

(2000) 04 KAR CK 0005
In the Karnataka High Court
Case No : Writ Petition No. 28808 of 1999

Chikkappa Ningappa Shygoti

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 13-04-2000

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 11 (1),
146, 38 (2)

Citation : (2000) 5 KarLJ 135 : (2000) 3 KCCR 1892

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Sri Jayakumar S. Patil, for the Appellant; Sri B.H. Satish, High Court Government Pleader and Sri B.G. Sreedharan, Senior Advocate, for the Respondent

Judgement

1. An interesting question is raised in this petition on the following facts:

Facts.--Respondent 2 is a Marketing Committee of Kundgol constituted under the Karnataka Agricultural Produce Marketing Committee (Regulations) Act ("the Act" for short). Elections were held for the said committee on 28-4-1997. Petitioner contested as a representative of Taluk Agricultural Produce Co-operative Marketing Society Limited ("APMC" for short), Kundgol in terms of Section 11 of the Act. Incidentally, at the relevant point of time, petitioner happened to be a member of the committee and also the President of respondent 3. In the elections held to the Agricultural Produce Marketing Committee in April 1997, petitioner was elected. He secured eight votes out of total number of fourteen votes. The elected office is for a period of five years.

2. Petitioner further states that elections were held to the committee of respondent 3 on 30-5-1999. He did not contest in the said election to the committee and therefore the petitioner was not a member of the committee of management of respondent 3. A meeting of respondent 2 was held on 8-7-1999. No notice was issued to the petitioner. Petitioner was shocked and later came to

know that respondent 2 had unilaterally decided that the petitioner ceased to be a member of the committee of respondent 2 on account of his ceasing to be a Director of respondent 3. Petitioner made an application for which an endorsement as per Annexure-B is issued. Petitioner in this petition questions Annexure-B and also seeks for the following prayers.-

"(a) A writ in the nature of a certiorari quashing the endorsement Annexure-B, dated 8-7-1999 in Notification No. APMC(ka). 444/99-2000 issued by the respondent 2.

(b) Strike down Section 38(2) of the Act insofar as it applies to an elected representative u/s 11(1)(iv) of the Act from the Constituency of Co-operative Marketing Societies.

(c) Such other writ or order or direction as deems fit under the circumstances of the case including an order for costs".

3. Notice was issued by this Court and respondents have entered appearance. A detailed statement of objections has been filed by the APMC. The APMC states that the petitioner was a representative of respondent 3. On his ceasing to be a Director of the third respondent, he ceases to be a member of the APMC in terms of Section 38(2). Respondents say that Section 38(2) provide for automatic removal consequent upon the petitioner ceasing to be a Managing Committee Member of respondent 3. They justify the endorsement.

4. Petition is heard at great length. Mr. Jayakumar S. Patil, learned Counsel for the petitioner vehemently contends that Section 10(1)(iv) provides for a nominated committee and Section 11 provide for an elected committee. According to him, Section 38(2) has to be read as applicable only in respect of the members falling u/s 10(1)(iv). His argument is that the elected members, in terms of Section 11(1)(iv) cannot be roped in for removal u/s 38(2). He took me through the various provisions in support of his contention. Per contra, Mr. B.G. Sreedharan, learned Senior Counsel, referred to the object of the Act, Sections 10, 11, 38, 146 and Rule 5(6) in support of his contention. In reply, Mr. Jayakumar S. Patil, learned Counsel reiterated his contention. In addition he added that there is no prescribed qualification for getting elected as a representative of respondent 3 under the Act. He referred to Sections 15 and 16 in this regard. He also pointed out the subtle difference between Sections 10 and 11 of the Act.

5. I have heard the learned Counsel on both sides since this case involves a very subtle distinction on the facts of this case. The scheme of the Act provides for a marketing committee u/s 2(20) of the Act. Chapter III deals with the constitution of market committees. Section 9 provide for establishment of market committee having jurisdiction over the entire market area. Section 10 deals with constitution of first market committee and Section 11 deals with constitution of second and subsequent market committees. The constitution of the first market committee is by way of nomination by notification. The State Government has to

nominate eleven agriculturists, of whom, one shall be a woman and two persons belonging to Scheduled Castes or Scheduled Tribes residing in the market area not disqualified u/s 16. Section 10(1)(iv) provides that one shall be a member of the committee of management of a co-operative marketing society carrying on business in notified agricultural produce within the market area, who is not disqualified u/s 16.

6. Section 11 on the other hand provide for a constitution of second and subsequent market committee. It also provides for the following particulars.-

"Save as provided in Section 10, every market committee shall consist of the following members, namely.--

(i) eleven members shall be persons of whom one shall be a woman and two persons belonging to the Scheduled Castes or the Scheduled Tribes elected by the agriculturists in the market area;

(ii) one member shall be a person elected by the traders other than retail traders, in the market area;

(iii) x x x x x x;

(iv) one member shall be a representative of Co-operative marketing societies carrying on business in notified agricultural produce, within the market area, who is not disqualified u/s 16, elected by the committee of management of such societies;

(v) one member shall be a representative of Agricultural Co-operative Processing Societies carrying on business in notified agricultural produce, within the market area, who is not disqualified u/s 16, elected by the committee of management of such societies;

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(viii) one shall be an officer not below the rank of the Secretary of the concerned market committee nominated by the Director of Agricultural Marketing, who shall have no right to vote u/s 41 or Section 44;

(ix) three members shall be persons nominated by the State Government who shall have right to vote in all the meetings of the market committee and shall hold office at the pleasure of the State Government:

Provided that if persons of the categories specified in any category of clauses (ii), (iv) and (v) (both inclusive) are not available, the committee shall consist only of

persons of the categories available:

Provided further that when persons of those categories become available, they may be elected as members and such members shall hold office so long only as the members first elected hold office of members;

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XXXX".

7. In this case we are concerned with regard to a Member to the Co-operative Market Societies. Before proceeding further, I have to notice the wordings in Section 10(1)(iv), Section 11(1)(iv) the difference being in Section 10(1)(iv) which provides for a member of the committee of management of co-operative marketing society carrying on business in notified agricultural produce within the market area, who is not disqualified u/s 16 whereas in Section 11(1)(iv) it provides that one member shall be a representative of a co-operative marketing society carrying on business in notified agricultural produce, within the market area, who is not disqualified u/s 16, elected by the committee of management of such society. The difference being that in the first committee he shall be a member of the committee of management of co-operative marketing society whereas in the second and subsequent marketing committee, a representative of the co-operative marketing society is elected by the committee to management of the society. A reading of these two provisions very carefully indicates that there is no necessity of a qualification of being a member of the committee of management in the second and subsequent marketing committee. In the second and subsequent committee, he represents the co-operative marketing society by way of elections. Therefore, Mr. Patil, in my opinion, is right in saying that to be a member of elected second committee one need not continue to be a member of the committee of management of the co-operative marketing society. All that is necessary is that a member is to be elected by the committee of management of societies. This makes a lot of difference. Now that I have come to a conclusion that to be a member in the second committee one need not be a member of the committee of management, incidentally in the case on hand the petitioner, at the time of elections was also a member of the Managing Committee, the subsequent development of his not being a member in the managing committee cannot come in the way of his being a representative in the APMC in terms of Section 11(1)(iv).

8. In the light of this difference, let me see Section 38(2) which is pressed into service by the respondent. Section 38(2) reads as under:

"Notwithstanding anything contained in sub-section (1), a person who is a member of the market committee by virtue of being a representative of a Co-operative Marketing Society or an Agricultural Co-operative Processing Society, as the case may be, shall cease to be such member on his ceasing to be a

member of the Managing Committee of the society concerned by efflux of his term of office or otherwise".

It states that a person who is a member of the market committee by virtue of being a representative of a Co-operative Marketing Society, shall cease to be such member on his ceasing to be a member of the Managing Committee. Admittedly, in the case on hand, the petitioner has demitted his office on account of his not contesting the election to the committee of management. Section 38(2) has been pressed into service by respondents to hold against the petitioner on account of his failure to contest for the management of third respondent. As I mentioned earlier, Section 38(2) read into Section 10 would show that it is applicable only in the case of first committee. Mr. B.G. Sreedharan, learned Senior Counsel however argued that the word "representative" in Section 11(1) (iv) and Section 38(2) makes it clear that the petitioner, on his ceasing to be a member in the managing committee, ceases to be a member of committee of management of the society. This argument, at the first blush, is very attractive but on probing the matter further, as I mentioned earlier, the said submission cannot be accepted. In the second committee, anybody can be a representative of the committee of management of the society, the only qualification being getting elected in the election. But in the case of Section 10(1)(iv) he shall be a member of a committee of management to be in the committee. Section 11(1) (iv) has to be understood as representing the committee of management of society carrying on business in notified agricultural produce, within the market area, who is not disqualified u/s 16 elected by the committee of management. Therefore, Section 38(2) cannot be invoked in the case on hand to deny the elected office of the petitioner consequent upon his ceasing to be a member of the managing committee of respondent 3.

9. I must also at this juncture refer to Section 15 and Section 16 because these two provisions deal with qualification and disqualification. Section 15 prescribes a qualification with regard to elections by an agriculturists' constituency or by the traders' constituency, the qualification to be elected being, the name of the candidate to be found in the list of voters of agriculturists' constituencies and in the list of voters of the traders' constituencies of the market area respectively. Petitioner admittedly was a representative of the committee of management of societies. There is no qualification prescribed as in the case of agriculturists or traders u/s 15. Petitioner is also not disqualified in terms of Section 16. In the light of the provisions with regard to disqualification and qualification and in the light of the differential language used by the legislation in Section 10(1)(iv) and Section 11(1)(iv) I am of the view that one need not be a member in the committee of management for contesting the election to be a representative of the committee of management of societies in the APMC. Mr. B.G. Sreedharan is unable to show any other provision providing for a qualification of being in the committee to be a representative of APMC.

10. Mr. B.G. Sreedharan however referred to Rules 5 and 6 in this regard. Rule 5,

Part II deals with constitution of market committee and elections. Rule 5 deals with preparation of voters' list of agriculturists' constituencies. Rule 5-A provide for correction of entries in the list of voters in agricultural constituency. Similar provision is found in respect of traders constituency in Section 5-B. Rule 5-C is a rule providing for maintenance of list of members of the managing committee of co-operative marketing society and Agricultural Co-operative Processing Societies. Mr. B.G. Sreedharan, learned Senior Counsel referred to Rules 5 to 5-C and Rule 6 to contend that unless the name of a candidate is found in the list maintained by the authorities, he cannot be a representative of APMC or the marketing society. It is his contention that only those whose names are shown in the list of members in terms of the list alone can be representative of a society in APMC. A careful reading of Rule 5-C shows that the Deputy Commissioner shall, in respect of co-operative market society referred to in sub-section (1) of Section 11 maintain in the list of all the members of the managing committee. This only indicates the requirement of voters list. This cannot be understood to mean that even a representative who wants to represent the marketing society, shall also maintain his name in the list. Such an argument, in my opinion, would be contrary to the scope of Rule 5-C. Similarly, Rule 6 deals with calling upon the constituencies and Co-operative Marketing Societies and Agricultural Co-operative Processing Societies to elect. It is only a provision for election. Rule 6 cannot be pressed into service in the case on hand. A qualification to be a voter is different from being a representative of that voter. There is a legal lacuna in the Act. It may be the legislature in its wisdom thought that only in respect of agriculturists or traders the representative is also to represent from the same group. The said condition is not available in respect of the marketing society. Reading the various provisions of the Act, I am of the view that Mr. Patil is right in his contention in contending that Section 38(2) is not applicable to the facts of this case.

11. Before concluding, I must also refer to a judgment of this Court in W.P. No. 30084 of 1999. That was a case with regard to the operation of law. That was a case with regard to nomination u/s 10 of the Act. It was on the facts of that case in the light of Rule 10, this Court ruled that Section 38(2) is applicable to the case on hand. But the present facts differ from the said case. In the circumstances, the said judgment is not applicable to the facts of this case.

12. Now that I have ruled that Section 38(2) is not applicable to the facts of this case, I have no option but to issue a writ of certiorari quashing Annexure-B. I need not strike down Section 38(2) in the light of my earlier discussions. Section 38(2) can be read down to say that it applies only in respect of nomination u/s 10 of the Act.

13. In these circumstances, the writ petition is allowed. Annexure-B is set aside. No costs.