



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.2721 OF 2025

1. Eknath S/o Ramchandra Ghandge  
Age-46 years, Occu.-Agriculturist,  
R/o. Pathargavhan, Tq. Pathri,  
District Parbhani.

...PETITIONER

**VERSUS**

1. The State of Maharashtra,  
Through : Divisional Joint Registrar,  
Co-operative Societies,  
Chh. Sambhajinagar, Tq. & District  
Chh. Sambhajinagar.
2. The District Deputy Registrar,  
Co-operative Societies,  
Parbhani. Tq. & Dist. Parbhani,
3. The Assistant Registrar, Co-op. Societies,  
Sailu, Ta. Sailu, District Parbhani.
4. Agricultural Produce Market Committee,  
Pathri. Tq. Pathri. Dist. Parbhani.  
Through : In-charge Secretary -  
SadatraoTengse, Age 35 years,  
Occu : Service, I/c Secretary, A.P.M.C.  
Pathri, R/o Renapur, Tq. Renapur,  
District Parbhani.
5. Sham s/o Uttamrao Dharme,  
Age-62 years, Occu.- Agri.

R/o. Loni, Tq. Pathri. Dist. Parbhani.

6. Babasaheb S/o Govindrao Lipne,  
Age-57 years, Occu.- Service,  
R/o Nivdi, Tq. Pathri.  
District Parbhani.
7. Anil S/o Sakharam Nakhate,  
Age-52 years, Occu.- Agri. & Business.  
R/o. VIP Colony, Pathri.  
Tq. Pathri, District Parbhani.
8. Ashok S/o Marotrao Giram,  
Age-56 years, Occu.- Agri.  
R/o. Babhalgaon, Tq. Pathri.  
District Parbhani.
9. Prabhakar S/o Rustumrao Shinde,  
Age-60 years, Occu.- Agri. & Business.  
R/o. Vadi, Tq. Pathri. Dist. Parbhani.
10. Minatai Ramprasad Kolhe,  
Age-48 years, Occu.- Agri.  
R/o. Kayapuri, Tq. Pathri.  
District Parbhani.
11. Sanjiv S/o Marotrao Satwadhar,  
Age-56 years, Occu.- Agri.  
Zari, Tq. Pathri. Dist. Parbhani.
12. Santosh S/o Jagannathrao Galbe,  
Age-44 years, Occu.- Agri.  
R/o. Dehegaon, Tq. Pathri.  
District Parbhani.

13. Ganesh S/o Sakharam Dugane,  
Age-40 years, Occu.- Agri.  
R/o. Limba, Tq. Pathri. Dist. Parbhani.
14. Kiran S/o Bharathrao Takalkar,  
Age-36 years, Occu.- Agri.  
R/o. Sarola, Tq. Pathri.  
District Parbhani.
15. Shaikh Dastagir Shaikh Hasan,  
Age-60 years, Occu.- Hamal,  
R/o. Pathri, Tq. Pathri.  
District Parbhani.

**...RESPONDENTS**

Advocate for the petitioner : Mr. N. B. Khandare h/f. Mr. D. J. Choudhary  
Advocate for Respondent No.5 : Mr. K. J. Suryawanshi  
Advocate for Respondent No.6 : Mr. N. R. Pawade  
Advocate for Respondent No. 7 : Mr. A. A. Khande h/f. Mr. G. V. Sukale  
AGP for Respondent/State : Mr. P. D. Patil

**CORAM** : KISHORE C. SANT, J.  
**RESERVED ON** : 27<sup>th</sup> JANUARY 2025  
**PRONOUNCED ON** : 18<sup>th</sup> MARCH 2025

**JUDGMENT :-**

1. Rule. Rule made returnable forthwith by consent of the parties.
2. Challenge in this writ petition is to an order passed by the learned  
Divisional Joint Registrar Co-operative Societies, Chh. Sambhajinagar,

allowing the application filed by Respondent Nos. 5 and 6. The petitioner is director of the Agricultural Produce Market Committee, Pathri, Tal. Pathri, Dist. Parbhani. Respondent No.1 is the State thorough Divisional Joint Registrar, Co-operative Societies. Respondent Nos. 2 and 3 are the District Deputy Registrar and the Assistant Registrar, Co-operative Societies. Respondent No.4 is the Agricultural Produce Market Committee (in short "A.P.M.C."). Respondent Nos. 5 and 7 to 15 are the members of Respondent No.4 A.P.M.C. Respondent No.6 is the Secretary of Respondent No.4.

3. Respondent Nos. 5 and 6 had approached the Divisional Joint Registrar for cancelling the resolution dated 24.01.2025 passed by the petitioner and Respondent Nos. 7 to 15, thereby giving rights to the petitioner to operate the bank account. Further, it was prayed for initiation of an enquiry under Section 40 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (The act is called as the "said act" for the purpose of convenience) and to take an action under Section 45 of the said Act.

4. The facts in short are that, the petitioner and Respondent Nos. 5 and 7 to 15 are the directors of A.P.M.C. Respondent No.7 was elected as Chairman of the A.P.M.C. He was held disqualified by order dated 14.10.2024 by the District Deputy Registrar. The post of Chairman was thus fallen vacant. Since the post of Chairman was vacant, the charge was handed over to Respondent No.5 being Vice Chairman of the A.P.M.C. under Rule 92(2) of the Maharashtra Agricultural Produce Sale-Purchase (Development and Regulation) Act, 1967 (“Rules” for short).

5. In the meantime, Respondent No.7 challenged his disqualification by filing an appeal before the Appellate Authority. The appeal came to be allowed by remanding the matter back to the District Deputy Registrar. In view of setting aside the order of disqualification and remand of the matter, Respondent No.7 took back the charge on 16.01.2025. He called for a meeting on 24.01.2025. In the said meeting, only 10 directors were present. The resolution that was under challenge is the resolution whereby authority to operate bank account was taken from the Vice Chairman i.e. Respondent No.5 and was given to the present petitioner.

Respondent No.5, therefore filed an application. The challenge is that when Chairman, Secretary and Vice Chairman are functioning, no authority to operate the bank account can be given to any other person. The resolution is thus against Rule 108 of the rules. The another resolution was in respect of charge of the Secretary i.e. Respondent No.6 which came to be handed over to one Mr. B. S. Tingse. To this resolution, the challenge was that, society cannot take any decision in respect of taking of the charge from the Secretary on its own without prior sanction of the higher authorities. It was thus prayed that the resolution be set aside as per Rule 43 of the said act.

6. It is the case of the petitioner that, the Rule 108 is only directory and not mandatory. Respondent No.5 cannot be said to be an aggrieved party as he was absent in a meeting in spite of receiving notice. There are allegations of misappropriation against Respondent No.5 and the enquiry is going on against him. Respondent No.6 had gone on leave from 26.12.2024 till 25.01.2025 and thereafter, on 24.01.2025, he had filed an application for voluntary retirement because of health

conditions. The said application was allowed. Respondent No.7-Chairman had therefore directed the Deputy Secretary to issue notice calling for a meeting as per by law No. 44 of the A.P.M.C. In the meeting, resolution came to be passed and charge was handed over to Mr. Tingse. The said resolution is also approved/sanctioned by the District Deputy Registrar.

7. The learned Divisional Joint Registrar considered the rules and the arguments and came to the conclusion that, both the resolutions are against the rules. It is mainly held that, in view of Rule 108(2), the financial transactions can be done only by the Chairman, in his absence by the Deputy Chairman and the Secretary. In absence of Chairman and Vice Chairman, only a member, who is specifically authorized along with the Secretary can sign the cheques. He thus came to the conclusion that, enquiry is necessary into the charges. So far as the another resolution is concerned, it is held that it is against the rules. It is further held that, there was only one subject on the agenda whereas six different resolutions have been passed on subject which were not on agenda.

There was no subject of taking over the charge of Respondent No.6 and to hand it over to Mr. B. S. Tingse. Ultimately, the application of Respondent Nos. 5 and 6 came to be allowed. Both the resolutions came to be cancelled and enquiry is directed. The petitioner is therefore before This Court.

8. The learned Senior Advocate Mr. Khandare appearing for the Petitioner submits that, the first resolution giving power to sign cheques is rightly passed, as respondent No.7 himself stated that, he do not want to sign the cheques as enquiry was going on against him and for some time, he was disqualified. There were allegations against Respondent No.5 and therefore charge was handed over to other person i.e. the present petitioner. The A.P.M.C. has the power in such circumstances to authorize some other person to do work of vice-chairman. The second resolution was passed because the Secretary has tendered voluntary resignation and was not in a position to look after the work of the A.P.M.C. There was specific requisition by the directors calling for a meeting. Since by that time, Chairman has resumed his duties. The Vice



Chairman again remain absent without giving information and without giving due intimation as required by law. The meeting was rightly presided over by the Chairman. For any transaction, the signature of Chairman and in his absence, by the Vice Chairman along with the Secretary is necessary. Since, Respondent No.5 was facing charges, the power given to a fit person i.e. the petitioner. He submits that, Rule 108 takes care of the situation, when the Chairman is not in the office or is not available for a meeting, then the charge is given to the Vice Chairman. There is no provision in Rule 108 providing for a contingency where Chairman and Vice Chairman both are absent. The A.P.M.C. certainly has the power to take appropriate decision in such cases and such decision is rightly taken in the meeting. The resolution thus, cannot be said to be against Rule 108. The Rule 108 needs to be interpreted in wider sense. If such meaning is not given to Rule 108, the functioning of the A.P.M.C would be stopped. He invites attention to Rule 93 which requires Chairman and Vice Chairman to seek leave for a period of their absence. The Vice Chairman was absent without taking such leave and therefore he was taken as absent. He further drew attention to Rule

100(5) to submit that temporary arrangements can be made by the A.P.M.C. One more reason, in his submission is that, for handing over any charge to the authority to sign cheques was that an enquiry was going on against Chairman.

9. On Maintainability of the application before the authority, he submits that, initially, Respondent No.5 alone had filed an application. It is not clear as to how Respondent No.6 came to be joined in the application. The intervention of Respondent No.7 was allowed after the file was closed. For all this, the intervention application was thus without sufficient notice to the petitioner. The notice of hearing was on 11.02.2025 and on the said date, immediately the file was closed. He submits that, the reliance on Rule 33 and 36 is misplaced. The interpretation needs to be given to give effect to the provisions of the rules. He submits that the *doctrine of necessity* requires the elected persons to take decision for proper administration of the A.P.M.C. in absence of Chairman and Vice Chairman and for that purpose, he relied upon the following judgments :

(i) Balasaheb Wasade and others vs. Manohar Gangadhar Muddeshwar and others reported in 2024 (3) Mh.L.J. 1.

(ii) Jai Bhavani Shikshan Prasarak Mandal vs. Ramesh and others reported in 2022 (13) SCC 148.

He ultimately prayed for quashing and setting aside the impugned order.

10. Learned Advocate Mr. K.J. Suryawanshi for respondent No.5 vehemently opposes the petition. He submits that in the Act there is nothing to authorize the APMC to give powers of the Chairman or Vice Chairman to any other person. So far as handing over charge of the Secretary is concerned, it can be done without prior sanction of the Authorities. He relies upon sections 19 and 24 of the Act. He further relies upon Rule 92(2) of the rules. He submits that on 04.10.2024 respondent No.7 was held to be disqualified. However, the said order was set aside by order dated 31.12.2024 by the Appellate Authority with directions to conduct fresh enquiry. The enquiry is thus pending against respondent No.7. He points out that when the Agenda was prepared

only one subject was shown on the agenda that was in respect of seeking powers to the petitioner. Said subject was about giving authority of operating bank account. There was no any other resolution. Thus, there was no question of passing any other resolution in the meeting. The resolution also do not find place in the Register of minutes of meeting. All the resolutions passed on the dates are recorded in a separate book. He submits that the resolution is against bye-law No.36. He submits that the resolutions are not confirmed in the next meeting and for this reason the resolutions are against the law.

11. Learned Advocate Mr. Pawade for respondent No.6 also opposes the petition. He submits that respondent No.6 was on leave from 26.12.2024 till 25.01.2025. There is also leave application on record seeking leave for the above period. So far as voluntary resignation is concerned, same was not accepted and therefore it cannot be said that the Secretary was not in the office. Subsequently, the resignation was withdrawn.

12. Learned AGP supports the order passed by the Authority.

13. While considering the powers and functions of the Chairman and Vice Chairman, this Court needs to consider Rule 92 of the Rules. The Rule 92 reads as under :

- (I) The chairman shall -*
  - (a) convene, preside at and conduct meeting of a Market Committee;*
  - (b) have access to the records of a Market Committee;*
  - (c) discharge all duties imposed and exercise all powers conferred on him by or under the Act and the rules and bye-laws made thereunder;*
  - (d) have control over all officers and servants of the Market Committee subject to these rules and do the directions, if any, given by the Committee;*
  - (e) supervise and control the execution of all the activities of the Market Committee; and*
  - (f) conduct or cause to be conducted correspondence and be responsible for the keeping of accounts, for the punctual rendering the accounts, reports and returns and for the custody of all amounts (other than those deposited in the treasury or with a bank approved by the Director).*
- (II) The Vice-chairman shall-*
  - (a) in the absence of a Chairman, preside at the meetings of a Market Committee;*
  - (b) exercise such of the powers and perform such of the duties of the Chairman as the Chairman may, subject to any bye-laws made by the Market Committee in this behalf, delegate to him by an order in writing;*
  - (c) pending the election of the Chairman, or during the absence of the Chairman from the market area, or by reason of leave obtained with the permission of the Market Committee, exercise the powers and perform the duties of the Chairman.*

14. Thus, it seems that, the Vice-chairman shall do the functions of the Chairman, preside over the meeting of the Market Committee, exercise such powers and perform such duties as Chairman delegated to him by

and order in writing and can act as a Chairman during absence of the Chairman from the market area by reason of leave of the Market Committee. Thus, the functions to be exercised by the Vice-Chairman are only in absence of the Chairman. Rule 93 provides for leave of absence to Chairman or Vice-chairman. This rule provides that, if they want to remain absent from any meeting of the Market Committee for a period not exceeding 30 days in any year, shall apply to the Committee for leave. The leave can be granted by passing a resolution. If the absence is without such leave, then Section 24 of the Act comes into picture which provides for consequences in the present case. It is clearly seen that, the functions of the Chairman can be exercised by Vice-chairman alone while Chairman is on leave. There is nothing to show that the power can be delegated to any other member to do the functions of Chairman or Vice-chairman. The question therefore, does not arise in the present case of Market Committee authorizing the petitioner to sign the cheques and to look after the banking transactions. This is more so, when the Chairman and Vice-chairman are very much there.

15. The question also crops up about the stand of Chairman. It is stated that the Chairman do not want to exercise the functions and therefore it was necessary to give authority to the petitioner. This hardly can be accepted. The Chairman in any case cannot avoid doing the functions or performing the duties. This Court finds that there is any choice left to the Chairman or Vice-chairman to say that, they do not want to exercise functions or to perform any duties. This argument cannot be therefore digested for any reason.

16. So far as respondent No.6 is concerned, it is the petitioner himself who requested the authority to consider all the questions together and to dispose off the complaint instead of deciding to entertain it. It is in this view, the complaint was finally decided. This Court finds that, this position is not disputed. Considering all above factors, this Court finds that resolution No.1 is totally against law and is rightly set aside by respondent No.1.

17. So far as the second resolution is concerned, it is clearly seen that the said subject was not included in the agenda. The said subject was

taken without it being in the agenda. It is further seen that there is nothing on record that the law provides powers to the Directors to take charge of the Secretary without previous sanction of the authority. The second resolution is thus bad in law for above reasons. The second resolution is also therefore rightly quashed and set aside by respondent No.1. So far as submissions in respect of Section 40 and 45 of A.P.M.C Act, thereby no prejudice can be said to have been agitated in the petition. For this, this Court does not find any reason to interfere with the said order. This Court hardly finds any reason to call for interference at the hands of this Court.

**18.** Though it is submitted by Mr. Khandare that admittedly the Secretary was not in the office, therefore, there was nothing wrong in taking the charge and handing it over to some other person. There is also no dispute that the Secretary had filed application seeking voluntary retirement. Even assuming this, it would not be give power to the APMC to hand over charge of the post of the Secretary to any other person without prior sanction from the Authority.



**19.** Considering overall, the writ petition stands dismissed. No order as to costs.

**20.** Rule stands discharged.

**[KISHORE C. SANT, J.]**

PRW