

[2019] 9 S.C.R. 181

M/S HANDE WAVARE & CO.

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v.

RAMCHANDRA VITTHAL DONGRE & ORS.

(Civil Appeal No. 5350 of 2019)

JULY 10, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963– ss.43, 52B – Government of Maharashtra decided to shift the wholesale fruit and vegetable market situated in Crawford Market to Vashi, Navi Mumbai to reduce the congestion – Agricultural Produce Market Committee (APMC- respondent no.5) constructed two types of galas/shops, small galas and big galas – Committee appointed to suggest the norms to allot the galas/shops– Dispute pertains to the allotment of large gala/ shop no.F-158 in lottery conducted by APMC– Appellant selected in the lottery for allotment of the said gala – Decision to conduct lottery challenged by respondent no.1 before respondent no.6 – Allotment by lottery to the appellant set aside – Order of respondent no.6 set aside and the decision of APMC drawing the lottery and allotting the said gala to the appellant was confirmed – Respondent No.2 filed writ petition – Allowed by High Court while directing APMC to allot the said gala in his favour – On appeal, held: As per the norms, no trader who has not paid the booking amount can get large gala or part thereof or more than one small gala – Respondent no.2 himself neither made the application before the cut-off date nor paid the booking amount – Amount paid by father of respondent no.2 was sought to be transferred to respondent no.2 – Transfer of amount by a person who booked the gala to another person is not permissible as per the norms fixed by the Committee – Respondent No.2 cannot claim allotment of Gala No.F-158 dehors the norms fixed by the Committee which were directed to be strictly followed by the High Court – Neither respondent no.1 nor respondent no.2 are eligible to claim allotment of large gala – Appellant having paid the market fee of Rs.9844.10 in the time frame of 1985-86 to 1994-95 which is less by Rs.155.90 to the required norm of Rs.10,000/-, falls under the category of “marginally falls

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- A *short of the norms” and is entitled to make claim for the large gala – Findings of the High Court that one ‘GS’, who was not considered eligible to participate in the lottery, is not eligible to claim large gala set aside – Directions issued – Constitution of India – Art.14.*

Constitution of India – Art.14 – Enforcement of, in negative manner – Held: Not permissible – If any illegality or irregularity has been committed in favour of any individual or group of individual or wrong order has been passed by a forum, the same illegality or irregularity cannot be perpetuated on the ground of discrimination or hardship.

C **Disposing of the appeals, the Court**

- HELD: 1.1 Claim of respondent No.2- Respondent No.2 himself did not make any application for booking of any gala nor did he pay any amount for booking the gala. As per the norms suggested by Daud Committee, there was no scope of transfer of booking of gala and the booking amount from one person to another. In the impugned judgment, the High Court held that the right of respondent No.2 to get large gala has been crystallised by the order dated 24.09.2002 of Director of Agricultural Marketing and when the large Gala No.F-158 became available, APMC ought to have allotted the same to respondent No.2. As per the norms, no trader who has not paid the booking amount can get a large gala or part thereof or more than one small gala. Transfer of amount by a person who booked the gala to another person is not permissible as per the norms fixed by Daud Committee. Merely because, in other cases, gala booked in the name of one person is transferred in the name of another person, it cannot be the reason to adopt the same irregularity in the case of the second respondent also. If any illegality or irregularity has been committed in favour of any individual or group of individual or wrong order has been passed by a forum, the same illegality or irregularity cannot be perpetuated on the ground of discrimination or hardship. Merely because, in few other cases, gala booked in the name of one person was transferred in the name of other persons in deviation from the norms fixed by Daud Committee, the Director, Marketing was not right in holding that**

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the second respondent is entitled for allotment of large gala by transfer of booking of large gala from his father-Farhatullah Haji Barkatullah to his name. Father of respondent No.2 though paid the booking amount of Rs.1,32,000/-, he has not paid the requisite cess amount to be eligible for the third large gala. Where report of the Daud Committee specifically fixed the norms for the traders who have paid the booking amount and traders who have not paid the booking amount distinctly, the norms cannot be compromised or diluted by allowing the traders to get the booking amount of one trader be transferred to another thereby, enabling him to claim allotment of gala which he otherwise, would not have entitled to. Respondent No.2 cannot make a claim for allotment of Gala No.F-158 dehors the norms fixed by Daud Committee or otherwise, it would amount to diluting the norms fixed by Daud Committee which has been directed to be strictly followed by the High Court *vide* its order dated 07.05.1999 in W.P. No.2556 of 1999. The order dated 24.09.2002 passed by the Director of Agricultural Marketing is contrary to the norms fixed by Daud Committee. The order of the High Court holding that respondent No.2 is entitled to large gala cannot be sustained and is liable to be set aside *qua* respondent No.2. [Paras 23, 26, 27-29, 32] [196-H; 197-A, E; 198-G; 199-C-H; 200-A-D; 201-E-F]

1.2 Claim of Appellant– During the period between 1985-86 to 1994-95, the appellant had paid an amount of Rs.9844.10 towards cess/market fee and Rs.34,000/- towards booking a gala. The cess/market fee paid by the appellant was less by Rs.155.90 to the required norm of Rs.10,000/-. The market fee of Rs.9844.10 paid by the appellant was in the time frame of 1985-86 to 1994-95 and thus the appellant had not fulfilled the norms as per the Daud Committee report and thus the appellant is falling under the category of “*marginally falls short of the norms.*” The appellant placed reliance on the order of the High Court dated 07.05.1999 passed by the High Court in W.P. No.2556 of 1999 whereby the Division Bench has directed APMC to make allotment strictly by adhering to the norms laid down by the learned Commissioner. In WP No.2556/1999, the High Court further directed that if any gala remains vacant after allotment in accordance with the norms, it will be open to APMC to allot to those who “*marginally falls*

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- A *short of the norms*" that have been laid down. The appellant having paid the market fee of Rs.9844.10 in the time frame of 1985-86 to 1994-95 which is less by Rs.155.90 falls under the category of "*marginally falls short of the norms*" and is entitled to make a claim for the large gala. Without considering the rival contentions of the parties, the High Court was not right in holding that respondent No.2 alone was entitled for the allotment of large Gala No.F-158. [Paras 33, 34] [202-C-G]

1.3 Claim of 'GSS': 'GSS' was allotted a small Gala No.M-748 in 1999. The amount of Rs.3,000/- paid by him to the Traders Association transferred to APMC in 2003, be it for lease premium

- C or booking amount, the fact remains that he had paid only Rs.32,725/- before the cut-off date for taking the gala. Though, he was allotted small gala, the same can be taken into account for holding that he falls within the category of "*marginally falls short of the norms*" and is entitled to claim large gala. The findings of
- D the High Court that he is not eligible to claim large gala is not sustainable and the is set aside. [Paras 35, 40] [202-G; 205-F-G]

1.4 M/s 'RVD': M/s 'RVD' is a registered partnership firm consisting of two partners. Both the partners obtained licences in their individual capacities. There are no norms suggested by

- E Daud Committee making a partnership firm separately eligible for allotment of a Gala on the basis of the licence issued in the name of the individual partner, the amount paid by said individual partner towards booking of the Gala, payment of cess made by such individual partner, etc. In the absence of specific norms for the partnership firms, the norms framed for individual traders
- F are applicable for the partnership firms. When the firm was registered in the year 2014 and it has not complied with any of the norms fixed by Daud Committee, the firm cannot seek for the allotment of any gala, much less a large gala. Considering the submissions of both the parties, in the impugned judgment, the
- G High Court rightly held that the partnership firm consisting of 'RVD' and 'GVL' is not separately entitled for allotment of any separate Gala. The partnership firm was registered only in the year 2014 and the firm was neither in existence nor carried on any business prior to cut off date. The High Court rightly rejected

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the contention that the registration would relate back to the date of execution of the partnership deed in the year 1987. The High Court rightly rejected the plea that the firm was eligible to apply for allotment of large Gala No.F-158. [Paras 41, 47 and 48] [206-B; 208-B-D; 209-A-C]

1.5 In view of the concurrent finding of Director of Agricultural Marketing dated 04.06.2014 and the findings of the High Court in the impugned judgment that M/s RVD is not eligible to claim large gala, nothing survives for consideration in W.P.No.234 of 2004 pending before the High Court of Bombay. In the light of affirming the view taken by the High Court that the firm M/s RVD is not eligible to claim allotment of large gala, the High Court shall dispose of the said writ petition W.P.No.234 of 2004 by passing appropriate orders. Respondent No.1 and respondent No.2 are not eligible to claim allotment of large gala and the judgment of the High Court is liable to be set aside. The appellants and 'GS' (who are marginally short of the norms) are eligible to claim allotment of large gala along with others. [Paras 49-51] [209-E-H]

1.6 Since there is huge competition for the large gala, instead of adopting the lottery method, after fixing the market value in order to fetch more revenue for APMC, offers should be invited in sealed covers. In order to attract better offers, it is appropriate that appellant should vacate the large Gala No.F-158 at the earliest. The counsel appearing for APMC has stated that the small Gala No.M-821 earlier allotted to the appellant is still vacant. APMC shall forthwith pass an order for re-allotting the said small sized Gala No.M-821 to the appellant and the appellant shall vacate the large Gala No.F-158 before the end of September, 2019. Considering the fact that APMC itself has fixed the market value of large Gala No.F-158 at Rs.55,00,000/- in the year 2013-14, it is deemed appropriate to fix the upset value at Rs.55,00,000/-. The four eligible claimants shall quote their offers in a sealed cover and accordingly, the large Gala No.F-158 be allotted to the one who is quoting the highest price. The impugned judgment of the High Court is set aside. Following directions issued- (i) Respondent No.2 is not entitled to claim allotment of large gala and findings of the High Court qua respondent No.2 is set aside;

- A (ii) The findings of the High Court that the firm-'RVD' is not entitled to claim allotment of large gala is affirmed; (iii) The possession of small Gala No.M-821 shall be restored back to the appellant and it shall vacate the large Gala No.F-158 on or before 30.09.2019. The amount of Rs.27,69,500/- deposited by the appellant towards the large gala No.F-158 shall be refunded to him by APMC immediately within two weeks from the date of his vacating; (iv) The upset value of large Gala No.F-158 shall be fixed at Rs.55,00,000/- as fixed by the Director of Agricultural Marketing, APMC and the same shall be notified by APMC by the end of October, 2019. The four eligible claimants shall quote their offers for the large gala and shall submit sealed tenders to APMC on or before 15.11.2019. The sealed tenders are to be opened by APMC in the presence of a higher level officer preferably, the Joint Director of Marketing and in the presence of all the four claimants or their representatives on 22.11.2019; and (v) The large Gala No.F-158 shall be allotted to the claimant who has quoted the highest price. Payment of the amount for allotment of large gala by the successful allottee shall be paid as per the rules of APMC.[Paras 52-54] [210-D-H; 211-A-F]

State of Bihar v. Upendra Narayan Singh and Others
(2009) 5 SCC 65 : [2009] 4 SCR 866 – relied on.

- E *Hanumant Murlidhar Gavade v. Mumbai Agricultural Produce Market and Others* (2012) 1 SCC 729 : [2011] 16 SCR 229; *M. Meenakshi and Others v. Metadin Agarwal (Dead) by LRs. and Others* (2006) 7 SCC 470: [2006] 5 Suppl. SCR 505 ; *Anita International v. Tungabhadra Sugar Works Mazdoor Sangh and Others* (2016) 9 SCC 44 : [2016] 6 SCR 635 – referred to.

Case Law Reference

	[2011] 16 SCR 229	referred to	Para 1
G	[2009] 4 SCR 866	relied on	Para 28
	[2006] 5 Suppl. SCR 505	referred to	Para 30
	[2016] 6 SCR 635	referred to	Para 31

CIVIL APPELLATE JURISDICTION: Civil Appeal No 5350 of A
2019

From the Judgment and Order dated 21.11.2018 and 07.12.2018 of the High Court of Judicature at Bombay in Writ Petition No. 10328 of 2014

With B

Civil Appeal Nos. 5351, 5352, 5353-5354, 5355-5359 of 2019.

Vinay Navare, Sr. Adv., Uday B. Dube, Ms. Gwen Karthika, Ravindra Sadanand Chingale, Sandeep Sudhakar Deshmukh, Vishwajeet M., Amol Nirmalkumar Suryawanshi, Anoop Kandari, Nishant Ramakantrao Katneshwarkar, Rakesh K. Sharma, Nishant, Parthiv K. Goswami, Ms. Diksha Rai, Palak Mahajan, Ishan Bisht, Sandeep Sudhakar Deshmukh, Advs. for the appearing parties.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted. D

2. These appeals arise out of the judgment dated 21.11.2018 passed by the High Court of Bombay in WP No.8959 of 2014 and batch of writ petitions in and by which the High Court held that only the second respondent is eligible for the allotment of large gala and directed the appellant-M/s Hande Wavare & Co. to vacate the large Gala No.F-158 in the Mumbai Agricultural Produce Marketing Committee, Vashi and further directing the Mumbai Agricultural Produce Marketing Committee to hand over the said gala to respondent No.2-Habibullah Farhatullah. E

3. The dispute pertains to the allotment of large Gala/shop No.F-158 in a lottery conducted by respondent No.5-Mumbai Agricultural Produce Market Committee (APMC) on 25.09.2013. The brief facts giving rise to these appeals are that the Government of Maharashtra decided to shift the wholesale fruit and vegetable market situated in Crawford Market to Vashi, Navi Mumbai in order to reduce the congestion. With a view to facilitate traders dealing in wholesale trading of fruit, APMC has constructed two types of galas/shops viz. small galas admeasuring 300 sq. ft. (200 sq. ft. + 100 sq. ft. loft) and large galas admeasuring 450 sq. ft. (300 sq. ft. + 150 sq. ft. loft) each. On 26.04.1998, the High Court of Bombay appointed Justice S.M. Daud, former Judge of the High Court as the Court Commissioner to suggest the norms to F

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- A allot the galas/shops in the newly constructed wholesale market at Vashi to the traders so shifted. Learned Commissioner submitted three reports stipulating norms for eligibility for two-time frames which were accepted by the High Court. The first-time frame was 1985-86 to 1994-95 and second time frame was of 1991-92 to 1994-95. For proper appreciation of the contention regarding fulfilment of norms or otherwise, we have referred to the relevant portion of the report of the Commissioner as to the norms for entitlement of gala.

- 4. In the case of *Hanumant Murlidhar Gavade v. Mumbai Agricultural Produce Market and Others*(2012) 1 SCC 729, the Supreme Court had cancelled the allotment of the large gala bearing No.F-158 which was allotted in favour of Hanumant Murlidhar Gavade as he was found not eligible for the large gala having made short payment of cess and APMC was directed to allot only a small gala to Hanumant Murlidhar Gavade. Consequently large gala bearing No.F-158 became vacant. Several claimants made claims for the allotment of the said large gala/shop. The first respondent-a partnership firm by name M/s Ramchandra Vitthal Dongre approached the High Court in a Civil Application No.13 of 2012 in WP No.234 of 2004 for an early hearing seeking allotment of the said large gala. The High Court *vide* its order dated 07.01.2013 disposed of the application acceding to the submissions of the Agricultural Produce Market Committee-APMC that apart from the applicant therein there are four other claimants and directed APMC to scrutinize the claim of all eligible claimants for the allotment of Gala No.F-158.

- 5. Pursuant to the order of the High Court dated 07.01.2013, a meeting was convened by the Board of Directors of APMC on 07.03.2013 to conduct a lottery for allotment of Gala No.F-158 amongst five traders viz. (i) M/s Ramchandra Vitthal Dongre-respondent No.1; (ii) Shri Habibullah Farhatullah-respondent No.2; (iii) M/s Bhalchandra Chintaman Lele (Shri Kedar Keshav Lele)-respondent No.3; (iv) Shri Ashok Dhondiba Punde-respondent No.4; and (v) M/s. Hande Wavare and Company (Shri Kashinath Wavare)-appellant. On 26.08.2013, notices were issued to all the said five claimants with direction to participate in the lottery proposed to be drawn on 19.09.2013. Out of the five claimants who were allowed to participate in the lottery, only four claimants participated in the said lottery drawn by APMC. Respondent No.1-M/s Ramchandra V. Dongre participated in the said lottery system under H

protest. Habibullah Farhatullah-respondent No.2 refused to participate in the lottery. The appellant-M/s. Hande Wavare and Company was selected in the said lottery for allotment of the said Gala No.F-158 and its value was fixed at Rs.28,77,000/- as per Government ready reckoner and was directed to pay Rs.27,69,500/- as consideration within one month for allotment of said gala by deducting the amount of Rs.1,07,500/- initially deposited by the appellant for the purpose of allotment of one small gala and APMC asked the appellant to return the small gala allotted to him back to APMC. The appellant M/s Hande Wavare & Co. deposited the amount of Rs.27,69,500/- to APMC on 07.01.2014. The appellant also surrendered its small gala to APMC.

6. The decision to conduct lottery was thereafter challenged by the firm M/s Ramchandra Vitthal Dongre under Section 52B of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 before respondent No.6-Director of Agricultural Marketing. Respondent No.6 *vide* its order dated 04.06.2014 partly allowed the appeal filed by Ramachandra V. Dongre and set aside the allotment by lottery to appellant M/s Hande Wavare & Co. and directed APMC to allot said gala by inviting bids from five claimants in a sealed cover. Director, Marketing observed that the allotment of the large gala to the appellant by way of a lottery by reducing the price of the said gala from Rs.55,00,000/- as initially fixed value as per government rate to Rs.28,77,000/- was not proper. The Director of Agricultural Marketing further observed that APMC should have considered the market rate and the value of the said gala from the government approved valuer and should have called for sealed tenders from five claimants and ought to have allotted the said gala to the claimant who is paying the maximum value. The Director held that APMC has not followed the statutory system and erred by allotting gala by lottery system to M/s Hande Wavare and Co. thereby causing financial loss to the APMC and thus, set aside the allotment of large gala to the appellant.

7. Aggrieved by the cancellation of allotment, appellant Kashinath Wavare filed a Revision Application No.28 of 2014 under Section 43 of MAPMC Act before the State Government. Challenging the said order of Director of Agricultural Marketing, respondent No.1 also filed revision in Revision Petition No.27 of 2014 under Section 52B of MAPMC Act before the State Government. The Hon'ble Minister for Co-operation, Marketing and Textile-respondent No.7 *vide* his order dated 12.09.2014

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- A allowed the revision petition filed by Kashinath Wavare and dismissed the revision petition filed by respondent No.1-Ramachandra Vitthal Dongre and set aside the order of respondent No.6-Director of Agricultural Marketing and confirmed the decision of APMC drawing the lottery and allotting the said gala to the appellant M/s. Hande Wavare & Co. The Hon'ble Minister observed that there was not only a single party but there were five claimants who were eligible for the allotment of Gala No.F-158 and upheld the process of allotment undertaken by APMC by confirming the decision of the Board of Directors to draw the lottery and determining the price of the Gala at Rs.28,77,000/- instead of its market value of Rs.55 lakhs.
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- C 8. Aggrieved by the order of APMC and the order of Minister, M/s Ramchandra Vitthal Dongre filed W.P. Nos.8959 and 8975 of 2014 before the High Court and respondent No.2-Habibullah Farhatullah filed W.P. No.10328 of 2014. Challenging the allotment of large gala to the appellant and also challenging the lottery method adopted by APMC,
- D Ganpat Shinde who was not considered eligible to participate in the lottery filed W.P. No.2090 of 2015 before the High Court. The appellant Kashinath M. Wavare filed W.P.(ST) No.35978 of 2017 against the order of the Director of Marketing dated 29.04.2015.
- E 9. The High Court heard all the writ petitions together and considered the claim of the claimants for allotment of large gala. By the common judgment dated 21.11.2018 allowed WP(C) No.10328/2014 filed by respondent No.2-Habibullah Farhatullah directing the APMC to allot the said gala in his favour. The High Court held that respondent No.2-Habibullah fulfilled all the eligibility criteria formulated by Justice Daud Committee. The High Court held that once the large Gala No.F-158 became available by virtue of the judgment passed in *Hanumant Murlidhar Gavade*, respondent No.2 ought to have been allotted the large Gala in compliance with the order dated 24.09.2002 passed by the Director of Agricultural Marketing in Appeal No.34/2002 which was filed by respondent No.2. The High Court set aside the order passed by
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- G the Hon'ble Minister for Co-operation, Marketing and Textile by observing that "APMC thus could not have drawn lottery to consider the claim of other four claimants under the guise of implementing the order dated 07.05.1999 passed by the Division Bench in WP(C) No.2556/1999 in the case of *Shantaram Y. Bhagat v. The Mumbai Agricultural Produce Market Committee and another*". Aggrieved, the appellant-M/s. Hande
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Wavare and Co. has filed appeal before the Supreme Court. The Supreme Court *vide* its order dated 11.01.2019 issued notice and directed the parties to maintain status quo.

10. Mr. Uday B. Dube, learned counsel appearing for the appellant submitted that APMC is having only one large Gala No.F-158 vacant for which claim is made by traders like appellant, who otherwise fulfil the guidelines fixed by Daud Committee but were "*marginally fall short of the norms*". It was submitted that as per the order of the High Court dated 07.05.1999 in W.P.No.2556 of 1999, Board of Directors of APMC has rightly taken the decision to conduct lottery amongst the eligible claimants and the same ought not to have been set aside by the Appellate Authority-Director of Agricultural Marketing and the High Court. The learned counsel further submitted that respondent No.2-Habibullah Farhatullah has not booked the gala in his name nor paid the amount and is not entitled for allotment of a large gala as he has not paid the amount for booking the gala.

11. It was submitted that Farhatullah Haji Barkatullah-father of respondent No.2- had initially deposited the amount seeking allotment for three galas and after allotment of two large galas by APMC, instead of taking refund of the amount deposited for the third gala, father of respondent No.2 requested APMC to transfer the said amount deposited by him in the account of his son-respondent No.2. It was contended that the High Court ought to have independently considered the claim of respondent No.2 and recorded a finding regarding the eligibility of respondent No.2-Habibullah Farhatullah to get a large gala on merits instead of relying upon the technical ground raised by respondent No.2 that APMC did not challenge the order passed by the Director of Agricultural Marketing dated 24.09.2002. The learned counsel further submitted that the rights of the third parties i.e. the rights of the appellant and others cannot be decided on the ground of non-challenge by APMC especially when it was demonstrated by the appellant as to how respondent No.2 was not entitled for any large gala. It was urged that the appellant and other claimants were not parties before the Director of Agricultural Marketing and hence, the said order dated 24.09.2002 cannot be said to be binding on the appellant and other traders.

12. Mr. Sandeep Sudhakar Deshmukh, learned counsel appearing for respondent No.1-M/s Ramchandra Vitthal Dongre reiterated that

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- A the eligibility of partnership firm of the M/s Ramchandra Vitthal Dongre had never been an issue and respondent No.1-firm has all along been fighting for allotment of second large gala and the eligibility of which, was never disputed in other proceedings. The learned counsel submitted that the norms fixed by Daud Committee do not expressly prohibit the claim of respondent No.1-firm and the High Court erred in saying that the firm M/s Ramachandra Dongre is not eligible to claim allotment of large gala.
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13. Mr. Vinay Navare, learned senior counsel appearing on behalf of the appellant Ganpat Sabaji Shinde in SLP(C) Nos.4927-31 of 2019

- C submitted that Ganpat Sabaji Shinde has deposited an amount of Rs.35,725/- with APMC during the period between 1987-1991 for allotment of large gala which amount was more than Rs.34,000/- as per norms. It was submitted that though APMC claims that an amount of Rs.32,725/- has been made by him, further amount of Rs.3,000/- has been paid by him to the trader's association which was transferred to
- D APMC and, therefore, Ganpat Sabaji Shinde satisfies the norms fixed by Daud Committee and APMC erred in excluding Ganpat Sabaji Shinde from making a claim to the large Gala No.F-158.

14. Mr. Huzefa Ahmadi, learned senior counsel appearing on behalf of respondent No.2 submitted that Director of Agricultural Marketing

- E *vide* its order dated 24.09.2002 allowed the transfer of the booking amount in the name of father of respondent No.2 to his name thereby, entitling him for a large gala. It was further submitted that the order dated 24.09.2002 has not been challenged and binding on APMC and, therefore, the High Court rightly held that the right of respondent No.2 has been crystallised and, therefore, respondent No.2 was the only eligible claimant for allotment of the large Gala No.F-158. The learned senior counsel further submitted that in view of eligibility of respondent No.2 for large gala, APMC could not have considered the case of other claimants under the alleged category of "marginally falling short". It was submitted that taking note of inconsistent stand taken by APMC in various proceedings,
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- G the High Court rightly set aside the order of the Hon'ble Minister and directed allotment of large Gala No.F-158 to respondent No.2.

15. Taking us through the materials, Mr. Rakesh K. Sharma, learned counsel for respondent No.5-APMC submitted that respondent No.2-

- H Habibulla Farhatullah did not pay any booking amount and under the norms suggested by Daud Committee, there was no scope for transfer

of booking of one claimant to the name of any other person and the order dated 24.09.2002 passed by the Director of Agricultural Marketing in the appeal filed by the respondent No.2 is contrary to the norms fixed by Daud Committee and the orders passed by the High Court and the Supreme Court. It was urged that respondent No.2 himself did not pay any booking amount and therefore, the question of allotting any large gala to respondent No.2 did not arise. It was also contended that respondent No.2—Habibullah Farhatullah did not participate in the lottery on the pretext that he had the order dated 24.09.2002 in his favour passed by Director of Agricultural Marketing. The learned counsel further submitted that since there were more than one claimants, Board of Directors of APMC had taken the decision to conduct lottery amongst the claimants who were "*marginally fall short of the norms*" in compliance with the norms fixed by Daud Committee and the Hon'ble Minister rightly affirmed the same. It was submitted that by placing reliance upon the order dated 24.09.2002 passed by the Director, the High Court erred in holding that respondent No.2 is eligible for allotment of large gala and the impugned order is liable to be set aside.

16. Upon consideration of the submissions and impugned judgment and other materials on record, the following points arise for determination in these appeals:-

- (i) When respondent No.2—Habibullah Farhatullah himself has not booked the large gala before the cut-off date nor paid the booking amount, whether the High Court was right in saying that only second respondent is entitled for allotment of large gala by getting the transfer of the booking amount from his father to his name?
- (ii) Dehors the norms fixed by Daud Committee, whether the High Court was right in placing reliance only upon the order of Director, Marketing dated 24.09.2002 to hold that the second respondent is entitled for allotment of large gala?
- (iii) Whether the High Court was right in saying that APMC could not have considered the case of other claimants under the category of "*marginally fall short of the norms*" and that drawing of lottery was without jurisdiction?

17. **Norms laid down by Justice Daud Committee:-** In the year 1987-88, APMC had decided to shift all the subsidiary market of fruits and vegetables from Mumbai to Vashi, Navi Mumbai. In the year

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- A 1995, the construction of the said market was completed. In view of the dispute between traders in respect of the allotment of galas/shops, several petitions came to be filed before the High Court. On 26.04.1998, the High Court appointed Shri Justice S.M. Daud as a Court Commissioner to suggest the norms to allot the galas/shops in the newly constructed wholesale market at Vashi. The learned Commissioner submitted three reports which were accepted by the High Court. As pointed out earlier, the said new wholesale Fruit Market had total number of 1029 galas. Out of 1029 galas, 732 being the large galas each measuring 450 sq.ft. and 297 small galas each measuring 300 sq.ft. The Daud Committee provided for eligibility for two-time frames. The first-time frame was
- B 1985-86 to 1994-95 and the second time frame was of 1991-92 to 1994-95.
- C 1985-86 to 1994-95 and the second time frame was of 1991-92 to 1994-95.

18. What is relevant for these appeals is the norms fixed by learned Commissioner for "*Fruit Market*" which has 1029 galas viz. 732 large galas and 297 small galas. As earlier mentioned, the learned Commissioner

- D submitted three reports *inter-alia* stipulating the norms for allotment of galas/shops in the newly constructed wholesale market. The first time frame was 1985-86 to 1994-95 and the second time frame was of 1991-92 to 1994-95. No one would get more than three large galas and for retaining the third, the claimant would have to pay the market price within ninety days of the acceptance of the norms by the High Court.

19. First time frame was from 1985-86 to 1994-95. For those who came into the business from 1991-92 to 1994-95 had booked the galas up to 31.12.1993, the second time frame 1991-92 to 1994-95 was made applicable. The relevant recommendations of the Committee read as under:-

- F **"Time frame 1985-86 to 1994-95. Booking effected.**
The claimant has to establish doing of five years business as reflected in payment of market fee irrespective of quantum thereof. He must further show that he held an APMC licence for at least two years in the above ten years period as also that he did business in one of the years 1995-96 or 1996-97 – this again to be established by proof of cess paid. The cess – space nexus will be as under:-
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	Total Cess Paid	Entitlement
1.	Rs.1,500/- to Rs.5,000/-	Half small gala
2.	Rs.5,001/- to Rs.10,000/-	1 small gala
3.	Rs.10,001/- to Rs.15,000/-	Half large gala
4.	Rs.15,001/- to Rs.90,000/-	1 large gala
5.	Rs.90,001/- to Rs.3,00,000/-	2 large galas
6.	Above Rs.3,00,000/-	3 large galas

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No one to get more than three large galas and for retaining the third, the person retaining, will have to pay the market price within ninety days of the acceptance of the norm by the High Court.

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The next category is of those who have booked galas up to 31.12.1993 and have come into the business from 1991-92 to 1994-95. For them the time frame will be 1991-92 to 1994-95. The eligible in this category will be those who have held APMC licences for at least three years, have done business for three years as reflected in the payment of market fee irrespective of quantum and also show that they were doing business in 1995-96 or 1996-97 by proof of having paid market fee about having done business either in 1995-96 or 1996-97. The cess-space nexus will be thus:-

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	Total Cess Paid	Entitlement
1.	Rs.2,500/- to Rs.7,500/-	Half small gala
2.	Rs.7,501/- to Rs.25,000/-	1 small gala
3.	Above Rs.25,000/-	1 large gala

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20. The High Court *vide* its order dated 07.05.1999 in Writ Petition No.2556 of 1999 directed APMC to make allotment strictly by adhering to the norms laid down by Daud Committee. In the said order, the High Court further issued directions that in case any galas remaining in balance after allotment in accordance with norms, APMC to allot the same to those who “marginally fall short of the norms” that have been laid down. The said order of the High Court reads as under:-

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“1. Pursuant to the orders passed by this Court Justice Daud was appointed for laying down norms for the purpose of allotment of Galas in the Agricultural Produce market Committee’s market at

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- A Vashi, New Bombay, Justice Daud has accordingly passed his awards laying down the norms. APMC is directed to make allotment strictly by adhering to the norms laid down by Justice Daud. If any Galas remain in balance after allotment in accordance with the norms it will be open to the APMC to allot the same to those who marginally fall short of the norms that have been laid down. The orders of allotment as also the orders refusing allotment will be treated as orders having been passed under the Maharashtra Agriculture Produce Marketing (Regulation) Act, 1963 and the same will be appealable under Section 52B of the Act. It goes without saying that the orders granting or refusing to allot galas will be supported by reasons.” **[underlining added]**
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In *Hanumant Murlidhar*, the Supreme Court has also reiterated that the allotment should be strictly in accordance with the norms fixed by Daud Committee.

- D 21. As pointed out earlier, after decision in *Hanumant Murlidhar*, large Gala No.F-158 had fallen vacant. Stand of APMC is that as per the meeting of Board of Directors held on 07.03.2013, it was *inter-alia* resolved that allotment of Gala No.F-158 be done amongst the five eligible claimants viz. (i) M/s Ramchandra V. Dongre; (ii) Mr. Habibullah Farhahtullah; (iii) M/s Bhalchandra Chintaman Lele (Mr. Kedar Keshav Lele); (iv) Mr. Ashok Dhondiba Punde; and (v) M/s Hande Wavare & Co. by drawing lottery. In the decision taken by the Board of Directors in its meeting held on 26.04.2013, allotment of the said gala by drawing lottery was confirmed. As discussed earlier, allotment of Gala No.F-158 to the appellant-M/s Hande Wavare & Co. has led to the series of litigations.
- E
- F 22. In the above facts and circumstances, it is to be considered whether the High Court was right in holding that respondent No.2-Habibullah Farhatullah is entitled for allotment of large gala without making booking of large gala before 31.12.1993 and by getting transferred booking amount of his father in his name after acceptance of new norms by the High Court.
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23. Claim of respondent No.2-Habibullah Farhatullah:-
Respondent No.2-Habibullah applied for licence in the year 1991-1992 in his own name and obtained licence in the year 1992. Admittedly,

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respondent No.2 does not fall within the first-time frame 1985-86 to 1994-95. Respondent No.2 himself did not pay any amount for booking of gala. On 04.01.1999, father of respondent No.2- Farhatullah Haji Barkatullah paid an amount of Rs.1,32,000/- as booking amount for three large galas. As per norms fixed by the learned Commissioner for allotment of three large galas, total cess payable is above Rs.3,00,000/-. Since father of respondent No.2 paid amount less than Rs.3,00,000/-, he was allotted only two large galas. In his letter dated 23.03.1999, father of respondent No.2 stated that he had paid Rs.1,32,000/- for booking of two large galas initially and that his son Habibullah started the business of fruits trade since 1991-1992 and that he asked for booking of one large gala in the name of his son viz. respondent No.2. However, APMC did not accept the booking in the name of his son and therefore, Farhatullah Haji Barkatullah- father of respondent No.2 booked the third gala in his own name. In the said letter, father of respondent No.2 has also stated that the third gala booked in his name i.e. in the name of father of respondent No.2 may be transferred to his son-respondent No.2 and also the remaining amount be transferred to his son-respondent No.2 and that he may be allotted a large gala. Be it noted, respondent No.2 himself did not make any application for booking of any gala nor did he pay any amount for booking the gala. It is also pertinent to note that as per the norms suggested by Daud Committee, there was no scope of transfer of booking of gala and the booking amount from one person to another.

24. In the application for allotment of large gala on 26.04.1999, respondent No.2 was allotted a small Gala No.M-775 by APMC which was not accepted by respondent No.2. Another application filed by respondent No.2 for allotment of large gala was rejected on 02.05.2001 against which respondent No.2 filed an Appeal No.34/2002 before the Director of Agricultural Marketing. APMC opposed the claim of respondent No.2 contending that respondent No.2 did not pay any booking amount in his name or in the name of others and therefore, the question of allotment of any large gala to him did not arise. APMC also took the stand that as per the norms fixed by the learned Commissioner, there was no scope of transfer of booking of gala and the booking amount from one person to another. By the order dated 24.09.2002, Director of Agricultural Marketing allowed the appeal preferred by respondent No.2 and directed APMC to allot large gala to him by pointing out that in

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- A fourteen other cases, booking of galas made by one person were transferred to other persons.

25. While allowing the Appeal No.34/2002 filed by respondent No.2 (order dated 24.09.2002), the Director of Agricultural Marketing called for report from the Joint Director of Marketing to ascertain

- B whether there were other cases of allowing transfer of booking from one person's name to the other in allotting the galas in the name of transferee. By referring to the report of the Joint Director of Marketing and observing that APMC in fourteen cases has allowed the transfer of the booking of the galas in the name of others and allotted the galas to such transferees, in Appeal No.34/2002, Director of Agricultural Marketing observed as under:-

D “From the report of Shri Kokare, it is clear that in 14 cases which are on record the booking was done in the names of some other persons and the Respondent has allowed the transfer of the bookings of the galas in the name of others and further allotted the galas to such transferees. This has not been denied by the Respondent Market Committee. Considering the fact that the Market Committee has allowed transfers in large number of cases, there is no justification for not allowing transfer of the booking in the name of the Appellant where the booking was in the name of

- E his father and the transfer was requested in the name of the son i.e. present Appellant..... This is a glaring case of injustice by the Respondent committee against the Appellant. In view of this, it would be in the interest of justice to allow the appeal of the Appellant and give directions to the agricultural Produce Market Committee, Mumbai to allot one large gala to the Appellant.....”

G 26. In the impugned judgment, the High Court held that the right of respondent No.2 to get large gala has been crystallised by the above order dated 24.09.2002 of Director of Agricultural Marketing and when the large Gala No.F-158 became available, APMC ought to have allotted

- H the same to respondent No.2. The High Court held that APMC ought not to have drawn lottery to consider the claim of four other claimants who fall “marginally falls short of the norms” fixed by the Daud Committee under the guise of implementing the order dated 07.05.1999 passed by the Division Bench in Writ Petition No.2556 of 1999. The High Court mainly relied upon the order of Director of Agricultural

Marketing dated 24.09.2002 and observed that the said order has attained finality and is binding on APMC and thus directed APMC to allot large gala to respondent No.2 on first priority.

27. Respondent No.2 heavily relies upon the order of Director of Agricultural Marketing dated 24.09.2002 allowing the transfer of booking amount from the name of his father to his name and thereby entitling him for a large gala which was also accepted by the High Court. Before considering the effect of the order dated 24.09.2002, let us evaluate the eligibility of respondent No.2-Habibullah as per the norms laid down by Daud Committee. As per the norms, no trader who has not paid the booking amount can get a large gala or part thereof or more than one small gala. As pointed out earlier, Habibullah himself has neither made the application before the cut-off date nor paid the booking amount; the amount paid by father of respondent No.2 was sought to be transferred to respondent No.2. Transfer of amount by a person who booked the gala to another person is not permissible as per the norms fixed by Daud Committee.

28. As pointed out earlier, the Director, Marketing held that the second respondent is entitled for allotment of large gala mainly on the ground that in few other cases, gala booked in the name of one person has been transferred to another person. In the order dated 24.09.2002, the Director, Marketing has pointed out such instances where booking of gala in the name of one person has been transferred to other persons and observed that the second respondent cannot be discriminated. Merely because, in other cases, gala booked in the name of one person is transferred in the name of another person, it cannot be the reason to adopt the same irregularity in the case of the second respondent also. As held in *State of Bihar v. Upendra Narayan Singh and others(2009) 5 SCC 65*, Article 14 of the Constitution of India is a positive concept and it cannot be enforced by a citizen or a court in a negative manner. If any illegality or irregularity has been committed in favour of any individual or group of individual or wrong order has been passed by a forum, the same illegality or irregularity cannot be perpetuated on the ground of discrimination or hardship. Merely because, in few other cases, gala booked in the name of one person was transferred in the name of other persons in deviation from the norms fixed by Daud Committee, in our considered view, the Director, Marketing was not right in holding that the second respondent is entitled for allotment of large gala by transfer

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- A of booking of large gala from his father-Farhatullah Haji Barkatullah to his name.

29. Father of respondent No.2 though paid the booking amount of Rs.1,32,000/-, he has not paid the requisite cess amount to be eligible for the third large gala. Where report of the Daud Committee specifically

- B fixed the norms for the traders who have paid the booking amount and traders who have not paid the booking amount distinctly, the norms cannot be compromised or diluted by allowing the traders to get the booking amount of one trader be transferred to another thereby, enabling him to claim allotment of gala which he otherwise, would not have entitled to.
C The High Court, in our view, did not keep in view that respondent No.2 had neither booked the gala before the cut-off date nor paid the amount and the High Court proceeded hold as to the entitlement of respondent No.2 mainly on the basis of the order dated 24.09.2002. Respondent No.2 cannot make a claim for allotment of Gala No.F-158 dehors the norms fixed by Daud Committee or otherwise, it would amount to diluting
D the norms fixed by Daud Committee which has been directed to be strictly followed by the High Court *vide* its order dated 07.05.1999 in W.P. No.2556 of 1999.

30. The order of the Director of Agricultural Marketing in Appeal No.34/2002 has not been challenged by APMC. In this context, Mr.

- E Huzefa Ahmadi, learned senior counsel appearing for respondent No.2 submitted that the order dated 24.09.2002 has become final and the same is binding on APMC. Placing reliance upon *M. Meenakshi and Others v. Metadin Agarwal (Dead) by Lrs. and Others(2006) 7 SCC 470*, it was contended that unless the order passed by competent authority is challenged and declared as “not valid”, its correctness cannot be considered in collateral proceedings. In *M. Meenakshi*, it was held as under:-

- G “**18.** It is a well-settled principle of law that even a void order is required to be set aside by a competent court of law inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non est. An order cannot be declared to be void in a collateral proceeding and that too in the absence of the authorities who were the authors thereof. The orders passed by the authorities were not found to be wholly without jurisdiction. They were not, thus, nullities.”

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31. Placing reliance upon *Anita International v. Tungabadra Sugar Works Mazdoor Sangh and Others*(2016) 9 SCC 44, it was submitted that the order passed by the competent court/quasi-judicial authority like the Director of Agricultural Marketing has the force of law until the same is set aside by a court of competent jurisdiction.

32. There is no quarrel over the proposition laid down in the above decisions. But in the peculiar facts and circumstances of the present case, in our view, respondent No.2 cannot base his entitlement for allotment of large gala solely on the basis of the order dated 24.09.2002 of Director of Agricultural Marketing, dehors the norms fixed by Daud Committee which were directed to be strictly complied with by the High Court. In the order dated 07.05.1999 in W.P. No.2556 of 1999, when the High Court has directed APMC to make allotment of galas strictly by adhering to the norms laid down by Daud Committee, the order of Director of Agricultural Marketing dated 24.09.2002 cannot prevail over the order of the High Court. While so, the High Court, in our view, erred in holding that by the order of Director of Agricultural Marketing dated 24.09.2002, right of respondent No.2 to get large gala has been crystallised and that APMC ought to have allotted the same to respondent No.2 instead of conducting lottery amongst all the eligible claimants. The High Court erred in relying upon the above order of Director of Agricultural Marketing and directing APMC to allot the said large gala to respondent No.2 without keeping in view the norms fixed by the Daud Committee. The order dated 24.09.2002 passed by the Director of Agricultural Marketing is contrary to the norms fixed by Daud Committee. Dehors the norms fixed by Daud Committee which has been directed to be strictly complied with (vide order dated 07.05.1999 in WP No.2556/1999), respondent No.2 cannot claim entitlement for the large gala based on the said order and the order of the High Court holding that respondent No.2 is entitled to large gala cannot be sustained and is liable to be set aside qua respondent No.2.

33. **Claim of Appellant M/s Hande Wavare & Co. (Shri Kashinath Wavare):-** Let us now consider the eligibility of the appellant. As pointed out earlier, as per the resolution of the Board of Directors held on 07.03.2013, appellant M/s Hande Wavare & Co., respondent No.2-Habibullah Farhatullah and three others were the eligible claimants. Prior to the allotment in question, the appellant M/s Hande Wavare &

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- A Co. was allotted a small size Gala bearing No.M-821. As per the norms suggested by the learned Commissioner, the wholesale broker in fruit section who was falling in the time frame of 1985-86 to 1994-95 was entitled for large gala on fulfillment of the conditions viz. (i) He should have booked gala by paying booking amount upto Rs.34,000/- before closing date; (ii) He should hold licence issued by the APMC for at least two years between the year 1985-86 to 1994-95; (iii) He should have done business for at least five years between the years 1985-86 to 1994-96; (iv) He should have done business either in the year 1995-96 or 1996-97 by paying cess; and (v) For entitlement of large gala, he should have paid cess between Rs.10,001/- to Rs.90,000/- in the years 1985-86 to 1994-95. According to the appellant, he was satisfying all the conditions except condition No.5. During the period between 1985-86 to 1994-95, the appellant had paid an amount of Rs.9844.10 towards cess/market fee and Rs.34,000/- towards booking a gala. The cess/market fee paid by the appellant was less by Rs.155.90 to the required norm of Rs.10,000/-.
- B The market fee of Rs.9844.10 paid by the appellant was in the time frame of 1985-86 to 1994-95 and thus the appellant had not fulfilled the norms as per the Daud Committee report and thus the appellant is falling under the category of "*marginally falls short of the norms.*"
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34. The appellant placed reliance on the order of the High Court dated 07.05.1999 passed by the High Court in W.P. No.2556 of 1999 whereby the Division Bench has directed APMC to make allotment strictly by adhering to the norms laid down by the learned Commissioner. As pointed out earlier, in WP No.2556/1999, the High Court further directed that if any gala remains vacant after allotment in accordance with the norms, it will be open to APMC to allot to those who "*marginally falls short of the norms*" that have been laid down. The appellant having paid the market fee of Rs.9844.10 in the time frame of 1985-86 to 1994-95 which is less by Rs.155.90 falls under the category of "*marginally falls short of the norms*" and is entitled to make a claim for the large gala. In our view, without considering the rival contentions of the parties, the High Court was not right in holding that respondent No.2 alone was entitled for the allotment of large Gala No.F-158.

35. **Claim of Ganpat Sabaji Shinde:** Ganpat Sabaji Shinde has been allotted a small Gala No.M-748 in 1999. According to the appellant Ganpat Shinde, he had deposited an amount of Rs.32,725/- with APMC during the period between 1987 and 1991 for allotment of large gala. It

is in dispute between the parties whether the appellant Ganpat Shinde had deposited a sum of Rs.35,725/- or Rs.32,725/- prior to 31.12.1993 with APMC. Appellant Ganpat Shinde alleges that he has deposited Rs.32,725/- with APMC and he had paid an amount of Rs.3,000/- to the Trader's Association which according to him was transferred to APMC aggregating to the total of Rs.35,725/- which is more than the required amount of Rs.34,000/-. According to APMC, the records of APMC did not show any receipt of Rs.35,725/- before 31.12.1993. According to APMC, the amount of Rs.3,000/- paid by Ganpat Shinde to Traders Association was received by APMC only in the year 2003 and the same was adjusted towards the lease premium of small gala No.748 allotted. APMC rejected the claim of Ganpat Shinde by order dated 17.02.2010 which was challenged by Ganpat Shinde in Appeal No.14 of 2010 under Section 52B of APMC Act. By the order dated 09.11.2011, Director of Agricultural Marketing set aside the order dated 17.02.2010 and directed APMC to afford an opportunity of hearing to Ganpat Shinde and take appropriate decision on merits.

36. Mr. Vinay Navare, learned senior counsel appearing for appellant Ganpat Sabaji Shinde submitted that though appellant Ganpat Shinde sent various letters requesting for allotment of Gala No.F-158, the same was not considered and he was informed by APMC (letter dated 19.10.2013) that Gala No.F-158 has been allotted by lottery system and therefore, his request for allotment of large gala cannot be considered. On the other hand, by its order dated 26.11.2014, APMC agreed to allot small size Gala No.M-745 to Ganpat Shinde for value of Rs.25,50,000/- i.e. at the price determined by Government approved valuer. As per the decision of the Board of Directors in the meeting dated 28.02.2014, APMC resolved to allot small Gala No.M-745 to Ganpat Shinde. By the communication dated 26.11.2014, Ganpat Shinde was asked to pay Rs.19,66,517/- as per ready reckoner. Challenging the order of the Board of Directors and the order dated 26.11.2014, Ganpat Shinde filed Appeal No.2/2015 before the Director, Marketing. According to APMC, since Ganpat Shinde has not given his consent for allotment of additional small gala and to the resolution of the Board of Administrators held on 14.01.2015, it was resolved to cancel the allotment of small size Gala No.M-745 to Ganpat Shinde and the same was informed to Ganpat Shinde by letter dated 18.02.2015. Appellant Ganpat Shinde challenged the Board's resolution dated 14.01.2015 in Appeal No. 12 of 2015. Director

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- A of Marketing had taken up Appeal No.2 of 2015 and 12 of 2015 together and the appeals were allowed by order dated 29.04.2015 whereby the Director held that Ganpat Shinde is entitled for large gala. Challenging the order of the Director, Marketing dated 29.04.2015 holding Ganpat Shinde entitled for large gala, Kashinath Wavare filed writ petition in WP(Stamp) No.35978 of 2017. Contention of Ganpat Shinde is that Kashinath Wavare has no *locus standi* to challenge the order passed by the Director, Marketing and the eligibility of the appellant for large gala.
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37. Insofar as the case of Ganpat Shinde is concerned, the High Court held that "*there was a dispute between the parties whether the appellant had deposited a sum of Rs.35,725/- or Rs.32,725/- prior to 31.12.1993 with APMC*".

- C The High Court also observed that there was a dispute that out of Rs.35,725/-, a sum of Rs.3,000/- was adjusted towards the lease of Gala No.M-748 and therefore, the High Court rejected the claim of appellant Ganpat Shinde that he had deposited more than Rs.34,000/- towards the allotment of large gala prior to the
- D cut-off date. Though, appellant Ganpat Shinde claims that amount of Rs.35,725/- has been paid only for allotment of large gala, APMC claims that the same is not borne by record namely letter dated 03.07.2003 of APMC which reads as under:-

- E ".....Subject to terms and conditions of the Gala allotment, amount of Rs.35,725/- which you have been paid till date is transferred to Gala No.M-748."

- F 38. The High Court held that since Ganpat Shinde had paid only a sum of Rs.32,725/- towards booking amount and was accordingly allotted a small Gala No.M-748 in the year 1999 and that he is not entitled to claim allotment of large gala. The High Court was not right in holding that Ganpat Shinde had paid only Rs.32,725/-. It is pertinent to note that in the above communication dated 03.07.2003, APMC stated about the receipt of the payment of Rs.35,725/-. As rightly contended by senior counsel Mr. Vinay Navare, APMC for the first time by its resolution dated 17.02.2010 stated that Ganpat Shinde has paid registration booking amount of Rs.32,725/- and that Ganpat Shinde does not satisfy the norms fixed by Daud Committee requiring deposit of an amount of Rs.34,000/-.
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- H 39. Contention of APMC is that its records show Rs.32,725/- in the name of Ganpat Shinde and the sum of Rs.3,000/- was received in

the year 2003 from the Traders Association and the same was considered towards the lease premium of Gala No. M-748 allotted vide letter dated 29.02.1999. Further contention of APMC is that in any case, Rs.3,000/- came to be deposited only in 2003 well after the cut-off date and it is immaterial whether it is adjusted towards the lease amount or not and therefore, Ganpat Shinde has neither satisfied the eligibility norms nor satisfied the norms fixed by Daud Committee.

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40. Admittedly, amount of Rs.3,000/- paid by Ganpat Shinde in the account of Traders Association was transferred to the account of APMC only in the year 2003. But APMC is not right in saying that the said amount of Rs.3,000/- was adjusted towards the lease premium amount. In the reply to the information sought under Right to Information Act, APMC has stated that the amounts are not adjusted to lease premium but they are transferred towards booking amount. The reply to RTI are as under:-

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“Market Committee did not register the Gala in the Fruit and Vegetable Division in personal name of association. The concerned association in the Fruit and Vegetable Market Compound deposited the amounts of their members to the Market Committee. Association submitted recommendation letters in the name of their members to the Market Committee. The amounts intimated by the association were transferred on the members towards booking amount. These amounts are not towards lease premium, but they are transferred towards booking amounts. The Market Committee had not prepared any rules for the same.”

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The amount of Rs.3,000/- paid by Ganpat Shinde to the Traders Association transferred to APMC in 2003, be it for lease premium or booking amount, the fact remains that Ganpat Shinde has paid only Rs.32,725/- before the cut-off date for taking the gala. Though, Ganpat Shinde was allotted small gala, the same can be taken into account for holding that Ganpat Shinde falls within the category of “*marginally falls short of the norms*” and he is entitled to claim large gala. The findings of the High Court that Ganpat Shinde is not eligible to claim large gala is not sustainable and the same is liable to be set aside.

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41. **M/s Ramchandra Vitthal Dongre:** M/s Ramchandra Vitthal Dongre is a registered partnership firm consisting of two partners respondent No.1-Ramchandra Vitthal Dongre and G.V. Lohot. According

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- A to the appellant-Ramchandra Vitthal Dongre, the firm applied for partnership registration on 12.12.2005 and was registered on 31.05.2014. Ramchandra Vitthal Dongre paid substantial market fees for carrying on the business of wholesale fruit distributor. He paid booking amount of Rs.10,000/- on 04.06.1988 and Rs.34,000/- on 09.09.1991. G.V. Lohot had paid Rs.32,725/- on 09.09.1991. Both the partners have obtained licences in their individual capacities. Respondent No.1-Ramchandra Vitthal Dongre was allotted a large Gala No.G-247 on 28.09.1995 and is in possession of the same in his individual capacity. Ramchandra Dongre had paid cess above Rs.1,01,156/- during the period of ten years i.e. between 1985-86 and 1994-95. Subsequent to the cancellation of allotment of two large Galas in favour of M/s Indian Fruit Co., Ramchandra Dongre was allotted a second large Gala No.F-124 on 09.05.2001 and he paid an amount of Rs.1,27,500/- on 23.05.2001. However, the appeal preferred by M/s Indian Fruit Co. under Section 52B of the Act was allowed by the Director of Agricultural Marketing *vide* order dated 13.12.2001 and the allotment of second large gala No.F-124 in favour of Ramchandra Vitthal Dongre was cancelled. Against which, Ramchandra Vitthal Dongre filed writ petition W.P.No.234 of 2004. In the year 2012, when Gala No.F-158 became vacant, Ramchandra Dongre filed a civil application in the said writ petition filed by him seeking an early hearing. The High Court *vide* its order dated 07.01.2013 disposed of the application accepting the submissions of APMC that apart from Ramchandra Vitthal Dongre, there are four other claimants and directed APMC to scrutinize the claim of all eligible claimants for allotment of Gala No.F-158.

42. Insofaras M/s Ramchandra Vitthal Dongre is concerned, the question falling for consideration is whether the firm-M/s Ramchandra Vitthal Dongre has complied with the norms laid down by Daud Committee and whether the firm is eligible for the allotment of large Gala.

43. The contention of Ramchandra Vitthal Dongre is that the booking amount paid on behalf of M/s Ramchandra Vitthal Dongre is Rs.76,725/- (amount paid for individual booking amounts paid by the partners in their own individual name) and is therefore, eligible for allotment of said large gala. It is contended that the allotment of Gala No.F-124 made by APMC, their stand taken in three affidavits filed by

APMC in Writ Petition No.4101 of 2001, Writ Petition No.3194 of 1999 and Writ Petition(Stamp) No.10993 of 2002 numbered as Writ Petition No.234 of 2004 prove that the firm is eligible for a large Gala.

44. The contention of Ramchandra Vitthal Dongre is that his partnership firm-M/s Ramchandra Vitthal Dongre satisfies the norms laid down by the learned Commissioner. The said partnership firm consists of two partners who hold licences given by APMC. Admittedly, the firm got registered only in the year 2014. One partner, Ramchandra Vitthal Dongre has been carrying on the business in his individual capacity and has been earlier allotted a large gala. The other partner G.V. Lohot is also carrying on business in his own individual name.

45. Claim of Ramchandra Vitthal Dongre is that the firm had paid the booking amount of Rs.76,725/- which is denied by APMC. The contention of APMC is that no booking has been made in the name of the partnership firm, no cess amount is paid and no licence was obtained by it. According to APMC, Ramchandra Vitthal Dongre had paid Rs.10,000/- on 04.06.1988 and Rs.34,000/- on 09.09.1991. G.V. Lohot was not doing any business till the year 1991. G.V. Lohot started business by taking licence in his name for the year 1991-92 and Rs.32,725/- was paid by him on 09.09.1991 towards booking of gala. The said amount was paid by Ramchandra Vitthal Dongre and G.V. Lohot in their individual capacities and not by the firm. As the booking amount was paid in their individual capacity, Ramchandra Vitthal Dongre was allotted Gala No.G-247 which was a large Gala. Registered Deed of Sub-lease dated 29.10.1999 was also executed in the name of Ramchandra Vitthal Dongre in his individual capacity. According to APMC, Ramchandra Vitthal Dongre had paid booking amount and cess only in his individual capacity and was accordingly allotted a large gala and his claim for second gala in the name of the firm is not sustainable. Insofar as G.V. Lohot is concerned, he was issued a licence by APMC on 30.07.1972 which was renewed from time to time upto 2014 and said G.V. Lohot is also carrying on the business in his individual name only.

46. Insofar as three affidavits filed by APMC in Writ Petition No.4101 of 2001, Writ Petition No.3194 of 1999 and Writ Petition(Stamp) No.10993 of 2002 numbered as Writ Petition No.234 of 2004 on which reliance was placed by M/s Ramchandra Vitthal Dongre is concerned,

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- A contention of APMC is that those three affidavits were in respect of the claim of Ramchandra Vitthal Dongre as proprietor and not by M/s Ramchandra Vitthal Dongre, the partnership firm and thus, no reliance on those three affidavits can be placed by M/s Ramchandra Vitthal Dongre. It is stated that APMC never admitted the claim of the firm.
- B 47. There are no norms suggested by Daud Committee making a partnership firm separately eligible for allotment of a Gala on the basis of the licence issued in the name of the individual partner, the amount paid by said individual partner towards booking of the Gala, payment of cess made by such individual partner, etc. In the absence of specific norms for the partnership firms, the norms framed for individual traders are applicable for the partnership firms. When the firm was registered in the year 2014 and it has not complied with any of the norms fixed by Daud Committee, the firm cannot seek for the allotment of any gala, much less a large gala. Considering the submissions of both the parties, in the impugned judgment, the High Court rightly held that the partnership firm consisting of Ramchandra Vitthal Dongre and G.V. Lohot is not separately entitled for allotment of any separate Gala. Based on the documents of the individual partners, the relevant findings of the High Court are as under:-
- E “In my view, the license obtained by an individual partner, the booking amount, if any, paid by such individual partner, payment of cess, if any, paid by such individual partner or other requirements which individual partner is required to be fulfilled as per the norms suggested by the learned Commissioner for being eligible to allotment of such gala cannot be utilised by the partnership firm consisting of such partners to make such firm eligible for allotment of any gala under the said norms suggested by the learned Commissioner..... In my view, the documents relied upon by the petitioner for seeking allotment of the said gala No.F-158 which were the documents of individual partner of the petitioner could not be used and/or relied upon for the purpose of seeking allotment of the said gala No.F-158 in the name of the said partnership firm.”
- G The contention of APMC is that Ramchandra Dongre has been doing business and paid money only in his individual capacity. As pointed out earlier, G.V. Lohot started business by taking licence in his name for the year 1991-92 and paid the money only in his individual capacity.

48. The partnership firm was registered only in the year 2014 and the firm was neither in existence nor carried on any business prior to cut off date. The High Court, in our view, rightly rejected the contention that the registration would relate back to the date of execution of the partnership deed in the year 1987. The High Court rightly rejected the plea that the firm-M/s Ramchandra Vitthal Dongre was eligible to apply for allotment of large Gala No.F-158. Both Ramchandra Vitthal Dongre and G.V. Lohot are carrying on the business in their individual name therefore, the amount paid by the individual partners cannot be treated as the payment made by the firm and the High Court rightly held that the appellant firm M/s Ramchandra Vitthal Dongre is not entitled for a separate allotment of gala.

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49. After the appeal preferred by M/s Indian Fruit Co. under Section 52B of MAPMC Act which was allowed by the Director of Agricultural Marketing *vide* order dated 13.12.2001, the allotment of second large Gala No.F-124 in favour of Ramchandra Dongre was cancelled. Challenging the cancellation of allotment of Gala No.F-124, Ramchandra Dongre filed writ petition W.P.No.234 of 2004. It is unfortunate that the said W.P.No.234 of 2004 has been kept alive for about fifteen years. In view of the concurrent finding of Director of Agricultural Marketing dated 04.06.2014 and the findings of the High Court in the impugned judgment that M/s Ramchandra Vitthal Dongre is not eligible to claim large gala, in our view, nothing survives for consideration in W.P.No.234 of 2004 pending before the High Court of Bombay. In the light of our finding affirming the view taken by the High Court that the firm M/s Ramchandra Vitthal Dongre is not eligible to claim allotment of large gala, the High Court shall dispose of the said writ petition W.P.No.234 of 2004 by passing appropriate orders.

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50. In our considered view, respondent No.1-M/s Ramchandra Vitthal Dongre and respondent No.2-Habibullah Farhatullah are not eligible to claim allotment of large gala and the judgment of the High Court is liable to be set aside.

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51. Next question for consideration is as to who are all eligible to make claim for the allotment of large gala. In view of the foregoing discussion, the appellants-M/s Hande Wavare & Co. and Ganpat Shinde (who are marginally short of the norms) are eligible to claim allotment of large gala along with others. As per the counter filed by APMC in writ petition W.P.No.10328 of 2014, other than appellant-M/s Hande Wavare

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A & Co., two other claimants viz. respondent No.3-M/s Bhalchandra Chintaman Lele (Mr. Kedar Keshav Lele) and respondent No.4-Ashok Dhondiba Punde are also eligible for allotment of large gala.

52. The only other point to be considered is whether the allotment to be made by sealed tenders or by draw of lottery. As seen from the order of the Director of Agricultural Marketing dated 04.06.2014, APMC initially fixed the value of said gala as per government rate at Rs.55,00,000/- . The Director of Agricultural Marketing observed that instead of accepting the amount of Rs.28,77,500/- from appellant-M/s Hande Wavare & Co., APMC should have considered the market rate and getting valued the said gala from government approved valuer and should have called for sealed covers from the claimants and ought to have allotted the gala to the claimant who is paying the maximum value for allotment of large gala. In our considered view, since there is huge competition for the large gala, instead of adopting the lottery method, after fixing the market value in order to fetch more revenue for APMC, offers should be invited in sealed covers. In order to attract better offers, it is appropriate that appellant-M/s Hande Wavare & Co. should vacate the large Gala No.F-158 at the earliest. The learned counsel appearing for APMC has stated that the small Gala No.M-821 earlier allotted to the appellant-M/s Hande Wavare & Co. is still vacant. APMC shall forthwith pass an order for re-allotting the said small sized Gala No.M-821 to the appellant- M/s Hande Wavare & Co. and the appellant shall vacate the large Gala No.F-158 before the end of September, 2019.

53. Considering the fact that APMC itself has fixed the market value of large Gala No.F-158 at Rs.55,00,000/- in the year 2013-14, we deem it appropriate to fix the upset value at Rs.55,00,000/-. The four eligible claimants. viz. (i) M/s Hande Wavare and Co.; (ii) Mr. Ganpat Sabaji Shinde; (iii) M/s Bhalchandra Chintaman Lele (Mr. Kedar Keshav Lele); and (iv) Mr. Ashok Dhondiba Punde shall quote their offers in a sealed cover and accordingly, the large Gala No.F-158 be allotted to the one who is quoting the highest price.

G 54. In the result, the impugned judgment of the High Court is set aside and these appeals are disposed of with the following directions and observations:-

- (i) It is held that respondent No.2-Habibullah Farhatullah is not entitled to claim allotment of large gala and findings of the

High Court qua respondent No.2-Habibullah Farhatullah is set A aside;

- (ii) The findings of the High Court that the firm-Ramchandra Vitthal Dongre is not entitled to claim allotment of large gala is affirmed; B
- (iii) The possession of small Gala No.M-821 shall be restored back to the appellant-M/s Hande Wavare & Co. and M/s Hande Wavare & Co. shall vacate the large Gala No.F-158 on or before 30.09.2019. The amount of Rs.27,69,500/- deposited by the appellant towards the large gala No.F-158 shall be refunded to him by APMC immediately within two weeks from C the date of his vacating;
- (iv) The upset value of large Gala No.F-158 shall be fixed at Rs.55,00,000/- as fixed by the Director of Agricultural Marketing, APMC and the same shall be notified by APMC by the end of October, 2019. The four eligible claimants viz. (i) D M/s Hande Wavare and Co.-appellant; (ii) Mr. Ganpat Sabaji Shinde; (iii) M/s Bhalchandra Chintaman Lele (Mr. Kedar Keshav Lele)-respondent No.3; and (iv) Mr. Ashok Dhondiba Punde-respondent No.4 shall quote their offers for the large gala and shall submit sealed tenders to APMC on or before 15.11.2019. The sealed tenders are to be opened by APMC in the presence of a higher level officer preferably, the Joint Director of Marketing and in the presence of all the four claimants or their representatives on 22.11.2019; and E
- (v) The large Gala No.F-158 shall be allotted to the claimant who has quoted the highest price. Payment of the amount for F allotment of large gala by the successful allottee shall be paid as per the rules of APMC.