

(2003) 04 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No's. 20685 of 2003

Parashuram and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-04-2003

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 13 (4), 38, 42 (2)

Citation : (2003) ILR (Kar) 2953 : (2003) 5 KarLJ 523

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Ravivarma Kumar, N.R. Krishnappa, Jayakumar S. Patil, S.M. Chandrashekar, C. Shiva Kumar, Mohan Bhat, Shantesh Gureddi and Suresh P. Hudedagaddi, for the Appellant; Jayaram, A.G. and Tajuddin, G.P., for the Respondent

Judgement

Kumar, J.—Issue Rule.

2. Heard both the parties. As the question involved in all these Writ Petitions is common and having regard to the urgency of the matter and the short point that arises for my consideration, by consent of the parties, these Writ Petitions are taken up for final disposal and disposed of by this common order.

3. The petitioners in all these Writ Petitions who are the elected representatives of the respective Agricultural Produce Marketing I LR 2003 Kar 2956 KARNATAKA SERIES Committees have challenged the notification dated 9.4.2003 issued by the 1st respondent - Government of Karnataka postponing the elections to all the 110 Agricultural Produce Marketing Committees specified in the annexure for a period of six months and further appointing Administrators in place of the office bearers in respect of the said 110 Agricultural Produce Marketing Committees after the expiry of the term of their office.

4. The petitioners were all duly elected members of the A.P.M.Cs. The term of their office expires between 24.4.03 and 30.4.03. Their grievance is, the

Government was under an obligation to hold elections to these Committees before the expiry of their term of office as contemplated u/s 38 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. In spite of such a statutory obligation imposed on the Government, elections are not held. On the contrary, the impugned notification has been issued purporting to be under Sub-section (4) of Section 13 of the Act by which the elections are postponed for a period of six months and after the expiry of their term of office, in their place, Administrators are appointed. It is contended, firstly, sub-section (4) of Section 13 of the Act does not empower the Government to postpone the elections. Secondly, it was contended, the reason for such postponing being drought situation in the State of Karnataka, which is only a lame excuse and the real reason being to take over these co-operative societies into their hands and therefore malafides are alleged against the Government for issuing the impugned notification.

5. The State has filed a detailed counter. They have set out in detail the circumstances which necessitated the Government to take the decision to postpone the elections. As the present drought situation prevailing in the State of Karnataka has been worst in the past 12 years which has led to a situation where the State has declared 154 Taluks out of 176 Taluks to be drought hit. Therefore, they contend, absolutely there are no malafides in the impugned action by which the elections are postponed. In so far as the power to postpone the elections is concerned, it is contended that subsection 4 of Section 13 of the Act specifically empowers the Government to postpone the elections and that the impugned notification issued is valid and legal and do not suffer from legal infirmity. Therefore, they prayed for dismissal of these petitions.

6. Sri Ravivarma Kumar and Sri Jayakumar S. Patil, learned Counsel appearing for the petitioners contend, a reading of subsection (4) of Section 13 makes it very clear that the Government has been conferred power to issue instructions relating to all matters connected with elections to the market committees including directions for cancellation of the calendar of events or postponement of the poll. Nowhere in the section, power has been conferred on the Government to postpone the entire election as such and therefore they submit that the impugned notification issued by the Government is one without jurisdiction, void and is liable to be quashed.

7. Per contra, learned Advocate General submitted, sub-section (4) of Section 13 was introduced by way of an amendment by Amendment Act 4 of 1982 which came into force on 1.1.1981. In view of the law declared by this Court in the cases of *TAHASILDAR (REV.)*, *SHIMOGA vs RAMAPPA* 1982 (2) Kar.L.J.14 wherein this Court categorically held that the Government has no power to postpone the elections, the legislature took steps and brought about the amendment by introducing sub-section (4) to Section 13 of the Act. The very object behind this amendment is to empower the Government to postpone the elections in case of necessity. It is also submitted, the election process starts

with a calendar of events and the aforesaid provisions specifically provides for cancellation of the calendar of events and also postponing of the poll. On a proper interpretation of the aforesaid provision, it is clear, the said power conferred under the proviso amounts to confirmation of power to postpone the election itself, postponing of the poll amounts to postponing the elections under the aforesaid provision. Lastly it was contended, the very fact that the elections are postponed in all 110 marketing committees shows, the Government has not discriminated any particular committee. It shows concern for the people who are suffering from drought throughout the Karnataka. As no calendar of events are yet issued, the question of cancellation of calendar of events or postponing the poll would not arise.

8. From the aforesaid undisputed facts and the rival contentions, the short point that arises for my consideration in these Writ Petitions is:

Whether sub-section (4) of Section 13 of the Act empowers the Government to postpone the elections throughout the State?

9. Only if the answer to the aforesaid point is in the positive, the question of going into malafides in exercise of that power by the Government would arise. In view of my finding that the Government has no power under the aforesaid provision, the question of going into the malafides do not arise for consideration in these Writ Petitions.

10. In order to decide the aforesaid question, it is necessary to have a look at the various provisions of the Act dealing with elections. Section 38 of the Act deals with terms of office of members which reads as under:

" The members of the market committee shall, save as otherwise provided in this Act, hold office for a term of five years before the expiry of which election shall be held to a market committee."

11. Therefore, it is clear, the term of office of the market committee is fixed as five years. The term of office of the members is also fixed co-extensive with the marketing committee which is five years. The law mandates that before the expiry of the said term, elections shall be held to a market committee. The legislature has made its intention very clear. No discretion is conferred on the authorities concerned in the matter to hold elections. They shall hold elections before the expiry of the term of the market committee. The said provision is mandatory.

12. Section 13 of the Act deals with Superintendence, direction and control of elections. The aforesaid provision makes it very clear, subject to the instructions of the Director of Agricultural Marketing, the superintendence, direction and control of the preparation of the lists of voters for and the conduct of all elections to the market committee, shall be vested in the Dy. Commissioner. This section was the subject matter of interpretation of this Court earlier. Following the judgment of the Supreme Court reported in the case of The State of Karnataka

and Others Vs. Gunjahalli Nagappa and Others, , this Court had held in the case of T. RAMAPPA vs TAHASILDAR that ILR Parashuram & Ors. vs State of Karnataka & Ors. 2959 Section 13 of the Act gives the general power of "superintendence, direction and control of and conduct of all elections" and the said power of superintendence does not include the power to postpone the elections. The said judgment of the learned Single Judge has been affirmed by a Division Bench of this Court in W.A.No. 574/ 1982 disposed of on 25.3.1982 where it has been held, the language of Section 13 does not admit the construction that it takes within its sweep a power to interdict an electoral process after it has been duly set in motion.

13. It is because of the Judgment of the learned Single Judge in the aforesaid said case, the legislature thought it fit to bring about the amendment accepting the said interpretation. Therefore, the question that arises for my consideration is, whether the said legal position declared by this Court has in any way affected by the amendment introduced by way of sub-section (4) of Section 13. In order to appreciate this aspect, it is necessary to have a look at the amended provision of sub-section (4) of Section 13 which reads as under:

"Notwithstanding anything contained in any law for the time being in force, the State Government may issue instructions relating to all matters connected with elections to the market committees including directions for cancellation of the calendar of events or postponement of the poll."

14. Therefore it is evident, by virtue of the aforesaid provision, the Government has been empowered to do the following acts.

- a. Issue directions relating to all matters connected with elections to the market committee.
- b. Direction for cancellation of calendar of events.
- c. Postponing of the poll.

15. The legislature has consciously conferred power on the Government to do the aforesaid acts and the power to postpone the elections is conspicuously missing in the aforesaid provision. Therefore, the mandate u/s 38 of the Act has to be obeyed by the Government. The elections have to be conducted before the expiry of the term of the Committee. In holding such elections, if the Government were to encounter any difficulties, the amended provisions enables the Government to issue instructions in that regard. The law is well settled that once the calendar of events has been issued, it cannot be interdicted. Having regard to the fact that there are a number of market committees for which elections have to be held at a time, if any practical difficulties are there in respect of any particular committee, the aforesaid provision confers on the Government the power to cancel the calendar of events. That cancellation would be not for ever. After noticing the defect in conducting the elections, if the calendar of events is cancelled, the calendar of events has to be issued within a reasonable time. Even

after the issue of calendar of events, if any difficulty arises regarding the date on which the poll has to take place, the legislature has taken care to introduce the specific provisions empowering the Government to postpone the poll. Therefore, the intention of the legislature was not to permit the Government to postpone the elections. Any difficulty in conduct of the election could be postponed or corrected by invoking the aforesaid provision.

16. The object of the aforesaid amendment was not to give a blanket power to the Government to postpone the elections throughout the State. The said power is conferred on the Government to be exercised in a given case where circumstances justify such exercise of power. As calendar of events has to be issued in respect of each committee and a particular date has to be fixed for poll in respect of each committee by a separate order, the aforesaid power has to be exercised in respect of such committee only. Any other interpretation would run counter to the mandate contained in Section 38 of the Act, which has to be avoided.

17. Therefore, in the circumstances, on a literal and harmonious reading of the section along with Section 38 of the Act it is very clear that the power to postpone the election has not been conferred on the Government by this amended provision.

18. Learned Advocate General submitted, postponing of the means postponing of the election also and the aforesaid phrase should be given itself full meaning. I am unable to accept this argument.

19. The Division Bench of this Court in the case of VENKATA RAO vs STATE OF MYSORE AND OTHERS, LAW REPORTS 694 dealing with what a poll means, has approved the meaning of the word "poll" in the Dictionary on English Law by Earl Jowitt in which it is stated as under:

"Poll, to give a vote at an election; also to receive a vote; also taking of votes of all persons entitled to vote present, by proxy or otherwise as opposed to counting the votes of voters present at a meeting."

20. And it was held that the word poll has to be given its ordinary meaning. The Dictionary meaning of the word poll is "voting at election".

21. The Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, observed that the pervasive philosophy of democratic elections as vivified by Sir Winston Churchill in his Matchless words as: "At the bottom of all tributes paid to democracy is the little man walking into a little booth with a little pencil making a little cross on a little bit of paper. And that is poll". Poll is thus the most important and vital stage in the electoral process. If elections are festivals of democracy, the polling day marks the most eventful occasion in these celebrations. The gigantic preparations, massive administrative effort and huge Government expenditure involved in the conduct of election are also aimed at making the polling process a

smooth and peaceful affair on the day of poll. "Poll" according to the standard English Dictionaries and Encyclopaedia Britannica literally means a humar head or a head as a unit in numbering. In modern time "poll has come to be associated with the expression of one's opinion on a question or matter of public concern and needing a decision representing popular will. In electoral parlance, "poll" means the recording of votes at an election in favour of one or more of the contestants in the electoral fray.

22. Therefore, it becomes clear the poll is the most important and vital stage in the electoral process. Poll and election are not one and the same. Postponement of poll does not necessarily mean the postponement of election. Therefore, power of postponing the poll does not confer the power to postpone the election itself.

23. In view of the aforesaid discussions, I am of the view, notwithstanding the amendment brought about by inserting sub-sec(4) to Section 13 of the Act, the said provision does not confer power on the State Government such as issuing instructions regarding postponement of elections. That provision only confers certain powers to the Government such as issuing instructions regarding conduct of elections, cancellation or postponing certain stages in the election process. Therefore, the impugned notification postponing the election purporting, to exercise its power under sub-sec(4) of Section 13 is void and without jurisdiction and it is therefore liable to be quashed.

24. In the aforesaid notification consequent to the postponing of election the Government has ordered, with effect from expiry of the date of the term of office of the Chairman and Vice-Chairman of the Market Committee, Administrators shall be appointed. The said power is purported to flow from Sub-sec(2) of Section 42 of the Act.

25. The learned Counsel for the petitioners contend, sub-section 2 of Section 42 does not empower the Government to appoint the Administrator on the expiry of the term of office of the Chairman and Vice Chairman and therefore that portion of the notification is also liable to be quashed for want of authority. It was also contended on their behalf, the entire scheme of the act makes it very clear, even from the inception, these Market Committees are to be managed by elected representative and not by officials and therefore he submits as this notification is issued only with an intention of taking over the control of Market Committees after the expiry of the period prescribed without holding elections, consequent to quashing of the notification, elected representatives whose term of office has come to an end should be permitted to continue in office till the election are held and new office bearers are elected.

26. Per contra, Learned Advocate General submits, once the term of office expires, the elected representatives cannot be continued even for a day as in the entire scheme of the Act there is no provision for such extension and therefore he submits, even if the order postponing the election has to be quashed, no case

for quashing the appointment of Administrator is made out.

27. Sub-section (2) of Section 42 deals with the term of office of Chairman and Vice-Chairman which reads as under:

"Not withstanding anything contained in this Act, on the expiry of the term of office of the Chairman and Vice-Chairman and of the market committee, the Tahasildar of the Taluk in which the yard is situated shall exercise the powers and perform the functions of the market committee and its Chairman until the market committee is reconstituted and its chairman is elected.

Provided that the (Director of Agricultural Marketing) may, at any time thereafter appoint any other Officer to exercise the powers and perform the functions of the market committee and its Chairman".

28. Therefore, a reading of the said provision makes it very clear, the Government has not been conferred any power to appoint the Administrator. After the expiry of the term of office of the Chairman and the Vice-Chairman, the Tahasildar of the Taluk is empowered to perform the functions of the market committee till the new market committee is constituted and the Chairman is elected. Therefore, the impugned order passed by the Government appointing the Administrators is also one without jurisdiction. However, Sub-Sec (2) of Section 42 makes it very clear that after the Tahasildar takes over the management of these market committees, the Director of Agricultural Marketing may, at any time thereafter appoint any other officer to exercise the powers and perform the functions of the market committee and its Chairman. Therefore, it is clear, even this proviso does not empower the Government to appoint the Administrator. After the Tahasildar takes over the management of the market committee, the Director of the Agricultural Marketing may appoint any officer to exercise the powers and perform the functions of the market committee and its Chairman.

29. The members of the Committee were elected for a define period There is no provision in the Act for extension of their term. On the expiry of their term, by virtue of Sub-Section (2) of Section 42 of the Act, the Tahasildar of the Taluk is statutorily empowered to exercise the powers and functions of the market committee. In other words, the members cease to be the members of the Committee on expiry of their term. Therefore they cannot be permitted to continue as members on the ground that no elections are held before the expiry of their term.

30. Under these circumstances, the impugned order appointing the Administrators by the Government purported to exercise the powers under sub-section (2) of Section 42 of the Act is also one without jurisdiction and is therefore hereby quashed.

31. It is not in dispute that the term of the market committee comes to an end by 30.4.03. Rule 7 deals with notice to elect provides that not less than 45 days

before the date for the election, the Dy. Commissioner shall cause a notice in Kannada to be published in a Kannada Newspaper having circulation in the market area and at the places specified in sub-rule (5) of Rule 5. Therefore, after the expiry of the term of the market committee till the new elections are held, which has to be at any date beyond 45 days, during that interim period, by virtue of sub-section (2) of Section 42, the Tahasildar of the Taluk in which the yard is situated shall exercise the powers and perform the functions of the market committee and its Chairman until the market committee is reconstituted and its Chairman is elected. However, it is open to the Director of Agricultural Marketing to appoint any officer to exercise the aforesaid powers and perform the functions as contemplated u/s 42. Therefore, it is necessary that as required u/s 38 of the Act, elections shall be conducted immediately giving 45 days notice for such elections. Under these circumstances, I pass the following order.

1. The impugned notification issued by the Government dated 9.4.03 bearing No.CD 36 MRE 2003 is hereby quashed.
2. The Government is directed to take steps to hold the elections to the 110 Marketing Committees in the State within three months from today and complete the entire election process.
3. After the expiry of the term of these marketing committees till the newly elected committee takes charge, the Tahasildar of the Taluk shall exercise the powers and performs the functions of the market committee and its Chairman until the market committee is reconstituted and its Chairman is elected.
4. Liberty is reserved to the Director of Agricultural Marketing to appoint any other Officer as provided in proviso to sub-section 2 of Section 42 of the Act.
5. Parties to bear their own costs.