
(1983) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 4813, 5038, 5367 and 5754 of 1983

Kotrappa Haldal and etc.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-04-1983

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 130, 38 (1)
Karnataka General Clauses Act, 1899 — Section 16, 21

Citation : AIR 1984 Kar 34 : (1983) 2 KarLJ 49

Hon'ble Judges : N.D. Venkatesh, J

Bench : Single Bench

Advocate : M. Subbara, D.L.N. Rao, B.G. Sridharan and B.V. Krishnaswamy Rao, for the Appellant; M.R. Achar, Govt. Pleader, for the Respondent

Judgement

1. Since common questions of law and facts arise in these cases they were clubbed and heard together.
2. The petitioner in W.P. No. 4813/1983 is the Chairman of the Agricultural produce Market Committee (APMC), Hagaribommanahalli Bellary District The petitioners 1and 2 in W. P. No, 5038/83 are respectively the Chairman and Director of the APMC, Kottur, Bellary District. The petitioner in W. P. No. 5367/83 is the Chairman of the A.P.M.C., Siruguppa; and the petitioner in W. P. No. 5754/83 is the Chairman of the A.P.M.C., Kumta, Bellary District.
3. By the notifications impugned in these proceedings respondent 1, State of Karnataka, treating the earlier notifications issued by it extending the term of office of the members of the respective Market Committee as void, appointed respondent 2, the Tahsildar in each case as the Administrator to exercise the powers and duties of the A. P. M. C., concerned and this order is made under S. 130, Karnataka Agricultural Marketing (Regulation) Act, 1966 (herein- referred to as the Act).
4. It is not in dispute that these four market Committees, which have been

replaced by the Administrators, were Market Committees constituted after elections as provided in the Act.

5. Under S. 38(1) of the Act the term of office of the members of the Market Committee is four years. The term of four years of the APMC, Hagaribommanahalli expired on 3-1-1983, and that of Kottur, Siruguppa and Kumta, respectively on 21-4-1983, 10-11-1983, and 4-7-1982. The proviso to S. 38(1) confers power on the State Government to extend the term of office of the members of the Market Committee from time to time for a period not exceeding one year. Exercising its powers under the proviso the State Government extended the term of office of the APMC of Hagaribommanahalli by its Notification dated 1-1-1983 (No. RDC-1-MMD-83) for a period of six months from 4-1-1983 to 3-7-1983 or till the elections to the said committee is held whichever is earlier (Annexure-A in W. P. No. 4813/93). By similar notifications issued it "tended the term of office of APMC, Kottur, up to 24-7-1983, and that of Siruguppa till 10-7-1983, and that of Kumta till 4-7-1983. It may be noted that Kumta Committee"s term has been extended twice by two such notifications. In the case of these three Market Committees of Kottur, Siruguppa and Kumta Notifications extending the term of office were issued respectively on 6-1-83, 6-1-83 and 5-7-1982 and 3-1-1983. While these Market Committees were thus functioning the State Government on the same day - 5th March, 1983 - have issued the impugned notifications replacing the said Committees by Tahsildars. The Notifications are also worded similarly.

6. It is stated above that the impugned notifications dated 5-3-1983 have been issued by the State Government treating the earlier notifications issued by its extending the term of office of the Market Committees as void. The Government have given some reasons in the impugned notifications for treating the earlier notifications as void. What they say is that they had issued earlier notifications extending the term without giving any reasons there for though it was obligatory for them to have given such reasons and that non-furnishing of reasons had made those earlier notifications, as observed by the Supreme Court in several of its decisions as non est, invalid, and inoperative in law, and also that in this connection they had received several representations from others questioning the validity of the said notifications. The appointment of Administrators in the impugned notifications have been made by the State Government exercising their powers u/s 130 of the Act.

7. The petitioners" contention in all these cases is that, in issuing these impugned notifications, the State Government had exceeded its powers. The learned counsel for the petitioners argue that the State Government, having once extended the term of office of these Market Committees, exercising their powers u/s 38 of the Act, had no powers to issue the impugned notifications treating the earlier notifications as void but virtually rescinding the said notifications. Their further contention is that their clients who were holders of office prior to their replacement, should have been heard in the matter, and, since no such

Opportunities have been given to them by the Government, these notifications were also void being opposed to the principles of natural justice.

8. On the other hand, the learned Government Advocate, supporting the impugned notifications, submitted, that having come to know that the notifications earlier issued by it, being not in compliance with the statutory requirement, were void, had rightly recognised the said fact and, having recognised it, had appointed Administrators to perform the duties of the Market Committees, which, in law, were not at all functioning, since in these Market Committees there were no lawful functionaries at the time of issue the impugned -notifications, he argues" there was no necessity to issue prior notice as to the contemplated action.

9. The only question that arises for consideration in these cases is:

Whether the notifications impugned in these petitions are bad In law having been issued by the State Government in excess of their powers ?

10. Section 38 of the Act reads as follows:

"38. TERM OF OFFICE OF MEMBERS:

(1) The members of the Market Committee shall, save as otherwise provided in this Act, hold office for a term of four years :

Provided that the State Government may, by notification, for reasons to be stated therein, may extend from time to time the said term for a period or periods not exceeding one year.

(2) Notwithstanding anything contained in sub-section (1), a person who is a member of a Market Committee by virtue of being a representative of any institution shall cease to be such member on his ceasing to be a member of the managing body of the institution concerned by the end of his term of office or otherwise."

The notifications issued earlier under the proviso to sub-section (1) of S. 38 are, in terms, similar. I propose to "tract one such notification, Annexure-A, produced in W.P. No. 4813 of 1983 :

"KARNATAKA GAZETTE

PUBLISHED BY AUTHORITY

(EXTRAORDINARY)

PART-IV-26 (ii)

BANGALORE, SATURDAY, JAN. 1, 1983

(PUSHYA 11, SAKA ERA 1904) No. 4

RURAL DEVELOPMENT AND CO-

OPERATION SECRETARIAT

Notification No. RDC 1 MMO 83

Bangalore, Dated 1st January, 1983.

Whereas the term of office of the Agricultural Produce Market Committee, Hagaribommanahalli expires on 3rd January, 1983.

Whereas it is considered necessary to continue the term of office of the members of the Agricultural Produce Market Committee, Hagaribommanahalli for a further period of six months i.e., from 4-1-1983 to 3-7-1983, or till the elections to the Committee are hold whichever is earlier.

Now, therefore, in exercise of the powers conferred by the proviso to sub-section (1) of S. 38, -Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act, No. 27 of 1966) the Government of Karnataka hereby extend the term of office of the members of the Agricultural Produce Market Committee, Hagaribommanahalli, for a further period up to 3rd July, 1983 or till the elections of the Committee are held whichever is earlier.

By order and in the name of the Governor of Karnataka, Sd/- V. Narasimhamurthy, Under-Secretary to Government, Rural Development Co-Opn. Dept."

11. While elaborating his arguments the learned Government Advocate makes a two fold submission. He argues that, as provided in the proviso to sub-section (1) of S. 38, reasons ought to have been given while ex tending the term of office of the Market Committee, and such reasons are not found in the said notifications, that therefore they were bad in law, that they had to be ignored and having thus rightly ignored the said notifications proper steps had been taken by the State Government to manage the affairs of the Committees. Even otherwise, according to him, the action taken can be justified for the reason that the Government bad powers to cancel or rescind a notification earlier issued by issuing another notification cancel ling or rescinding the same. For this latter submission of his he relies on the provisions of the Karnataka General Clauses Act, 1899.

12. The first part of his submission has to be examined from three angles, Firstly, we must see whether, in fact, those notifications issued under the proviso contain no reasons for issuing them. Secondly, we have to we as to whether the requirement in the Proviso to furnish reasons is mandatory or only directory. Thirdly we have to see that, even if it is mandatory, would its non-observance make the notification issued thereunder a void one and even if it is a void one, can the authority which had issued such a notification, itself take a decision that it is a void one and act in this manner.

13. As can be seen from the notification issued under the proviso to sub-section (1) of S. 38 and extracted above it is stated in the first para that the term of

office of that Market Committee would expire on 3-1. 1983, and in the second para it is stated that the Government had considered it necessary to continue the term for a further period of six months or till the elections are held whichever is earlier; and in the third Para it is stated that in exercise of the powers vested in them they had extended the term. Are not the three paras of that notification closely connected with each other? If one reads the notification, applying one's common sense, what is discernible is that that notification extending the term of the existing Committee had been issued for the reason that there was no likelihood of another legally constituted elected committee coming into being in time to take its place when its term would expire in the near future. In the circumstances, this could have been the only reason given and that, in fact is the reason mentioned therein. I am unable to agree with the learned Govt. Advocate that this notification does not contain any reason at all. It could have been more happily worded making it clear even to a layman why they were issuing that notification. However, the aforesaid reason is clearly spelled out in the notification.

14. Even otherwise I am of the view that this requirement to furnish reasons in the notification as mentioned in the proviso is not mandatory. The legislature has delegated this power of extending the term of office up to one year to the executive. It did not want its delegate to exercise their powers arbitrarily. It wanted the executive to apply its mind and for valid reasons to act thereunder. Therefore, as a matter of caution the law provides for giving reasons in the notification itself. If there are no mala fides in extending the period, and, if otherwise the action extending the term can be justified the notification would not be bad for the mere fact of not containing reasons in it. Action taken, under the proviso would not involve any penal consequences. The right vested in any person is not taken away and as can be seen from sub-section (1), resorting to that provision the Government can only extend the term but not shorten it. It would be quite in consonance with" the spirit of the provision. If, by inadvertence, reasons are not actually mentioned in the notification but there is other -evidence to show that, after careful consideration and deliberation, the term of office had been ex- tended such a notification cannot be dubbed as void.

15. In one of the decisions of the Supreme Court on which reliance has been placed by the Government in the impugned notifications this very question whether a statutory requirement of furnishing reasons in a order or notification issued under such a provision is directory or mandatory has been considered. The following observations in *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, may be noted:

"The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which, for instance, set out the consequences of the omission to observe the requirement but on the purpose for which the requirement has been enacted, particularly in the context of the other provisions of the Act and the general scheme thereof. It would, inter

alia, depend on whether the requirement is insisted on is protection for the safeguarding of the right or liberty of person or property which the action might involve. The implication of the auxiliary verb "shall" is inconclusive and similarly the mere absence of the imperative is not conclusive either." (Underlining supplied.)

If the requirement stipulated in the proviso is examined in the light of the aforesaid observation, it appears that the requirement is only directory and not mandatory.

16. The learned Government Advocate, proceeding on the, basis that the previous notifications were void for not contaminated" sons therefore further argues that the action of the Government in appointing administrators was, in the circumstances, justified. His argument is that the "Government has rightly ignored those notifications, the very notifications it bad earlier issued acting under a statutory provision. There may be cases in which the Government could review its administrative orders. As observed in an other decision "of -the Supreme Court referred to in the impugned notifications - R.R. Verma and Others Vs. Union of India (UOI) and Others, "Government must be free to after its policy or decisions in administrative matters" and "if they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirement and also to observe the principles of natural justice where tights of parties may be affected". In that case while not agreeing with the arguments of the learned counsel that the Government could not have reviewed its own order, the learned Judge Chinnappa Reddy, J., observes that "the cases cited by Sri Garg are cases where the Government was exercising quasi-judicial powers vested in them by a statute". The learned Judge was of the view that in administrative matters, where undue hardships were likely. to occur to persons, the Government can review their own orders. In Girdharilal Amratlal Shodan and Others Vs. State of Gujarat and Others, , the 3rd decision referred to in the impugned notifications, the Government having found a notification issued under the Land Acquisition Act had for not containing reasons, withdrawn it and issued another one. They had not withdrawn from the acquisition.

17. In the instant case the result of the earlier notification was the term of office of the Market Committee came to be extended statutorily. The result was they would hold office as an elected body till the expiry of the extended term. This was cut short by the impugned notifications. Even though the Government chose to treat, the earlier, notifications as void, the members of the Committee, on the strength of-those notifications, were holding on to their offices and were, in fact, functioning as such. The result of those impugned notifications is that that right of holding on to their offices was taken away. I have referred to above two decisions of the Supreme Court relied upon by the Government in the impugned notifications. The facts involved in those cases are not similar to the facts in the instant case. The ratio enunciated in the aforesaid decisions cannot, as a matter

of course, be applied here. It is not easy, under all circumstances, for the Government to treat its own action; taken as a delegate of the legislature, as a nullity. How difficult it is for the Government to treat its own order as invalid or void is highlighted in the following illuminative passage of H. W. R. Wade in his "Administration Law" (4th Edition) at page 299:

"Where an act or order is a nullity, according to Lord Denning's opinion quoted above, "there is no need for an order to quash it". But unless such an order is obtained, there is no means of establishing its nullity. It enjoys a presumption of validity, and will have to be obeyed unless a Court invalidates it. In this sense every unlawful administrative act, however invalid, is merely avoidable. But this is no more than the truism that every matter of law is for the Court. In a well known passage Lord Radcliffe said :

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity upon its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

This must be equally true even where the "brand of invalidity" is plain : for there also the order can effectively be resisted in law only by obtaining the decision of the Court. This also is corroborated by Lord Diplock saying that:

"it leads to confusion to use such terms as "avoidable", "avoidable ab initio", "void" or "a nullity" as descriptive of the status of subordinate legislation alleged to be ultra vires for patent or for latent defects, before its validity has been pronounced by a Court of competent jurisdiction."

The words "Patent or latent" show that there is no difference where the order bears a "brand of invalidity upon its forehead". Lord Diplock pointed out that the order would be presumed to be valid unless the presumption was rebutted in competent legal proceedings by a party entitled to sue, He added that there might be no one entitled to sue, for example, if a statutory time limit had expired. In that case the order would have to stand.

"The reality of the matter, therefore, is that the Court will invalidate, an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the "void" order remains effective and is, in truth, valid. It follows that an order may be void as against one person and valid as against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.

"Void" is therefore meaningless in any absolute sense. Its meaning is relative, depending upon the Court's willingness to grant relief in any particular situation. If this principle of legal relativity is borne in mind, confusion over "void or avoidable" can be avoided. A case could be made for using either term in relation to invalid acts. But so long as the ultra vires doctrine remains the basis of administrative law, the correct epithet must be "void".

18. Having carefully considered the submissions of the learned Government Advocate and for the reasons stated above, I am of the view that firstly, the earlier notifications did contain reasons and, therefore, were valid, secondly, the requirement in the proviso to give reasons in the notification, in the circumstances, is merely directory and not mandatory; and lastly that, even otherwise, the Government, for the reasons stated by it, could not have treated the earlier notifications as void and proceeded in this fashion.

19. The last submission of the learned Government Advocate was that the authority, having allowed the members of the committee to continue in office, had the powers to remove them, or, having issued a notification extending their term, could as well have withdrawn the same. For his former view he places reliance on Section 16 and for the latter on S. 21, Karnataka General Clauses Act. Section 16 is not attracted because this is not a case of an appointment. Section 21 cannot also be invoked here for this reason. If the earlier notifications are valid and in the instant case they are for the reasons stated above, the same cannot be withdrawn or rescinded. In the first place these impugned notifications do not purport to rescind the earlier notifications. Assuming that, in fact, they do the same thing, to justify that Section 21, Karnataka General Clauses Act, cannot be relied upon, I have referred to above the consequences that ensue on the issuance of a notification under the proviso to sub-section (1) of S. 38. The term of office of persons holding elective offices would thereby get itself extended. That cannot be nullified by simply issuing another notification, withdrawing that notification, relying on S. 21, Karnataka General Clauses Act. Section 21 is in terms similar to Section 21, Central General Clauses Act. That provision has been considered by the Supreme Court in several decisions including in *The State of Bihar Vs. D.N. Ganguly and Others*, wherein it is stated (at p. 1021) :

"It is well settled that this section embodies a rule of construction and the question whether or not it applies to the provisions of a particular statute would depend on the subject-matter, context and the effect of the relevant provisions of the said statute. In other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by the application of the rule of construction enunciated by Section 21, the appellant's contention is justified that the power to cancel a reference made under S. 10(1) can be said to vest in the appropriate Government by necessary implication. If we come to the conclusion that the context and effect of the relevant provisions is repugnant to the application of the said rule of construction, the appellant would not be entitled to invoke the

assistance of the said section."

20. I have carefully considered the submissions made in support of the impugned notifications by. the learned Government Advocate. I am unable to agree with him. The impugned -notifications are clearly unsustainable in law.

21. Therefore and for the reasons stated above these petitions are allowed; the rules issued are made absolute; and the impugned notifications are hereby quashed. The result is the earlier notification extending the term of office of these Market Committees continue to be in force. No costs.

22. Petitions allowed.