(2016) 06 KAR CK 0205

In the Karnataka High Court

Case No : W.P.Nos. 30969-980 C/w 30925, 31274, 31485, 29999, 31704, 29998 and 29448-51 of 2016 (APMC)

Manjunath G. APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 14, Article 226
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 101, Section 106, Section 13, Section 13(1), Section 38, Section 42

Citation : (2017) 1 AirKarR 89 : (2017) ILRKarnataka 227

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : D. Ashwathappa, AGA, for the Respondents Nos. 1 and 2 in W.P.No. 30925 of 2016; Sri. Mohamad Tahir A., Advocate, for the Petitioners in W.P.No. 30969-980 of 2016; Sri. D. Ashwathappa, AGA, for the Respondents Nos. 1 to 3 in W.P.No. 30969-980 of 2016; Sri.

Final Decision : Partly Allowed

Judgement

Aravind Kumar, J. - Petitioners are elected members, nominated members, President/Vice-President of various Agricultural Produce Marketing Committee (for short ''APMC'') across the State and in these writ petitions they have called in question order passed by the Director, APMC appointing jurisdictional Tahsildars as officers to respective APMCs in exercise of power vested under sub-section (2) of Section 42 of Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 (for short ''APMC Act'') and also the order passed by the Director, APMC appointing the Assistant Commissioner, Lingasuguru Sub-Division, Lingasuguru in W.P.29999/2016 as the officer of APMC, Sindhanur, Deputy Commissioner, Chamarajnagar District, Chamarajanagar as officer of Chamarajnagar APMC.

2. In W.P. 31274/2016, the constitutional validity of Section 42 of APMC Act is challenged. In W.P.31704/2016, order dated 11.05.2016 passed by Additional

Director, APMC postponing the elections to the Market Committees in Chikkamagalur District and has directed the Deputy Commissioner to take steps since Government of Karnataka had resolved to postpone the elections to APMC across the State. Petitioners have also sought for a direction to the respondents to hold elections to the Market Committee of various APMCs whose term are coming to an end during May/June, 2016 expeditiously and as per the mandate of Section 38 of the APMC Act.

3. Since common question of law is involved in these writ petitions and having regard to the facts obtained in all these cases also being common and urgency expressed by learned advocates appearing for the parties to take up these petitions for final disposal, these writ petitions are taken up for final hearing, heard and disposed of by this common order.

4. The learned Government Advocate has filed an affidavit in W.P.30925/2016 which is sworn to by the Additional Director (Department of Agricultural Market, Bengaluru) stating thereunder that in March, 2016 the State Government has made a proposal in the Annual Budget to increase the representation of women in APMC from 1 to 3 as a prominent measure towards woman empowerment and a bill is proposed in this regard to be placed before the ensuing assembly session in the month of July, 2016 and contending if this benefit cannot be given now or given effect to, it would postpone the same for another five years. As such contending that proposal has to be incorporated in this particular year itself and elections are to be conducted during November, 2016, State is seeking for postponing of election. One another ground urged is that State of Karnataka has witnessed drought in nearly 137 talukas and welfare measures in this regard are to be implemented on priority basis and entire district administration is in the process of providing rehabilitation to farmers as well as to people in the drought areas and on priority, Officers are required to comply the directions of the Government and the Hon''ble Supreme Court, as such district administration could not concentrate on conducting elections to APMCs. It has also been stated in the said affidavit that Government has taken steps to conduct the elections for 139 APMCs within November, 2016 and entire process would take two months after the completion of assent that would be received from the office of the Governor on the bill which is proposed by the Government and as such, it is stated that Government has decided to hold elections to all 139 APMCs on or before November, 2016. On these grounds, State has sought for dismissal of the writ petitions.

5. I have heard the arguments of Sriyuths Mohamad Tahir, Mahesh S.T., Maheswarappa learned Advocates appearing on behalf of V.M. Sheelvant for petitioners, Mallikarjun C. Basareddy, Dr. Nanda Kishore, learned Advocates appearing for APMC and D. Ashwathappa, learned Additional Government Advocate appearing for State. Perused the records and also affidavit filed by the State.

6. It is the contention of learned advocates appearing for the petitioners that

order passed by the Director of APMC in exercise of power vested under Section 42(2) of the Act is illegal and it is contrary to Section 42 of the APMC Act. It is also contended that appointment of Administrator to the Committees is not sustainable and Director, APMC has no authority to appoint, unless calendar of events are issued. It is the contention of learned advocates appearing for the parties that to invoke Section 42 of APMC, calendar of events should be first issued and thereafter for the interregnum period i.e., after expiry of the existing committee and before new committee were to take charge, an Administrator can be appointed. As such invocation of sub-section (2) of Section 42 of the APMC Act is erroneous. They would draw the attention of the Court to Section 38 of the Act to contend that term of the board of every APMC is five years and before the expiry of the term of existing committee or in other words, before the expiry of five years term of the existing committee elections are to be held to every market committee and the intention of the legislature being clear and unambiguous, State cannot resort to appointment of an Administrator on the expiry of the term of the existing committees and as such, action of the Director of APMC to appoint Administrator would be in violation of Section 38(1) of the Act.

7. In W.P.No.31274/2016 the constitutional validity of Section 42 is challenged contending that section 38 of the Act mandates that election to every market committee has to be held before the expiry of prescribed term of five years and same having not been held, the Director of APMC or State cannot resort to invoke Section 42, inasmuch as, Section 42 empowers the Director to appoint Tahsildar or any person to discharge the function of Chairman or Vice-Chairman of the committee and when Section 38 mandates that election to market committee to be held before the expiry of term of the committee sub-section(2) of Section 42 and proviso thereunder would become redundant and as such, appointment of Tahsildar or any other person after expiry of the term of office would not arise and same is contrary to Section 38. Hence, on this ground it is contended that Section 42 of the Act is ultra vires and arbitrary and also discriminatory. It is further contended that Section 42 gives arbitrary power to the Director to appoint Tahsildar or any other person to function as Chairman, Vice-Chairman or committee and there is no time limit or period fixed for the person to remain in office of the committee and same being contrary to the object of Section 38, Section 42 is to be held as ultra vires of the Constitution. It is also contended that Section 42 of the Act does not fix the period or limitation to assume the duties of Chairman and committee, and this runs contrary to Section 38. Since Section 42 gives absolute power to the Director, marketing committee to appoint an officer to exercise the power and perform the functions of market committee and its Chairman and same would defeat the very object of the Act since there is no time limit or period for which an Administrator can be continued. Hence, it is contended that term of office members of the committee do not cease and till new committee is elected, existing members would continue to hold office. Hence, it is contended that Section 42 is ultra vires of the

Constitution. It is also contended that there is conflict between Sections 38 and 42 and in view of same, the present Chairman as well as committee would continue to function unless new market committee is constituted and as such, they have prayed for suitable directions being issued to the Director, APMC as well as State to permit the existing committees to continue in office. On these grounds, they have sought for allowing the writ petitions and also to declare Section 42 as ultra vires of the Constitution.

8. Sri. Mohamad Tahir, learned counsel appearing for petitioner has vehemently contended that when sub-section (1) of Section 38 mandates that term of office members of the committee to hold office would be for a period of five years and before such term would expire election should be held and as such, State cannot resort to postpone the election by resorting to sub-section (4) of Section 13 by contending that such power is available to State. In support of his submission he has relied upon unreported Judgment of Co-ordinate Bench of this Court in W.P. Nos.20685/2003 C/W 20637-646/2003 and connected matters rendered on 24.04.2003. He would submit that Karnataka Agricultural Produce Marketing (Regulation and Development) Rules, 1968 has to be read, harmoniously with Section 38 and Section 42 and when so read it would indicate that there is a duty cast on the Deputy Commissioner to prepare voter''s list of market committees and then he has to commence the process of election by publishing the voter''s list which ought to commence 15 days prior to the expiry of term of the existing committee. He would submit that in the instant case such exercise having not been undertaken, it would clearly indicate the intention of legislature to install the new committee after the expiration of the term of the existing committee is given a complete go by and as such, the term of existing committee would continue till such new committee is elected. Hence, he prays for suitable directions being issued in this regard.

9. Per contra Sri. Mallikatjun C. Basareddy, Dr. Nanda Kishore and Sri. D. Ashwathappa, learned Advocates appearing for APMC''s and State respectively would contend that action of the Director of APMC in appointing Administrators to the market committees whose term has expired is in consonance with the statutory provision namely Section 42 and reading of sub-section (2) of Section 42 would clearly indicate that immediately on expiration of the term of period of existing market committee namely after the period of five years then automatically the jurisdictional Tahsildar in which the market committee is situate would start exercising and performing the functions of such market committee and its Chairman until the committee is constituted and Chairman is elected. They would submit that proviso to sub-section (2) of Section 42 would clearly enable the Director to appoint any other officer to exercise the power and perform the functions of market committee and this power of the Director is in addition to deeming proviso of sub-section (2) of Section 42. Hence, they pray for dismissing the writ petitions.

10. Having heard the learned advocates appearing for parties and on perusal of

records, this court is of the considered view that following points would arise for consideration :

"(1) Whether Section 42 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 is ultra vires or intra vires of the Constitution ?

(2) Whether action of the respondents i.e., Director, APMC appointing jurisdictional Tahsildar to take over the functions of the respective marketing yard committees is contrary to Section 38 and Section 42 of the Act ?

(3) What order ?"

11. Courts while adjudicating upon the constitutional validity of the provisions of a Statute would notice all relevant facts whether existing or conceived. Courts strongly lean against any construction which tends to reduce a statute to nullity. If the choice is between two interpretations, narrower of which would fail to achieve the manifest purpose of the legislation, then Courts would avoid such construction which would reduce the legislation to a futility and accept the bolder construction based on the view that Legislature would legislate only for the purpose of bringing about an effective result in bringing about such enactment.

12. The construction which leads to such a result that it would invalidate the legislation would not (sic) be eschewed on the principle expressed in the maxim "Ut res magis valeat quam pereat". For this proposition the following judgments can be looked up :

(i) (2003) 7 SCC 628 - Balram Kumawat v. Union of India and others.

"26. The courts will therefore reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. [See Salmon v. Duncombe (AC at p.634)]. Reducing the legislation futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the courts would accept the bolder construction for the purpose of bringing about an effective result. The courts, when rule of purposive construction is gaining momentum, should be very reluctant to hold that Parliament has achieved nothing by the language it used when it is tolerably plain what it seeks to achieve. [See BBC Enterprises v. Hi-Tech Xtravision Ltd. (All ER at pp. 122-23)]".

(ii) AIR 2005 SC 34 - Nandkishore Ganesh Joshi v. Commissioner, Municipal Corporation of Kalyan and Dombivali and others.

"19. The proviso xxx take any decision. No doubt a legal fiction has been created but the same cannot be given effect to in vacuum. It is to be applied having regard to the legislative intent and a restricted meaning is to be attributed thereto in a situation of this nature. A statute, it is also well-known, must be read in such a manner whereby it is made workable - Ut res magis valeat quam pereat. [See Andhra Bank v. B. Satyanarayana and others (2004) 2 SCC 657.

and Indian Handicrafts Emporium and others v. Union of India and others (2003) 7 SCC 589]. In any event, where a difficulty arises in a given situation to construe the statute upon applying a plain meaning thereof, it is well-settled, the rule of purpose construction should be applied. [See Swedish Match AB and Anr. v. Securities & Exchange Board, India and Anr., 2004 (7) SCALE 158]".

(iii) AIR 2004 SC 361 - Saurabh Chaudri and others v. Union of India and others.

"64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means - (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.

65. Hence, we may also notice the argument, whether institutional reservation fulfils the aforementioned criteria or not must be judged on the following :-

1. There is a presumption of constitutionality;

2. The burden of proof is upon the writ petitioners as they have questioned the constitutionality of the provisions;

3. There is a presumption as regard the State''s power on extent of its legislative competence;

4. Hardship of few cannot be the basis for determining the validity of any statute".

13. The constitutional infirmity, if any, has to be shown for striking down the legislation. Mere allegation of unreasonableness or work-ability of a particular section in a statute may lead to difficult situation, that itself is not a ground to strike down the legislation or a section in a statute. It is to be established by the petitioners that unreasonableness which they have canvassed would impair or infringe their rights namely, fundamental rights enshrined in the Constitution. As otherwise, such contentions would be considered with circumspection. Courts would not sit in the armchair of Legislature to ascertain as to or find out as to the wisdom of legislature in introducing such legislation and only in the event of petitioners establishing lack of legislative competence and violation of fundamental rights guaranteed in Part III of the Constitution of India and such legislation would clearly violate the rights of the parties, then only Courts would strike down such legislation as otherwise not. For this proposition the judgment of the Apex Court in the case of State of A.P. and others v. McDowell and Co., and others reported in (1996) 3 SCC 709 can be looked up where under the Apex Court in its authoritative pronouncement has held as under :

"40. For the sake of completeness, and without prejudice to the above holding, we may examine the alternate line of thought. In Cooverjee Bharucha (AIR 1954 SC 220), a Constitution Bench of this Court expressed its wholehearted concurrence with the opinion of Field, J. in Crowley v. Christensen (34 L.Ed 620 : 137US 86 (1890)) to the effect that :

"There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority."

While laying down the said proposition, Mahajan, CJ., speaking for the Court, referred generally to the position obtaining under Article 19(1)(g) and clause (6) of the Article. The learned Chief Justice said that the reasonableness of the restriction has to be determined having regard to the nature of the business and the conditions prevailing in that trade. The learned Chief Justice said :

"The nature of business is, therefore, an important element in deciding the reasonableness of the restrictions."

These observations, it may be noted, were not made with particular reference to trade in intoxicating liquors but are general in nature. Indeed, it is after making these general observations that the Bench proceeded to refer to and express its concurrence with the observations of Field, J. referred to above. The said observations cannot be read as recognizing a fundamental right to trade in intoxicating liquors. Any such proposition would run counter to the main holding in the decision referred to above. It is true that in Krishna Kumar Narula v. State of Jammu & Kashmir, ((1967) 3 S.C.R. 50) : (AIR 1967 SC 1368), Subba Rao, CJ., speaking for the Constitution Bench, adopted a slightly different approach, viz., every trade is a trade; even the trade in intoxicating liquor is a trade; however, the nature and character of the business is relevant for determining the extent of restrictions that can be placed on such trade or business; inasmuch as intoxicating liquors are inherently harmful to the individuals consuming them and to the society as a whole, it can even be prohibited but it cannot be said that trade or business in intoxicating liquors is not a trade or business within the meaning of Article 19(1)(g). Even adopting this approach, it would be evident - and the decision in Krishna Kumar Narula recognises it - that the trade and business in intoxicating liquors can be restricted, severely curtailed or even prohibited. The fact that Article 47 of the Constitution expressly speaks of the obligation of the State to endeavour to bring about prohibition of the consumption of intoxicating drinks is itself a clear and definite pointer in this direction. Imposing prohibition is to achieve the directive principle adumbrated in Article 47. Such a course merits to be treated as a reasonable restriction within the meaning of clause (6) of Article 19".

14. Keeping these principles in mind, facts on hand are examined. In the instant case the term of the market committees across the State which are 157 in numbers, have come to an end or coming to an end shortly and elections are due

to be held for 139 market committees across the State. During the year 2016, term of 120 APMCs is coming to an end, for which elections are to be held. The details of number of APMCs whose term is coming to an end during 2016 are as under :

April-02 APMCs

May-77 APMCs

June-34 APMCs

July-01 APMC

August - 05 APMCs

November - 01 APMC

The Director, APMC in exercise of power vested under sub-section (2) of Section 42 has passed impugned orders appointing jurisdictional Tahsildar as officer-in-charge of the committee to perform the functions of the market committee including that of the Chairman. It is the grievance of the petitioners that as already noticed herein above such power is not available to the Director, APMC and the stand of the State that elections are being postponed on account of intending amendment sought to be brought to the Act as one infringing upon their right to continue in the committees, since they have been duly elected in the previous election held and until and unless new committee is duly elected and market committees are constituted, they are entitled to be continued in office. As such, they have called in question action of the State/Director-APMC.

15. In order to examine these issues or contentions provisions of the Act, which has been pressed into service are required to be noticed and they read as under:

"13. Superintendence, direction and control of elections. -

(1) Subject to the instructions of the [Director of Agricultural Marketing] the Superintendence, direction and control of the preparation of the lists of voters for and the conduct of all elections to the market committee, shall be vested in the Deputy Commissioner :

[x x x]

(2) The State Government xxxxx this Act.

(3) All expenditure in xxxxx of the State.

(4) Notwithstanding anything contained in any law for the time being in force, the State Government may issue instructions relating to all matters connected with elections to the market committees including directions for cancellation of the calendar of events or postponement of the poll.

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 [five years] [before the expiry of which election shall be held to a market committee;]

[x x x]

[(2) Notwithstanding anything contained in sub-section (1), a person who is a member of the market committee by virtue of being a representative of a Co-operative Marketing Society or an Agricultural Co-operative Processing Society,

as the case may be, shall cease to be such member on his ceasing to be a member of the Managing Committee of the Society concerned by efflux of his term of office or otherwise.]

39. Commencement of term of office. -

(1) The term of office of the members of a market committee shall commence on the date immediately after the expiry of the term of office of the out-going members of the market committee [or on the date of first meeting convened under sub-section (2) of Section 41 for election of Chairman and Vice-Chairman whichever is later.

(2) When not less than two-thirds of the representatives of agriculturists, and not less than two-thirds of the total number of members of a market committee are available to function as members after a general election, the market committee shall, notwithstanding anything contained in this Act, be deemed to be duly constituted, and the market committee so constituted shall be competent to exercise the powers and perform the functions of the market committee.

41. Election of Chairman and Vice-Chairman.-

(1) Subject to the provisions of sub-sections (2) and (3), every market committee shall choose two members representing the agriculturists'' constituencies of the market committee to be respectively the Chairman and Vice-Chairman thereof and so often as the office of the Chairman or the Vice-Chairman becomes vacant by death, resignation, removal or otherwise, the market committee shall choose another member to be the Chairman or the Vice-Chairman as the case may be, in accordance with the provisions of this Act and the rules.

[(2) As soon as may be after the constitution of a market committee under section 11 or on its reconstitution, a meeting thereof shall be called by the prescribed officer who shall himself preside over the meeting but shall have no right to vote. At such meeting a member representing an agriculturists'' constituency shall first be elected as the Chairman and thereafter another member representing another agriculturists'' constituency shall be elected as Vice-Chairman in the manner hereinafter provided.

(2A) At the meeting,-

(a) candidates for the office of the Chairman [or, as the case may be, the Vice-Chairman]shall be proposed by one member and seconded by another. The names of all members proposed and seconded shall be read out by the Presiding Officer;

(b) if any candidate desires to withdraw, he may do so in writing. The names of the contesting candidates shall then be read out by the Presiding Officer;

(c) if there is only one candidate, he shall be declared to have been elected as the Chairman [or, as the case may be, the Vice-Chairman], If there are two or more candidates, votes of the members present at the meeting shall be taken by ballot and the candidate securing the highest number of votes shall be declared to have been elected as the Chairman [or, as the case may be, the Vice-Chairman];

(d) in case of equality of votes, the result shall be decided by drawing lots.

[(2B) x x x]

(2C) If for any reason the Chairman or the Vice-Chairman is not elected at the meeting referred to in sub-section (2), such election shall be held at an adjourned meeting by the [prescribed officer for the election of Chairman and Vice-Chairman and after following the procedure laid down in sub-section (2-A)]

[(i) xxx

(ii) xxx]

(3) Where a Chairman [or the Vice-Chairman]has to be elected on account of the vacancy occurring in the office of the Chairman [or the Vice-Chairman], the meeting for such election, shall be convened by the prescribed officer and the election held in the manner specified in sub-section (2).

(4) Any dispute relating to the validity of the election of the Chairman or the Vice-Chairman under sub-sections (1), (2) or (3) shall be decided by the District Judge having jurisdiction over the area in which the office of the market committee is located in accordance with such rules as may be prescribed. The decision of the District Judge in that behalf shall be final, and no suit or other proceedings shall lie in any Civil Court in respect of any such decision.

42 - Term of office of Chairman or Vice-Chairman :

(1) Save as otherwise provided in this Act, the Chairman and Vice Chairman shall continue in office (for a term of twenty months or for the term of the market committee whichever is earlier]

(2) Notwithstanding anything contained in this Act, on the expiry of the term of office of the Chairman and Vice-Chairman and of the market committee, the Tahsildar of the Taluk in which the yard is situated shall exercise the powers and perform the functions of the market committee and its Chairman until the market committee is reconstituted and its Chairman is elected :

[Provided that the [Director of Agricultural Marketing] may, at any time thereafter appoint any other officer to exercise the powers and perform the functions of the market committee and its Chairman],

101. Composition of the State Marketing Board-

(1) The Board shall consist of the following members, namely :-

(i) The Minister of the State in-charge of agricultural produce marketing who shall be the ex-officio Chairman of the Board;

(ii) One person from each revenue district of the State who shall be a Chairman of a market committee in the district elected in the prescribed manner by an electorate consisting of the Chairman of all market committees in such district;

[(iii) the Secretary to Government, Department of Co-operation or his nominee, ex-officio;

(iv) the Secretary to Government, Department of Agriculture or his nominee, ex-officio;

(v) the Director of Agricultural Marketing;]

Provided that where in any revenue district there are only two market committees and both the Chairmen are contesting candidates for election from such district, the person to represent the market committees on the Board shall be decided by lot to be drawn by the Returning Officer:

Provided further that where in any revenue district there is only one market committee, the Chairman of such committee shall be the member of the Board.

(2) The Board shall elect a Vice-Chairman from among the elected members.

(3) The [Director of Agricultural Marketing] shall ex-officio be the [Managing Director]of the Board.

104. Cessation of membership of elected members of the Board.-

A member elected under clause (ii) of subsection (1) of Section 101 shall cease to be a member of the Board if he ceases to be a member of the electorate of Chairmen of the market committees concerned.

106. Term of office of the members of the Board.-

The term of office of the elected members of the Board shall, save as otherwise provided in this Act, be co-terminus with the term of office of the members of the market committee:

Provided that the term of office of the elected members of the Board shall be deemed to have been continued till the term of office of the duly elected members commences].

16. A bare reading of Section 38 would clearly indicate that term of the market

committee is fixed as five years and members of the market committee would also hold office for a term of five years. The term of office of members of the committee is also fixed and co-extensive with that of the market committee. Section 38 also mandates that before the expiry of said term, election shall be held to such market committee. Legislature has made its intention clear and specific. There is no discretion given to the authorities concerned to hold election and such election is to be held before expiry of the term namely, term of the market committee. A bare reading of sub-section (1) of Section 38 leaves no doubt in the mind of this Court that there cannot be any other view than arriving at a conclusion that term of members of the market committee as well as that of the market committee being co-extensive and it would be for a period of five years.

17. Sub-section (1) of Section 13 makes it clear that Deputy Commissioner is vested with the power of superintendence, direction and control of preparation of voters list for conduct of elections to the market committee, which would be of course from instruction of Director of APMC. Sub-section (2) makes it clear that State Government should make available to the Deputy Commissioner such staff, funds as may be necessary for discharge of the functions and responsibilities conferred on the Deputy Commissioner under the Act. Subsection (3) indicate that such expenditure in connection with or incidental to the election of members to the Market Committee shall be met out of the consolidated fund. Sub-section (4) of Section 13 would enable the State Government to issue instructions relating to all matters connected with elections to the Market Committees including directions for cancellation of calendar of events or postponement of the poll.

18. As to whether words used in sub-section (4) namely, "postponement of poll" would mean and include postponement of elections or not was the subject matter of consideration by a co-ordinate Bench of this Court in Parashuram & others v. State of Karnataka & others (W.P. No.20685/2003 : (2003 AIR Kant HCR 2173) and connected cases, decided on 24.04.2003) and it came to be held that they are separate, distinct and independent and in the guise of power vested to the Government to postpone the poll, State Government is not empowered to postpone the elections. It has been held by a co-ordinate Bench of this Court by noticing the earlier judgment of this Court and the judgment of Apex Court to the following effect:

"12. Section 13 of the Act deals with Superintendence, direction and control of elections. The aforesaid provision makes it very clear, subject to the instructions of the Director of Agricultural Marketing, the Superintendence, direction and control of the preparation of the lists of voters for and the conduct of all elections to the market committee, shall be vested in the Dy. Commissioner. This section was the subject matter of interpretation of this court earlier. Following the judgment of the Supreme Court reported in the case of State of Karnataka v. Gunjnhalli Nagappa & others reported in AIR 1975 SC 1708, this court had held in the case of T. Ramappa v. Tahasildar that Section 13 of the Act gives the general power of superintendence, direction and control of and conduct of all elections" and the said power of superintendence does not include the power to postpone the elections. The said judgment of the learned single Judge has been affirmed by a Division Bench of this Court in W.A.No.574/1982 disposed of on 25.3.1982 where it has been held, the language of Section 13 does not admit the construction that it takes within its sweep a power to interdict an electoral process after it has been duly set in motion.

13. It is because of the Judgment of the learned single Judge in the aforesaid case, the legislature thought it fit to bring about the amendment accepting the said interpretation. Therefore, the question that arises for my consideration is, whether the said legal position declared by this court has in any way affected by the amendment introduced by way of subsection (4) of Section 13. In order to appreciate this aspect, it is necessary to have a look at the amended provision of sub-section (4) of Section 13 which reads as under :

"Notwithstanding anything contained in any law for the time being in force, the State Government may issue instructions relating to all matters connected with elections to the market committees including directions for cancellation of the calendar of events or postponement of the poll."

14. Therefore it is evident, by virtue of the aforesaid provision, the Government has been empowered to do the following acts.

a. Issue directions relating to all mattes connected with elections to the market committee.

b. Direction for cancellation of calendar of events

c. Postponing of the poll."

It has been noticed that in sub-section (4) of Section 13, words "postponement of election" is conspicuously missing and therefore, mandate of Section 38 being that election to the Market Committee is to be held before expiration of the term of existing committee i.e., 5 years, would leave no doubt to infer or to conclude that there is no power vested with the Government to postpone the elections unlike the power vested with the Government under Section 41 and Section 13 to postpone the poll. In that view of the matter, the irresistible conclusion that will have to be drawn from the aforesaid discussion is State cannot postpone the conduct of elections contrary to sub-section (1) of Section 38 under the guise of exercising the power under Section 13(4) of the Act.

19. Now turning my attention back to the validity of Section 42 which has been questioned in one of the writ petitions, it has to be noticed that under sub-section (1) of Section 42, term of the Chairman and Vice Chairman elected to a market committee is for a period of 20 months and sub-section (2) mandates that on expiry of the term of office of the Chairman and Vice Chairman of the committee, if for any reason, such Chairman and Vice Chairman and Committee

is not elected or reconstituted for the said interregnum period, Tahsildar would exercise power and perform functions of the market committee. This is based on the salutary principle of ''office should not remain in vacuum''. Proviso to Section 42 came to be inserted by Act No. 17 of 1980 with retrospective effect i.e., from 03.11.1979 and it makes clear that even where Tahsildar of a Taluk in which Market Committee is situate would be exercising powers and functions of such market committee the term of which has come to an end, even in such circumstances Director of APMC would be empowered to appoint any other Officer to exercise the power and functions of the market committee and its Chairman.

20. When Section 38 is read in conjunction with Section 42, it would clearly indicate that term of members of the market committee would be only for a period of five years and term of the Chairman and Vice Chairman would be for a period of 20 months. If for any reason, office of the Chairman or Vice Chairman who have been elected for a period of 20 months falls vacant and a new Chairman or Vice Chairman is to be elected to such market committee, they cannot be heard to contend that on account of the term of the Chairman and Vice Chairman having been fixed under sub-section (1) of Section 42, they would be entitled to continue for the entire period of 20 months commencing from the date of their election even though term of Market Committee itself has come to an end. It is not the intention of the Legislature that period of Chairman or Vice Chairman would be for the period of 20 months from the date of election even where term of the Market Committee comes to an end. As such, 20 months'' period cannot be termed as co-terminus with that of the committee and the Legislature has consciously used the words "whichever is earlier" in sub-section (1) of Section 42 of the Act. Further sub-section (1) of Section 38 would also make it clear that members of the market committee shall hold the office for a term of five years. They cannot be heard to contend that they would still continue to hold the office even after five years solely on the ground that new market committee has not been elected. Thus, Section 42 operates independently and on the situation occurring as indicated thereunder and it cannot be held that Section 42 runs contrary to Section 38. There is absolutely no conflict in the operation of these Sections.

21. Yet another contention which came to be raised by Mr. Mohan, learned Advocate appearing for petitioners is that Section 104 of the Act would indicate that a member elected to State Marketing Board under clause (ii) of sub-section (1) of Section 101 would cease to be a member of the Board, if he ceases to be a member of the electorate of Chairman of the market committee concerned and as such, term of office of members of the State Marketing Board as per Section 106 would continue till the term of office members of the duly elected member commences and the existing members or Chairman of the respective committees would continue to hold the office till new committee is elected. Said contention is required to be considered for the purposes of outright rejection for the following reasons :

Section 101 of the Act would indicate the composition of State Marketing Board and it would consist of members as indicated in clause (i) to (v) of sub-section (1) thereunder and sub-section (2) enables such Board to elect a Vice Chairman from amongst the elected members. The Chairman of a State Marketing Board is Minister of State in-charge of Agricultural Produce Market Committee ex-officio as per Section 101(1)(i). Clause (ii) of subsection (1) of Section 101 would indicate that one person from each revenue District of the State who shall be a Chairman of the market committee in the district elected in the prescribed manner, would be a member of the State Marketing Board. Section 104 makes it clear that such member elected under clause (ii) of sub-section (1) of Section 101 would cease to be a member of the Board if he ceases to be a member of the electorate of Chairman of the market committees concerned. In other words, if a person is elected is member of State Marketing Board, who would necessarily be the Chairman of a jurisdictional market committee ceases to be a member of such electorate, then, automatically, he ceases to be a member of the State Marketing Board. Though Section 106 would indicate the term of office of the elected members of the Board shall be co-terminus with the term of office members of the market committee, saving clause provided thereunder i.e., in Section 106 wherein the words "save as otherwise provided in this Act" having been incorporated, would make it absolutely clear that it has to be read in conjunction with Section 104 and when so read, it leaves no manner of doubt to arrive at a conclusion that term of the Chairman of the market committee who ceases to be a member of the electorate of Chairman, such person cannot be heard to contend that he would continue to be a member of the State Marketing Board and he will not cease to hold the office. In the light of above discussion, this Court is of the considered view that there is no variance between Sections 42,104 and 106, so as to strike down Section 42 of the Act either on account of its workability or infringement upon rights of the petitioners. In that view of the matter, point No.(1) is answered in favour of the State by upholding validity of Section 42 of the Act.

Re: Point No.(2)

22. Insofar as power of the State regarding postponement of election is concerned, as already noticed herein above, sub-section (4) of Section 13 would empower the Government to issue directions relating to all matters connected with elections to the market committees, directions for cancellation of calendar of events or postponement of poll. However, neither sub-section (4) of Section 13 nor subsection (2) of Section 42 would empower the Government to postpone the conduct of elections. In that view of the matter, mandate of Section 38 ought to be followed by the State and to be obeyed by the Government. As held by a co-ordinate Bench of this Court, in the event of Government were to encounter any difficulties in the conduct of election after issuance of calendar of events, amended provision enables the Government to issue instructions in that regard.

23. Having regard to the affidavit filed by the Additional Director

(Administration), Department of Agricultural Marketing, Bangalore indicating thereunder that in order to increase women representation in APMC from the existing 1 member to 3 members and by taking note of the quotation of Dr. B.R. Ambedkar, which reads thus :

"The progress of the society should be measured on the basis of the improvements the life of women."

and to give life to it, amendment to the existing Act is being proposed and also the fact that State Administration has shifted its resources for rehabilitation of the drought hit citizens, this Court is of the considered view that some reasonable time is to be granted to the State and this would suffice and it would also meet the requirement of law namely, mandate of Section 38 of the Act. A perusal of the said affidavit would indicate that Government has taken steps to conduct elections for 139 APMCs well within November, 2016 and because of the proposed bill has to be placed in both the Houses and it has to be assented by the Governor indefinite postponement of elections as sought by State cannot be accepted for reasons more than one.

Firstly, it is noticed that in respect of Sindhanur market committee, steps had been taken to conduct elections within the time as prescribed under sub-section (1) of Section 38 namely, preparation of voters list had already been commenced. Secondly, postponement cannot be for indefinite period. Object of sub-section (1) of Section 38 not being postponing of the elections indefinitely and the affidavit of the State undertaking that they proposed to hold elections on or before November, 2016 which is also seriously disputed by the learned Advocate appearing for petitioners and taking note of the fact that sub-section (4) of Section 13 would only empower the Government to cancel the calendar of events even after elections being declared, if any such difficulties were to arise and sufficient safeguard having been provided in sub-section (4) of Section 13 anticipating such events that may take place or may not take place, elections cannot be postponed indefinitely. However, taking into consideration that Rules 5, 6 & 7 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Rules, 1968 would provide for preparation of voters list, publication of draft voters list, calling for objections, hearing of the aggrieved persons and also finally announcing the final voters list would consume at least 8 weeks, this Court is of the considered view that State if directed to hold elections within a period of 2? months, it would suffice and it would address all the issues including bottlenecks expressed by the Government, which they may encounter during conduct of such elections. Accordingly, point No.(2) is answered.

24. For the reasons afore-stated, I proceed to pass the following :

ORDER

(1) Writ petitions are hereby allowed in part.

(2) A writ of mandamus is issued to the State of Karnataka and Director of

Agricultural Produce Marketing Committee by directing them to hold elections to 139 APMCs as under :

(i) 19 APMCs whose term has ended prior to 2016, 2 APMCs whose term has ended in April, 2016 and 77 APMCs whose term have ended on 31.05.2016, shall be held on or before 31.08.2016.

(ii) Term of APMCs which are coming to an end in June/July/August, 2016 whose numbers are 34, 01 & 05 respectively, shall be held on or before 15.11.2016.

(iii) Remaining 1 APMC whose term would come to an end during November, 2016, shall be held on or before 31.12.2016.

(3) Order No. (VERNACULAR MATTER) dated 07.05.2016 passed by the Director, Agricultural Produce Marketing Committee - Annexures-B1, D & B in W.P.Nos. 30969-30980/2016, W.P.No.31274/2016 & W.P.No.29998/2016 respectively, are hereby upheld.

(4) Order No. (VERNACULAR MATTER) dated 26.05.2016 - Annexure-B in W.P.No.30925/2016, order No. (VERNACULAR MATTER) dated (sic) 05.2016 - Annexure-B in W.P.No.29999/2016 and order No. (VERNACULAR MATTER) dated 12.05.2016-Annexure-C in W.P.Nos.29448-29451/2016 passed by the Director, Agricultural Produce Marketing Committee appointing Deputy Commissioner, Chamarajanagar District, Assistant Commissioner, Lingsugur and Deputy Commissioner, Belagavi District to the respective Market Committees to exercise power of Market Committee and the Chairman of such committees, are hereby upheld.

(5) Order No. (VERNACULAR MATTER) dated 11.05.2016 - Annexure B in W.P.No.31704/2016 and W.P.No.31485/2016 respectively passed by Additional Director (Administration) are hereby quashed and held that jurisdictional Tahsildars of Mandya District and Chickmagalur District would be empowered to exercise powers and perform the functions of Chairman and the Market Committee until new Market Committee is reconstituted.

(6) Validity of Section 42 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 is upheld.

(7) No costs.

Ordered accordingly.

All pending applications stand consigned to file.

Registry shall make available the operative portion of this order to the learned Advocates appearing for respondents to enable them to comply with the directions issued herein above.

