(1994) 02 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16495 of 1993, W.A. No''s. 22, 23 and 24 of 1994

Md. Jaheeruddin APPELLANT

Vs

V. Government of Andhra Pradesh and others RESPONDENT

Date of Decision : 11-02-1994

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 2, 3, 33, 4, 5
Constitution of India, 1950 — Article 14, 226
General Clauses Act, 1897 — Section 14
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 8

Citation : AIR 1994 AP 259

Hon'ble Judges : S. Nainar Sundaram, C.J;Syed Shah Mohammed Quadri, J

Bench : Division Bench

Advocate : A.G., G. Gangaiah Naidu, P.M. Gopala Rao and A.V. Krishna Koundikya, for the Appellant; D. Sethusami, S.C. for A.M.C. N. Bhaskara Rao and N Satyanarayana, for the Respondent

Judgement

Syed Shah Mohammed Quadri

1. These three writ appeals and the writ petition out of which the appeals arose raise the same question of law, therefore, they are heard together and are being disposed of by a common judgment. In this judgment, the parties will be referred to as they are arrayed in the writ petition.

2. The petitioner claims to be a trader within the meaning of cl. (xvi) of S. 2 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short "the Act") within the notified market area of the Agricultural Market Committee, Hyderabad-respondent No. 15. He challenges the re-constitution of the Market Committee under Sec. 6 read with Sec. 5 of the said Act. He says that having fixed the total number for the Hyderabad Agricultural Market Committee as 18, in G.O.Ms. No. 465 dated 26-3-1992, the Government of Andhra Pradesh, the 1st respondent herein, reconstituted the committee in

violation of the provisions of S. 5(1) of the Act; in the category of ''growers'' 10 persons were appointed as against 12; no member is appointed under cl.(ii) of sub-sec. (1) of S. 5; and only 3 persons are appointed in the category of ''traders'' under clause (iv) of sub-sec. (1) of Sec. 5 of the Act, thus the composition of the Market Committee-respondent No. 15, is in violation of S. 5 of the Act. He, therefore, prays for a writ of certiorari to call for records relating to G.O.Ms. No. 1295, Food and Agriculture (Marketing-I) Department, 3-10-1992 and to quash the same as illegal and arbitrary.

3. He also filed W.P.M.P. No. 20846 of 1993 praying this Court to suspend operation of the impugned G.O.Ms. No. 1295 dated 3-10-1992, pending disposal of the writ petition.

4. It appears that Rule Nisi and service of notice in W.P.M.P. No. 20846 of 1993 could not be effected on the respondents. So the petitioner sought permission in W.P.M.P. No. 22723/93 for substituted service for publishing in any local newspaper; that petition was ordered on 17-12-1993 and publication was made in the issue of the ''ENADU'' on'' December 20, 1993. Thereafter W.P.M.P. No. 20846/93 came up for hearing on 30-12-1993. A learned single Judge of this Court observing that the point raised in the Writ Petition is covered by the judgment of a Division Bench of this Court in Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, granted interim suspension of the impugned G.O. giving liberty to the 1st respondent to constitute a fresh committee in accordance with the provisions of Section 5 of the Act. On the very next day i.e. 31-12-1993 respondents 3 and 13 filed W.P.M.P. No. 26126/93 praying this Court to set aside the interim order of suspension granted by this Court on 30-12-1993. After hearing the parties therein, the learned single Judge made the interim order absolute being of the view that there was no much difference in the language of Section 5 of the Act as it stood in the year 1971 and it stands on the date of passing of the order of the learned single Judge, insofar as the provision relates to composition of the Market Committee. Aggrieved by the said orders of the learned single Judge, respondent No. 13 filed Writ Appeal No. 22/94; respondent No. 3 filed Writ Appeal No. 23/94 and respondents 1 and 2 filed Writ Appeal No. 24/94. When the Writ Appeals came up before us, we withdrew the Writ Petition to our Court, with the consent of the parties, to dispose it of along with the Writ Appeals. That is how these cases have come up before us.

5. Respondent No. 13 alone filed a counter-affidavit in the Writ Petition. It is stated by him that the petitioner has no locus standi to file the Writ Petition; his brother and others earlier filed W.P. No. 3126/93 questioning the impugned G.O. Criminal prosecutions are pending against the petitioners therein and at their instance the present Writ Petition is filed. After assumption of the office by the members of the committee appointed under the impugned G.O., the petitioner and his brother and other petitioners in the earlier Writ Petition brought pressure on the members to withdrew prosecution against them. When they did not agree

for that course of action, they made one Ramachandra Reddy to file W.P. No. 1430/ 92, but that Writ Petition was subsequently withdrawn. The Writ Petition is malicious and that the writ petitioner has no right to file the Writ Petition. It is filed after an year and two months from the date of assumption of office, therefore, it is belated and liable to be rejected on that ground. It is further stated that Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, was decided on the basis of Section 5 as it stood in 1971 and that after amendment of the said provision in 1980 by Ordinance 11 of 1980, which was replaced by Act 6 of 1981, there has been substantial change in the provisions and the ratio in that judgment does not apply to the facts of this case. The appointment of members of the Committee was made in accordance with law and as the Government has discretion to fix the strength between 15 and 18, it appointed 15 persons as members of the Committee of the 15th respondent. Ten persons were appointed from the category of ''growers'' from out of the panel submitted by the Director of Marketing; three persons are appointed from the category of ''traders'' and two persons are nominated as institutional members. The quorum of the Market Committee is 10, the number of persons appointed is 15, therefore, the functions of the committee can be properly carried on. It is also stated that in G.O. Ms. No. 591 dated 20-11-93 vacancy caused due to the death of one Venkaiah was filled up. The petitioner filed W.P. No. 1854/93 questioning the additional appointment. In the circumstances it is prayed that the Writ Petition be dismissed.

6. The petitioner filed a reply affidavit reiterating that he has locus standi to file the Writ Petition and in the circumstances mentioned therein, the delay has been explained and further submitted that composition of the Committee is in violation of Section 5(1) of the Act.

7. Mr. Gangaiah Naidu, the learned counsel for the Writ Petitioner and the 1st respondent in the writ appeals, urged before us that composition of the Agricultural Market Committee under the impugned G.O, is in violation of the provisions of Section 5{l)(i) of the Act and that this point is squarely covered by a judgment of this Court in Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, , therefore, the impugned G.O. is liable to be quashed by this Court. In view of this legal position, submits the learned counsel, the relief in the Writ Petition cannot be denied to the petitioner on the ground of locus standi or laches; the petitioner is a trader within the meaning of the Act and carries on his business in the notified market area, as such he has a right to question illegal constitution of the market committee and that in view of the filing of the earlier Writ Petitions by different categories of persons who are equally interested in the valid composition of the Agricultural Market Committee, there are no laches on his part in filing the Writ Petition.

8. Mr. P. M. Gopala Rao, the learned counsel for the 13th respondent and appellant in W.A. No. 22/94, has contended that the provisions of Section 5 of the Act have undergone many changes and the Government can constitute a

Committee appointing any number of persons, more than 15 but less than 18, as contemplated by sub-section (1) of Section 5 of the Act so there is no illegality in the impugned G.O. He further submits that in any event the petitioner has no locus standi to file the Writ Petition and that on the ground of laches also the Writ Petition is liable to be dismissed.

9. The contention of the learned Advocate-General appearing for respondents I and 2 in the Writ Petition and the appellants in W.A. No. 24/94, is that composition of the Agricultural Market Committee is in accordance with Section 5(1)(i) of the Act and that the Government have appointed three more members to fill up the vacancies in G.O. Ms. No. 591 dated 20-11-1993, so from the date of that order there is a full-fledged committee, as such there is no case for the petitioner to complain that the Committee is not in accordance with the provisions of Section 5(1)(i) of the Act. His further submission is that if the impugned G.O. is quashed, the Government have power to appoint the very same 18 persons u/s 5 of the Act, therefore, issuance of a Writ will become futile and that this Court will not issue any futile writs. He also pleaded that on the ground of laches alone the petitioner be non-suited.

10. In view of the above contentions the following two questions arise for consideration :--

(1) Whether composition of the Agricultural Market Committee under the impugned G.O. satisfies the requirements of Section 5(1)(i) of the Act; if not, is the Writ Petition liable to be dismissed on the ground of locus of the petitioner or laches?

(2) Whether issuance of the Writ prayed for to quash the impugned G.O. would amount to issuing a futile writ as the Government can reconstitute the Agricultural Market Committee u/s 6 read with Section 5 of the Act.

First we shall take up the first question.

11. The Act is promulgated with a view to regulate purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. For that purpose Section 3 of the Act authorises the Government to declare the area called ''notified area'' for purposes of the Act. Section 4 of the Act mandates the Government to constitute an Agricultural Market Committee for every notified area which would be a body corporate by such name as the Government may specify in the said notification, having perpetual succession, and a common seal with power to acquire, hold and dispose of property and having the capacity to sue and be sued by its corporate name. Section 5 deals with composition of Market Committee. The first limb of sub-section (1) of Section 5, provides that the Government may fix such number of members for every Market Committee which shall not be less than 15 and not more than 18. Rule 5 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969, framed u/s 33 of the Act, enjoins that in respect of a (Market Committee having annual income of rupees two lakhs or above, the

members of the Committee shall be 18 and in respect of the Market Committee having annual income of less than rupees two lakhs, the number of members shall be 15. Exercising the power u/s 5 and Rule 5, referred to above, the Government have issued orders in G.O. Ms. No. 465 Food and Agriculture (Marketing I) Department, dated 26-3-1992 fixing the number of members for each Market Committee in the State in the Annexure to the said G.O. Insofar as the Agricultural Market Committees of Hyderabad and Guntur are concerned, the strength of the members is fixed as 18. It is admitted by the learned counsel appearing for the parties that the annual income of the Agricultural Market Committee of, Hyderabad -- respondent No. 15, is about rupees two crores; the income being more than rupees two lakhs, under Rule 5 the strength can be fixed only at 18 and accordingly the Government in the said G.O. No. 465 dated 26-3-1992 have rightly fixed the strength at 18.

12. Insofar as the composition of a Market Committee is concerned, the second limb of sub-section (1) of Section 5 of the Act, requires the Government to appoint not less than 2/3rd of the members after consultation with the Director of Marketing from among the categories of growers of agricultural produce and owners of livestock and products of livestock in the notified area as specified therein. So u/s 5(1)(i), 12 members will have to be appointed by the Government; u/s 5(1)(ii) one member has to be appointed by the Government from among the Presidents and persons, if any, for the time time being performing the functions of the President of the Co-operative Marketing Societies having their areas of operation within the notified area, or in the absence of such societies, members have to be appointed as specified in clause (iv). Clause (iii) of subsection (1) of Section 5 specifies two categories; (a) one representative of the Agricultural Department or the Animal Husbandary Department, to be appointed by the Government; and (b) the Chairman of the Municipality or the Sarpanch of the Gram Part-chayat as the case may be within whose jurisdiction the office of the Market Committee is situate. In cases of Market Committees of Hyderabad, Visakhapatnam and Vijayawada, the proviso to this clause mentions that the person nominated by the Corporation may represent the Corporation. Thus two members have to be appointed under this clause. Clause (iv) also specifies two categories of traders from which the remaining members have to be appointed by the Government after consultation with the Director of Marketing. The categories are--(a) small traders whose annual turnover of trade in the notified area does not exceed rupees two lakhs; and (b) other traders in the notified area.

13. Under the impugned G.O. the composition of the Market Committee is: under the growers category 10 members have been appointed, under the category of President of Co-operative Societies, nobody has been appointed; under the category of representative of Agricultural Department or Animal Husbandry Department, one member; under the category of Municipality or Gram Panchayat, one member and under the category of traders, three members. Thus 15 members have been appointed as against 18 members contemplated under

the Rules and the strength fixed by the Government in G.O. Ms. No. 465 dated 26-3-1992.

14. Does the appointment of the truncated body under the impugned G.O. satisfy the requirements of Section 5? Before we proceed to answer this question, we consider it useful to refer to the extracts from books on Administrative Law:

"Almost all administrative powers are statutory; they owe their existence to, and the limitations on their use are determined by, Act of Parliament. A person or body acting under statutory powers can do only those things permitted by the statute to be done, and cannot do those things forbidden to be done; that is the ultra vires doctrine. That doctrine is applied by the Courts, which are therefore in a position of importance and influence in determining the scope and the validity of the exercise of administrative powers. "(*)

"When the question arises whether a public authority is acting lawfully or unlawfully, the nature and extent of its power or duty has to be found by seeking the intention of Parliament as expressed or implied in the relevant Act.

....

Non-observance of a mandatory condition is fatal to the validity of the action. But if the condition is held to be merely directory, its non-observance will not matter for this purpose. "(**)

"Where the statute confers a power to be exercised subject to specified conditions, it must be deemed to have been prohibited to exercise the power or to do an act which could be done in exercise of that power, except in accordance with the provisions of the Act and the conditions and limitations imposed by it."(***).

15. Keeping the above principles in mind we shall examine the relevant provisions of the Act to find out whether requirements of Section 5(1)(i) of the Act are mandatory or merely directory.

16. Often the question arises before this Court as to whether action of the public authority is lawful or unlawful. This Court, in such contingencies is obliged to seek out the nature and extent of the power of the public authority, and that could be legitimately done by looking into the intention of the Legislature as expressed or implied in the relevant Act. Powers conferred by the Act will have to be exercised to serve the purpose for which they are conferred. The purpose will be evident either explicitly or impliedly, when the working of the provisions of the Act is done in a harmonious manner. A working that dislocates and defeats the very intendment of the Act will not be permitted, or to put in other words must be held to have been prohibited. In that view, compliance with a provision of the Act must be held to be mandatory.

17. A cogent and harmonious reading of provisions of Section 5(1) as well as other provisions of the Act, leaves us in no doubt that Section 5(1) does not

contemplate the appointment in jitters or in piecemeal. The Government is not authorised to appoint members one by one to constitute the Market Committee. A reading of Section 5(1)(i) itself makes this abundantly clear inasmuch as it enjoins that not less than 2/3rds of the members shall be appointed from the category of growers.

18. Sub-section (3) of Section 5 provides, the term of office of the members appointed under sub-section (1) shall be three years from the date of appointment.]f the members of the Committee are allowed to be appointed in instalments the term of the members of the Market Committee will vary from member to member as such member will be appointed for three years from the date of his appointment, which would obviously be not in terms of or in accord with the scheme of the provisions of the Act. There can be no reconstitution of the Committee as such on the expiry of the term of the office of the members of the Market Committee as contemplated u/s 6 of the Act. In such a case what could happen is, there can only be filling up of the vacancies as and when the term of office of members appointed on different dates would expire. There is no provision in the Act providing for filling up of vacancies of the members on ihe expiry of the term of their office because subsection (8) of Section 5 provides for filling up of the vacancies in the office of the member for the remainder of the term of the member whose vacancy was to be filled in. The proviso to sub-section (8) of Section 5 enjoins that no vacancy shall be filled in if the remainder of the term of the outgoing member is less than three months. Further Section 9 of the Act provides, inter alia, that a meeting of Market Committee shall be called on receipt of requisition from one-third of the total members of the Market Committee. If the piecemeal appointments of members of the Committee is permitted, provisions of sub-sec. (8) and proviso thereto as also S. 9 would be rendered nugatory. From the above discussion it follows that the provisions of S. 5(1) and S. 6 of the Act dealing with composition of the agricultural Market Committee or the reconstitution of Market Committee are mandatory and the violation of those provisions renders the composition invalid and illegal. Consequently we hold that the reconstitution of the agricultural Market Committee of Hyderabad, in violation of the composition prescribed under sub-sec. (1) of S. 5, in a truncated form by the impugned G.O. is invalid and illegal.

19, A Division Bench of this Court has taken the same view, though for different reasons, in Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, . In that case the order of the Government constituting a Market Committee under S. 5(1)(i) of the Act was questioned as being in violation of the said provisions. The appointment of some of the members was found to be bad in law while the appointment of other members was admittedly valid in law. One of the contentions urged before the Division Bench was that piecemeal exercise of power by the Government under S. 5(1) of the Act was not contemplated and that if any one of the appointments was found to be bad then all the appointments must go, so that the Government must exercise its power in accordance with law. This submission found favour from the Division Bench, though it was contended by the Government Pleader that it was not necessary to quash the entire G.O. and that it must at least be upheld to the extent of the appointments found to be valid in law. The Division Bench observed (at p. 356 of AIR):

"It follows that the Government cannot appoint less than half the members from growers. If they do, they would be acting in contravention of the provisions of S. 5(1)(i) of the Act. The Government obviously cannot also appoint less than half the members in the first instance and reserve to itself the power to appoint the rest at a later stage. If, in a case, the Court holds that the appoint of some members is bad and proceeds to uphold the appointment of others who may be less than half the total strength, the Court, in effect, would be permitting the Government to appoint less than half the members in the first instance and the rest at a later stage. This would be against the provisions of S. 5(1)(i). We are therefore convinced that the power under S. 5(1)(i) must be exercised as a whole and all at once."

20. However, Mr. P. M. Gopala Rao, sought to distinguish that judgment on the ground that the amendments have complately changed S. 5 and that the same result does not follow from the amended provision of the Act. To examine this contention it would be necessary to notice the amended as well as unamended provision, which are extracted hereunder:

As it originally stood. As amended by A. P. Act 6 of 1981 with effect from 2-12-1980.

1. Every market committee shall consist of such number of members, being not more than sixteen as the case may be fixed for it by the Government and shall be consti-tuted in the following manner : ?

1. Every market committee shall consist of such number of members being not less than fifteen and not more than eighteen, as may be fixed for it by the Government by notification, and shall be constituted in the following manner:?

(i) not less than one half of the members to be appointed by the Government after consul-tation with the Director of Marketing, from among the growers of agricultural produce and the owners of livestock and products of livestock in the notified area.

(i) not less than two thirds of the members to be appointed by the Government after consul-tating with the Director of Marketing from among the following categories of growers of agricultural produce and the owners of livestock and products of livestock in the notified area, namely-

(a) growers of agricultural products who are small farmers of dry lands.

(b) growers of agricultural products other than small farmers of dry lands.

(c) growers of agricultural products who are small farmers of wet lands.

(d) growers of agricultural products other than small farmers of wet lands, and

(e) the owners of livestock and products of livestock.

(ii) one member to be appointed by the Government from among the Presidents and persons, if any, for the time being performing the functions of the Presidents of the Co-operative Marketing Societies having their area of operation within the notified areas in the absence of such societies to be elected as specified in clause (iv).

(ii)one member to be appointed by the Government from among the Presidents and persons, if any, for the time being performing the functions of the President of the Co-operative Marketing Societies having their areas of operation within the notified area, or in the absence of such societies, to be appointed as specified in clause (iv).

(iii)(a) One representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry De-partment to be appointed by the Government.

(iii)(a) One representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry De-partment to be appointed by the Government.

(b) the Chairman of the Municipality or the Sarpanch of the Gram Panchayat as the case may be within whose jurisdiction the office of the market committee is located.

(b) the Chairman of the Municipality or the Sarpanch of the Gram Paachayat as the case may be within whose jurisdiction the office of the market committee is located.

Provided that in the case of the Municipal Corporation of Hyderabad such person as may be nominated by the Corporation.

Provided that in the case of the Municipal Corporation of Hyderabad and Visakha-patnam Municipal Corporation, such person as may be nominated by that Corporation, may represent the Corporation.

(iv) the remaining members to be elected in the prescribed manner by the persons licensed under sub-section (1) of Section 7 in the notified area from among themselves.

(iv) the remaining members, to be appointed by the Government after consultation with the Director of Marketing, from among the traders belonging to the following categories, namely:

(a) small traders whose annual turnover of trade in the notified area does not exceed rupees two lakhs.

(b) other traders in the notified area.

EXPLANATION I :

For the purpose of this sub-section the term small farmer of dry lands shall mean a farmer

holding a total extent of not more than 4.04686 hectares (ten acres) of dry land, and the term, small farmer of wet lands, shall mean a farmer holding a total extent of not more than 2.02343 hectares (five acres) of wet lands and the term ''trader'' shall mean a person licensed under sub-section (1) of Sec-tion 7 of the notified area.

EXPLANATION II:

In computing the extent of land held by a farmer for the purpose of this sub-section, 0.404686 hectares (one acre) of wet land shall be deemed to be equal to 0.809372 (two acres) of dry land.

2. Every Market Committee shall elect two of its members other than those mentioned 4 in Clause (iii) of sub-section (1) to be respec-tively Chairman and Vice-Chairman thereof.

2. Every Market Committee shall have a Chairman and Vice-Chairman, to be appointed by the Government after consultation with the Director of Marketing from among its members specified in Clauses (i) and (iv) of sub-section (I).

21. We shall revert to the comparison of the extracted provisions presently. Here we wish to point out that the constitutional validity of S. 5(1) as it stood before amendment was questioned in Chandramouli v. Government of Andhra Pradesh (1980) 1 APLJ 120. A Division Bench of this Court allowed the writ petition and held S. 5(1) to be unconstitutional. Thereafter, on 2-12-1980 S. 5(1) was amended by Ordinance 11 of 1980 which was subsequently replaced by Act 6 of 1981. Sections 5 and 6 of the Act were repealed, but were again inserted by Act 24 of 1991 and the same remain unamended so far.

22. From a perusal and comparison of the amended and unamended provisions of sub-sees. (1) and (2) of S. 5 of the Act it is clear that in sub-sec. (1) the number of members have been enhanced from 12 to 15 and from 16 to 18. In clause (i) of sub-sec. (1) the categories of growers have been specified in the amended provision. So far as clauses (ii) and (iii) are concerned, there is no change.

23. In Clause (iv) before the provision was amended the remaining members were to be elected in the prescribed manner from the category of traders, but the amended provisions provide for appointment of members from the traders category by the Government and the categories of traders have been specified. Insofar as sub-section (2) is concerned, the Chairman and the Vice-Chairman of the Market Committee had to be elected under the unamended provision, but the amended provision provides for appointment of Chairman and Vice-Chairman by the Government after consultation with the Director of Marketing from among

the members of the Committee in the categories of growers and traders. Thus it is seen that the provisions with regard to composition of Market Committee and the obligation of the government to appoint the members of the Committee as a whole and all at once, are not, in any way, affected. The judgment in Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, was rendered by the Division Bench on 20-3-1970 and the said amendments were carried out in 1980. Had the Legislature intended to effect a change from the law laid down by this Court in Donda Ramarao''s case (supra) it would have done so by providing for piecemeal appointments, but it has not chosen to do so.

24. For the aforesaid reasons we are of the view that the amendment of sub-secs. (1) and (2) of S. 5 of the Act does not alter the position and that the ratio of the judgment in Donda Ramarao''s case (supra) applies to the appointment of the members of the Committee even under the amended S. 5(1) of the Act.

25. We may also add here that a notification identical with the impugned notification was issued by the Government appointing 15 members to the Market Committee of Guntur as against the strength of 18 fixed by the Government under S. 5 of the Act. That notification was questioned in W.P. No. 16347 of 1992. Following the judgment of our High Court in Donda Rama Rao and Another Vs. The Government of Andhra pradesh and Others, , a learned single Judge of this Court allowed the writ petition and quashed the notification impugned therein on April 29, 1993. We are informed that the Government have issued a fresh notification with regard to the said Market Committee.

26. Reliance is placed by the respondents on the judgment of the Supreme Court in Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, , in support of the contention that even if there is no specific provision to reconstitute the Board on the resignation of one of the members, the Supreme Court has upheld the reconstitution in that case, so also in the instant case in the absence of any specific power to appoint members of the Market Committee piecemeal, we should uphold the impugned G.O. In that case the decision of the Wage Board was challenged as illegal and void, inter alia, on the ground that reconstitution of the Board was ultra vires and unauthorised under the Act. There what happened was: One of the members of the Board originally appointed resigned; the resignation was accepted by the Central Government by a notification issued in that behalf and by the same notification another person was appointed as a member and thus the Wage Board was reconstituted. The Supreme Court repelled that contention pointing out to the fact that under Sections of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the Central Government had power to constitute a Wage Board and that having regard to S. 14 of the General Clauses Act, it must be construed that that power may be exercised from time to time as the occasion arose. So the reconstituting the Board on the resignation of one of the members being accepted, was held to be valid. In our view this case has no application to the facts of the case on hand. Constitution or composition of the Board in that

case at the initial stage was valid. It was only on acceptance of resignation of one of the members, the Board was reconstituted, by appointing another person his place. But in the instant case the very composition of the Board is contrary to the statutory provisions viz. S. 5(1) of the Act.

27. Now in view of the finding recorded on the first point, the second aspect that arises for consideration is whether we should deny the petitioner the relief prayed for on the ground that he has no locus or on the ground of laches.

28. Insofar as the question of locus is concerned, the petitioner is a trader within the meaning of S. 2(xvi) of the Act and is carrying on business in the notified market area of respondent No. 15. The issuance of licence/ renewal of licence to him and conducting of business in the notified area by him are under the control of the market committee; he is therefore very much interested in the proper constitution of the Market Committee. If the composition of the Market Committee is not legal he would be vitally affected and would therefore be entitled to question the same. We have no hesitation in holding that the petitioner has locus to file the writ petition.

29. Now coming to the aspect of the delay the impugned G.O. was issued by the Government on 3-10-1992, the writ petition was filed by the petitioner on 1-11-1993, after a year and a month of issuing of the G.O. The explanation submitted by the petitioner is that immediately after the issuance of the G.O. Writ Petition No. 14030/ 92 was filed by one of the traders carrying on business in the same market area. That writ petition was Withdrawn on 1-3-1993. Thereafter another trader, said to be the brother of the petitioner, filed W.P. No. 3126/93 on March 15, 1993, It is stated that the prosecution of the second writ petition was being delayed, so apprehending that the petitioner in the said writ petition was also colluding with the respondents, he filed the present writ petition on 1-11-1993, In short, the explanation of the petitioner is when the validity of the G.O. was under challenge in the High Court he did not consider it necessary to file one more writ petition, but when the writ petition challenging the G.O. was either withdrawn or not properly prosecuted, instead of standing-by and waiting for the result, he filed the writ petition. This is the explanation of the petitioner. Be that as it may. Even assuming that there is delay of a year, is the writ petition liable to be dismissed on that ground?

30. The learned Advocate-General relied on the judgment of the Supreme Court in P.S. Sadasivaswamy Vs. State of Tamil Nadu, . In that case the appellant challenged the relaxation of the Rules in favour of his junior, which was done 14 years before. That writ petition was dismissed on the ground of delay. In the writ appeal filed against the judgment in the writ petition also, the petitioner was unsuccessful. Confirming the judgment of the High Court of Madras, the Supreme Court observed that such a person must approach the Court at least within six months or at the most a year of promotion of his juniors.

31. In Ramana Dayaram Shetty Vs. International Airport Authority of India and

Others, , the Supreme Court having found that acceptance of tenders of the 4th respondent therein and the contract resulting from such acceptance was invalid and arbitrary being violative of Art. 14 of the Constitution proceeded to consider whether any relief can be granted to the appellant therein in view of the delay in seeking the relief. The Supreme Court found that the appellant had no real interest in the result of the litigation but had been put up another person for depriving the 4th respondent therein of the benefit of the contract secured by him. Having noticed how the said third person had been unsuccessfully questioning the acceptance of the contract in favour of the said 4th respondent, set up the appellant therein to challenge the impugned action, considered the question of delay and held that the delay as well as the fact that the appeal was not bona fide and declined to grant the relief to the appellant.

32. In Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, , validity of notice inviting objections was questioned long after the nominations have been received and final list of candidates was published, but just before the date of election. The High Court dismissed the Writ Petition on the ground of laches. The Supreme Court observed that the principle governing the exercise of jurisdiction under Art. 226 for issuing the writs, viz., when there is no satisfactory explanation for the inordinate delay, the High Court may reject the petition should it find that the issuance of a writ would lead to public inconvenience and interfere with the rights of others, will also apply to a case in which validity of election to a local authority was challenged. But the Supreme Court made it clear that the question whether in a given case the delay involved is such that it disentitled a person under Art. 226 is a matter within the discretion of the High Court which as in all matters of discretion, has to exercise it judiciously and reasonably having regard to the surrounding circumstances.

33. Rabindranath Bose and Others Vs. The Union of India (UOI) and Others, . In that case changes were made in the seniority list of Income Tax Officers, as a result of the change in the Seniority Rules. A petition attacking the changes was filed 15 years after the Rules were promulgated and given effect to in preparing the seniority list. The Supreme Court held that each person ought to be entitled to sit back and consider that his appointment and promotion effected long time ago would not be set aside after the lapse of a number of years and that it would be unjust to deprive the officers of the rights which had accrued to them and declined to grant the relief.

34. Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, . In that case His Lordship Hidayatullah, Chief Justice, in a concurring judgment observed that the Supreme Court will not and should not inquire into belated and stale claims or take note of evidence of neglect of one''s own rights for a long time and that the party claiming Fundamental Rights must move the Court before other rights come into existence. The action of courts should not harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court.

35. In Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, , a Constitution Bench of the Supreme Court has observed that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law but a rule of practice based on sound and proper exercising of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. The question is one of discretion to be exercised on the facts of each case. It was further observed that the principle on which the Court proceeds in refusing relief to the petitioner on ground of laches or delay is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there was reasonable explanation for the delay; and that the Supreme Court which has been assigned the role of a sentinal on the qui viva for protection of the fundamental rights cannot easily allow itself to be persuaded to refuse relief solely on the jejune ground of laches, delay and the like.

36. From a reading of the above decisions the position that emerges is that in exercising discretionary jurisdiction under Art. 226 of the Constitution, the paramount consideration for the High Court is to render justice; justice not only to the petitioner but also to the parties to the petition. The ultimate question will be whether the delay or laches on the part of the petitioner are such as to confer a right on the opposite party on account of such delay or laches. If so, would it be unjust to exercise the jurisdiction in favour of the petitioner, so as to divest the other party of the right accrued to him on account of such delay or laches. This has to be decided on the facts and circumstances of each case.

37. In the instant case no right as such has accrued to the respondents on account of the delay in filing the writ petition or laches on the) part of the petitioner. The impugned G.O., asl pointed out above, has been under challenge in one proceeding or the other. In the circumstances of the case, we are of the view that it would not be a just and proper exercise of jurisdiction to deny the petitioner the relief which he is otherwise be entitled to from this Court in this writ petition on the jejune ground of delay or laches.

38. Now coming to the last contention of the learned Advocate-General that no writ will be issued by this Court which would be a futile writ. So far as the principle is concerned there can hardly be any dispute. One qf ther limitations imposed by the Courts on their power to issue the writ is: where the grant of writ would be futile, the Court will decline to issue any writ. But where a statutory authority has acted in violation of law, the High Court in its extraordinary jurisdiction under Art. 226 of the Constitution will not only correct the mistake but it is bound to do so if the facts and circumstances of the case justify The possibility that a legal order can be issued by a statutory authority subsequently if the impugned illegal order is quashed, cannot be a ground to decline to issue the writ to quash an illegal order. Indeed the very purpose of issuing the writ is to correct the illegalities committed by the authorities and to make them act according to law.

39. The learned Advocate-General relied on the judgment of a Full Bench of Punjab and Haryana High Court in Ram Niwas Gupta and Others Vs. State of Haryana and Another, . In that case by a resolution passed in 1954, the Municipal Committee of Bahadurgarh decided to levy octroi duty on the goods imported into Fateh Mandi, but that resolution was annulled by the Government; consequently no octroi duty was levied on the shop-keepers of Fateh Mandi. However by another resolution passed in 1965 the Municipal Committee requested the Government to cancel its earlier order so that octroi duty could be levied on the shop-keepers of Fateh Mandi. Subsequently the State of Haryana approved that resolution. When the Municipal Committee started charging octroi duty the petitioners questioned the resolution and the approval of the government in the writ petition. It wa,s contended by the government as well as the Municipal Committee that under Sec. 62-A of the Punjab Act 48 of 1953 the government could direct the Committee to levy octroi duty among other duties and in the event of the committee not complying, it could impose the octroi duty itself. So even if the writ petitions were allowed the State Government could nullify the effect thereof by issuing appropriate notice u/s 62-A of the Act. The Full Bench accepted that contention and observed that the Court would not issue infructuous writs or writs which could be nullified by respondents by a notification under a statute.

40. With great respect to the learned Judges, we are unable to subscribe to this view. If the resolution and the approval were bad in law, the authorities had no right to collect the duty from the petitioners therein. Merely because the duty could have been imposed validly by issuing notification on a subsequent date would not, in our view, make the writ issued to quash an illegal order authorising collection of the duty, infructuous or futile. A few examples of futile writs would be to issue a direction to grant licence for a period which had expired or to set aside the resolution impugned which has come to an end.

41. Another example of futile writ is furnished by the case in Sri Krishna Rice Mills, Tadepalligudem by Proprietor Sait Bansilal (died) and Another Vs. Deputy Director (Food) Govt. of India, (office of the Joint Director of Food), Dept. 17/270, Vijayawada 2, . It was held that (at p. 435 of AIR):

"An officer cannot be directed by means of a writ of mandamus to do what he under the statute could not do and which is beyond his legal powers and a petition for directions to an Officer to carry out anything which it is incompetent for him to do will be a futile one."

42. For the aforesaid reasons, we are unable to sustain the impugned notification. it is accordingly quashed. The writ petition is allowed without costs.

43. In view of allowing of the writ petition, the writ appeals filed against the interlocutory orders passed in the said writ petition, do not survive for consideration, they are accordingly dismissed, but without costs.

44. After we pronounced this Judgment, there is a request on behalf on behalf of

Mr. P. M. Gopal Rao, the learned counsel that we may suspend the operation of our pronouncement for a month. This move is being vehemently opposed by Mr. P. Gangaiah Naidu, learned counsel. We do not think that we could show the indulgence of suspending the operation of our Judgment. Hence this request is negatived.

45. Petition allowed.

