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+ W.P.No. 20357 of 2007

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. . . P e t i t i o

V s .

\$ 1. The State of Andhra Pradesh, rep. by its Prl. Secretary,
Agriculture & Cooperation (AGRL.MKTG.I) Department,
Secretariat, Saifabad, Hyderabad.

2. The Commissioner & Director of Agricultural Marketing,
A.P.Hyderabad,

3. The Agricultural Market Committee, Hyderabad, New
Osmangunj, Hyderabad, rep. by its Secretary

4. Sri G. Balakrishna Yadav s/o not known to petitioner, Vice
Chairman & Incharge Chariman, Agrl. Market Committee, New
Osman Gunj, Hyderabad

5. Andhra Pradesh Grain & Seeds Merchants Association, office of
16-10-1/164, First Floor, Sri Krupa Agrl. Market Complex,
Malakpet, Hyderabad, rep. by its Secretary.

.RESPONDENTS.

< G I S T :

> H E A D N O T E :

! C o u n s e l f o r S r R. Prabhakar, i t i o n e

^ C o u n s e l f o r r e s p o n d e

C o u n s e l f o r S r Rie s / p o n d e

C o u n s e l f o r S r Rie s T p. o K d e n a

C o u n s e l f o r R e s p o n d e n

? C A S E S R E F E R R E D : -

1. (2002) 10 SCC 471
2. (2003) 6 SCC 675
3. AIR 2006 SC 2609

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And

Secretariat, Saifabad, Hyderabad and 3 others.

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THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 20357 of 2007

ORDER

The matter is coming up for admission.

2. When the matter came up for admission on 27-09-2007, in the light of the orders dated 07-08-2007 and 24-09-2007, since in both the orders the representation made by the Andhra Pradesh Grain & Seeds Merchants Association had been referred to and since the orders were made at the instance of the said Association, on the allegations made by the said Association, this Court was of the opinion that the said Association is a necessary party. The implead applications were filed and respondents 4 and 5 were impleaded.
3. When the matter came up on 01-10-2007, Sri T. Kumar

Babu, learned counsel representing the 4th respondent and Sri Vedula Venkataramana, learned counsel representing the 5th respondent requested time on the ground that they are entering appearance on behalf of respondents 4 and 5 respectively and hence this Court directed the matter to appear in the list on 04-10-2007. The matter was heard on 04-10-2007.

4. Sri S. Ramchander Rao, learned Senior Counsel representing the writ-petitioner, had taken this Court through the contents of the affidavit filed in support of the writ-petition and also the stand taken in the counter affidavit filed by the 5th respondent and would maintain that though normally in a matter relating to suspension pending enquiry, the Courts may be reluctant to interfere, this is a peculiar case, where on the self-same allegations made against the Chairman, Agricultural Market Committee, Hyderabad, an order was made by the Commissioner and Director of Agricultural Marketing, Government of Andhra Pradesh, Hyderabad, in Lr. No. 5395/2006, dated 07-08-2007 and the Government having referred to the said order dated 07-08-2007 as second reference made G.O.Rt. No. 1241, dated 24-09-2007 repeating the same allegations keeping the writ-petitioner under suspension for a period of three months with immediate effect under Section 6(A) of A.P. (Andhra Pradesh Produce & Livestock) Market Act, 1966, (in short 'the Act') pending further enquiry into the matter and in this view of the matter, such power

could not have been exercised by the Government for the reason that no further enquiry could be proceeded with, in the light of the order already made by the Commissioner and Director of Agricultural Marketing, A.P. Hyderabad dated 07-08-2007.

Learned Senior Counsel also would contend that even on a careful reading of Section 6(A) of the Act, this is not a case where the Government could have made such an order since none of the ingredients expected to be satisfied, to attract Section 6(A) of the Act, had been satisfied in the present case. Learned Senior Counsel also would contend that the suspension pending enquiry, at the best, could be made only when the incumbent had willfully omitted or refused to carry out their orders or abuse his position or powers vested with him and his further continuance in the office would be detrimental to the interests of the Market Committee. Learned Senior Counsel also would contend that the enquiry conducted by the Joint Director of Marketing would reveal *mala fide* intention and illegal activities of the Association, hence, it is definitely an arbitrary action. Learned Senior Counsel also pointed out to the references made in these orders and also the contents of these orders. Learned Senior Counsel also placed strong reliance on the decision of the Apex Court in **UNION OF INDIA V. K.D. PANDEY AND ANOTHER**^[1].

5. Learned Government Pleader for Agriculture representing respondents 1 and 2 had taken this Court through the Section 6(A)

of the Act and in all fairness would submit that, no doubt, the order made by the 2nd respondent dated 07-08-2007 referred to the self-same allegations. But the learned Government Pleader for Agriculture, however, would contend that, it appears from the records that such observations were made by the 2nd respondent in the light of Lr.Rc. No. 1819/2006, dated 02-07-2007 of the Joint Director of Marketing, Hyderabad (evidently the date appears to be a mistake). Learned Government Pleader for Agriculture also had pointed to the concluding portion of the order dated 07-08-2007 wherein it was specified that, in view of the above, the Government may take a view and issue further necessary orders in this matter. Hence, the learned Government Pleader for Agriculture would maintain that it cannot be said that the 2nd respondent closed the enquiry finally and in the light of the same, the contention advanced by the counsel for the writ-petitioner that G.O.Rt. No. 1214, dated 24-09-2007, is without authority, cannot be sustained. Even if the allegations are self-same allegations, the Government is empowered to take its own decision in this regard in the light of Section 6(A) of the Act aforesaid. Learned Government Pleader for Agriculture also would maintain that this being a suspension pending enquiry, at the best, the enquiry may be expedited and nothing beyond thereto can be done at this stage.

6. Sri V.V. Narayana Rao, learned counsel representing the 3rd

respondent, also made submissions on similar lines as that of the learned Government Pleader for Agriculture.

7. Sri T. Kumar Babu, learned counsel representing the 4th respondent, would maintain that the writ petition itself is not maintainable, since neither the fundamental right nor the legal right of the writ-petitioner had been infringed. Learned counsel also had taken this Court through the language of Section 6(A) of the Act and made elaborate submissions on the expression “opinion”. Learned counsel would maintain that in forming an opinion there need not be any enquiry. Even otherwise, the learned counsel would submit that in the light of the subsequent events, since the allegations made by the Association may have to be gone into, at this stage, no interference is warranted. Even otherwise, the learned counsel would contend that this being a case falling under the realm of administration, in the light of the limitations imposed by several judicial precedents in the exercise of judicial review on this Court, the writ petition is liable to be dismissed. Learned counsel also placed strong reliance on certain decisions and also certain dictionary meanings to substantiate his submissions.

8. Sri Vedula Venkataramana, learned counsel representing the 5th respondent, would maintain that though the relief in the writ petition is in the form of a direction, virtually, it is a writ of Certiorari to quash the order. Learned counsel also had taken this Court through the contents of the counter affidavit and had referred

to the relevant paras. Learned counsel also would submit that the power of the Director of Marketing being concurrent even as per the language of Section 6(A) of the Act, it cannot be said that the Government has no power at all to make an order of suspension pending enquiry especially in the light of the language of Section 6(A) of the Act. At the best, the report of the Director of Agricultural Marketing, dated 07-08-2007 is an interim report, it cannot be said that the enquiry into the allegations had been finally closed or put an end to even in the light of the language of the said order, especially, the concluding portion. Learned Counsel would also maintain that the power to be exercised under Section 6(A) of the Act of the 1st respondent and the 2nd respondent being concurrent, the impugned order does not suffer from any jurisdictional error. Even otherwise, the learned counsel would maintain that in the light of the language of Section 6(A) of the Act, the Joint Director is not competent and the Joint Director has no role to play and there is no delegation of power to the Joint Director. Learned counsel also would maintain that, it appears in the light of the report of the Joint Director without proper application of mind, the 2nd respondent made an order, by that itself, it cannot be contended that the 1st respondent is denude of all the powers under Section 6(A) of the Act. Learned counsel placed strong reliance on **SURYA DEV RAI V. RAM CHANDER RAI AND OTHERS**^[2]. Learned counsel while further elaborating

his submissions had taken this Court through the impugned order G.O. Rt. No. 1241 dated 24-09-2007 and further pointed out specifically to the references made in the order made by the 2nd respondent, Joint Press release dated 23-07-2007, representation of the Chairman, AMC, Hyderabad to the Commissioner and Director of Agricultural Marketing, dated 23-07-2007, representation of Chairman, AMC, Hyderabad to the Minister for marketing dated 24-07-2007 and also Lr. Rc.No. 1819/2006 dated 02-07-2007 of Joint Director of Marketing, Hyderabad. Learned counsel, in all fairness, would submit that the date 02-07-2007 may be a mistake. Learned counsel also would maintain that as can be seen from the nature of the representations, it is unknown why such representations were made by the Chairman and incidentally no doubt the Joint Press release of A.P. Grain and Seeds Merchants Association, Hyderabad had been referred to. Hence, the learned counsel would maintain that the Government as superior authority always has the residuary power, it is not as though the said report was called for by the Government and at the instance of the Government the said report was submitted, even as well reflected from the references, hence to contend that the Government is not competent to make such an order is totally an unsustainable contention.

9. Heard the learned counsel. Perused the averments made in the affidavit filed in support of the writ petition, the counter

affidavit filed by the 5th respondent, the impugned G.O.Rt. No. 1241 dated 24-09-2007, and the other material papers placed before this Court.

10. Sri B. Chenna Reddy, the writ-petitioner, had averred in the affidavit filed in support of the writ petition that he is a farmer and engaged in cultivation and dairy farm and has been the Chairman of Agricultural Market Committee, Hyderabad and he was appointed by the 1st respondent as such for a period of three years in exercise of its powers conferred under sub-section (1) of Section 6, read with sub-section (1) and (2) of Section 5 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 by issuing G.O.Ms. No. 60, dated 09-03-2006 and since then he has been continuing as Chairman of Agricultural Market Committee, Hyderabad, till date.

11. It is also stated that he had been striving hard to develop the market yards under the control of the 3rd respondent Market Committee in all respects and take all steps to provide essential facilities in the interests of all the parties engaged in activities within the premises of market yards including hamalies, traders and clerks. It is also further averred that there are seven market yards under the control of the 3rd respondent situated at Gudimalkapur, Mir-alam-Mandi, Begum Bazar, Madannapet, Kishan Gunj, Chandrayanagutta and Malakpet, that all the ryots in and around Hyderabad, Nalgonda, Ranga Reddy and Medak

Districts bring their agricultural produce and livestock to these market yards and sell them away for a competitive price, that he would take all steps as the Chairman of the 3rd respondent to see that the interests of the ryots, who are the bedrock of the economy of this country and take all steps to protect them from the clutches of middlemen, such as traders and commission agents, that under his chairmanship the 3rd respondent reached its targeted income i.e. Rs. 2,75,00,000/- for the year 2006-07 as against Rs. 1,45,00,000/- for the year 2005-06, that he had taken steps to shift the Jambagh flower business to Gudimalkapur market yard, that he prevented the illegal business conducted in the name of 'Ganta' by getting issued notices through officers concerned and he took steps to prevent the method of collecting money illegally on white slips (tella chittis) instead of thak patti and got refunded the money to the tune of several thousands to the ryots by taking action on concerned traders, that the traders and commission agents, who are demanding commissions illegally at 8% instead of 2 or 4% by getting licenses with benami names and evading payment of income-tax and sales tax ought to have been paid to the Government, were taken to task by regular inspections and got refunded the money collected excessively to the ryots and took steps as per the procedure stipulated in the Act and the rules made thereunder, that he directed the concerned officials of the 3rd respondent committee to take steps to enhance the income to

the market committee and that he had also taken steps to construct houses to the hamalis in the premises of the respective market yards.

12. It is further stated by the petitioner that he made a representation to the Hon'ble Chief Minister to protect the interests of market committee by enquiring into the issue of encroachment of the market committee's land and to protect the interests of traders and ryots, that he made a representation to the respondents informing the steps taken by him to protect the interests of ryots enclosing the pamphlets issued educating the ryots in respect of the illegalities that were being committed by the commission agents and traders and that there is no allegation of misappropriation or misconduct against him in his tenure of 1 ½ year as the Chairman. Further, it is stated that all the steps taken in the interests of poor ryots and growers and to develop the 3rd respondent Market Committee and market yards under its control caused deep anguish in the minds of traders and commission agents as the above steps prevented them from demanding or collecting excessive commission and performing illegal activities at the cost of poor and destitute ryots and hence the traders, commission agents and their associations bore-grudge against him, that in furtherance of their vengeance against him, one Association known as Andhra Pradesh Grain & Seeds Merchants Association, Malakpet made a complaint to the 2nd respondent

with certain allegations against him.

13. It is also averred by the petitioner that the A.P. Grain & Seeds Merchants Association operating in Malakpet, Hyderabad made the above complaint dated 23-07-2007 to the 2nd respondent with an ill-will and *mala fide* intention to get rid of him as the Chairman of the 3rd respondent since he is taking steps to protect the interests of the ryots and growers from the clutches of its members viz. traders, middlemen and commission agents and in pursuance of the said complaint, the Association conducted bandh on 25-07-2007 in the Malakpet Market yard. It is further averred that the above allegations are vague and baseless and invented only to get rid of him as Chairman of the Market Committee and it is also relevant to point out that out of the seven market yards, which are under the control of the 3rd respondent Market Committee, only the above said association operating in Malakpet Market Committee made the said complaint even though there are several associations are operating in all the seven market yards, that from this it is clear that the said complaint is based on no material and tainted with mala fides and ill-will and for oblique motives and extraneous considerations and that aggrieved by the ill-will and vilification campaign resorted to by the Association, he made a representation to the Minister Smt. Sabitha Indra Reddy informing all the events.

14. It is also further averred by the petitioner that in pursuance

of the said complaint dated 23-07-2007, the Joint Director of Marketing, Hyderabad, conducted a detailed enquiry and submitted its report to the 2nd respondent on 28-07-2007 wherein it was reported that the allegations are vague and baseless and no *mala fides* cannot be attributed to the Chairman and it is also reported that there are oblique motives and extraneous considerations behind the said complaint and further reported to the 2nd respondent that the market committee had initiated steps to educate the farmers and purchasers about the mal-practices committed by the traders and commission agents through public address system and pamphlets and further reported that the Chairman, Agricultural Market Committee had taken steps to stop such mal practices of 'Ganta' and also taken steps to return the unauthorized collections made by the traders from ryots. Further, it is averred that on the basis of the said report dated 28-07-2007 the 2nd respondent addressed a letter dated 7-8-2007 to the 1st respondent referring the said report seeking necessary orders from the 1st respondent-Government and the 1st respondent having received the report dated 28-7-2007 and the letter of 2nd respondent passed the impugned order without considering the said reports and without having any material before it and hence the same is illegal, unjust, arbitrary etc. and that the impugned order is based on no material and a total non-speaking order and hence the impugned is liable to be set aside.

15. It is also further averred that the impugned order was passed in view of the powers under Section 6(A) of the Act and the relevant portion of the same reads as hereunder.

“6-A. Power of Government or the Director of Marketing to suspend the Chairman of the Market Committee:-

If the Government or the Director of Marketing are of the opinion that the Chairman of Market Committee willfully omitted or refused to carry out the orders of the Government or the Director of Marketing for the proper working of the Market Committee or abused his position or the powers vested with him and that the further continuance of such person in the office would be detrimental to the interests of market committee or the inhabitants of the market, the Government or the Director of Marketing may, by order, suspend the Chairman of the Market Committee from the office for a period not exceeding three months pending investigation into the charges and the action thereto under the foregoing provisions of this Section.”

16. It is also further averred that from the reading of the above said section, it is clear that the respondents can suspend the Chairman, if the incumbent is willfully omitted or refused to carry out their orders, or abused his position or the powers vested with him and that his further continuance in office would be detrimental to the interests of the Market Committee, that in the instant case, it is not the case of the respondents that he omitted or refused to carry out their directions and it is also evident from the record that he, as the Chairman of the Committee acted responsibly with due diligence keeping in mind the interests of the Market Committee and inhabitants of the market, as such, there is no complaint whatsoever from any of the associations operating in the seven

market yards which are under the control of the 3rd respondent except the present complaint from the association, which bore-grudge against him as stated above for preventing their illegal income viz. collecting excess commission and other source of illegal income at the cost of poor ryots and hence invoking the provisions under Section 6-A to suspend him is highly untenable and unwarranted and in fact the enquiry conducted by the Joint Director of Marketing reveals the *mala fide* intention and illegal activities of the Association.

17. It is also further averred by the petitioner that having received the complaint from the association, the Joint Director conducted a detailed enquiry in the presence of all the interested including himself and submitted its report to the 2nd respondent, who in turn informed the same to the 1st respondent, that the 1st respondent who has to pass necessary orders after considering all aspects with proper application of mind and considering the detailed report submitted by the Joint Director and the Commissioner, passed the impugned order suspending him without considering any of the relevant material and without issuing any reasons and hence the impugned order is liable to be set aside. It is further stated by the petitioner that the entire issue is based on a vague, frivolous, and vexatious complaint made by the association with ill-will and for oblique motive and extraneous considerations and the same was enquired into in detail by a

responsible officer i.e. Joint Director of Marketing, Hyderabad, which was confirmed and informed by the 2nd respondent-Commissioner to the 1st respondent. In such circumstances, the writ petitioner approached this Court praying for the reliefs referred to supra.

18. The counter affidavit of the 5th respondent alone had been filed. The President of the 5th respondent-association has sworn to the counter affidavit, wherein it is averred that the 5th respondent association is a company incorporated under the Companies Act, vide registration No. 771 of 1957 and the association is avowed to the protection of welfare of its members who are traders in the agricultural market committee, in so far as the market area of Srikrupa Market, Malakpet is concerned. This respondent stated that there are about 200 members in its association and they are not concerned with the other market yards which are under the control and supervision of Hyderabad Market Committee and their association is interested in safeguarding the interests of its members in so far as the Srikrupa Market which forms part of Hyderabad Market Committee is concerned. It is also stated that the impugned order in G.O.Rt. No. 1241 dated 24-09-2007 is only an order of suspension pending enquiry into the allegations leveled against the petitioner on account of his misconduct in the office of the Chairman of Hyderabad Market Committee, that their association had issued a press release dated 23-07-2007

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elaborating the misconduct of the writ petitioner and the same had been published in various newspapers dated 24-07-2007 and subsequently they have been requesting the 1st respondent to take action against the writ petitioner for the misconduct committed by him while functioning as Chairman of the market committee.

19. This respondent further averred that they have abundant evidence to say that the petitioner, abusing his office, has demanded bribes from the traders while threatening them with cancellation of their licenses under the Act and as and when a regular enquiry is conducted, their members are ready and willing to depose the truth of the matter and that an order of suspension pending enquiry is not amenable to judicial review since the power of suspension has got to be exercised on subjective satisfaction of the 1st respondent. This respondent further averred that the press release issued by their association dated 23-07-2007 is based on hard facts and it is incorrect to say that there is no factual foundation for the press release issued by them, copy of which marked to respondents 1 and 2 also, that the impugned order is legally valid since Section 6(A) of the Act has conferred a concurrent power on the State Government as well as Director, Marketing in so far as suspension of the Chairman is concerned, however, this does not mean that the view of the Director, Marketing contained in his letter dated 07-08-2007 shall be deemed to be binding on the 1st respondent, that in the said letter

of the 2nd respondent, a reference made to some verification was done by the Joint Director of Agricultural Marketing in his letter dated 02-07-2007, that when their press release itself is dated 23-07-2007, it is un-understandable as to how the Joint Director has submitted some letter/report dated 02-07-2007 to the 2nd respondent, that the 2nd respondent in his letter dated 07-08-2007 has not taken any pains to apply his mind as to the necessity or otherwise of suspending the petitioner under Section 6(A) of the Act, that as a matter of fact, the 1st respondent has never called for any report or preliminary enquiry either by the Director, Marketing or by the Joint Director, Marketing, and thus the so-called report of the Joint Director, which appears to be totally partisan in favour of the petitioner and the letter of the 2nd respondent dated 7-8-2007 are in the nature of unsolicited information to the 1st respondent, obviously aim at prevailing upon the 1st respondent to lean in favour of the petitioner and thus no credence can be given to the letter of 2nd respondent dated 07-08-2007 and the so-called report of the Joint Director and in this view of the matter, the contention of the petitioner that the 1st respondent could not have passed the impugned order in the face of the letter of the 2nd respondent dated 07-08-2007 cannot be countenanced by this Court.

20. This respondent further averred that the power of suspension

pending enquiry and the exercise thereof is a matter which is not open to judicial review since it is only an intermediary stage of the exercise of disciplinary action against the petitioner and that the impugned order is in strict compliance of the requirements of Section 6(A) of the Act and therefore it does not warrant interference by this Court in its Certiorari jurisdiction as laid down by the Supreme Court in 2003 (6) SCC 675 at para-38. This respondent further averred that further continuance of the petitioner in office as Chairman of the Market Committee would result in serious detriment to the interest of the traders and the market committee. Hence dismissal of writ petition had been prayed for.

21. Section 6(1) of the Act already had been referred to supra. The words "if the Government or the Director of Marketing are of the opinion" would assume some importance. Further, the words, "that the further continuance of such person in the office would be detrimental to the interests of market committee or inhabitants of the market." also would assume some importance in the present context.

22. In Words and Phrases "opinion" had been defined.

"An "opinion" creates no fact but is what someone thinks about something and the thought may be accurate or inaccurate and yet represent the honest conviction of person expressing it, and because of that, opinion evidence is generally considered of a low grade and not entitled to much weight against positive testimony of actual facts"

23. In the New Lexicon Webster's Dictionary – Encyclopedic Edition, "opinion" is defined:

Opinion: a mental estimate/ a belief or conviction, based on what seems probable or true but not on demonstrable fact/ the collective views of a large number of people, esp. on some particular topic, to offend local opinion/ a formal expression by an expert of what he judges to be the case or the right course of action, counsel's opinion."

24. In **EKTA SHAKTI FOUNDATION v. GOVT. OF NCT OF DELHI**^[3] while dealing with the limited scope of judicial review in relation to administrative action, the Apex Court held in paras 10 to 12:

"While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided at page SC 2612 these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. and K.* (AIR 1989 SC 1899), *Shri Sitaram Sugar Co. v. Union of India* (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone

can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

25. Reliance also was placed on the decision of a Division Bench of this Court in **N. SREERAMA MURTHY AND OTHERS v. THE STATE OF A.P. AND ANOTHER**^[4] wherein at para-10 it was observed:

“It was next feebly contended that greater representation was given to the growers as compared to the traders on the market committee. This contention is without substance for there is no law that all the interests which may be represented on a given committee constituted under the enactment, should be equally represented. The representation on a particular committee is itself a right granted by the Statute and not a fundamental right or a natural right. If the Legislature, in its wisdom, having regard to the large number of growers of agriculture produce and owners of livestock and products of livestock, has given a larger representation to them on the market committee than to the traders who are infinitesimally few as compared to the growers, that legislation cannot be struck down as vesting an arbitrary power or as discriminatory. In the matter of nomination to the committees constituted under an enactment, no citizen can claim a fundamental right or violation of any such fundamental right on that ground.”

26. In **MANI SUBRAT JAIN v. STATE OF HARYANA AND OTHER**^[5], it was held:

“It is elementary though it is to be restated that no can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something. AIR 1973 SC 2216 and AIR 1976 SC 578 had been relied upon.”

27. Further, strong reliance was placed on **SURYA DEV RAI v. RAM CHANDER RAI AND OTHERS**^[6] wherein the Apex Court at para-38 observed:

“Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

- (1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.
- (2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.
- (3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction – by assuming jurisdiction where there exists none, or)ii_ in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.
- (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a

subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

- (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.
- (6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.
- (7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

- (8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
- (9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

28. Learned Senior Counsel representing the writ petitioner placed strong reliance on **UNION OF INDIA v. K.D. PANDEY AND ANOTHER** (1st supra) wherein the disciplinary proceedings were initiated against R in respect of six charges. After the enquiry, a report was submitted to the effect that none of the charges levelled against R stood proved. The disciplinary authority examined the matter and found that four of the six charges could be substantially proved beyond doubt with the available documentary evidence and, thereafter, remitted the matter for further inquiry. On the said direction of the disciplinary

authority, the enquiry officer made a subsequent report finding R guilty of four charges. Based on that report, the Railway Board dismissed R. The Tribunal as well as the High Court set aside the said order as it was not a case of further enquiry but a fresh opinion had been furnished on the same material. The appellant herein had challenged the reinstatement of R which was ordered by the Tribunal and subsequently confirmed by the High Court. The Apex Court while dismissing the appeal held that, from the order made by the Railway Board as well as from that part of the file where the inquiry report made earlier is discussed, it is clear that specific findings have been given in respect of each of the charges after discussing the matter. Hence, in such case, the matter could not have been remitted to the enquiring authority for further inquiry. Indeed this resulted in second inquiry and not in a further inquiry on the same set of charges and the material on record. If this process is allowed the inquiries can go on perpetually until the view of the enquiring authority is in accord with that of the disciplinary authority and it would be abuse of the process of law. The decision of the Apex Court referred to above is in relation to service jurisprudence and is distinguishable on facts in the light of the nature of the orders involved in the present writ petition.

29. This is no doubt, a peculiar case wherein on the strength of the Joint Press release and also the representations made by the

writ-petitioner, the 2nd respondent in the light of the report submitted by the Joint Director made an order. Though certain of the observations made appear to be in favour of the writ-petitioner, the concluding portion would clearly go to show that the Government may take a view and issue further necessary orders in this matter. This proceeding Lr. No. 5395/2006, dated 07-09-2006 is addressed by the Commissioner and Director of Agricultural Marketing to the Principal Secretary to Government, A&C (Agrl. Marketing) Department, Government of Andhra Pradesh, Hyderabad. The subject and reference both read as hereunder.

“Sub: Agrl. Marketing Department – Joint Press release by Andhra Pradesh Grain and Seeds Merchants Association, Hyderabad – Mahaboob Mansion Market Yard – Band from 25.07.2007 to 27.7.2007 by Traders and A.P. Grain & Seeds Merchants Association – Allegations against the Chairman, Agricultural Marketing Committee, Hyderabad – Submission of report – Reg.

Ref: 1. Joint Press release dated 23.07.2007 by A.P. Grain & Seeds Merchants Association, Malakpet, Hyderabad.
2. Representation of Chairman, AMC, Hyderabad to the Commissioner & Director of Agrl. Marketing, dated 23.07.2007
3. Representation of Chairman, AMC, Hyderabad to the Minister for Marketing, date 24.07.2007
4. Lr. Rc. No.1819/2006, dated 2.07.2007 of Joint Director of Marketing, Hyderabad.”

The allegations were referred to and further it was observed:

“The Joint Director of Agricultural Marketing, Hyderabad vide reference 4th cited reported that the allegation of demanding money by the Chairman, Agricultural Marketing Committee, Hyderabad from traders could not be verified

as there is no specific and sufficient material proof for verification. Alleging that they have given bribe to the Chairman, Agricultural Market Committee, which is also unlawful Act, and by giving bribes also, they are liable to be punishable as per law. Their threatening to the market committee is also unlawful act and they should abide the rule of regulations as provided in the A.P. (A.P. & L.S.) Market act, 1966, Rules and bye-laws thereunder.”

Certain reasons were recorded relating to the other allegations and it was also specified.

“It is alleged that with the support of some trader members including Vice-Chairman, this type of activities are going on against the Chairman, Agricultural Market Committee and the ultimate idea is to keep the trader member in the chair having linkage with trading community obtained Market Committee Membership, under the guise of growers though they are doing business. It shall be enquired into and a report will be submitted in this regard separately.”

The instructions and the report of the Joint Director of Agricultural Marketing, Hyderabad, had been repeatedly referred to and the concluding portion is as hereunder.

“In view of the above, the Government may take a view and issue further necessary orders in this matter.”

30. The impugned order G.O.Rt. No. 1241, dated 24-09-2007, no doubt, refers to the representation of A.P. Grain & Seeds Merchants Association dated 28-07-2007 and from the Commissioner and Director of Agricultural Marketing, A.P. Hyderabad Lr. No. 5395/2006, dated 07-08-2007. This second reference made in the impugned order G.O.Rt. No.

1241 is made a serious ground of attack by the learned Senior Counsel representing the writ-petitioner. The impugned order reads as hereunder.

**“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT**

Agricultural Market Committee – Sri B. Chinna Reddy, Chairman,
Agricultural Market Committee, Hyderabad – Suspension – Orders – Issued.

AGRICULTURE & COOPERATION (AGRL. MKTG.I) DEPARTMENT

G.O.Rt. No. 1241

Dated: 24.09.2007
Read the following:-

1. From the representation of A.P. Grain & Seeds Merchants Association, dated 28.07.2007.
2. From the Commissioner & Director of Agricultural Marketing, A.P. Hyderabad Lr. No. 5395/2006, dt. 07-08-2007.

ORDER

In the reference 1st read above the A.P. Grain & Seeds Merchants Association, Malakpet alleged the following allegations against the Chairman, Agricultural Market Committee, Hyderabad.

1. The Chairman, Agriculture Market Committee, Hyderabad is threatening the Traders, Hamalies, Gumastas and Farmers. He is also issuing notice to the Traders against the rule and demanding the money duly blackmailing that their licenses would be cancelled. Further, he is also using abusive words on traders.
2. There is a separate way for “Masjid” the Chairman with the help of anti social elements dismantled the walls and created a road. In this connection, the matter was brought to the notice of police and Government Officials and with the help of police demolished were restored.
3. Apparently the Chairman with the help of anti-social elements and with his powers threatening all the traders.

2. In the reference 2nd read above, the Commissioner and Director of Agriculture, Marketing has furnished an interim report to the Government. Government after careful consideration of the matter hereby place Sri B. Chinna Reddy, Chairman, Agricultural Market Committee, Hyderabad under suspension for a period of three months with immediate effect under Section 6(A) of A.P. (Andhra Pradesh Produce & Livestock) Market Act, 1966, pending further enquiry into the matter.

3. The Commissioner & Director of Agricultural Marketing, A.P. Hyderabad is requested to take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

PANKAJ DWAIVEDI,
PRINCIPAL SECRETARY TO GOVERNMENT”.

31. On a careful reading of both the orders referred to supra and also in the light of the language employed in the order made by the 2nd respondent, which in fact, is based on the report of the Joint Director, though *prima facie* some irregularity is shown, it cannot be said that the impugned G.O.Rt. No. 1241 suffers from any jurisdictional error and it cannot be said that the Government is denuded of the power of putting the petitioner under suspension pending enquiry under Section 6(A) of the Act, especially, in the light of the language of the provision and also in the light of the fact that the report of the 2nd respondent being only an interim report and that too in the light of the concluding portion of the said report, leaving the decision open to the Government. This is the discretion exercised by the Government in the sphere of administration and in the light of the limitations of a writ Court in exercising the power of judicial review in this sphere, especially, in view of the fact that this is only a suspension pending enquiry, this Court is not inclined to interfere with the said decision of the Government.

32. It is needless to say that the writ petition being devoid of

merit, the same shall stand dismissed at the stage of admission.

No order as to costs.

33. However, let the enquiry be expedited and completed within a period of four weeks from the date of receipt of a copy of this order.

NARAYANA,J

P.S.

Dated: 11-10-2007

Vp

L.R. copy to be marked.

[\[1\]](#) (2002) 10 SCC 471

[\[2\]](#) (2003) 6 SCC 675

[\[3\]](#) AIR 2006 S.C. 2609

[\[4\]](#) AIR 1981 A.P. 395

[\[5\]](#) AIR 1977 SC 276

[\[6\]](#) (2003) 6 S.C.C. 675