
(1986) 04 KAR CK 0032
In the Karnataka High Court
Case No : Writ Petition No. 3838 of 1986

N.G. Purushothama

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 17-04-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 255, 304 (b)
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 8, 8 (2)

Citation : (1987) ILR (Kar) 116

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : K. Srinivasan, for the Appellant; N. Devedas, HCGP for R-1 and R-2 and B.G. Sridharan, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Swami, J.—In this petition under Article 226 of the Constitution, the petitioner has sought for a declaration that Sub-section (2) of Section 8 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the "Act") as amended by Karnataka Act No. 43 of 1976 is void, unenforceable as neither in accordance with the proviso to Article 304(b) of the Constitution, previous sanction of the President is obtained to the Bill, nor assent of the President to the Karnataka Act No. 43 of 1976 is obtained under Article 255 of the Constitution. He has also sought for quashing the Notification No. SMD 168 RGN 85, dated 16-1-1985, produced as Annexure-A. The petitioner has also further prayed for a declaration that Sub-clause (37) of Section 2 of the Act, suffers from excessive delegation and to strike down the same.

2. The 3rd respondent has filed the statement of objections. Sri Devadas, learned High Court Government Pleader, submits that respondents 1 and 2 adopt the statement of objections filed by the 3rd respondent.

3. Having regard to the contentions raised by the petitioner and respondents, the following points arise for consideration :

i) Whether Karnataka Act No. 43/76 in so far it amends Section 8(2) of the Act, is violative of Article 301 of the Constitution ; therefore, it is void as neither the previous sanction of the President before introducing or moving the Bill in the Legislature is obtained, as per the proviso to Article 304(b) of the Constitution, nor the assent of the President to the Karnataka Act No. 43 of 1976 is obtained as per Article 255 of the Constitution ?

ii) Whether Clause (37) of Section 2 of the Act, suffers from excessive delegation?

iii) Whether the notification dated 16-1-1986 produced as Annexure-A is without jurisdiction?

iv) Whether a retail seller can be permitted to sell the notified agricultural produce anywhere in the Market area?

4. POINT NO. (i): It is not necessary to discuss this point in greater detail as it is, covered by a Division Bench decision of this Court in D.V. Kempaiah and Others Vs. The Chief Marketing Officer, Karnataka and Others, wherein, this Court, after referring to Karnataka Act No. 43 of 1976 and several decisions of the Supreme Court in detail (See: Paras 6 to 11), has held as follows :

"11.

The following principles clearly emerge from the above decisions (i) if the Act intends to protect the producer by eradicating or at any rate reducing the scope of the exploitation in dealings, it cannot be said to create unreasonable restrictions on the citizens' right to do business unless it is clearly established that the provisions are too drastic, unnecessarily harsh and over-reach the scope of the object of the Act, M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others, (ii; If the control on marketing of agricultural produce has to be effective in the interest of the agricultural producer, transactions between traders and traders have also to be controlled AIR 1966 SC 1517 at p. 1527, para 20. And (iii) In order to achieve the objects of the Act, transactions on agricultural commodities even as between traders and traders could be prohibited in a specified area like outside the market yard and inside the market Bapubhai Ratanchand Shah and Others Vs. State of Bombay and Another, and Ramakrishna Hari Hegde and Another Vs. The Market Committee, Sirsi and Others,

Having regard to these principles, we cannot but reject the contention urged for the petitioners that Section 8(2) imposes an unreasonable restriction on the right guaranteed to them under Article 19(1)(g) of the Constitution. The challenge to the validity of Section 8(2), therefore, has to fail.

12. Nor there is any merit in the second contention urged for the petitioners that we should so construe Act 43 of 1976 as imposing no restrictions on transactions between traders and traders. The decision of this Court in K.N. Marularadhya v. The Mysore State. AIR 1970 Mys. 114 of course lends support to this contention. Therein it was observed that the Act, as it then stood, was intended to protect

only the first sale of agricultural produce to which the producer was a party. But this enunciation can no longer hold good. Sections 8(2) and 65 in particular, do not have the original colour and content. The Act has thrown the protective net wider so as to cover not only the transactions between traders and producers, but also those between traders and traders. Its present object, among others, is to regulate the marketing of agricultural produce and not merely to regulate the buying and selling to which a producer is a party. We cannot, therefore, construe that Act 43 of 1976 as it stands was not intended to cover transactions between traders and traders in the area outside the market yard and inside the market. It is not the contention for the petitioners that the provisions of the Act are beyond the legislative competence. In *B. Rajesh Khariah v. The Secretary, Tiptur Agriculture Produce Market Committee, Tiptur*, W.P. No. 2839/75 and connected W.Ps. disposed of on 28-9-1978 this Court has observed that the Act could be more comprehensive to control every transaction on agricultural commodities.

xx xx xx xx 14. Last contention on this part of the case relates to the repugnancy of the legislation. It was urged that Act 43 of 1976 conflicts with the several provisions of Sale of Goods Act, the Contract Act and the Arbitration Act and the former has not been reserved for consideration of the President as required under Article 254(1) of the Constitution. It is too hard to accept this contention also. The question of repugnancy can arise only with reference to legislations falling under the concurrent list. That principle has been well settled by a string of decisions of the Supreme Court commencing from the case in *A.S. Krishna Vs. State of Madras*, to the *Kerala State Electricity Board Vs. The Indian Aluminium Co. Ltd.*,

15. We also do not find any substance in the next contention urged for the petitioners that Act 43 of 1976 is bad for want of Presidential sanction as required under Article 304(b) of the Constitution. We have already held that the restrictions imposed by Act 43 of 1976 are in the nature of regulatory measures and it is well settled that such measures need not comply with the requirement of the provisions of Article 304(b). See *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, and *G.K. Krishnan and Others Vs. State of Tamil Nadu and Others*, ."

It also follows from the aforesaid decision that when the provisions of Karnataka Act 43 of 1976 do not attract Article 304(b) of the Constitution, it is not necessary to obtain the assent of the President to the Karnataka Act 43/76. Accordingly, Point No.(i) is answered in the negative.

5. However, Sri K. Srinivasan, learned Counsel for the petitioner, has placed reliance on a decision of the Supreme Court in AIR 1981 1127 (SC) In that decision, the aforesaid decision of this Court in *D. V. Kempaiah's* case, has been affirmed. Therefore, it is not possible to hold that the decision in *R. K. Porwal's* case is of any assistance to the petitioner.

6 POINT NO. (ii) : The contention of the petitions that Clause (37) of Section 2 of

the Act, suffers from vice of excessive delegation, cannot also be accepted. This clause defines the expression "retail sale". According to this definition, "Retail sale" means, the sale of notified agricultural produce to a consumer for domestic consumption not exceeding such quantity as the Market Committee may, by bye-laws or standing orders determine. The contention of Sri K. Srinivasan, learned Counsel for the petitioner, is that quantity of sale of notified agricultural produce ought to have been fixed by the Legislature and it ought not to have been left to the Market Committee for the purpose of determining whether one is a retail trader or a wholesale trader. Therefore, it is submitted that Clause (37) of Section 2 of the Act, suffers from the vice of excessive delegation. The Constitution does not prohibit delegation of Legislative powers by the Legislature to the Executive or any other authority or body as long as it does not abdicate its essential Legislative functions. The Legislature cannot delegate to another agency the exercise of its judgment on the question as to what the law should be. The legislature under our Constitution cannot delegate its essential functions which are entrusted to it by the Constitution. Thus, the Legislature can lay down legislative policy and leave the matters of detail which are not essential to the legislative policy to be provided by the Executive or any other authority which the legislature deems it competent or relevant having regard to the aims and objects of the enactment. In the instant case, the market committee has been entrusted with the power to determine the quantity of sale.

7. Under the Act, Market Committee is charged with the responsibility to enforce the provisions of the Act, and exercise control over the market area, market, sub-market, market-yard and market sub-yard. In the market-yard, wholesale business takes place and nobody can carry on wholesale business in the notified agricultural produce outside the market-yard. Therefore, for the proper and effective enforcement of the Act, it is also necessary to entrust to the Market Committee the function or power to determine or lay down the criteria for retail sale because the retail sale takes place in the market or market area but outside the market-yard or market sub-yard. As the determination of retail sale in respect of several notified agricultural produces depends upon the nature of the notified agricultural produce and local conditions, the Legislature has rightly left it to the Market Committee to determine the quantity of sale. In this regard, the Legislature has laid down the broad policy. As per the definition of the expression "retail sale", the sale must be of a notified agricultural produce; and it must be to a consumer for domestic consumption. Any other sale irrespective of the quantity does not fall within the definition of "retail sale". After prescribing these two essential requirements of "retail sale", the Legislature has left it to the Market Committee to provide non-essential i.e. to fix the quantity of sale, which, as already pointed out, depends upon the nature of the agricultural produce and local conditions. Fixation of quantity of sale, is a matter which varies from commodity to commodity and pertains to details of the Legislative policy which can be entrusted to the Market Committee. Thus, there is no delegation of essential Legislative function. That being so, the contention of the petitioner that

there are no guide-lines laid down in the definition or in the other provisions of the Act, to determine "retail sale", has no substance.

8. It is in exercise of this power, the Market Committee has framed the following bye-law which is approved by the Chief Marketing Officer in Karnataka vide order No. SMD 80 RGN 82 dated 27-1-86, as an amendment to Bye-law No. 23(11)(b) of the Bye-laws :

"(1) As per Section 85(1)(iv) of the KAPM (R) Act, "D" Class Traders shall purchase the notified agricultural produce from the wholesale traders for sale to the consumers for domestic purpose and shall obtain the "D" Class licence from the market committee.

(2) "D" Class licence shall be obtained from the market committee as per bye-laws.

(3) "D" Class trader shall purchase the notified agricultural produce only from the wholesale traders who are holding the licence issued by the market committee and shall sell the same.

(4) The bills for the purchase of every notified agricultural produce by "D" Class trader shall indicate the details of the payment of market fee. Such bills be produced to the officer/ officials of the market committee whenever they have demanded.

(5) "D" Class Trader shall maintain the accounts for all the notified agricultural produce purchased by him in the books supplied by the market committee.

(6) "D" Class trader shall not sell the notified agricultural produce to another traders.

(7) The annual purchase turnover of the "D" Class traders shall not exceed Rs. 5 lakhs.

(8) The quantity sold by a retailer to a consumer for domestic consumption at a time shall not exceed the following limit ;

(1) Food grains (Ragi & Rice) 50 Kgs. (2) Pulses 25 Kgs. (3) Chillies, Tamarind, Onion, Potato, Jaggery, Garlic, Tamarind seeds 10 Kgs. (4) Gingelly, Niger, Coriander, Soapnut, Groundnut and Honey Seeds 5 Kgs. (5) Coconuts 20 Nos.
(9) The market committee may impose such additional conditions on retail sale as and when required by standing orders."

The petitioner is a coconut merchant. He is not concerned with any other agricultural produce. According to the aforesaid bye-law, sale of 20 coconuts at a time to a consumer for domestic consumption is considered a "retail sale". It only means that it is open to the petitioner to sell to a consumer for domestic consumption at a time 20 coconuts, provided the annual purchase turn-over does not exceed Rs. 5 Lakhs. That being so. it is not possible to hold that the definition of "Retail Sale" as found in Clause 37 of Section 2 of the Act suffers

from any infirmity, much less from the vice of excessive delegation. Accordingly, Point No. (ii) is answered in the negative,

9. POINT NO. (iii): This contention is based on the assumption that it is not open to the Chief Marketing Officer to notify that some of the notified agricultural produces alone can be regulated in the market sub-yard. It is not possible to accept this contention. Learned Counsel for the petitioner has placed reliance on the provisions contained in Section 6(2)(b) of the Act. This point is also considered by a Division Bench of this Court in *Vasavi Traders v. State of Karnataka* and Ors 1982(2) KLJ 357. It is stated thus at paragraph 123 of the Judgment :

"In the Act, the power to specify the "Market-area" and specify the kinds of agricultural produce respecting which regulatory measures under the Act shall be enforced vests in the Government. u/s 5 it is the Government alone that can make alterations of the "Market-area" and in the list of items of regulated agricultural produce earlier notified by it u/s 4. The power of the C. M. O. in Section 6 is to effectuate this regulation by specifying "markets", "sub-markets" "market-yards" and market sub-yards. Quite obvious the C.M.O. cannot undo what the Government has done under Sections 4 and 5. A constriction which will lead to that position should be avoided, if it could reasonably be done. The construction of and purpose sought to be achieved by Sections 4 and 5 on the one hand and Section 6(2)(b) on the other, suggested by Shri Srinivasan, if accepted, would lead to an apparent conflict between the two sets of provisions. For instance if Government specifies 10 items of agricultural-produce for regulation u/s 4, the C.M.O. would be at liberty to regulate, say 4 to 5 of them undoing the effect of the notifications under Sections 4 and 5 as the case may be, so far as the rest of the items are concerned.

An indication of and the basis for a harmonious construction is in Section 6(2)(b) itself. An analysis of Section 6(2)(b) would show that it enables the C.M.O. to ;

(i) declare a specified place in the market-yard for the regulated marketing of the notified agricultural produce specified in notification ;

(ii) declare, by the same notification any other specified place to be "market-sub-yard" or sub-market yards for the regulated marketing of the notified agricultural produce specified in the notification.

What follows is that the requirement to specify the agricultural produce over-again in the notification issued by the C.M.O. is clearly in the context of apportionment of the items of agricultural produce to be regulated as between a main "market-yard" and "sub-market yard". In our opinion, the requirement to notify once again the agricultural produce by the C.M.O. u/s 6(2)(a) and (b) is necessary only where he apportions the notified produce for regulation as between "market-yard" and "sub-market yards". It is open to the C.M.O. to say that certain items of the agricultural produce notified u/s 4 shall be dealt with in the market yard and some other items in the sub-market yard. This power

should be read with and as a corollary of the power in Section 6(3) which interlaid enables the C.M.O. to:

"....direct that the regulated marketing of any notified agricultural produce in any market-yard, or market sub-yard, or sub-market yard shall cease or that any notified agricultural produce shall be included in the regulation of marketing in any such yard or sub-yard."

If no mention is made of any notified agricultural produce in the notification u/s 6(2)(a) and (b) issued by the C.M.O. it would mean that all the notified produce specified by the Government u/s 4 shall be regulated in both the market-yard and the sub-market-yard or yards." Accordingly, this point is answered in the negative and against the petitioner.

10. POINT NO. (iv) : Whether the petitioner is a retail trader or not need not be gone into in this Petition because it is for the Market Committee to determine. If he is a retail trader it is open to him as it is open to every retail trader to sell coconut by way of retail sale in the market area, but outside the market yard and market sub-yard, on obtaining "D" class licence. Point No. (iv) is answered accordingly.

11. The petitioner has also prayed for issue of a Writ in the nature of Mandamus directing the Agricultural Produce Marketing Committee, Bangalore, to issue him "D" Class licence. Sri Sridharan, learned Counsel appearing for the Market Committee submits that an injunction order issued in the suit O.S. No. 2519/1083 filed by the petitioner against the Market Committee in the Court of the Vth Additional City Civil Judge, Bangalore, has now been vacated, therefore if the petitioner makes an application to the Market Committee seeking "D" class licence, the same will be considered in accordance with law. Learned Counsel for the petitioner submits that the petitioner will make an application seeking "D" Class licence. In case the petitioner makes such an application, the Market Committee is directed to consider the same in accordance with law.

12. For the reasons stated above, this Writ Petition is dismissed subject to a direction that if she petitioner files an application seeking "D" Class licence, the Market Committee shall consider the same in accordance with law and dispose it of within two months from the date it is filed.