
(1985) 03 KAR CK 0003

In the Karnataka High Court

Case No : Writ Petition No's. 16208 and 18744 of 1984

A.V. Muniswamy

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 07-03-1985

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 38, 38 (i), 42 (2)

Citation : (1985) ILR (Kar) 2409

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : Pramila and P. Vishwanatha Shetty, for the Appellant; S. Udayashankar, HCGP, for the Respondent

Final Decision : Allowed

Judgement

K. A. Swami, J.—At the stage of preliminary hearing, Sri S. Udaya Shankar, Learned High Court Government Pleader, was directed to take notice for Respondents. Accordingly, he has put in appearance for Respondents and has secured records and instructions in the matter.

2. Writ Petition No. 18744 of 1984 is filed by the outgoing Chairman and Vice-Chairman, of the Agricultural Produce Market Committee, Malur. Writ Petition No. 16208 of 1984 is filed by the outgoing Chairman, Vice-Chairman certain other members of the Agricultural Produce Market Committee, Gowribidanur. The term of both the market committees expired on 12-10-1984. Similarly, the term of the members of the Market-Committee of Bangarpet also expired on 12-10-1984. The petitioners in Writ Petition 16208 of 1984 have produced a copy of the notification bearing No. RDC 201 MMD 84, dated 15-10-1984 published in the Karnataka Gazette dated 5th October, 1984, produced as Annexure-D, extending the term of the office of the members of the A.P.M.C. Bangarpet for a period of one year or till the elections are held, whichever, is earlier. In both these petitions, the petitioners have sought for a direction to the State

Government to extend the same benefit to the members of the A.P.M.Cs of Malur and Gowribidanur by extending their term of office for a period of one year.

3. In Writ Petition No. 16208/84, Rule is also issued and an interim order as prayed for, is also passed. These Writ Petitions were heard for some time on 4-1-1985 and the following order was passed:

"These two petitions are heard on merits. Having regard to what has transpired during the course of hearing, learned High Court Government Pleader submits that he be given time till 11th January, 1985 to find out from the Government as to whether they are prepared to extend the same treatment which they have extended to Bangarpet A.P.M.C., to the other two marketing committees in question, or else he will file statement of objections by that date.

Accordingly, call these two petitions on 11th January 1985".

So far, no statement of objections is filed. Sri S. Udaya shankar, Learned High Court Government Pleader, has today prayed for grant of further time to file statement of objections. Having regard to the fact that sufficient time has already been granted, I do not think there is any justification to grant further time to file statement of objections.

4. The case of the petitioners is that there is no difference between the case of the members of the A.P.M.C. Bangarpet and that of the members of the A.P.M.Cs. of Malur and Gowribidanur; that in fact, the term of all the three A.P.M.Cs. expired on 12-10-1984 and all the A.P.M.Cs. are situated in Kolar District and they form adjoining taluks ; that all the three A.P.M.Cs. passed resolutions seeking extension of their term; that the Chief Marketing Officer in Karnataka, by the communication dated 2-8-1984 bearing No. SMD 33 ELN 84, made a report to the State Government in connection with the extension of term of A.P.M.C. Bangarpet; that pursuant to the said communication, the State Government has extended the term of office of the members of the A.P.M.C. Bangarpet; that in respect of the term of office of the members of A.P.M.Cs. of Malur and Gowribidanur, no order is passed; that the State Government has acted arbitrarily in not extending the term of office of the members of the A.P.M.Cs. of Malur and Gowribidanur even though it has extended the term of office of the members of Bangarpet; that there is no reason to refuse to extend the same benefit to the other two A.P.M.Cs.; that the petitioners and the the A.P.M.Cs. of Malur and Gowribidanur are subjected to hostile discrimination.

5. On the contrary, it is the contention of the Respondents that there is no right vested in the Petitioners to seek extension of the term of their office; that as per Section 38 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the "Act"), the term of office of the members of the A.P.M.C. is for a period of 4 years; that this term can be extended for a period of one year by Notification, if the Government for the reasons stated therein, is of the opinion that the term of office can be extended for a period of one year; that in the absence of such a Notification as per Section 42(2) of the

Act, on the expiry of the term of office of the Chairman and Vice-Chairman and members of the Market Committee, automatically the Tahsildar of the taluk in which the market yard is situated takes over the committee; and performs the function and exercises the powers of the market committee and its Chairman until the market committee is reconstituted ; therefore, there is no right vested in the Petitioners to seek extension. Regarding the silence on the part of the State Government, in not stating anything for not extending the term of office of the members of the APMCs of Malur and Gowribidanur and extending the term of office of the members of the APMC, Bangarpet, it is contended that it is not necessary to pass any order or give any reason in a case where the term of office is not extended and it is only when the term of office is extended, the notification extending the term of office has to state the reasons for extending the term and not otherwise.

6. No doubt, there is no right vested in the Petitioners to seek extension of their term of office. On the expiry of four years, their term of office comes to an end. It is open to the State Government, if it is of the opinion that the term has to be extended for a period of one year, to extend the term of office that too on the reasons recorded in the notification.

7. In these two Writ Petitions, it is not the right of the petitioners to seek extension of their term of office that is involved, it is the manner of exercise of power under the statute i.e., the Act, by the State Government is involved. The report made by the Chief Marketing Officer is as follows:

GOVERNMENT OF KARNATAKA

(Department of Marketing)

"No. SMD 33 ELN 84

Office of the Chief Marketing Officer in Karnataka, Cricket Stadium, Cubbon Road, Bangalore-1, dated 2nd August 1984.

To The Secretary to Government, Co-operation Department, M.S. Buildings, III Stage, Dr. Ambedkar Veedhi, BANGALORE.

Sir,

Subject: Extension of term of APMC, Bangarpet u/s 38(i) of the KAPM(R) Act, 1966.

The term of office of Agriculture Produce Market Committees, Bangarpet, Malur and Gowribidanur of Kolar District is expiring OH 12th October, 1984 and the Deputy Commissioner, Kolar has been directed to take action to hold elections in accordance with the Act.

The APMC, Bangarpet in its resolution dated 6th July, 1984 have requested for extension of the term of the Market Committee by one more year for the reasons explained in its resolution, a copy of which is enclosed herewith. u/s 38(1) of the

KAPM (R) Act, the State Government is no doubt competent to extend the term of any Market Committee for a period not exceeding one year. The present committee of the APMC has tried hard to get land at K.G.F. for formation of sub-market yard and in this connection they have relentlessly pursued the matter with the Government to get land in their possession. The Government orders in this connection is expected to be issued by the HUG department shortly While taking the land only one step the development of the yard needs certainly longer time and much more efforts on the part of the Market Committee. In addition to this in view of the impending parliamentary and panchayat elections whether the elections to APMC should be deferred for some time and the present body itself has to be continued for one more year is a point for consideration. In case, we decide to give such benefit to the Bangarpet APMC, the same principle probably applies to the other APMCs of Gowribidanur and Malur also whose term is expiring on the same day.

I, therefore, request you to please consider the request of the APMC Bangarpet in the light of the above facts and communicate the orders of Government relating to extension or otherwise of the term of the market committee for one more year immediately to avoid any unnecessary work on the part of the Deputy Commissioner in case the decision is in favour of extension of the term of the Market Committee.

Yours faithfully, Sd/- B.M. Patil, Joint Chief Marketing Officer"

The aforesaid report goes to show that the Chief Marketing Officer, who is an important functionary under the Act, and whose position under the Act is next to the State Government, has stated in categorical terms that:

"In case we decide to give such benefit to the Bangarpet A.P.M.C., the same principle probably applies to the other A.P.M.Cs. of Gowribidanur and Malur also whose term is expiring on the same day."

8. Learned Government Pleader has tried to distinguish the case of the members of the A.P.M.C. Malur on the ground that they have not even requested for extension of their term. But, on verification, it is found that the A.P.M.C. Malur just as other two A.P.M.Cs. in question, has also passed a resolution well in time for extension of the term of the members of the committee and has sent a copy of the resolution to the Chief Marketing Officer. Thus, it is not correct to contend that the members of the A.P.M.C. Malur have not sought for extension of their term of office.

9. Learned Government pleader submits that the report of the C.M.O. is not binding on the State Government. He is right there. But, the State Government when it chooses to exercise its power u/s 38(1) of the Act, in favour of only one of the A.P.M.Cs., in a case where on a common report made by the Chief Marketing Officer the case of all the three A.P.M.Cs. cannot at all be differentiated; the exercise of power in favour of one of the three APMCs only, will not be justified as there are no distinguishing features, and such exercise of

power results in subjecting the members of the other two APMCs to hostile discrimination. Though it is open to the Government not to extend the term of office of the members of the APMC and simply keep quiet. In such an event, the law takes its course and the Tahsildar steps in u/s 42(2) of the Act. In such an event, no member can legitimately make a grievance. But, the case assumes different dimension when in a situation like the one obtaining in the present case, the State Government, on a common report made by the Chief Marketing Officer, chooses to extend the term of office of the members of only one APMC. The equality clause contained in Article 14 of the Constitution, makes it incumbent upon the State to exercise its power reasonably and free from the taint of discrimination, bias, arbitrariness and extraneous considerations. Otherwise, neither the right to equality nor the equal protection of the laws has any meaning. Judged in this background, there is no justification to exclude the members of the other two APMCs from the benefit of Section 38(2) of the Act, when such benefit is extended to the members of the APMC of Bangarpet whose case does not stand on any different footing. If the members of the other two APMCs had not discharged their functions and had not conducted the affairs of the APMCs properly or there are several such other reasons, the Government would have been justified in not extending the term of office of the members of the other two APMCs. But, no such case is made out. No statement of objections is filed. Therefore, the Court has to proceed on the basis of the averments made in these petitions and the report dated 2-8-1984 made by the Chief Marketing Officer. In W.P. 18744/84 it is alleged that members of the APMC, Malur, belong to Congress (I) group and in the last general election the Janata Party has come into power in the State, that ever since the Janata Party has come into power, where ever local bodies are governed by Congress (I) members, they have been disturbed and harassed in one way or the other. It is also further alleged that the Chief Marketing Officer has recommended for continuation of the term of office of the members of the A.P.M.Cs of Malur, Bangarpet and Gowribidanur, but, the State Government due to political reasons has extended the term of office of the members of the A.P.M.C. of Bangarpet and rejected the recommendations in the case of Gowribidanur and Malur due to the fact that members in these two A.P.M.Cs belong to Congress (I) Party, whereas the members of A.P.M.C. Bangarpet belong to the Janata Party. In W.P. 16208/84 the allegations are to the effect that since the majority of the members of the A.P.M.C. Gowribidanur belong to Congress (I) Party, whereas the majority of the members of the A.P.M.C. Bangarpet belong to Janata Party, the term of the members of the A.P.M.C. Bangarpet is extended and that of the A.P.M.C. Gowribidanur is not extended. The aforesaid allegations also go to strengthen the contentions of the petitioners that the term of office of the members of the APMC of Bangarpet is extended by extraneous consideration and on the very consideration, the same benefit is not extended to the members of the APMCs of Malur and Gowribidanur and thereby they are subjected to hostile discrimination. Thus, there is no escape from the conclusion that under the facts and circumstances of the case, the State Government, by not extending the term of office of the members of the APMCs of

Malur and Gowribidanur has subjected them to hostile discrimination because it has extended the term of office of the members of the APMC Bangarpet whose case is not in any way different from the case of other two APMCs.

10. It is however contended by Sri S. Udayashankar, learned Government Pleader, that no power is exercised by the State Government u/s 38(1) of the Act, as far as the APMCs of Malur and Gowribidanur are concerned; therefore, the State Government has not done anything so as to hold that it has either acted arbitrarily or with extraneous considerations or has subjected the members of the APMCs of Malur and Gowribidanur to hostile discrimination. As it is already pointed out, if no action whatsoever had been taken on the report made by the Chief Marketing Officer in respect of all the three APMCs in question, regarding extension of term of office of the members of those A.P.M.Cs. the contention of learned Government Pleader would have gained ground; but, as already pointed out, it is the exercise of the power in favour of the members of A.P.M.C. of Bangarpet and non-exercise of the same in relation to the APMCs of Malur and Gowribidanur that has resulted in subjecting them to hostile discrimination.

11. It is contended on behalf of the petitioners in Writ Petition No. 16208 of 1984 that during the pendency of the Writ Petition, an interim order is passed and as a result thereof, the petitioners are continuing as members of the A.P.M.C. of Gowribidanur; therefore until the State Government issues a notification extending the term of office of the members of the A.P.M.C., Gowribidanur, they be allowed to continue in office. In other words, it is submitted that the status quo obtaining today as far as the members of the A.P.M.C. of Gowribidanur is concerned, be continued until the Government takes its decision pursuant to the direction of this Court in these Writ Petitions. As it is open to the State Government to remove the circumstance namely, to withdraw the Notification extending the term of office of the members of A.P.M.C. Bangarpet, which has resulted in subjecting the members of the A.P.M.Cs of Malur and Gowribidanur to hostile discrimination, it is not possible to direct the State Government to continue the members of the A.P.M.C., Gowribidanur until the decision is taken in the matter. In a case where hostile discrimination is pleaded and the relief is granted on that basis, the appropriate relief that can be granted is to direct the State or the authority concerned not to continue the hostile discrimination. However, learned Counsel Sri P- Vishwanatha Shetty has placed reliance on a decision of the Supreme Court in *Manazir Hussain Vs. Deputy Director, Consolidation, U.P. and Others*, . That is a case which related to certain consolidation proceedings under the Uttar Pradesh Consolidation of Holdings Act. The case was remitted to the Deputy Director (Consolidation) for considering the revision application of respondents 4 to 11 therein in regard to certain khathas. During the consideration of the revision petitions, the status quo that was obtaining on the date of the order of the Supreme Court was directed to be maintained until disposal of the case by the Deputy Director (Consolidation). From the aforesaid statement of facts, it is clear that the aforesaid decision has no authority on the point at issue. As such, it is of no assistance to the

petitioners in Writ Petition No. 16208/84.

12. For the reasons stated above, the Writ Petitions are allowed in the following terms :

A direction shall issue to the State Government not to continue the discrimination in the matter of extension of term of office of the members of the APMCs of Malur and Gowribidanur, in the light of the extension of term of office granted to the members of APMC of Bangarpet, whose case in this regard is not in any way different from the case of the Petitioners.