

(1996) 08 KAR CK 0039

In the Karnataka High Court

Case No : W.Ps. 2573 to 2579 and 6984 to 7016/96

N.A. Amareshappa and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 08-08-1996

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 5 (3)
Karnataka Agriculture Produce Marketing Committee Act, 1966 — Section 6 (4), 63, 7, 9

Citation : (1997) 1 KarLJ 463

Hon'ble Judges : Harinath Tilhari, J

Bench : Single Bench

Advocate : B.R. Satenahalli, for the Appellant; R.K. Hatti, HCGP for R-1 and R-2 and Basava Prabhu Patil, for R-3, for the Respondent

Judgement

Harinath Tilhari, J.—These Writ Petitions raise common questions of law and the reliefs claimed in these petitions are same. Hence, these petitions are clubbed and are decided by the following common judgment.

2. The petitioners have approached this Court for grant of the following reliefs:-

a) Issue a Writ/Order/Direction in the nature of Writ of Mandamus or direction directing the respondents not to enforce the Notification dated 19.8.1988 bearing No. Annexure-B issued by the first respondent until compliance is made by the respondents as provided under Sections 6(4), 7, 9 and 63 of the Karnataka Agriculture Produce Marketing Committee Act;

b) Issue a Writ/Order/Direction in the nature of Writ of Mandamus or direction not to demand and collect market fee from the petitioners until the executive orders are issued u/s 7 of the Act after satisfying the bye-laws or resolution passed by the third respondent Market Committee in implementing the intention of regulating the additional items vide Annexure-B notification bearing No. 87 dated 19.8.1988 of the first respondent;

c) Issue a Writ/Order/Direction in the nature of Writ of Mandamus or direction to the third respondent to provide all facilities including allotment of shops-cum-godowns in the market yard to the petitioners as provided u/s 63 of the Karnataka Agriculture Produce Marketing Committee Act after obtaining the concurrence from the Director of Marketing the second respondent".

The petitioners claim that they are carrying on wholesale business in cereals and pulses at advantage for the past several years. They have obtained necessary licenses under Karnataka Essential Commodities Licensing Order, 1986 and Karnataka Agriculture Produce Marketing Regulations Act, 1966 as well as Karnataka Sales Tax Act, 1957. Their case is that the first respondent Government of Karnataka issued a Notification u/s 5(3) Karnataka Agriculture Produce Marketing Regulation Act (hereinafter referred to as "the Act") indicating its intention to regulate the marketing of some more items mentioned therein, which includes pulses, in the market area as well as control of marketing thereof. Objections were filed to the same. Over-ruling those objections, the State, of Karnataka on 19.8.1988 issued Notification u/s 5 read with Section 4 of the Act. According to the petitioners, it provided for the regulations of marketing in the additional items of agricultural produce in the market area in addition to agricultural produces already regulated. WP.Nos. 32551 to 32557/94 and 16287 to 16309/89 were filed before this Court challenging the said notification. This Court clubbed all those Writ Petitions and interim order of stay had been granted staying the operation of the notification. However, on 15.9.1989 those Writ Petitions had been dismissed on the submission made by the counsel for the petitioners that the petitions may be dismissed with liberty to the petitioners to file petitions with a prayer directing the market committee to provide necessary infrastructure in advantage market yard. The Writ Petitions were dismissed granting the liberty to file fresh petitions in relation to the permission sought, namely, to direct the market yard to provide the infrastructure. Thereafter, the present petitions came to be filed with the aforementioned prayers.

3. The present petitions contain more reliefs than the liberty reserved to the petitioners to file fresh petitions. As mentioned earlier, the petitioners have sought for a Mandamus directing the respondents not to enforce the Notification dated 19.8.1988 at Annexure-B until compliance is made by the respondents of Sections 6(4), 7, 9 and 63 of the Act. The further prayer that has been claimed is issuance of a Writ of Mandamus directing the respondents not to demand and collect Market Fee from the petitioners until executive orders are issued u/s 7 of the Act after satisfying the bye-laws or resolutions passed by the 3rd respondent Market Committee in implementing the intention of regulating the additional items introduced in the Notification at Annexure-B dated 19.8.1988. These reliefs primarily appear to be not covered by the provision in the order dated 15.9.1989 passed in the earlier batch of Writ Petitions referred to above granting liberty to file fresh petitions only for a direction to provide facilities or necessary infrastructure. The third relief claimed in these Writ Petitions appears to cover the same, namely, to direct the 3rd respondent to provide all facilities including

allotment of shops-cum-godowns to the petitioners in the market yard. Thus, while the first two reliefs appear to travel beyond the scope of liberty under the earlier order dated 15.9.1989 in the other batch of Writ Petitions, the third relief may be said to be coming within the four corners of the permission granted by this Court while dismissing the earlier batch of petitions. Therefore, this Court has to consider only that aspect of the matter in these Writ Petitions.

4. No counter affidavit has been filed either by the Market Committee or the State Government. I have heard Sri B.R. Satenahalli, Learned Counsel for the petitioners in all these petitions and Sri Basava Prabhu Patil for 3rd respondent Market Committee as well as Sri R.K. Hatti, Learned Government Pleader for respondents 1 and 2.

5. Learned Counsel for the petitioners Shree Patil very fairly submitted before me that in so far as the plea that it was essential for the Government or the Director to have issued Notification u/s 6(2)(b) or u/s 7 of the Act before adding the agricultural produce or new commodities for being regulated in the market area, is concerned, he does not want to press that plea and that plea is not being pressed. But, he wants to urge on interpretation of the provisions of Section 7 of the Act. The argument which he addressed with great elaboration no doubt appear to be nothing but catching hold of the nose in a round about way from the back and not directly. The counsel submitted that when new agricultural produces were notified or added to the original notification by notification dated 19.8.1988, marketing could not be regulated there of unless and until the Regulations were framed for regulating the marketing thereof or amendments had to be made in the existing Regulations. According to him, until new Regulations are framed with newly added items of agricultural produce or at least amendment has been made to the existing Regulations incorporating the new items, there is no question of implementation of the intention in the scheme of regulation of marketing. The counsel submitted that until such notification or Regulation is issued, the provisions of Section 8 and other Sections of the Act do not operate and the petitioners ought not to be called upon to make payment of market fee in respect of the transactions relating to the newly added agricultural produce, including pulses, as and when business is carried on in those commodities. The counsel further submitted that the operation of the Notification had been stayed in the earlier Writ Petitions as per the order at Annexure-A dated 15.9.1995 of this Court. When the notification had been stayed, the petitioners did not collect and could not collect the market fee from the purchasers of pulses or newly added items. According to the Learned Counsel, the primary liability is of the purchasers to pay the market fee and the petitioners cannot be called upon to pay the market fee to the market committee as now they cannot catch hold of all those purchasers and collect the market fee. it is also submitted that since the petitioners' liability being secondary and because of the stay order they did not and could not collect the market fee, they are not liable to pay the market fee. Lastly he submitted that in any case if market fee is collected in respect of the entire transactions covered during the

period in question, the petitioners may have to suffer in their business and therefore this Court may direct the respondents not to collect the market fee from the petitioners for the period during which the operation of the notification had been stayed.

6. The contentions of the petitioners' counsel have been hotly contested by Sri R.K. Hatti, Learned Government Pleader and Shri Basava Prabhu Patil appearing for the respondents. They contended that the present Writ Petitions in relation to prayers (a) and (b) are not maintainable. As regards prayer (c), it is contended that the petitioners are not entitled to the same. It has been submitted that the stay order was obtained by the petitioners themselves and the stay order did not completely wipe out their liability to pay market fee or the responsibility to collect the market fee. There was only temporary stay only for the purpose of effectuating proper hearing and disposal of the Writ Petitions. When the earlier Writ Petitions were dismissed, under the garb of stay order the petitioners cannot be allowed to seek the benefit which was refused in the earlier Writ Petitions. Grant of such relief at this stage would be tantamount to perpetuating nothing but first breach of law under the garb of stay order and then claim the benefit of the same. This could not and should not be the purpose for exercising the power under Article 226 of the Constitution as it will encourage breach of law. The learned Government Pleader also submitted that the notification impugned is valid and had been issued u/s 5 of the Act read with Section 4 of the Act and the same was within the powers of the Government. The Learned Counsel further submitted that it is not essential or necessary that at each stage when some new agriculture produce is added by notification u/s 5 of the Act, a fresh notification should be issued declaring the establishment of fresh market not it is necessary for the Marketing Committee, or the authorities to frame new and separate Regulations. He submitted that Section 149(2) of the Act strengthens his contention that the existing by-laws continue to operate until they are amended or superseded. So, the counsel submitted that bye-laws did exist and the business had to be regulated. It is also submitted that the Market Committee may frame necessary by-laws when there be need and since it is a matter of policy, no direction could be issued to the Government in that regard. Lastly he submitted that there is no merit in these Writ Petitions and therefore they may be dismissed.

7. I have applied my mind to the contentions urged for the respective parties. In my opinion, these petitions have no force and they deserve to be dismissed. As regards the first contention of the petitioners' counsel, no doubt pulses along with other items or agricultural produce have been introduced as additional items u/s 5 of the Act to the original notification issued u/s 4 of the Act regulating the business in those items. The notification further provided that in respect of these additional items, the transactions of sale shall be regulated in the market area. The definition of "notified agricultural produce" in Section 2(28) of the Act also clearly explains what is a notified agricultural produce. "Agricultural Produce" has been defined in Section 2(1) of the Act as the items or good or provinces

specified in the Schedule to the Act. u/s (2) of the Act "notified agricultural produce" means any agricultural produce that the State Government by notification issued under Sections 4 and 5 declares as agricultural produce, the marketing of which shall be regulated in the market area. This definition clearly provides that even the agricultural produces notified u/s 5 marketing thereof is to be regulated in the market area. This is what the notification dated 19.8.1988 provided that in respect of those items of agricultural produce mentioned therein, the transaction in marketing of the same shall be regulated in the market area in addition to the items/agricultural produces in respect of which transactions are already regulated in the market area. This clearly indicated that the transactions are subject to the provision of the Act, bye-laws framed under the Act as well as to the Rules and Regulations. Learned Counsel for the petitioner very fairly produced copy of the Regulations and there is no dispute that there are bye-laws with respect to market area. No doubt, his contention is with reference to the newly added items and no bye-laws have been framed separately nor any amendment has been made. But, in my opinion, it was for the market committee to say whether any new or additional bye-laws had to be framed or not or the existing bye-laws can regulate and control the marketing. The Act clearly, indicated the intention of the framers of the law vide Section 149(2) of the Act that the first bye-laws made by the Market Committee in accordance with the provisions of the Act shall, notwithstanding anything contained in the Act, be deemed to be the bye-law for the market committee until superseded or amended by any bye-law made u/s 148. When this being the position, the position in the present case is that bye-laws had been framed by the Davangere Market Committee in exercise of the powers u/s 148 of Mysore Agriculture Produce Marketing Regulation Act, 1966. These bye-laws have been there and they have been framed before the establishment of the market yard, So, the bye-laws did and do exist. There is no need or compulsion to frame further bye-laws or make amendments in the existing bye-laws. The existing bye-laws will control and regulate the marketing of the new agricultural produce in the same manner as marketing has been controlled in respect of earlier notified agricultural produces. If any amendment is considered to be necessary, it is always open to the Market Committee to introduce the same. u/s 5 it is not always necessary either to frame new bye-laws or make any amendments in the existing bye-laws nor does it require issuance of any notification u/s 6 of the Act when the market committee has already been established u/s 4 in accordance with the requirement of Section 4, 6 and 7 of the Act. When I so opine, I find support for the same from the decision of this Court in the case of VASAVI TRADERS v. STATE OF KARNATAKA 1982(2) KarLJ 357 and also the decision of this Court in other cases subsequently.

8. It is no doubt true that before issuing notification u/s 7 of the Act, the Director has to see whether Rules have been framed and necessary facilities are provided and satisfy about them. It is well-settled principle of law that mere issuance of notification is not sufficient. The facilities must be provided in the market yard

and bye-laws must have been framed before the notification u/s 7 is issued. In the present case, notification has been issued earlier. This is a case only after the establishment of market yard, that at a subsequent stage new items were added and as held by the Division Bench, of this Court, neither Section 6(2) nor Section 7 come into play at the stage when we are considering the matter in the context of the notification u/s 5 of the Act adding some new items in the list of agricultural produce. So, what I would like to make it clear is that Regulation that has been existing will operate and if no fresh Rules, Regulations or Bye-laws are made, that will not be material or that will not create obstruction in the matter of implementation of the provisions of the Act, including the provisions relating levy and collection of market fee.

9. As regards the second contention, the petitioners have obtained stay order staying the operation of the notification dated 19.8.1988. Petitioners have to blame if at all to themselves. When they have obtained stay order and thereafter did not perform their duties, it is their mistake. Section 65(2)A of the Act passes liability so far as commission agents or importer or Trader (sellers) are concerned that it shall be the mandatory duty to realise the market fee from the purchasers to whom the items are sold and to deposit the same with the market committee. Both these duties are mandatory and they cannot be said to be discretionary. The Legislature had the intention to make these duties as mandatory by amending the Section itself and substituting the word "shall" for the expression "may" by Amendment Act 4 of 1982. So, when this duty has been cast upon with right to realise the market fee and the petitioners having failed to realise it, on that basis they cannot say or claim that they are not liable to pay the market fee. The petitioners are liable to pay the market fee irrespective of that they have collected or not. It is always open to them to collect even subsequently. In the case of M/s. Nandu Mal Girdhari Lal etc. etc. and Others Vs. State of Uttar Pradesh and others, and the connected cases, their Lordships have observed as under:-

"Merely because the commission agents cannot realise the amount from the purchasers at this distance of time or that they are scattered, the statutory liability cannot be avoided. In the result, we hold that they are liable to pay the demands raised by the respondent Samithi against them. However, with regard to any of the particular transactions it is proved by the commission agent that the purchaser had paid market fee on such transaction, the Samithi will not make him liable once again".

This is sufficient to repel, the contention of the petitioners. This observation very clearly indicates that when the liability is on the seller to realise and to pay the purchase tax/market fee to the market committee, he has to pay. No doubt, he has a right to realise it from the purchaser. If he has not realised it from the purchaser, he cannot escape that liability. Section 65(2), particularly (i), (ii) and (iii) while vests a right to realise from the purchaser, fastens a liability on the seller to pay the market fee. Therefore, that liability is there and the petitioners

cannot avoid it.

10. Further, petitioners are the architects of the situation. They filed Writ Petitions and having obtained stay order, they failed to collect the market fee. So, they have to bear the usufructs or the consequences. But, their liability to pay the market fee is not dependent on their discretion to realise. This Court cannot direct the market committee not to realise the market fee from the petitioners.

11. The petitioners are licensees. The market committee has to provide them shops-cum-godowns and other facilities which are available in the market yard. If there is any deficiency, the petitioners can approach the market committee and point-out the deficiencies. The market committee has to consider their grievance and try to solve the problems within the framework of their means and not beyond that.

12. Subject to these observations, these Writ Petitions are hereby dismissed as regards prayers (a) and (b) are concerned.

13. As regards prayer (c), the Writ Petitions are partly allowed and as and when the petitioners approach the market committee, the market committee will consider their grievances with regard to the facilities and if they are not allotted shops-cum-godowns, the market committee may make an endeavour in the matter of allotment of the same to these functionaries so that the market functionaries may not be compelled to act in any manner in breach of Section 8(2) of the Act.

14. These Writ Petitions are disposed of accordingly as above, i.e., dismissing the petitions in respect of reliefs (a) and (b) and partly allowing in respect of relief (c). In the circumstances of the case, costs of the petitions are made easy,

15. Sri R.K. Hatti, Learned High Court Government Pleader is permitted to file memo of appearance in four weeks' time.