
(1988) 03 BOM CK 0003
In the Bombay High Court
Case No : Writ Petition No. 218 of 1988

Laxman Balsare

APPELLANT

Vs

Municipal Council, Warud and Others

RESPONDENT

Date of Decision : 01-03-1988

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 13(1), 13(1A), 15(1)

Citation : (1988) 4 BomCR 576

Hon'ble Judges : V.A. Mohta, J; M.S. Ratanparkhi, J

Bench : Division Bench

Advocate : C.G. Madkholkar and R.C. Madkholkar, for the Appellant; A.M. Gorde, for respondent Nos. 1 and 4, A.M. Tayade, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Ratanparkhi, J.—A mandate has been sought from this Court directing the quashing of the resolution passed by the Municipal Council, Warud on 20th January, 1988 cancelling the representation of the petitioner Mr. Belsare and sending Mr. Gulhane, respondent No. 4, as their representative to the Agricultural Produce Market Committee, Warud. A declaration has also been sought to the effect that the petitioner continues to be the Member of the Managing Committee of the said Agricultural Produce Market Committee.

2. Facts giving rise to this litigation may be briefly stated as follows; An Agricultural Produce Market Committee, a creature of Maharashtra Act No. XX of 1964, has been established at Warud. It has been constituted in pursuance of section 13(1) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, (hereinafter referred to as "the Act"). As the Municipal Council is existing at Warud a representative elected by the Municipal Council was sent to the Market Committee in pursuance of section 13(1)(e) of the said Act. The present petitioner who was initially the President of the Municipal Council went there as a representative of the Municipal Council. Subsequently he resigned

from the Agricultural Produce Market Committee. After his resignation, the Municipal Council elected him as a representative of the Municipal Council. Subsequently on 20th January, 1988 the general body of the Municipal Council passed a resolution No. 14 cancelling the representation of the petitioner and freshly electing Mr. Gulhane, respondent No. 4, as their representative on the Agricultural Produce Market Committee. It is this resolution passed by the Municipal Council, Warud which has been challenged in this petition.

3. It is the case of the petitioner that the general body of the Municipal Council acted without any jurisdiction to cancel his representation in as much as there was no vacancy created in the Agricultural Produce Market Committee. It was also contended that as he was sent by the same body as a representative, there was no power of cancelling his representation conferred either by the Maharashtra Municipalities Act or any other Statute. Thus the cancellation of his representation was ultra vires the powers of the Municipal Council. In law inspite of the resolution so passed, he continues to be a member of the Agricultural Produce Market Committee. As a consequence, he has also sought a declaration to that effect.

4. The Municipal Council, respondent No. 1, have put in their returns. It is their contention that the petitioner became a member of the Agricultural Produce Market Committee purely in his capacity as a representative of the Municipal Council. It was the bare domain of the Municipal Council to choose their representative. The Municipal Council passed a resolution on 20th January, 1988 and the effect of that resolution was that the petitioner lost his character as a representative. As soon as this character was lost, his membership of the Market Committee, Warud came to an end in view of the Explanation to section 15 of the Act. As there was a vacancy due to cancellation of his representation, the Municipal Council u/s 14(2) of the said Act was competent to send its representative. Accordingly they elected Mr. Gulhane, respondent No. 4, as their representative. This act on the part of the Municipal Council was quite valid and within the powers of the Municipal Council.

5. The respondent No. 2 has also filed the written submission and he generally supports the stands taken by the Municipal Council. Other respondents have not filed their written submissions. However, Mr. Gorde appears for respondent No. 4 and his stand appears to be parallel to that of the respondent No. 1.

6. Mr. Madkholkar, the learned Advocate for the petitioner, took us exhaustively through the general scheme of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. Section 13 of the said Act creates a Market Committee for the specified area. This Committee has to be constituted in pursuance of the provisions of section 13(1)(a) to (g) of the Act. It would not be necessary to reproduce the section. Enough to point out that the membership of the Committee is two thronged. The first category consists of the elected members from different sections, such as agriculturists, traders, commission agents etc.; whereas the second category consists of the representatives of the cooperative

societies, Panchayat Samitis and other local authorities mentioned in the section. These representations from these two different categories constitute the Committee. Clause (e) of sub-section (1) of section 13 of the Act speaks about the representation from Municipal Council constituted within the operational area of the Market Committee. This Clause (e) reads as follows:

"(e) One shall be the President or Sarpanch of the local authority (other than a Panchayat Samiti) within the jurisdiction of which the principal market is situated or the representative elected by such local authority:"

7. We are concerned here only with the local authority and not with other bodies. It is an undisputed position that initially the present petitioner was the President of the Warud Municipal Council and in his capacity as a President he straightaway walked to the Agriculture Produce Market Committee. He resigned as a member of that Committee and thereafter the general body of the Municipal Council elected him as their representative to that Committee. Thus his stature as a representative of the general body of the Municipal Council enabled him to become the member of the Market Committee in view of section 13(1)(e) of the said Act. He would continue to be the member of that Committee as long as he is clothed with this stature. So long as the Municipal Council treated him as their representative to that Committee, he could continue to be the member of that Committee.

8. Section 14 of the said Act gives some directions as to how the Municipal Council has sent its representative to the Committee. Sub-section (2) of section 14 of the Act would be relevant from this point of view. It says that whenever there is a vacancy the Municipal Council has to send their representative and in case of failure on the part of the Municipal Council to fill up that vacancy, the Director has to take appropriate steps to see that the representation from the local body is made.

9. As we are concerned here with the category of "representing members" it would be proper at this stage to refer to section 15 and particularly the proviso to sub-section (1) of that section. Sub-section (1) speaks about the term of office of Members of the Managing Committee. It reads as follows :

"(1) The term of office of members of a Market Committee shall be deemed to commence on the date of the first meeting of the Market Committee at which business is transacted :

Provided that, a person who is a member by virtue of his being a representative, or holding office or holding licence belonging to any of the categories of members referred to in sub-section (1) or (1-A) of section 13, shall hold office as such member so long only as he continues to be such representative or to hold such office or such licence and on his ceasing to be such representative or holding such office or licence he shall cease to be such member and he shall be deemed to have vacated his office."

10. The position obtainable from these different provisions which we have referred to above shows that the Market Committee established u/s 13(1) of the said Act has a tenure of five years. This tenure is subject to the proviso to section 15 (as reproduced above) and this tenure is bound to be curtailed, if any eventuality mentioned in that proviso occurs. We are not much concerned here with the vacancies contemplated u/s 18 of the said Act. Arguments were advanced only on interpretation of section 15 and particularly the proviso to sub-section (1) and it would be our endeavour to examine the scope of that proviso.

11. As the petitioner comes within the category of "representating member" of the Market Committee, he would definitely fall in the proviso to section 15. This proviso has no concern with the members who are directly elected from the different sections, such as agriculturists and so on, but the intention and the purpose of this proviso is crystal clear. A person goes to the Agricultural Produce Market Committee as a representative of these different bodies (in the present case, the Municipal Council) because he is clothed with the representation by the general body. As long as he wears these clothes, he continues to function as member of that Committee. As soon as he ceases to be the representative of the parent body, he automatically ceases to be the member of the Committee where he has to sit as a representative of his parent organisation. This appears to be the general scheme of the proviso to section 15 of the said Act.

12. Mr. Madkholkar, the learned Advocate for the petitioner, strenuously urged before us that the Municipal Council sends a person as their representative and when the vacancy is filled by such representation, the Municipal Council becomes functus officio because there is no question of any further representation. What he urged before us was that after the petitioner resigned his membership of the Agricultural Produce Market Committee, a vacancy automatically occurred and this vacancy was filled in by Municipal Council by electing him as their representative to Market Committee. Once the Municipal Council have elected their representative, the power of representation came to an end as long as his tenure in the Agricultural Produce Market Committee continues. Thus, according to Mr. Madkholkar, the learned Advocate for the petitioner having once elected the petitioner as their representative to the Agricultural Produce Market Committee, the Municipal Council exhausted their right to send a new member. Mr. Madkholkar also urged before us that a power of recall has not been normally recognised in our democratic system. It may be true to some extent. We are not going to decide the concept of recall because it is not necessary for us to do so in this petition. What we have to examine at this stage is "concept of representation." This Municipal Council has power u/s 13 (1)(e) of the said "Act to send its representative. The contemplates that the power of the Municipal Council to send its representative in absence of any other provision either in the Maharashtra Municipalities Act or in the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 is uncontrolled. It is admittedly their power and they can exercise this power according to their Will.

13. This being the background of the concept of representation, it is difficult to appreciate the argument that once the Municipal Council sends its representative to a specified body, it exhausts all his powers to make a further representation. It is true that a Municipal Council cannot send two representatives at a time because law does not permit them. Law does permit them to send one representative. In these circumstances if the Municipal Council thinks it proper to cancel the representation for reasons best known to them, then the initial representation has to cease, to represent them. We do not think that there is any restriction imposed by law to prohibit them from cancelling that representation and sending a fresh representative.

14. Our attention was invited by Mr. Madkholkar to the ratio laid down in *Jehangir Bhikaji Panthaki v. Corporation of the City of Nagpur* 1960 N.L.J. 99. This case dealt with the constitution of the Nagpur Municipal Corporation, as it existed then. Section 9 of the City of Nagpur Corporation Act provided that 57 councillors shall be elected from the electorate of the City. In addition to these elected representatives, six members were to be appointed or elected by different organisation including the Nagpur Chamber of Commerce, registered Trade Unions, University, Nagpur Improvement Trust, District Council at Nagpur, Central Railways, Bengal Nagpur Railways and the Directors of the Cloth Mills at Nagpur. The Directors of the Empress Mills nominated Mr. Panthaki as their representative. He, thus, became the member of the Nagpur Corporation in view of this nomination. Mr. Panthaki was then an employee of the Empress Mills. Mr. Panthaki's services came to be terminated and as a result of this terminated and as a result of this termination, the Empress Mills informed the Chief Executive Officer of the Nagpur Municipal Corporation that he ceased to be their representative. The vacancy was reported to the appropriate authorities. The Government declared that Mr. Panthaki could not continue to be the member.

15. The action was challenged before this Court in special Civil Application No. 5 of 1960. The action was challenged on the ground that when the Empress Mills nominated Mr. Panthaki as their representative to the Nagpur Municipal Corporation, they had no power to revoke that representation. This Court came to the conclusion that Mr. Panthaki could not cease to be the member of the Municipal Corporation only because his services were terminated by the Empress Mills.

16. In fact the case which was under consideration of this Court in that writ petition was quite different from the one we are dealing at the present. It was purely a nomination u/s 9 of the old Nagpur Municipal Corporation Act.

17. The Empress Mills urged before the Court that section 9 of the said Act gave them a power to appoint a councillor. According to them, the very power of appointment must be construed to mean that the Mills were also given the power to suspend or cancel that nomination. It was also their contention that as soon as the Principal (Empress Mills) lost confidence in their representative, the agent ceases to be their representative and hence he could not occupy the position of

the councillor. This Court observed in paragraph 15 that---

"The allegation that the councillor has lost the confidence of the appointers obviously does not make him incapable of acting. It only means that the appointers do not want him to act though he may be very much ready and willing to act."

Further, it was observed that once a councillor is appointed u/s 9(1)(d)(vi) and his appointment is notified u/s 16, the Councillor has a right to hold that office for a period of five years subject to the Act.

18. We have now to see whether the ratio would be applicable to the present case. What we are concerned with in the present case is the representation and that representation as contemplated under sub-section (1)(e) of section 13 of the Act is by election. It is the Municipal Council who have to elect their representative, whereas in Panthaki's case it was a case of nomination, pure and simple. A representation based on election assumes a different place and the concepts of nomination are no longer relevant in the concept of elected representative. The law presupposes a confidence imposed in him by the parent authority. The reposition of that confidence clothes him with the authority to represent the Municipal Council on the Agricultural Produce Market Committee. As soon as the main body lost confidence in him, it will not only be difficult but well-nigh impossible for him to continue as a representative of the parent body. It is from this point of view that the ratio in Jehangir's case 1960 N.L.J. 99 would be of no avail to the present case.

19. Our attention was also invited to Islam Ali Vs. Panchavat Samiti, Telhara and Others, . The facts of that case are similar to the facts of the present case. The petitioner Mir Islamali (in that petition) was a member of the Panchayat Samiti, Telhara. He was a member of the Panchayat Samiti and the Panchayat Samiti elected him as its representative to the Agricultural Produce Market Committee, Telhara. He was further elected as a Chairman of the A.P. M C Telhara. While the tenure of the A.P.M.C was continued, the tenure of the Panchayat Samiti came to an end. New Panchayat Samiti was elected and this Panchayat Samiti did not want Mir. Islamali as their representative to the Market Committee. His representation was cancelled. This act was challenged before this Court in Special Civil Application No. 489/1973, sections 13, 14, proviso to section 15 and other sections, specially sections 17 and 18 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 came to be interpreted. Paragraphs 10 and 11 of the judgement give the gist. The relevant portion can be reported with advantage.

"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 and if he 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 three 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 a representative, a fresh representative can be sent by the Panchayat Samiti as a member of the Market Committee.

Regarding the contention and interpretation on section 18 of the Act, this Court observed:

"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 representative" 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 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".

The above mentioned portion of the judgment explains the law and we respectfully agree with the same. The Panchayat Samiti and the Municipal Council do not stand on different footing as far as the real crux of the matter is concerned. The crux of the matter consists in the concept of representation and as such, it does not make any difference.

20. At one stage it was urged that the ratios in Jehangir's case 1960 N.L.J. 99 and Islam Ali Vs. Panchayat Samiti, Telhara and Others, are conflicting and hence we should refer this matter to a Full Bench. As a matter of fact, there is no need of reference because the ratios in these two different cases are quite different. In Jehangir's case (cited supra) this Court was considering about the nomination, whereas in Mir Islamali's case (cited supra) the main question before this Court was about the concept of representation by a local authority. We do not feel that there is any conflict in the ratio.

21. Taking into consideration the factual position as it stands the petitioner who

represented the Municipal Council, Warud on the Agricultural Produce Market Committee ceased to hold that representative character as soon as the impugned resolution was passed on 20th January, 1988. As soon as he lost the representative character, the proviso to section 15 of Act automatically came into operation. As a consequence his representative character vanished. The Municipal Council who was duty-bound under the statute to send its representative then elected the respondent No. 4 and he has now assumed the membership of the Market Committee in view of his representative character. It cannot be said by any stretch of imagination that the Municipal Council lacked in Jurisdiction when it cancelled the representation of the petitioner. As already pointed out, this power was in the Municipal Council itself and this power was not controlled by any statute. Even the ratio in *Islam Ali Vs. Panchavat Samiti, Telhara and Others*, supports this view. The resolution dated 20th January, 1988 has not been challenged on any other ground except the one mentioned above.

22. In the result, we, therefore, hold that the petitioner cease to have a representative character and as such he came within the four corners of the proviso, as a result of which he ceases to be the member of the Market Committee. This being the real crux of the matter, as has been done by the Municipal Council, Warud was only consequential. The petition has, therefore, no merit and it deserves to be dismissed and is accordingly dismissed. Rule is discharged. In the circumstances of the case, there will be no order as to costs.