

(1997) 11 KAR CK 0012
In the Karnataka High Court
Case No : Writ Appeal No. 3995 of 1997

Parappa

APPELLANT

Vs

Nandarayappa and Others

RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 16 (1) (a),
17 (2), 20

Citation : (1998) 6 KarLJ 557

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullal, J

Bench : Division Bench

Advocate : Sri Shivaraj P. Mudhol, for the Appellant; Shri V. Prakash, Additional Government Pleader, Sri Y. Lakshmikant Reddy and Sri R.L. Patil, for M/s. Patil and Patil, for the Respondent

Judgement

G.C. Bharuka, J.—The present appeal has been preferred against the order dated 7th July, 1997 passed by the learned Single Judge of this Court quashing the show-cause notice dated 1-7-1997 issued u/s 17(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (in short "Act") requiring the first respondent, Nandarayappa, to explain as to why he should not be declared disqualified as member of the third respondent, Marketing Committee.

1(a) Pursuant to the election held on 25-4-1997, the first respondent was declared as an elected member of the third respondent, Marketing Committee from the agriculturists constituency. Being aggrieved by the said election of the first respondent, the defeated candidate, Parappa, appellant, filed an election petition in No. 2 of 1997 before the jurisdictional Munsiff, Jamkhandi, u/s 20 of the Act on the ground that the first respondent was disqualified to contest from the agriculturists constituency in view of Section 16(1)(a), (b) and (c) of the Act since according to him the first respondent was a licensed trader and could not have contested from the said constituency. The said election petition is still pending adjudication on the file of the Munsiff, Jamkhandi.

2. Despite the pendency of the election petition, the appellant before us claiming as an agriculturist and voter under the third respondent, Marketing Committee, filed an application before the Director, seeking disqualification of the first respondent on the ground that the said respondent could not have contested from the agriculturists constituency. Based on the said complaint, the Director issued a notice u/s 17 of the Act requiring as to why he should not be disqualified from being a member. The said notice was challenged by the first respondent by filing a writ petition before this Court and the impugned order was passed by the learned Single Judge, quashing the same by holding that the Director has no jurisdiction to enquire into the issue of pre-election disqualification since the dispute of the present nature can be resolved only in an election petition to be preferred u/s 20 of the Act before the jurisdictional Munsiff

3. Section 16(1)(a) of the Act reads as follows:

"16. Disqualifications for membership.--Without prejudice to any other disqualifications provided in this Act.-

(1) a person shall be disqualified for being chosen as, or for being a member of a market committee.-

(a) as representative of agriculturists, if he or a firm in which he is a partner, or a body corporate (other than a co-operative society) in which he is a Director, or a joint family of which he is a member, does business as a trader, commission agent, broker, importer or exporter in any market area;

or was doing business as a trader, commission agent, broker, importer or exporter, till such date not later than five years immediately preceding the date of election".

From the above provisions it is clear that no person can be nominated or elected from the agriculturists constituency, if he is found to be carrying on business as a trader, commission agent, etc., or if he is doing such business till such date not later than 5 years immediately preceding the date of election.

4. Section 20 of the Act provides that if any candidate who stood for election or any person qualified to vote at that election, is aggrieved by the election of a returned candidate, then he can prefer an election petition before the jurisdictional Munsiff challenging the election on any of the grounds mentioned in Section 21 of the Act. Therefore, under the scheme of the Act all the issues pertaining to the election of a candidate has to be adjudicated and decided only by the jurisdictional Munsiff, in an election petition.

5. On the other hand, keeping in view the provisions contained in Section 17 of the Act, if any member of the market committee, that is a person who has been duly elected as a member, becomes subject to any of the disqualifications mentioned in Section 16 of the Act, then his seat shall be deemed to be or to have become vacant and the same shall have to be intimated to the member in writing by the market committee. Sub-section (2) of Section 17 of the Act

provides that if a dispute arises as to whether a person has become subject to disqualification under sub-section (1), then the Director either suo motu or on any report from the Secretary of the market committee or otherwise after giving an opportunity to the member to be heard and holding such enquiry as he deems fit, decide the question.

6. A reading of Section 17 of the Act makes it abundantly clear that the Director of Agricultural Marketing gets jurisdiction to decide the disqualification aspect of a sitting member, only if it has been caused to him subsequent to his election. But the disqualification was of a period anterior to the election having bearing on the validity of his election itself, then the said issue can be decided only by the jurisdictional Munsiff in an election petition. Taking of any contrary view will only lead to overlapping of jurisdiction which has to be always avoided in view of the principles of interpretation.

7. It may be further noticed here that as held by the Supreme Court in the case of East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, , that when a show-cause notice has been issued by an Authority who had no jurisdiction to initiate such proceeding then he can certainly be prohibited from proceeding with the same under the writ jurisdiction of the High Court. Therefore, keeping in view the facts and law as narrated above, in our opinion, since the second respondent-Director, had usurped the power to initiate the impugned proceeding without any legal sanction, therefore, the learned Single Judge has rightly interfered with the same and quashed the proceedings.

8. Learned Counsel appearing for the appellant has raised a technical objection to the effect that keeping in view the Rule 13(a) of the Writ Proceedings Rules, 1977 framed by this Court under Articles 226 and 227 of the Constitution of India, the writ petition could not have been finally disposed of at the stage of admission itself. In support of his contention, he relied upon such observation made by the learned Single Judge of this Court in the case of Nagendrappa Vs. State of Karnataka, . In our opinion, the said contention has to be outrightly rejected in view of clause (b) of Rule 13 as substituted by Notification No. HCE 618 of 1990, dated 29-8-1990, wherein it has been provided that in the event the Court issues a direction in accordance with proviso (ii) of the Rule, the issuance of rule nisi may be dispensed with and the matter may be heard and disposed of on merits. Therefore, it is always permissible for this Court to dispose of the writ petition even without issuing rule nisi.

9. Another grievance of the learned Counsel for the appellant is that the learned Single Judge has disposed of the writ petition without issuance of notice to the appellant. In our opinion, the said objection is devoid of any merit. It is for the reason that u/s 17(2) of the Act, it is the Director who has to initiate the proceedings either suo motu or on any report from the Secretary of the market committee. No individual person has statutory right to invoke the said jurisdiction of the Director, though if complaint is made by any individual person

making allegation regarding disqualification of a particular member, then the Director can consider such complaint as an information only for the purpose of invoking his suo motu jurisdiction. For that reason, the complainant cannot claim right either to defend or to support any proceeding initiated by the Director. In that view of the matter, in our opinion, no illegality was committed by the learned Single Judge in dispensing with the requirement of issuance of notice to the present appellant.

10. For the aforesaid reasons, we do not find any valid ground to interfere with the impugned order of the learned Single Judge.

Writ appeal, therefore, stands dismissed.