

(2015) 02 BOM CK 0303

In the Bombay High Court

Case No : Writ Petition No. 1822 and 1823 of 2004

Dattarao and Others

APPELLANT

Vs

District Dy. Registrar Cooperative Societies and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 44, 44(1)

Citation : (2015) 02 BOM CK 0303

Hon'ble Judges : Anand Vasant Nirgude, J; V.L. Achliya, J

Bench : Division Bench

Advocate : Sushant V. Dixit, for the Appellant; K.J. Ghute Patil, AGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Anand Vasant Nirgude, J—These petitions challenge notification dated 1st March, 2004, issued by District Deputy Registrar, Cooperative Societies, Parbhani, thereby bifurcating Agriculture Produce Market Committee, Jintur into two market committees namely; Jintur and Bori. The petitioners are members of Agriculture Produce Market Committee, Jintur (hereinafter shall be referred to as "APMC"). This APMC was established in the year 1961. The petitioners contended that provisions of Section 44 of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 (for short "the Act") are not complied with before taking such decision. Section 44 of the Act reads as under:-

44. Amalgamation or division of Market Committees.

(1) Where the State Government is satisfied that for securing efficient regulation of marketing of any agricultural produce in any market area 3 [and for ensuring the economic viability of the Market Committee], it is necessary that two or more Market Committees therein should be amalgamated or any Market Committee therein should be divided into two or more Market Committees, then the State Government may, after consulting the Market Committees or Committee, as the

case may be, 1 [and the 2 [State Marketing Board]] by notification in the Official Gazette, provide for the amalgamation or division of such Market Committees into a single Market Committee or into two or more Market Committees, for the market area in respect of the agricultural produce specified in the notifications with such constitution, property, rights, interests and authorities and such liabilities, duties and obligations (including provision in respect of contracts, assets, employees, proceedings, and such incidental, consequential and supplementary matters as may be necessary to give effect to such amalgamation or as the case may be, the division) as may be specified in the notification.

(2) Whether more Market Committees than one are established in any market area under sub-section (1), the State Government may, notwithstanding anything contained in this Act, issue general or special directions as to which of the Market Committees shall exercise the powers, perform the duties and discharge the functions of the Market Committee under this Act, in which they are jointly interested or which are of a common nature.

(3) Where any directions are issued under sub-section (2), the cost incurred by a Market Committee in pursuance of the directions shall be shared by the other. Market Committees concerned in such proportion as may be agreed upon, or in default of agreement, as may be determined by the State Government or such officer as that Government may direct in this behalf. The decision of the State Government or such officer shall be final.

2. The petitioners as said above contended that the State Government did not consult APMC, Jintur, before taking the decision. According to them, this stage in the process is sine qua non on the same and cannot be avoided.

3. On the other hand, the respondents contended that APMC, Jintur, was consulted prior to taking the decision.

4. The question therefore is; whether consultation took place as required by Section 44 of the Act.

5. We have on record certain correspondence between the APMC, Jintur and the officers of the Cooperative Department.

6. Admitted facts are as follows:-The APMC, Jintur, in 1982, passed resolution seeking bifurcation of their APMC into two APMCs one at Jintur and other at Bori. But, admittedly, this process was not implemented for long time. Ultimately in 1995, the District Deputy Registrar, Cooperative Societies, Parbhani (in short "DDR, Parbhani") moved a proposal for bifurcation. For the purpose of this process, he directed Assistant Registrar, Jintur to take over all survey of existing APMC and Market-yard at Bori. Accordingly, survey was done and Assistant Registrar, Jintur, sent a report to the DDR, Parbhani. The Assistant Registrar, Jintur, sent at least three letters to APMC, Jintur, for seeking certain information thereby APMC, Jintur, came to know that the proposal of bifurcation was in active consideration. In 1995, when the Asst. Registrar sent a letter dtd. 24th July,

1995, seeking certain information from APMC Jintur, however, the APMC Jintur changed its view on the matter and resolved that they are against the bifurcation. They also mentioned in their resolution that bifurcation would not be financially viable. On the other hand, the reports were sent to State Market Board and they resolved that bifurcation would be viable and should be made. Accordingly the decision was taken and the notification was issued.

7. On perusal of the correspondence between the parties, we are of the firm view that the consultation as required under Section 44 was not effectively made with APMC, Jintur. The law on the subject is quite settled. There are at least two judgments on this issue. First; Kalwan Agriculture Produce Market Committee, Balasaheb Pundlik Wagh, Yuvraj Nimba Shinde, Kedar Dharma Hire, Popat Waman Gangurde, Bhila Rama Kakulte, Sou. Lata Gulabrao Patel, Gavli Yeshwant Laxman, Metkar Ramesh Jagannath, Narayan Mahadu Deore, Sou. Anjanabai Tambak Roundal, Manik Sakharam Patil, Ashok Trimbak Pagar, Sudhakar Trimbak Pagar and Bapu Sukhram Bhoys Vs. The State of Maharashtra, The District Deputy Registrar, Co-operative Societies, The Director of Marketing and The Maharashtra State Agricultural Marketing Board, (2003) 2 ALLMR 841 : (2003) 5 BomCR 656 : (2003) 3 MhLj 442 . Second; Sopanrao Sathe, Chairman, Agricultural Produce Market Committee and Agricultural Produce Market Committee Vs. State of Maharashtra and Others, (2011) 1 BomCR 186 : (2010) 112 BOMLR 3635 : (2011) 1 MhLj 739 . Both these judgments clearly held that the process of consultation as envisaged by Sub-section 1 of Section 44 is mandatory and has to be effective and meaningful. The DDR for the purpose of complying with this mandatory requirement must send relevant material to the State Marketing Board and also to the concerned APMC, so that they would form their opinion and send their opinion to the State Government. The material as is required to send to the APMC as well as the State Marketing Board should be the same material on the basis of which the DDR gets satisfied for initiating the process of bifurcation etc.

8. In this case, admittedly report of Assistant Registrar, Jintur, was not sent to the APMC, Jintur. The argument, that sending such letters clearly indicated to the APMC that bifurcation is proposed and since they opposed bifurcation by passing a resolution in 1995, the process of consultation was effected, is not accepted to us at all. The resolution of the APMC, Jintur, in 1995 was merely their opinion which was not based on Assistant Registrar's report. Whatever material DDR, Parbhani, collected for the purpose of reaching to the conclusion that proposal should be moved, was not shared with APMC, Jintur and so it cannot be held that the consultation was done.

9. Respondents No. 1 to 3 have filed an affidavit in response to averments made in the petitions. Perusal of affidavit-in-reply leads to an admitted position that before issuance of impugned notification dated 1st March, 2004, the Agriculture Produce Market Committee, Jintur (in short "APMC Jintur") was not consulted as contemplated under Section 44 of the Maharashtra Agricultural Produce

Marketing (Development and Regulation) Act, 1963 (for short "the Act"). The State Agriculture Market Board alone consulted in the matter before issuance of impugned notification. There is no specific stand taken on the part of respondents No. 1 to 3 that APMC was consulted in the matter before issuance of impugned notification. Although it is contended that by Resolution dated 14th August, 1995, passed by the APMC Jintur they opposed the bifurcation of APMC Jintur, but undisputedly same was passed much prior to submission of proposal for bifurcation of APMC. As per the facts narrated in reply filed on behalf of respondents No. 1 to 3, the Assistant Registrar, Cooperative Societies, Jintur (in short "AR"), on 7th October, 1995, moved proposal to the District Deputy Registrar, Cooperative Societies, Parbhani (in short "DDR"), for effecting the bifurcation of APMC Jintur into APMC Jintur and APMC Bori. On the basis of report of AR, the DDR by a letter dated 17th September, 1995, forwarded the proposal to Director of Marketing, Maharashtra State, Pune. The Board of Directors of Maharashtra Agriculture State Agricultural Marketing Board, Pune, in its meeting held on 14th December, 1998, pleased to consider that proposal and passed Resolution in favour of bifurcation. The decision of the Board was communicated to Director of Agriculture Marketing Board on 29th December, 1998. Vide letter dated 8th October, 2003, the Under Secretary, Cooperation and Textile Department, Maharashtra State, Mumbai, asked the Director of Marketing, Maharashtra State, Pune and DDR, Parbhani to complete the process of bifurcation of APMC Jintur into two APMCs viz. APMC Jintur and APMC Bori, by following the procedure prescribed. While matter was pending for taking further steps in that behalf, one Shri Khanderao Aghav, r/o Belkheda, Tq. Jintur, filed writ petition bearing No. 80 of 2004 before the High Court. In said writ petition, the Deputy Director of Marketing, Maharashtra State, Pune, filed affidavit-in-reply stating therein that as per the Government order dated 8th October, 2003, the DDR will take appropriate action for bifurcation as early as possible. However, the Court was not satisfied with the affidavit filed. Therefore, on 16th February, 2004, filed additional affidavit and undertake to complete process of bifurcation of Jintur APMC within period of four weeks. On 25th February, 2004, the Desk Officer, Cooperation and Textile Department, Maharashtra State, sent a letter address to DDR Parbhani that the Government has given sanction for bifurcation of APMC Jintur into APMC Jintur and APMC Bori with further direction to appoint the Board of Directors. Since the period as per undertaking was due to expire on 2nd March, 2004, the DDR Parbhani issued notification on 1st March, 2004, which is impugned by way of this petition.

10. Thus, if we consider the affidavit in reply filed on behalf of respondents No. 1 to 3, then on 14th August, 1995, then it is amply clear that when the alleged Resolution was passed by APMC, Jintur, recording their objection to bifurcation of APMC Jintur into APMC Jintur and Bori then till that time there was no proposal as such forwarded to Government for bifurcation of said APMC. So also if we consider the contents of the resolution (copy of which is annexed as Exh. B to the petition), then the subject No. 3, which was placed for discussion was to

consider the letter dated 25th July, 1995, received from Asst. Registrar asking certain information. In said letter, Asst. Registrar has mentioned that as per the letter dated 18th July, 1995, received from DDR, Parbhani he has been asked to submit report after conducting preliminary survey for establishing separate APMC at Bori. He, therefore, requested to Secretary of APMC Jintur to submit certain information in the prescribed proforma enclosed with the letter including the names of the villages which are to be attached the proposed APMC Bori. Thus, the meeting which was convened on 14th August, 1995, was not convened to consider any proposal of bifurcation of APMC Jintur, as contemplated under Section 44 of the Act. From material on record it can be safely stated that APMC Jintur was never consulted in the matter of bifurcation till issuance of impugned notification. By no stretch of imagination, the resolution dated 14th August, 1995, can be treated as part of consultative process as on the date of passing of that resolution itself, the proposal for bifurcation was not prepared and forwarded by DDR Parbhani. Similarly, the correspondence which was made in the year 1998 i.e. the letters dated 3rd April, 1998, 12th May, 1998 and 12th October, 1998 written by AR Jintur to Secretary of the APMC Jintur also cannot be termed as inviting the view of APMC, as envisaged under Section 44 of the Act. Perusal of contents of the letter reveals that same were issued for furnishing certain information for the purpose of bifurcation of APMC Jintur.

11. Mr. Salunke, the learned Counsel representing the intervenors i.e. respondents No. 5 to 7 has relied upon unreported judgment of this Court in Writ Petition No. 2928 of 1991 dated 14th June, 2002 delivered in the matter of Abdul Kadir Abdul Wahid Deshmukh and others versus State of Maharashtra and others. In our view, the said judgment relied upon by the learned Counsel for the intervenors, has no bearing upon the facts of the present case. It is settled position in law that the consultation with the market committee is mandatory before bifurcation of any APMC. In Shivram s/o Sonbaji Girhipunje and others vs. State of Maharashtra and others reported in 2010(1) Mh.L.J. 602, this Court while dealing with the issue of consultation as contemplated by Section 44 of the Act, in para 17 has observed thus:

"17.The provision has to be read in its right perspective. Amalgamation or division of Market Committee unnecessarily shall depend upon satisfaction of the government in respect of the above referred factors and, therefore, the government/competent authority is required to apply its mind to each of these factors before getting satisfied whether there is a need to amalgamate or divide the Market Committee. We cannot forget that the process of amalgamation or division is not the empty formality. The process is required to be undertaken only if it would secure efficient regulation of marketing agricultural produce in any market area and for securing economic viability of the Market Committee and to achieve those objectives, it is necessary to amalgamate or to divide Market Committee. Reaching the satisfaction mentioned in section 44(1) is a first step to be taken by the State Government or by the competent authority before initiating the process of amalgamation or division of Market Committee. However,

after reaching such satisfaction, the State Government or a Competent Authority is required to have effective consultation with the Market Committee/s and State Marketing Board which is a second requirement under section 44 before issuing the notification. The process of consultation is also not an empty formality and must be effective one."

(emphasis supplied)

Thus, reaching the satisfaction as contemplated u/s 44(1) is a first step to be taken by the State Government or by the competent authority before initiating the process of amalgamation or division of Market Committee and only after satisfaction of the State Government, that there is a need to amalgamate or divide the Market Committee, the State Government or the competent authority is required to take steps for effective consultation with the Market Committee/s and State Marketing Federation before issuing the notification. The process of consultation is also held to be effective consultation and not an empty formality to be complied with. Therefore we have no hesitation to uphold the contention of learned Counsel for petitioners that in the present case the mandatory condition of consultation with the APMC Jintur has not been carried out as per the requirement of Section 44 of the Act.

12. Mr. Salunke, the learned Counsel for intervenors has further argued that, the resolution dated 14th August, 1995, itself amounts to consultation and no further process was expected to be undertaken as in the year 1992 the APMC Jintur has already passed resolution in favour of bifurcation. We are not inclined to accept this submission for the sole reason that the AR Jintur has 1st time moved the proposal for bifurcation on 7th October, 1995. In the case of Kalwan Agriculture Produce Market Committee, Balasaheb Pundlik Wagh, Yuvraj Nimba Shinde, Kedar Dharma Hire, Popat Waman Gangurde, Bhila Rama Kakulte, Sou. Lata Gulabrao Patel, Gavli Yeshwant Laxman, Metkar Ramesh Jagannath, Narayan Mahadu Deore, Sou. Anjanabai Tambak Roundal, Manik Sakharam Patil, Ashok Trimbak Pagar, Sudhakar Trimbak Pagar and Bapu Sukhram Bhoys Vs. The State of Maharashtra, The District Deputy Registrar, Co-operative Societies, The Director of Marketing and The Maharashtra State Agricultural Marketing Board, (2003) 2 ALLMR 841 : (2003) 5 BomCR 656 : (2003) 3 MhLj 442 , the Division Bench of this Court has dealt the case based on identical facts and held that the process of consultation with the committee on the proposal of amalgamation or bifurcation of market committee arose only after proposal is mooted to such Market Committee or Committees and the State Agricultural Marketing Board. Since in the case in hand the proposal of bifurcation was prepared and submitted by AR on 7th October, 1995, any steps taken prior to submission of proposal cannot be treated as a part of process of consultation as envisaged under Section 44 of the APMC Act. In this context it is useful to refer the observations made in paragraph 19 of said judgment which reads thus:

19. Even on interpretation of law, the action cannot be said to be in accordance with law. In our opinion, the learned counsel for the petitioner is right in

contending that petitioner No. 1 Committee was required to be consulted on the proposal regarding amalgamation or division of Market Committee. It is only after such proposal is mooted out that Market Committees or Committee, as the case may be, and the State Marketing Board should be consulted. As is clear from the record and even admitted by the respondents that the proposal started from August 1, 2002 by a communication of respondent No. 2 to respondent No. 1-the State of Maharashtra. Thereafter on August 12, 2002, the Director of Agriculture, Marketing, on August 12, 2002, informed the General Manager of Maharashtra State Agricultural Marketing Board as well as respondent No. 2 regarding dividing or bifurcating Agricultural Produce Market Committee, Kalwan, into two Agricultural Produce Market Committees, Kalwan and Deola. Hence, what was required by law was the consultation of petitioner No. 1 Committee as also State Marketing Board in connection with the proposal dated August 1, 2002. Any action taken prior to August 1, 2002, could not be said to be in exercise of power under Section 44 of the Act. Therefore, even if any Resolution was passed earlier to such proposal, it could not be said to be in accordance with the provisions of the Act. A division or bifurcation of Committees required to be made under Sub-section (1) of Section 44 as regarding the proposal of bifurcation or division. Since that proposal was moved on August 1, 2002, the consultation would be only after August 1, 2002 and before the impugned order dated January 23, 2003. As no consultation had ever been made during the said period, the contention of the learned counsel for the petitioners must be upheld that there was no consultation and the order deserves to be set aside.

13. In the light of discussion made in foregoing paras, we are of the view that the impugned notification dated 1st March, 2004 which was issued without holding consultation with APMC Jintur as envisaged under Section 44(1) of the APMC Act, 1967, is not sustainable in law and liable to be quashed and set aside. The petitions therefore succeed. Both the writ petitions are allowed. Rule made absolute in terms of prayer clause "A" and "B" of the petitions. In the circumstances, no order as to costs.