

(2013) 08 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 8955 of 2012

Dilipbhai C. Nathvani

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 12-08-2013

Acts Referred:

Citation : AIR 2013 Guj 292

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : Dipen Desai, for the Appellant; Niraj Ashar, AGP and Bharat T. Rao, for the Respondent

Judgement

C.L. Soni, J.—The petitioner - Ex-Chairman of the Agriculture Produce Market Committee, Kalavad ("APMC" for short) has filed this petition under Article 226 of the Constitution of India seeking to set aside the action on the part of the Administrator of respondent No. 3 Committee in initiating process of grant of new licenses for the year 2012-13 and to quash and set aside order dated 2.6.2012 passed by respondent No. 3 whereby one Shri PI Jadeja, Inspector, Market Committee - Kalavad (Shitla) was asked to make scrutiny in respect of the applications made for licenses and to submit his report. The petitioner has also prayed to issue writ of prohibition restraining respondent No. 3 from taking any policy decision in the management and the affairs of the APMC. The petitioner has given history about different litigations against the Market Committee and alleged that though the term of the APMC was to expire on 24.6.2011 and though he made representation dated 2.2.2011 requesting respondent No. 2, Director, Agriculture Marketing and Rural Finance to initiate process of election before expiry of the term of the body, the concerned authorities since delayed the holding of elections, the petitioner had to prefer Special Civil Application No. 2872 of 2011 before this Court seeking direction to hold elections of the APMC, Kalavad and for restraining them from appointing administrator. It is further averred that even after this court issued notice, the concerned authorities issued

notice to the market committee u/s 46 of the Agriculture Produce Markets Act, 1963 ("the Act" for short) to show cause as to why the elected body of the Market Committee should not be superseded. The petitioner has also alleged that another petitions being Special Civil Application No. 4075 of 2011 with Special Civil Application No. 4078 of 2011 were filed against the show cause notice under Sec. 46 of the Act and because of the said proceedings, the show cause notice was not proceeded. The petitioner has averred that in the Special Civil Application No. 2872 of 2011, the Hon"ble Division Bench directed the State Government to first decide u/s 11(4)(aa) of the Act as to whether to extend the term of the elected body and then to pass order under Sec. 11(5)(a) for appointment of the administrator by reasoned order. The State Government decided not to extend the term of the elected body and consequentially on 28.7.2011, the State Government appointed administrator for respondent No. 3 Market Committee. The above orders were challenged by filing Special Civil Application No. 9704 of 2011 before this Court wherein this Court directed the State Authorities to hold elections of the APMC, Kalavad within three months from the date of the order. This Court also directed that the administrator shall not enroll any new member nor shall send any information to the authorities against any member. It is further averred that by virtue of the above-said order, the administrator was restrained from enrolling any new member for issuing any fresh licenses. The petitioner has also averred that the order passed by this Court directing to hold election within three months came to be challenged by Shri Haripar Seva Sahakari Mandali by filing SLP (C) No. 15526 of 2011 and the Hon"ble Supreme Court dismissed the said SLP after recording the statement of the learned advocate appearing for the Market Committee for not issuing any license in the context of voters for elections. The petitioner has made reference of other petitions filed by the persons from the agriculture constituency of Jamnagar District Co-operative Bank and other persons who had filed petitions before this court challenging action of the authorized officers of exclusion of their names from the voters' list and filing of SLP (C) 35638 of 2011 against judgment and order passed in those matters wherein Hon"ble the Supreme Court vide order dated 15.12.2011 stayed elections of the APMC, Kalavad, The petitioner has lastly averred that the, clear statement was made on behalf of the State authorities including respondent No. 3 not to issue any new licenses and not to cancel current licenses and to maintain status quo as prevailing then. It is on the above premises, the petitioner has asked for the above reliefs.

2. The petition is opposed by the administrator of respondent No. 3 by filing affidavit in reply stating that he is functioning as administrator under the statutory provisions of the Act and he is entitled to exercise all powers available to the Market Committee. He has made clear statement on oath that the grant of licenses and renewal of licenses will not entitle the licensee to be voter for the election of the APMC for which this Court has directed to hold the elections.

3. I have heard the learned Advocates for the parties.

4. Learned Senior Advocate Mr. Mihir Joshi appearing with learned Advocate Mr. Dipen Desai for the petitioner submitted that the appointment of the administrator on expiry of term of elected body of the Market Committee is for general administration of the Market Committee and not to take any important decision as regards giving new licenses and/or cancelling licenses to operate in the market area. Learned Senior Advocate Mr. Mihir Joshi submitted that the term of administrator could not be for unlimited period. The appointment of administrator is made when the term of the elected body of the Market Committee is not extended and, therefore, person appointed as administrator is not authorized to function like an elected body of the market committee. Learned Senior Advocate Mr. Mihir Joshi submitted, that in respect of respondent No. 3 though this court had passed order to hold elections within three months, still, election of respondent No. 3 market committee has not been held and the administrator is allowed to function to see that such administrator goes on adding new persons as voters just to influence result of the election of the market committee. Learned Senior Advocate Mr. Mihir Joshi submitted that when there was already a direction given by this court that respondent No. 3 shall not enroll any new persons as licensee, it is not open to the administrator to initiate action for the purpose of issuance of new licenses. Learned Senior Advocate Mr. Mihir Joshi submitted that even before Hon'ble the Supreme Court, statement was made that the administrator shall not enroll any new persons as licensees and, therefore, till the election of the market committee is held, administrator is not authorized to issue any new license or take any action for issuance of new licences or cancellation of the existing licenses. Mr. Joshi has relied on the decision of Hon'ble the Supreme Court in the case of *Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others*, and in the case of *K. Shantharaj and another Vs. M.L. Nagaraja and others*, to point out that Hon'ble the Supreme Court has explained role of administrator appointed in place of elected body of management committee and has held that the administrator is not authorized to enroll any new member in the society.

5. As against the above arguments, learned advocate Shri Bharat Rao appearing for the administrator submitted that the powers available to the administrator under the provisions of Sec. 11 of the Act are not circumscribed or limited by any provision of the Act and, therefore, it is open for the administrator to perform all functions and duties which are to be performed by the elected body of the market committee. Learned advocate Mr. Rao pointed out that unlike the provisions of the Co-operative Societies Act, licenses issued by the Administrator are for limited period of one year subject to further scrutiny by the Market Committee. At the time of renewal, it is always open to the elected body of the market committee to refuse to renew license if the holder of such license is not found entitled to continue the license. Learned advocate Mr. Rao submitted that the direction given by this court for holding of elections within three months and not to issue licenses was not only for said duration but was only for the purpose of not to enroll them as member in voters' list of coming elections and,

therefore, it cannot be said that there was blanket order of this court not to issue licenses by the administrator under the provisions of the Act. He submitted that this was in clear terms understood by the advocate appearing for the petitioner before Hon"ble the Supreme Court and, therefore, he made statement that the enrollment of new members was to be in the context of voters for election. In view of the above statement, the Hon"ble Supreme Court did not find any reason to interfere with the impugned judgment passed by this Court in Special Civil Application No. 9704 of 2011. Learned advocate Mr. Rao submitted that the directions given by this Court not to enroll any new member was in the context of voters for election and not in the context of exercise of powers by the administrator for issuance of new licenses under the Act. He however submitted that the administrator in his affidavit in reply has clearly stated that the grant of licenses or renewal of licenses will not make licensees entitled to be voters for the election of the Market Committee and even the condition to that effect shall be incorporated in the new licenses and it will be made clear to such new licensees that the issuance of new licenses shall be subject to the ultimate orders which may be passed by Hon"ble the Supreme Court. Mr. Rao, therefore, urged to dismiss the petition.

5.1 Learned A.G.P. Shri Niraj Ashar while adopting the arguments of learned advocate Shri Bharat Rao, submitted that the administrator is exercising statutory powers under the Act and such powers could not be taken away simply because the dispute for election of market committee is pending. Learned A.G.P. Shri Ashar submitted that no statement was ever made before Hon"ble the Supreme Court on behalf of the Government or on behalf of the administrator that till the election is held, the administrator shall not issue new licenses. Learned A.G.P. Shri Ashar submitted that in fact, there is no prohibitory order from any Court restraining the administrator from issuing new licenses. Learned A.G.P. Shri Ashar submitted that since the appointment of the administrator is u/s 11 of the Act, he would remain empowered to exercise all the powers of the market committee and, therefore, such administrator may not be restrained from exercising his statutory powers. Learned A.G.P. Shri Ashar, thus, urged to dismiss the petition.

6. Having heard learned advocates for the parties and having perused the different orders produced on record, it appears that pending the dispute as regards holding of election for APMC Kalavad, the administrator has been functioning in place of elected body of the market committee u/s 11(5) of the Act. The appointment of the administrator came to be made by the State Government on account of expiry of the term of elected body of the market committee. The provisions of Sec. 11(5)(a) to (d) which apply to the appointment of administrator read as under:

11(5) (a) Where the term of office of a market committee has expired, the State Government shall, by order published in the Official Gazette, direct that--

(i) such person as may be appointed by the State Government from time to time

shall be the Administrator to manage the affairs of the market committee, during the period beginning with the date specified in the order and ending on the day immediately preceding the date of the first general meeting of the market committee as reconstituted on the expiry of the term of the market committee (hereinafter in this sub-section referred to as "the said period").

(ii) the market committee shall be reconstituted within such period not exceeding one year in the aggregate as may be specified in the order.

(b) During the said period, all powers, functions and duties of the market committee under this Act shall be exercised and performed by the Administrator.

(c) The Administrator may by an order in writing delegate any of the powers, functions and duties to be exercised and performed by him under clause (b) to any officer for the time being employed by the market committee.

(d) The Administrator shall receive such remuneration from the Market Committee Fund as the State Government may from time to time by general or special order determine.

7. Clause (b) of section 11(5) of the Act provides that the administrator shall exercise all powers, functions and duties of the market committee under the Act during the period he remains as administrator in place of elected body of the market committee.

8. The petitioner has alleged that the State Authorities are deliberately not holding elections just to allow the administrator to function with a view to see that the authority of the administrator could be utilized for, oblique purpose of election.

9. However, in petition pending before the Hon"ble Supreme Court concerning dispute about holding of election of respondent No. 3, Hon"ble Supreme Court has granted stay against holding of election of respondent No. 3 market committee. There is no prohibitory orders from Hon"ble Supreme Court against administrator not to issue any new license under the Act.

10. Learned Senior Advocate Mr. Joshi however placed reliance on the directions issued by Hon"ble Division Bench of this Court in para 2 of the order passed in Special Civil Application No. 9704 of 2011 construing the same as direction to the administrator not to issue any new licenses. But this court finds that the direction issued in para 2 by Hon"ble Division Bench of this Court in Special Civil Application No. 9704 of 2011 were while deciding issue about holding of election of respondent No. 3 and the direction issued to the administrator not to enroll any new member or to send information to the authorities against any member or not to act upon any information if sent was in connection with holding of election of respondent No. 3 market committee for the period of three months from the date of the order. When this order was challenged before Hon"ble the Supreme Court, Learned advocate appearing for the petitioner clearly stated before Hon"ble the Supreme Court that the directions contained in para 2 of the

said order was in context of voters for election. In view of the above statement made by the learned Senior Counsel before Hon''ble the Supreme Court, the SLP was disposed of. Therefore, what clearly appears is that the directions contained in para 2 of the said order were meant to ensure that the administrator shall not enroll any new member for the purpose of election especially when the Court was ordering holding of election within three months. Such direction therefore could not be taken to be the direction against the administrator not to issue any new licenses under the Act.

11. Even apart from the above, when the administrator is given full powers to function like elected body of the market committee under the Act and when the Act provides for issuing new licenses by following the provisions of the Act and the Rules made under the Act, such statutory powers of the administrator could not be taken away simply because the dispute about election of market committee is pending.

12. It is required to be noted that unlike the provisions made for new membership under the Co-operative Societies Act, new licenses issued under the provisions of the Act and the Rules are only for a period of one year and the renewal is subject to scrutiny and complying with the requirements of the provisions of the Act and the Rules on the expiry of such one year. It is also required to be noted that even after grant of license, market committee has got power to cancel such license if it is found that it is not fulfilling the requirement of the Act and the Rules. Sec. 31H of the Act provides for such cancellation of licenses. Therefore, simply because the election is not being held for respondent No. 3 committee, the administrator cannot be stopped or prohibited from discharging functions and duties of market committee. The function and duties of market committee include issuance of new licenses. The administrator is therefore very much empowered to perform such statutory functions. Such powers cannot be taken away simply because election is not being held.

13. Decisions in the case of K. Shantharaj and another Vs. M.L. Nagaraja and others, will have no application to the facts of the case. Those decisions rendered by Hon''ble the Supreme Court were in the context of the provisions of the Karnataka Co-operative Societies Act and the Kerala Co-operative Societies Act. The powers available to the administrator under the Co-operative Societies Act cannot be termed as similar to the powers available to the administrator under the Act. Therefore, above decisions could not be applied to hold that the administrator appointed under the Act has no power to issue new licenses.

14. The administrator appointed under the Co-operative Societies Act is required to function under the direct supervision of the Registrar. His function shall be for streamlining the affairs of the society so as to see that at the earliest, management could be handed over to the elected body. In the case of administrator appointed under the Act, there are no restrictions imposed on the administrator and he has to perform all functions and duties of market committee.

15. Viewing the matter from the above angle, the grievance made by the petitioner cannot be entertained especially when the administrator has in clear terms stated in affidavit in reply that the issuance of new licenses or renewal of licences will not make the licensees entitled to be voters for election in the Market Committee for which this court has directed to hold election. Learned advocate Mr. Rao has made statement at the Bar that at the time of issuing licenses, provision shall be made by way of incorporating condition in the licence itself that new licensees shall not be voters for election in the ensuing elections. In view of the above, prayers made in this petition cannot be granted. The petition is therefore dismissed. Notice is discharged.