

(1989) 09 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil W.P. No. 3166 of 1987

Punjab State Agricultural Marketing Board and another

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 28-09-1989

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Punjab Agricultural Procedure Markets Act, 1961 — Section 3(4), 3(8), 408(1)

Citation : AIR 1991 P&H 143 : (1991) 1 ILR (P&H) 364

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : Mr. G.S. Grewal, Mr. Sarjit Singh, Mr. S.S. Bajwa and Mr. Jagdev Singh, for the Appellant; Mr. H.S. Bedi, A.G., for the Respondent

Judgement

1. This petition has been filed on behalf of the Punjab State Agricultural Marketing Board and its Chairman, Jathedar Tota Singh for quashing the order of suspension of the Board dated 19-5-1987, Annexure P/9.

2. The said Board was constituted on 15-9-1986 vide notification, AnnexureP/1. According to the said notification, the said Board was constituted for a period of three years with effect from 17-9-1986 as provided under S. 3(4) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as the Act). S. 3 of the Act provides that the State Government may establish and constitute a State Agricultural Market Board, consisting of a Chairman to be nominated by the State Government and fourteen other members of whom six shall be officials and eight non-officials, to be nominated by the State Government in the manner provided thereunder. The said Board was constituted when the Akali Government was in power in the State of Punjab. The said Akali Government headed by Shri Surjit Singh Barnala was dismissed by the President on 12-5-1987 and the Presidential Rule was imposed on the State of Punjab. According to the petitioners, the Governor of Punjab, issued Press statement that the Government had decided to remove all the non-official Chairman of all the State Corporations

and Boards and this was first major political decision taken by the Government of Punjab after imposition of Presidential Rule. Copy of the press report dated 14-5-1987 appearing in the Indian Express is attached as Annexure P/2. In execution of that policy decision, Governor of Punjab removed various non-official Chairman of various Corporations. According to the news item which appeared in the Tribune dated 16-5-1987, copy Annexure P/ 3, Chairman of the Khadi Village Industries Board and various other non-official Chairman were removed but it was mentioned therein that the Government had not taken the decision about the removal of the Chairman of the Marketing Board as his appointment was a "term appointment", and in case the Government decides to remove him, he will have to be paid salaries and other allowances for the remaining period of his term. In order to overcome this difficulty, the State Government decided to implement its political decision and issued a show cause notice to the Chairman as to why Marketing Board should not be suspended. Copy of the show cause notice is Annexure P/4. According to the petitioner, in the show cause notice, seven items were mentioned on the basis of which the Government had taken a decision to suspend the Board. Out of seven charges, six related to the period prior to the Constitution of the Board. Only Charge No. 1 related to the period of the present Board. However, reply to the said show cause notice was sent vide copy Annexure P/ 5. It was pleaded that according to the Act, the functions of Board and its office bearers were separately defined and the Marketing Board is entirely different from its office bearers. The relevant sections which define the powers, duties and responsibilities of the Board are tabulated in the form of Annexure P/8. According to the petitioners, neither the notice issued by the State Government Annexure P/4 nor the impugned order, copy filed as Annexure P/9 relate to the functions, duties and responsibilities of the Board. Board could only be suspended if it is not functioning properly or if it is abusing its powers or if it is guilty of corruption or mismanagement. The Board could not be suspended for the fault of any of its employees or the office bearers. None of the allegations mentioned in the notice relate to any of the duties which are assigned to the Board under the Act. No order of suspension of the Board could be passed.

3, The said order of suspension, Annexure P/9 has been challenged on the ground that it was mala fide and was passed simply to achieve the object of removing the petitioner No. 2 as Chairman of the Board. The power conferred upon the Government under S. 3(8) of the Act has been exercised in colourable way to achieve the purpose of wrecking vengeance of the Chairman of the Board appointed by the previous Government. The allegations made in the show cause note are absolutely without any basis-Even if such allegations may be assumed to be of substance, such allegations do not amount to abuse of power.

4. Learned counsel for the petitioner submitted that the powers to suspend the Board are provided under S. 3(8) of the Act which reads as under-

"3(8). The State Government shall exercise superintendence and control over the

Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, it may suspend the Board and, till such time as a new Board is constituted, make such arrangements for the exercise of the functions of the Board (and of its Chairman) as it may think fit;

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5. Learned counsel for the petitioner further submitted that except Charge No. 1, all other charges related to the period when the present Board was constituted on 17-9-1986. Moreover, no specific direction issued by the State Government has been violated by the Board and, therefore, the suspension order is mala fide and politically motivated. Even Charge No. 1, according to the learned counsel, was baseless because even in Charge No. 1 the period mentioned is 1-1-1987 to 31-3-1987. According to the said charge, the Marketing Board has released Rs. 343.33 lacs for the construction/repair of link roads whereas the amount of funds released to P.W.D. (B&R) is Rs. 135.83 lacs. Thus, according to the State Government, it was obvious that the Board deliberately acted against the decision and instructions of the Government and-against the allocation of 33 per cent, the Board has released 72 per cent funds which is gross violation of the decision of the Government. In order to rebul this allegation, learned counsel for the petitioner referred to Annexure P/5/1 which is a copy of the Minutes of the Meeting held on 3-1-1987 regarding construction/repair of the village link roads under the Chairmanship of the then Chief Minister, Punjab, Shri Surjit Singh Barnala. The said meeting was attended by eleven officials and the Chairman of the Board was one of them. None of the members of the Board attended the said meeting. The decision taken in that meeting was that "Marketing Board would construct roads according to P.W.D. specifications to avoid any problem in taking over of the roads by P.W.D. later on." (Action by Secretary, Marketing Board). Second meeting in this behalf was held on 2-2-1987. Copy of the proceedings is Annexure P/ 5/ 2. In that meeting, fourteen officials were present including the Chairman of the Board. Therein, the decision taken was that "it was decided that Marketing Board would prepare a note and action plan and make a reference to Finance Department through Administrative Department for obtaining the release of funds deposited with Finance Department. The Board will also explain the position of funds deposited with banks."(Action by Secretary, Marketing Board, F.D.J.The third meeting in this behalf was held on 11-3-1987 vide Annexure P/6. Seven officials were present therein. In that meeting, even the Chairman of the Board was not present. Only the Secretary of the Board Shri Sarbjit Singh was present. One of the decisions taken therein was that "Secretary, Mandi Board will supply detailed statement about the sanction of estimates and release of money for construction/repair of village link roads to Public Works Department (B&R) and Mandi Board, Market Committee from 1-1-1987. This will give a clear picture of the sanction of estimates and release of money to Market Committee failing in the jurisdiction of Public Works Department and Mandi Board." (Action by

Secretary, Mandi Board). It was also decided therein that the statement will indicate the total allocation of funds for the construction of village link roads, administrative sanction accorded by the Mandi Board and allocation of funds to Public Works and Mandi Board.

6. Thus, argued the learned counsel that in view of these three meetings held during this period, the charge made in the show cause notice at item No. I was unwarranted and baseless. As regards other charges, he submitted that it related to the period prior to the construction of the Board and, therefore, no action could be taken against the Board for the lapses, if any, on the part of the previous Board. On facts as well, he explained item-wise that no case was made out against the Board for taking any action as contemplated under S. 3(8) of the Act. According to the learned counsel, by passing the order of suspension, civil rights of the members of the Board as well as of the Chairman have been affected and, therefore, they were entitled to the relief sought for. In support of this contention, reference was made to AIR 1982 Pun and Har 16. It was next submitted that even if one ground is non-existent, the whole administrative order is vitiated and is liable to be struck down. In support of this contention, reference was made to:

i) Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another,

ii)(1975) 1 SLR 366 Krishnan Kapani v. State of Punjab

iii) A. Mohambaram Vs. M.A. Jayavelu and Others, ;

He further submitted that since all the seven charges do not relate to the functioning of the Board and there was no defiance of any order of State Government by the Board as the Board functions through its meetings which are held after more than one or two months and therefore, decision taken by the State Government was politically motivated and was thus liable to be quashed in writ jurisdiction. He also submitted that mal practice has grown that as and when party Government changes, the persons nominated by the earlier Government are removed by the subsequent Government and that way even if the orders are challenged in the Court, the delay caused in deciding the matter renders the writ petition ultimately infructuous and, therefore, in such a situation, direction should be given by this Court that the Board be allowed to complete its three years" term after the passing of the order by this Court. Reference in this behalf was made by this Court. Reference in this behalf was made to Hardwari Lal Vs. G.D. Tapase and Others, .

7. On the other hand, learned Advocate-General submitted that no such plea was taken by the petitioner-Board in reply to the show cause notice or in the present petition that the seven charges do not relate to the functioning of the Board. Rather, in their reply to the show cause notice, reply was sent on behalf of the Board through its Chairman who also happened to be the Chairman of the earlier Board as well. According to learned counsel, it appears that since Jathedar Tota Singh was also the Chairman of the earlier Board and, therefore, it was not open

to him to plead that the charges other than charge No. 1 related to the period prior to the present Board. Since no such plea was taken in the reply to the show cause notice, the same could not be allowed to be taken for the first time at this stage. Moreover, in the written statement filed on behalf of the State, it was specifically pleaded that action has been taken against the Board under S. 3(8) of the Act because it was not functioning properly and was also guilty of mismanagement but no replication has been filed on behalf of the petitioner-Board controverting the same. Thus, argued the learned counsel, this plea of the learned counsel for the petitioner that none of the charges relate to the functioning of the Board, was not available. He further submitted that the impugned order is an administrative order passed on the subjective satisfaction of the State Government which has been formed after the issuing of show cause notice and considering the reply filed thereto. That being so, the scope of interference in writ jurisdiction is very limited because the impugned order could not be said to be without any application of mind. According to the learned counsel, even if this Court might have taken a different view on the allegations made against the Board, this by itself will not provide a ground for interference in the impugned order being an administrative one. In support of his contention, he referred to *Radeshym Khare and Another Vs. The State of Madhya Pradesh and Others*, , *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, and *Jaichand Lall Sethia Vs. State of West Bengal and Others*, . Reference was also made to *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, to contend that where" an order is based on several grounds, some of which are irrelevant, then if there is nothing to show that the authority would have passed the order on the basis of relevant and existing grounds, that order cannot be sustained. Where, however, the Court is satisfied that the authority would have passed the order on the basis of other relevant and existing grounds and the execution of irrelevant or non-existing ground could not have affected the ultimate opinion or decision of the authority, order has to be sustained. It was also observed therein that in a writ application, the Court will not review the fact as an appellate body and the order is liable to be set aside only if no reasonable person on a proper consideration of the materials before the State Government could form the opinion that the Corporation is not competent to perform or persistently makes default in the performance of the duties imposed on it by or under the Act. He also referred to *Narayan Govind Gavate and Others Vs. State of Maharashtra and Others*, which was a case under the Land Acquisition Act to maintain that once the Court comes to the conclusion that the authority concerned was acting within the scope of its power and has some material, however meagre, on which it could be reasonably base its opinion, the Court should not and will not interfere.

8. According to the learned Advocate-General, the argument raised on behalf of the petitioners that the present Board was not responsible for the omissions and commissions of its predecessor Board, is not absolutely correct because even if some of the charges related to a period before the present Board came into

being and the members of the present Board could not be visited with penalty for the sins of their predecessor but such a course, when adopted, would be shocking to the conscience and against the very scheme and object of the Act as it is the duty of the successor Board to take reasonable, legal and prompt steps to have the illegalities set right. In support of this contention, reference was made to (1971) 73 PLR 289, Lila Krishan v. State of Haryana.

9. He next submitted that in para 5 of the written statement, it has been denied that there was any policy decision taken by the State Government after the President Rule in Punjab that all the members of the different Boards and Corporations are to be removed as alleged by the petitioners. According to reply in the said para, "it was question of the latter category of Board/Corporation/Undertaking that a policy decision was taken to consider the question of extension of tenure but there was no policy decision regarding other Boards/Corporations to which category the Marketing Board belonged," It was also pointed therein that the Punjab Housing Board is still functioning under the Chairmanship of S. Darshan Singh Issapur and similarly Punjab Water Supply and Sewerage Board was working under the Chairmanship of S. Ranjit Singh. Thus, it was incorrect that there was any policy decision to relieve all the Chairman of the Boards/Corporations irrespective of the fact whether their tenure was discretionary or fixed under any statute. He also referred to the impugned order, Annexure P/9 where different findings are given on each charge by the Financial Commissioner while passing the impugned order of suspension.

10. I have heard the learned counsel for the parties at a great length and also through the case laws cited at the bar. It could not be disputed that the scope of interference under Art. 226 in such like administrative orders is very limited. Admittedly, no mala fides have been alleged against any individual officer as such. To say that the impugned order was motivated by political considerations is by itself not sufficient to hold that the order was arbitrary or mala fides as such. The impugned order could be set aside if the grounds on which the order was passed were altogether irrelevant and extraneous. After reading the impugned order as a whole, it could not be successfully argued on behalf of the petitioners that the order was passed without any application of mind or it was actuated by any extraneous considerations. The mere fact that charges Nos. 2 to 7 related to the period prior to the present Board was itself no ground to hold that the impugned order was passed on irrelevant considerations. Admittedly, Jathe-dar Tota Singh who was Chairman of the present Board was also the Chairman of the earlier Board. It appears that he took upon himself to explain his earlier conduct by filing reply on behalf of the Board to the present show cause notice. Moreover, even if the illegalities were committed by earlier Board, it was incumbent upon the present Board to rectify the same or to take some proper action as not to perpetuate the same illegality. No such action seems to have been taken by the Board. One of the allegations at item No. 6 was that Shri G. S. Sathi had been appointed as Legal Advisor of the Board though he did not fulfil the requisite qualifications. Even the then Advocate-General pointed out that before he is

appointed, relaxation under the Rules be sought for his appointment but without, seeking any relaxation, Shri G. S. Sathi was appointed as the Legal Advisor. Similarly, certain Executive Engineers and Sub-Divisional Officers who did not fulfil the requisite qualifications, were appointed by the earlier Board. When requisite information was being sought, no complete answer was given to the said enquiry and the Board took more than five months to supply the information. This Court is not sitting in appeal over the impugned order and, therefore, will not review the facts as an appellate body, as observed in *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, . It could not be successfully argued on behalf of the petitioners that no reasonable person on a proper consideration could form the opinion that the Board was not functioning properly or was not guilty of mismanagement. At the most, two views could be possible and if one view has been taken by the State Government, the same could not be interfered with in writ jurisdiction. The allegation that the order was not passed in good faith and was politically motivated, has been denied in the return filed on behalf of the respondents. The press reports relied upon by the petitioners in this behalf could not be made the basis for the said allegations.

11. As regards the contention that even one of the grounds is found to be irrelevant or extraneous, the whole order should be struck down, is also not available to the petitioner. The case relied upon by the learned counsel for the petitioners, *Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another*, in this behalf, had no applicability to the facts of the present case. That was a case where a person was denied; and if one of the grounds of detention was found to be extraneous or irrelevant, the whole order was liable to be quashed. That was so because it was a question of one's personal liberty as guaranteed by Art. 21 of the Constitution of India. As regards the present case, if the order could be sustained on any of the grounds for which the show cause notice was issued, this Court will not interfere in the impugned order as this Court was not sitting in appeal. After all, it was a matter of subjective satisfaction of the State Government to form an opinion on the basis of the allegations made against the Board. After considering the reply filed thereto, if an opinion was formed, it could not be successfully argued that the same was liable to be set aside because any one of grounds was irrelevant. Similar view was taken by the Supreme Court in *The State of Maharashtra and Another Vs. B.K. Takkamore and Others*, while dealing with a case under the City of Nagpur Corporation Act whereby the Corporation was superseded by the State Government. In that case, it was held that such order of the State Government superseding the Nagpur Municipal Corporation was based on two grounds, one of which was relevant and the other irrelevant. The fact that the second ground showed that in the opinion of the State Government, the ground was serious enough to warrant action under S. 408(1) of the Act was sufficient to establish that the Corporation was not competent to perform its duties under the Act.

12. Thus, in view of the discussion above, the writ petition fails and is dismissed with no order as to costs.

13. Petition dismissed.