the power conferred by Section 43 on the State Government cannot be exercised in relation to the decision of a Board constituted u/s 10 of the Act, the question of delegating such a power cannot arise.

28. Apart from what we have said above, it is difficult to sustain the order passed by the first respondent on 25-6-1982 on its own merits. It is needless to say that while settling the dispute between a buyer and seller or deciding an appeal against the decision of an arbitrator deciding such a dispute, the Board discharges quasi-judicial functions. It, therefore, follows that any authority which has power to revise such a decision of the Board also discharge quasi-judicial function. If that is so, it is incumbent on such a revisional

29. authority to give an opportunity of being heard to the party to the dispute against whom it records its decision. The doctrine of audi alteram partem would squarely apply to such a case.

30. In the present case the first respondent has adopted a novel procedure. Though the Board had dealt with each dispute individually and had recorded its decision separately in each of them, the first respondent clubbed together not only the decisions recorded by the Board on one particular date in relation to one centre but clubbed together all decisions recorded by the Board in a span of about 4 months in relation to three centres. Consequently he did not record his decision separately in each case decided by the Board by considering it on its own merits but has recorded an omnibus order embracing several disputes where though

31. the buyer may be only third respondent, the sellers were several individuals. For this process the first respondent has not only not even given an opportunity to the sellers of being heard while reversing the order which the Board had passed in their favor, but has not bestowed his attention and has not applied his mind individually to the facts and circumstances of each case. The first respondent has proceeded on the assumption that in each and every case the Board had acted in collusion with certain Board had acted in collusion with certain persons who had manipulated to sell substandard cotton as that of higher grade. Perusal of the impugned order would show that this assumption is based on mere suspicion. This suspicion seems to be based on the ground that some of the applications for referring the dispute to the Board "were not made properly and the same were not filled in and signed properly". The first respondent believed that tenderer of the cotton himself had not signed the applications and some other persons had signed the same for referring the cases to the Arbitration Committee or to the Dispute Settlement Board. He has

cited a few examples in the table given in his order. This reasoning on the facts of it is fallacious since the first respondent has admittedly not heard or examined the persons concerned to find out if they had themselves referred the dispute and signed the applications or whether they had been referred in their names by some one else. It is difficult to understand as to how the first respondent could come to such a conclusion without even hearing the sellers in whose name the applications are made, unless the first respondent was conversant with their signatures, which appears to be a remote possibility. Even where the signatures, according to the first respondent, are illegible, they are taken to be those of persons other than the tenderer of the cotton. It is not necessary to dwell much on this aspect of the impugned order.

32. Even with regard to determining the grade of the cotton the first respondent has adopted a queer method. As can be seen from his order, he requested the Managing Director of the third respondent and the State Government in Agriculture and Co-operation Department, who for all practical purposes are the buyers of raw cotton, to arrange to examine the grades of raw cotton through technical experts and accordingly a so-called committee of experts consisting to the representatives of the third respondent and the Agriculture Department was constituted and this committee visited the cotton collection centres at Yavatmal, and Babulgaon as late as 17th and 18th May, 1982 along with the first respondent and examined the raw cotton there. Several questions arise on this modality of ascertaining grades of raw cotton sold by various sellers at the three centres on several different dates from December 1981 to middle of April 1982. It passes our comprehension as to how the grade of cotton in the case of each dispute could be determined if the cotton, which is subject matter of the dispute, was not available for inspection after such a long time. For example, it is difficult to see how raw cotton sold by a person at Yavatmal on 11-12-1981 could be available for inspection at the collection centre there on 17th or 18th May, 1982. The impugned order is not clear as to what actually was done by the said Expert Committee in order to examine the sample concerning each dispute. It would be of interest to note that the Expert Committee consisted of representatives of the buyers but none of the sellers. The first respondent acted on omnibus complaint by Sub-Zonal Manager of the third respondent which seems to have been investigated which seems to have been investigated by the District Deputy Registrar, Yavatmal who recommended to the first respondent to take action in the matter.

33. The other ground on which the first respondent has reversed the decisions of the Board are that the Board had not consulted and obtained expert opinion regarding the grades of cotton and that opinions so recorded was without any basis or facts and that the Board had not recorded its reasons as required by Rule 97 (6) . In so far as the first ground is concerned, the first respondent seems to have relied upon sub-section (2) of Section 10 of the Act and has read it to mean that it requires the Board to take its decision only after taking advice of technical experts. It seems

that the first respondent has based this view on the last sentence occurring in that sub-section, which, as has been said in para 3 above, has been added by the Amendment Act of 1973. Now this portion of that sub-section empowers the State Government to make rules to provide for consulting persons with technical qualifications or for laboratory analysis for ascertaining the quality of any agricultural produce. As said earlier, the State government has not correspondingly amended of Section 10 and thus had not made any provision to enable the Board to consult persons with technical qualifications, for ascertaining quality of any agricultural produce. Hence far from it being obligatory on the Board to consult such persons, there is no provision in the rules therefor. The view taken by the first respondent in this respect is, therefore on the fact of it, fallacious.

34. In so far as the second ground is concerned, Rule 97 nowhere specifically states that the Board should record its reasons while deciding a dispute. Sub-rule (6) of that rule merely says that Market Committee should communicate the decision to the parties with reasons therefor. It may be that by making this provision the rule-making authority intended that the Board should record its reasons for its decision. Omission to record reasons would at the most amount to irregularity which may not necessarily vitiate the decision.

35. It is not necessary to go deep into the impugned order to bring out its infirmities, since they are writ large on the face of it and even a casual reading of the order would bring out its unsustainability.

36. Relying on the decision of the Supreme Court in [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#), of the Patna High Court [Devendra Prasad and Others Vs. State of Bihar and Another](#), and of the Full Bench of the Rajasthan High Court in [Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another](#), it is submitted on behalf of the third respondent that we should not exercise our writ jurisdiction to quash the impugned order passed by the first respondent on 25-6-1982 as it would have the effect to revive the illegal orders and decisions made by the Board. This arguments proceeds on the assumption that all the decisions recorded by the Board invariably were illegal. There is nothing on record to support this submission. On the other hand, the said order passed by the first respondent is so blatantly illegal that it cannot be allowed to stand. Since, as stated above, the first respondent has not dealt individually with each decision of the Board, it is not unlikely that even tenderers of cotton who had genuine grievance against the decision of the grader of the third respondent or the the raw cotton sold by them, have suffered at the hands of the first respondent, particularly so when they have not been given so much as an opportunity of being heard to sustain the decision of the Board in their favour. Refusing to interfere with such an order would result in great injustice to such persons.

37. In the result both the writ petitions are allowed and the rule in Writ Petition No. 1438 of 1982 is made absolute in terms of prayer Clause (a) thereof and the rule in

Writ Petition No. 1821 of 1982 is made absolute in terms of prayer Clause (b) thereof. In the circumstances of the case there shall be no order as to costs in both the petitions.

38. Petition allowed.