

(1973) 07 BOM CK 0018

In the Bombay High Court

Case No : Special Civil Application No. 489 of 1973

Islam Ali

APPELLANT

Vs

Panchavat Samiti, Telhara and Others

RESPONDENT

Date of Decision : 31-07-1973

Acts Referred:

Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 — Rule 89
Maharashtra Agricultural Produce Marketing (Regulation) (Amendment) Act, 1964 — Section 18
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 15(1)

Citation : AIR 1974 Bom 68 : (1973) MhLj 867

Hon'ble Judges : Padhye, J; Dharmadhikari, J

Bench : Division Bench

Advocate : S.N. Paunekar and B.P. Jaiswal, for the Appellant; R.B. Agruawal, S.N. and N.S. Khardekar and M.B. Mor, Asstt. Govt. Pleader, for the Respondent

Judgement

Padhye, J.—This petition seeks the quashing of the resolution of the respondent No. 1, Annexure 4 and the orders of the respondent No. 2 at Annexures 5 and 7. It also seeks a writ of prohibition prohibiting the respondents 2 and 3 from issuing any directions which will have the effect of disturbing the status quo of the petitioner. The grievance of the petitioner arises in this way.

2. The petitioner Mir Islamali was an elected member of the Panchayat Samiti, Telhara from Hiwarkhed Panchayats Electoral College for a term of 5 years having been elected in the year 1967. After the establishment of a market committee for the market area of Telhara Block within the jurisdiction of the Panchayat Samiti, Telhara, a representative of the Panchayat Samiti, within the area of the market committee had to be sent to the market committee. The Panchayat Samiti, Telhara being within its jurisdiction, the Panchayat Samiti, Telhara decided to send the petitioner as its representative to the market committee, Telhara and accordingly the petitioner was elected as its representative. The name of the petitioner was duly published in the Office Gazette dated 19-1-1972.

3. After the petitioner was sent to the market committee Telhara as and elected representative of the Telhara Panchayat Samiti, the election of the Chairman of the Market Committee was held and in that election which was held on 21-4-1972, the petitioner was elected as a Chairman of the Market Committee Telhara his being the only name proposed. The petitioner there after continued to be the Chairman of the Telhara Market Committee and was functioning as such. The petitioner in the ordinary course would have continued as the Chairman of the Talhara Market Committee till 20-4-1975 by virtue of the provisions of Section 14 (3) of the Agricultural Production Marketing (Regulation) Act, 1963, hereinafter called the Marketing Act.

4. However, in the months of July and August 1972, elections of the new members of the Panchayat Samiti, Telhara were held. The petitioner contested the said election and was elected as a member of the Panchayat Samiti. The results were declared on or about 2-8-1972. The petitioner even thereafter continued to be the member and Chairman of the Market Committee, Talhara.

5. It, however, appears that a member of the newly elected body of the Panchayat Samiti, Telhara, tabled resolution to the effect that an elected representative of the Panchayat Samiti should be sent to the Market Committee in place of the sitting member Mir Islamali, i.e. the petitioner. The resolution was accordingly passed on 25-1-1973 to the effect that the representation of Mir Islamali is cancelled and in his place the Chairman of the Panchayat Samiti, Telhara Sahado Narayan Bopale be sent as member on the Telhara Agricultural Produce Market Committee. The collector by his memorandum dated 12th February 1973 intimated the chairman of the panchayat Samiti that since a new panchayat's samiti had been reconstituted on 12-8-1972 the petitioner Mir Islamali could not continue to function on the market committee as member after that date. The chairman was, therefore, directed by this memorandum to intimate the name of the chairman or the elected representative of the Panchayat Samiti who should be notified for this purpose u/s 14 (4) of the Marketing Act. It appears that there was a further memorandum by the collector on 7th March 1973 in continuation of his earlier memorandum dated 12th February 1973 information that the question about the nomination of a member pof the panchayat Samiti on the market committee was referred to the Government for final orders. It is the aforesaid resolution and these two memos of the collector that have been challenging in the present petition.

6. The petitioner contends that he was elected as a representative of the Panchayat Samiti , Telhara to represent the Panchayat Samiti as a member of the Market Committe, Telhara. The term of the office of a member being 3 years from the date of its first meeting, which was held on 21-4-1972, the petitioner was entitled to continue as a member on the market committee till 20-4-1975 and that his representation could not be cancelled during the period of this term.

7. Section 13 of the Marketing Act provides for the constitution of market committees. The market Committee after the amendment by Maharashtra Act

No. 32 of 1970, consist of 18 members out of whom as provided in Section 13 (1) (d) one is to be either the chairman of the panchayat Samiti within the jurisdiction of which the market area or the major portion thereof is situated or the representative elected by such panchayat Samiti, u/s 14 (3) the members of a market committee, not being a committee constituted for the first time, is to hold office for a period of 3 years. This market Committee of which the petitioner was elected a Chairman was not a committee constituted for the first time and, therefore, the petitioner who became a member of the market committee and was elected representative of the panchayat Samiti could hold office for a period of 3 years, unless for any reason he ceases to be such a member. The petitioner contends that as his term as a member of the market committee is for a period of 3 years, his representation by the panchayat Samiti could not be cancelled during that period. Of course, if he was disqualified or removed for good reasons as provided under the Act and the Rules, the matter would be different, but so far as the panchayat Samiti which sent him committee is concerned, his representation could not be cancelled.

8. The respondents, and particularly the respondent No. 1 contend that the petitioner having been elected as a representative by the Panchayat Samiti which has since ceased to function, his representation will not continue after the said Panchayat Samiti ceased to function and the New Panchayat Samiti consisting of the newly elected members would have a right to send its own representative on the market committee. It is, therefore, contended by the respondent No. 1 that the new panchayat Samiti was authorised to cancel the representation of the petitioner and either the chairman of the panchayat Samiti or another representative elected by the new Panchayat Samiti could take his place.

9. The question, therefore, that falls for consideration is whether the new body of the panchayat Samiti was within its powers in cancelling the representation of the petitioner as the member of the market committee. The term of the Panchayat Samiti is co-extensive with the term of the Zilla Parishad. The Panchayat samiti, however, is not a body corporate with perpetual succession and common seal as the Zilla Parishad is. A Zilla Parishad. is a continuous body and does not cease to be a corporate body and there is a continuity in its life as well as functioning. The councillors of a Zilla Parishad hold office till the time the new councillors take over and thus there is no distribution or hindrance in the continuance of the Zilla Parishad. That cannot be said of a Panchayat Samiti which is not a body corporate having perpetual succession though its term of office is co-extensive with that of a Zilla Parishad. Since after every new election it is a fresh body that comes into existence, it would be said to be independent of the previous body. We are considering here a case when there is only one Panchayat Samiti i.e. the Telhara Panchayat Samiti, which is functioning within the area of the Telhara Agricultural Produce Market Committee.

10. It is true that the term of office of a ;member of the market committee is for a period of 3 years from the date of its first meeting, but that term is not

inflexible and in certain circumstances that term can be cut short. For example, a vacancy in the office of a member may be caused by resignation, death or removal as provided in Sections 16, 17 and 18 of the Marketing Act. The vacancy could also be caused if the member incurs disqualification as in Rule 41 of the Maharashtra Agricultural Produce Marketing (Regulations) Rules, 1967 read with Rule 89 of the said Rules. Apart from that, the proviso to Section 15 (1) of the Marketing Act itself shows that though ordinarily the term of office of a member of a market committee is for a period of 3 years, that term can be cut short if he ceases to continue to be a representative so far as the co-operative Society or a local authority is concerned and in the case of persons who are licensees if those persons cease to be holders of their licences. A "local authority" as defined by section 2 (1) (g) of the Marketing Act includes a Panchayat Samiti. Thus the Panchayat Samiti is a local authority. The proviso to Section 15 (1) of the Marketing Act clearly envisages a situation where a representative sent on the market committee by a panchayat samiti ceases to continue to be such representative then necessarily the term of office of that person as a member of the market committee in his capacity as a representative of the panchayat Samiti must necessarily be cut short and ceases to have effect as soon as he ceases to be a representative of the panchayat samiti. It is not, therefore, correct to say that once a person has been sent by a panchayat samiti as its elected representative on the market committee, he must continue as a member of the market committee for a full term of 3 years. If this contention were to be accepted, then the proviso to section 15 (1) will be meaningless and can never be given effect to. The proviso contemplates a situation where the elected representative of the panchayat samiti even during the term of the market committee can cease to be a representative of that panchayat samiti. It, therefore, follows that on such representative ceasing to be representative, a fresh representative can be sent by the panchayat samiti as a member on the market committee.

11. S. 18 of the Marketing Act deals with casual vacancies. The casual vacancies may occur on account of death or on account of resignation as provided by section 16, removal as provided by Section 17 or his becoming incapable of acting as such having been disabled physically or mentally. The casual vacancy may also occur otherwise than in the aforesaid contingencies. The word otherwise used in section 18 would take in a case of this kind where a new panchayat samiti comes into existence in place of the old one, by which a representative was elected or where the same panchayat Samiti which elected a representative or a new panchayat samiti cancels the representation which was made earlier. The words "shall hold office so long only as they continue to be such representatives" used in the proviso to section 15 (1) clearly connote that during the term of office of the members of a market committee such person who is a member by virtue of his being a representative of a local authority which includes a panchayat samiti, can be discontinued as such representative. Such a continuance (sic) of the representation can be by cancelling his earlier

representation by the panchayat samiti which had earlier elected him or by the panchayat samiti which was subsequently formed after fresh elections.

12. In the instant case, the newly formed panchayat samiti passed a resolution by majority of votes expressly cancelling the representation of the petitioner and, therefore, on the passing of such a resolution the petitioner ceased to be an elected representative of the panchayat samiti, Telhara on the market committee of Telhara and as such, he would not continue to be a member of the Telhara Market Committee.

13. It was contended on behalf of the petitioner that the petitioner was not given any opportunity by the Collector of being heard before his representation was cancelled or before it was declared that he discontinued to be a member of the market committee. Reference was made to Rule 89 of the Rules. It refers to a declaration of disqualification of a member of the Market Committee by the Collector. This declaration is to be made in the cases mentioned therein. Such a declaration can be made if the member was subject to any of the disqualifications mentioned in Rule 41 at the date of his election or nomination, or if he has incurred any of the disqualifications mentioned in Rule 41 after his election or nomination or he has ceased to be an agriculturist or has ceased to represent a firm, corporate body or a co-operative marketing or processing society. This rule has no application to a case of this kind. This is not a case of disqualification under Rule 41, nor is the Panchayat Samiti a corporate body and, therefore, Rule 89 could not be invoked. The power is to be found in the proviso to S. 15 (1) itself. That power could be exercised by the Panchayat Samiti at any time. It could be exercised not only by the Panchayat Samiti which elected the petitioner as its representative on the market committee, but also by the Panchayat Samiti which was formed subsequently.

14. It was then contended by the petitioner that if this case is covered by the provisions of Section 18 of the Marketing Act, it was for the chairman of the Market Committee to communicate the occurrence of the vacancy to the Director and after such a communication the vacancy should have been filled in as soon as convenient of the Panchayat Samiti on the Market Committee. It was urged that such a procedure has not been followed in this case and, therefore, the action of the Panchayat Samiti is illegal.

15. We have already held that the term "otherwise" used in Section 18 of the marketing Act would cover a case of this kind. Therefore, normally it was necessary that the information in this behalf should have been given to the Director, and thereafter the vacancy should have been filled in as soon as conveniently as per the provisions of Section 13 (1) (d). On the basis of the provisions of Section 18 it was contended by the respondents that it was for the Director to decide and determine the matter involved in this writ petition and on this count the present petition is not maintainable. From the provisions of S. 18 of the Act it is quite clear that the legislature in its wisdom has chosen a high officer to whom to give information regarding the occurrence of vacancy. Giving

of such an information is not a mere formality, nor is the said officer expected to act as mere post office. A perusal of Section 18 will show that after the communication of the occurrence of the vacancy the vacancy is required to be filled in as soon as possible. The term "vacancy" used in this context must mean a lawful and valid vacancy in the office and that such a vacancy is brought about by any one of several modes to which a reference is made in Section 18 of the Act. If the power to fill in the vacancy is made dependent on its having occurred, in our opinion, it is implicit that the Director or the person upon whom the power of the Director are conferred should be satisfied that in fact and in law a vacancy has occurred in the office. The provisions of Section 18 themselves postulate that the authority to whom the intimation of vacancy is required to be given by the Chairman is impliedly invested with the power to determine whether the intimation given is in respect of a vacancy having been legally and validly occurred. In choosing a high officer of the rank of Director to whom an intimation about occurrence of vacancy has to be given, in our opinion, the legislature by necessary implication must have intended to vest him with all the necessary implied power to determine the said question, if a dispute is raised challenging the very occurrence of the vacancy or its legality. The Maharashtra Agricultural produce Marketing (Regulation) Act, 1963 is a complete code in itself and in our opinion the legislature has taken care to make the said Act self-contained and has provided for the remedies for most of the contingencies so as to ensure smooth working of the market committee. Therefore, whenever information regarding the vacancy is given to the Director as contemplated by Section 18 of the Act, by necessary implication it casts an obligation upon him to apply his mind and to decide and determine the dispute if the said occurrence of the vacancy is challenged before him. Dealing with somewhat identical provisions under the Bombay Panchayats Act and the Maharashtra Municipalities Act, 1965, this court has taken the similar view in *Ramkrishna Yeshwant Gore and Another Vs. Secretary, Village Panchayat, Borjai and Others*, and *Gangabai Vs. President Municipal Council, Tumsar and Others*, .

16. However, in this particular case the petitioner himself is the Chairman not be Market committee and it could not be expected of him that he will give an intimation to the Director about the vacancy which has occurred relating to his won office which is borne out by the very writ petition which he has filed. The petitioner has not disputed the validity of the resolution passed by the panchayat Samiti cancelling his representation on the ground that the meeting in which it was passed was either invalid, or the procedure required under the Act has not been followed while passing the said resolution. The action of the panchayat Samiti is challenged in this writ petition on the only ground that the panchayat Samiti had no jurisdiction or authority to pass such a resolution in view of the provisions of the Marketing Act, which challenge we have already negated. The petitioner cannot be allowed to take advantage of his own wrong in not giving the due intimation of the occurrence on the vacancy to the Director and then contend that unless such as intimation was given it was not open for the market

committee to proceed further in the matter, and therefore, in our opinion, there is no substance in the contention raised by the petitioner.

17. In view of this, the petitioner could not, after the resolution of the panchayat Samiti cancelling his representation, continue as a member on the market committee, Telhara, representing the panchayat Samiti, Telhara. The cancellation of the representation of the petitioner being in order the petitioner is not entitled to any of the reliefs claimed by him.

18. The petition, therefore, fails and is dismissed with costs.

19. Petition dismissed.