

(1998) 12 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 36283 of 1998

M.D. Devegowda

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 03-12-1998

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 16 (1) (c),
44 (2), 44 (3)

Citation : (1999) ILR (Kar) 4087 : (2000) 2 KarLJ 101

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Sri G. Vedavyasachar, for the Appellant; Sri L. Krishna Murthy,
Additional Govt. Advocate, for the Respondent

Judgement

Constitutional validity of Section 44(2) of the Karnataka Agricultural Produce Marketing Regulations Act, 1966, has been assailed in this petition. Also under challenge is the validity of a resolution passed by the respondent-A.P.M.C. whereby the petitioner has been removed from the post of the Chairman of the said Committee, on the basis of a "No-confidence" motion moved against him. An order issued by the third respondent-Director of Agricultural Marketing Committee dated 12th of November, 1998, u/s 44(2) of the Act, has also been called in question. The controversy arises in the following circumstances.

2. The petitioner was at the relevant point of time the elected Chairman of the respondent-A.P.M.C. A "No-confidence" motion was moved against him by as many as 15 out of a total of 17 members constituting the Committee. A meeting to discuss the motion was called by the Secretary of the Committee on the 10th of November, 1998. At the Meeting out of 17 members 5 were present all of whom unanimously voted for the no-confidence motion while two absented themselves including the petitioner herein. It is interesting to note that apart from the petitioner the only other absenting member was one Sri B.M. Swamygouda a signatory to the "No-confidence" motion moved against the

"petitioner, a copy whereof has been produced by the petitioner as Annexure-Q to the writ petition. Pursuant to the resolution passed by the Committee the third respondent-Director of Agricultural Produce Marketing Committee by an order dated 12th of November, 1998 removed the petitioner from the post of Chairman of the Committee. Aggrieved the petitioner has filed the present writ petition challenging the validity of the resolution as also the order passed by the Director on a variety of grounds- He has also assailed the constitutional validity of Section 44(2) on the ground that the same suffers from the vice of excessive delegation in that the Director has been empowered to issue an order of removal of the Chairman without there being any guidelines to regulate the exercise of the discretion vested in him.

3. Mr. Vedavyasachar, Counsel appearing for the petitioner contended that the no-confidence motion had in terms of Section 44(3) of the Karnataka Agricultural Produce Marketing Committee Regulation Act, 1966, to be discussed in the meeting before the same could be passed or rejected. No discussion was according to the learned Counsel, held by the members of the A.P.M.C. pursuant to the motion brought against the petitioner which was according to the learned Counsel, a clear violation of the requirements of sub-section (3) of Section 44. Sub-section (3) of Section 44 may at this stage be extracted in extenso.-

"Notwithstanding anything contained in this Act, or the rules, the Chairman or the Vice-Chairman shall not preside over a meeting in which a motion of no-confidence is discussed against him, but he shall have a right to speak and otherwise to take part in the proceedings of the Market Committee:

Provided that where a motion of no-confidence is moved both against the Chairman and Vice-Chairman, the Director of Agricultural Marketing or an officer authorised by him in this behalf shall preside over the meeting".

4. A plain reading of the above would show that all that the same ensures is that the Chairman or the Vice-Chairman shall not preside over a meeting in which a motion of no-confidence is discussed against them although in any such meeting they shall have a right to speak and to take part. From the resolution passed by the Committee, it is evident that the petitioner had absented from the proceedings on the 10th of November, 1998. It was not therefore tantamount to denying to the petitioner his right to speak or to take part in the proceedings. Any such denial could arise only if he had been prevented from attending the meeting or participating in the same. If a member voluntarily absents himself from the proceedings and thereby abandons his right to speak or to participate in the proceedings he cannot make any grievance against the result of any such proceedings on the strength of the provisions of sub-section (3) to Section 44.

5. Equally, untenable is the submission that a "no-confidence" motion must be necessarily discussed before a resolution is passed. Any such discussion it is evident would be necessary if there is some opposition to the motion howsoever feeble. In other words, even if a single member of the Committee opposed the

motion, a discussion on the subject would become essential. That would not however be true in a case where the entire body present and voting on the motion is of the unanimous opinion that the person holding the Office of Chairman or the Vice-Chairman of the Committee had forfeited their confidence and deserved to be removed from the same. In the instant case, that is precisely what appears to have happened. A perusal of the proceedings of the Meeting, that took place on the 10th of November, 1998, shows that the motion was carried unanimously. In the circumstances, just because the resolution does not make reference to any discussion or identify the reasons for which the motion was carried does not affect the validity thereof. It is noteworthy that the "No-confidence" motion, itself identified the reasons for the proposed removal of the petitioner. Among them were the petitioner's dictatorial attitude, his deliberate omission to take the members of the Committee into confidence and his incompetence to handle the affairs of the Committee. It is also noteworthy that the allegations against the petitioner and his attitude as also his incapacity to satisfactorily discharge the duties attached to his office were made by each one of those who moved the motion present in the meeting on the date the same was passed. There was, it is evident a clear and complete meeting of minds between the members of the Committee who were of the unanimous opinion that the petitioner did not either enjoy their confidence or possess the skill and the managerial capacity to continue as the Chairman of the Committee.

6. Counsel for the petitioner however contended that the allegations made in the "No-confidence motion" were without any basis. He tried to demonstrate by reference to the material placed on record by him that the petitioner had done extremely well and it was only because of the stiff attitude adopted by the Board in the matters of streamlining the affairs of the Committee and making recoveries of the outstanding amounts due from some of the members of the Committee that the allegations in the no-confidence motion were made. He submitted that in the scheme of the things and keeping in view the provisions of the Act, it was essential that before a no-confidence motion could be passed against the Chairman, those moving the motion should have made out a case of proved misconduct or failure on the part of the incumbent. I do not think so. The petitioner held an elected office. Continuance in that position required the confidence of 2/3rd majority of the members of such Committee. The scheme of Section 44 which envisages a "No-confidence motion" against the Chairman or the Vice-Chairman of the Committee, does not in my opinion require any specific charge being proved against the incumbent before he can be removed. An elected Chairman may lose the support of the generality of the members who have elected him not only because he has been guilty of any specific acts of misconduct or misbehavior but also on account of doubts entertained by such members as to his capacity to manage the affairs of the Committee. Suffice it to say, that the reason or the process by which the elected office holder forfeits his claim in the estimation of the members who have elected him, is wholly extraneous to the validity of such motion or the ultimate resolution that may be

passed in regard to the same. What is important in a petition seeking judicial review of any such decision is whether the procedural safeguards provided by the Act or the Rules have been observed. There is no allegation in the present case about any procedural impropriety or irregularity affecting the validity of the motion or the resolutions passed on the basis thereof. I have therefore no hesitation in rejecting the first limb of the challenge mounted by the petitioner.

7. It was next argued that three of the members constituting the Committee were disqualified to be members of the Committee and to vote for or against the no-confidence motion. The challenge in particular was against the appointment of respondents 4, 5 and 6 as members of the Committee. It was contended that respondents 4 and 5 being traders were disqualified in terms of Section 16(1)(c) of the Act. As regards respondent 6, it was contended that he was disqualified on account of his being a defaulter within the meaning of Section 16(2)(hh). Inasmuch as these three members had participated and voted for the motion, argued Mr. Vedavyasachar, the result of the proceedings was vitiated by a material irregularity.

8. The three members about whom the petitioner has made a grievance were elected nearly one year back at the time of the initial constitution of the Committee. No grievance was made at any stage by either the petitioner or for that matter by any other member of the Committee or any one out of those who elected the said respondents as to their eligibility for being elected or their entitlement to continue as members. The objection raised by the petitioner may also have never arisen only if he had been allowed to continue as Chairman. The grievance is evidently belated and inspired by the loss of office to which the petitioner had been elected.

9. That apart, a mere allegation that some of the members of the Committee who moved the motion or participated in the proceedings were not eligible to continue as members on account of any disqualification incurred by them is not enough for this Court to nullify the proceedings on that ground alone. It is only if an authority competent to determine the question of eligibility or the disqualification of such elected members, records a finding after hearing the persons concerned, that those held to be disqualified can be prevented from participating in the proceedings of the Committee. No such disqualification has been so far ordered nor any process initiated for determination of their right to continue as members. In that view it is difficult to appreciate how the petitioner can in collateral proceedings bring up the question of any member being not eligible or qualified to continue. Even assuming that three of those who had participated in the proceedings were not for any reason entitled to participate or vote for the motion yet, the remaining members constitute 2/3rd of the total membership of the Committee and could therefore have validly passed a resolution against the petitioner. Judged from any angle the grievance that three of the members were not competent to vote against the petitioner does not hold water. The third and the only other argument advanced on behalf of the

petitioner was that the Director of Agricultural Marketing was in terms of Section 44(3) of the Act was under an obligation to not only issue a notice to the petitioner but also to hold an enquiry before he could make an order of the removal of the petitioner from the post of the Chairman of the Committee. Section 44(3), does not in my opinion lend itself to that interpretation. It reads as under:-

"Section 44(2) -- If the motion against the Chairman or the Vice-Chairman is carried by a majority of not less than (two-thirds of all the then members of the Market Committee), the Chairman or the Vice-Chairman, as the case may be, shall be removed from his office by an order passed to that effect by the (Director, Agricultural Marketing). The order shall be communicated to the Secretary of the Market Committee and the Chairman or the Vice-Chairman concerned:

Provided that the Chairman or the Vice-Chairman shall vacate office on the expiry of thirty days from the date of the passing of the motion, if no order of such removal is passed within the said period".

10. It is evident that once a motion of no-confidence is carried against the Chairman or the Vice-Chairman by a majority of not less than 2/3rd of all the members of the Committee, the Chairman or the Vice-Chairman as the case may be, shall have to be removed. There is no option available to the Director of Agricultural Marketing except to pass an order to that effect. Reading into the scheme of sub-section (2) the requirement of a notice to the person holding the position or the conduct of an enquiry into the allegations which has led to his removal would amount to doing violence to the provisions. The mandate of the provision it is abundantly clear is that once Chairman or the Vice-Chairman forfeits the confidence of 2/3rd of the membership of the Committee, there is no way he can stick on to that position. The use of the word "shall be removed" is in my opinion much too clear to be capable of any other interpretation. Simply because the statute envisages an order to be passed by the Director of Agricultural Marketing does not necessarily imply that the order must be passed only after notice or on proved misconduct of the person concerned. The removal by the Director of Agriculture of the incumbent is in the scheme of things more in the nature of a ministerial act than a statutory function requiring the authority to adjudicate upon the issue on an independent evaluation of the material before it. The Act, does not envisage a situation where an incumbent Chairman can be allowed to continue against the wishes of the total membership of the Committee as is the position in the instant case. Such a situation would be totally anomalous and shall therefore have to be eschewed to avoid absurd results. That view in my opinion answers the petitioner's challenge to the constitutional validity of Section 44(2) also. I say so because the challenge is primarily based on an assumption that the Director of Agricultural Marketing exercises discretionary powers to remove or not to remove the incumbent despite a no-confidence motion passed against him. Since that interpretation has not found favour with me, I see no

reason how Section 44(2) can be said to be falling foul of Article 14 of the Constitution. The challenge to the vires of the provisions must therefore be repelled.

11. In the result, there is no merit in this petition which fails and is hereby dismissed reserving liberty to the petitioner to seek such redress against the continuance of the respondents 4, 5 and 6 as members of the Committee as may be legally permissible to him. No costs.