

(2001) 08 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 13431 of 2001

Sanjiva Matandooru

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 01-08-2001

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 11 (1) (ix)

Citation : (2001) ILR (Kar) 4272 : (2001) 6 KarLJ 509 : (2001) 4 KCCR 2614

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; B.H. Satish, High Court Government Pleader and B.G. Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

The Court

1. The petitioner is challenging the validity of Section 11(1)(ix) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short, "the Act") to the extent of providing voting right to members nominated under this section.

2. Heard Sri K.M. Nataraj, the learned Counsel for the petitioner; Sri B.H. Satish, High Court Government Pleader for respondent 1 and Sri B.G. Sridharan, Advocate for respondent 2.

3. The brief facts which are necessary to dispose of this petition are as follows:

The Act was promulgated with the object of providing better facilities to the agriculturists by regulating, establishing and administering the markets for agricultural produces and the matters connected therein in the State of Karnataka. The election to the respondent 2-Committee was held on 21-3-2001 to constitute a Committee u/s 11 of the Act. According to Section 11, eleven members will have to be elected from the agriculturists' constituency and one member each shall be elected from the traders constituency, representative of

Co-operative Marketing Society, representative of Co-operative Processing Societies and one officer who is not below the rank of the Secretary of the concerned Marketing Committee is nominated by the Director of Agricultural Marketing, who shall have no right to vote u/s 41 or Section 44 of the Act and the remaining three members shall be nominated by the State Government who shall have right to vote in all the meetings of the Committee. Section 11(1)(ix) of the Act was inserted in 1997 which empowers the State Government to nominate three persons as its representatives in the Committee with all rights and privileges of the elected members irrespective of their qualification and mode of acquiring the membership. Voting power of these 3 nominated members is challenged by the petitioner in this case.

4. The respondent 2 also filed objections contending that the petition is not maintainable. The persons who are nominated as members u/s 11(1)(ix) are the members who have voting power which is validly conferred upon them. The State Government has the power of superintendence over the functioning of the market yards in the matter of administration within the purview of the Act, Rules and Bye-laws. The contention that the Government nominates persons irrespective of their qualification and ability to serve the agriculturists etc. without any guidelines is denied. It is a misnomer to call the nominated persons as unequals when compared to elected members. There is no discrimination between the member nominated u/s 11(1)(viii) and 11(1)(ix).

5. The learned Counsel for the petitioner has questioned this Section 11(1)(ix) on 3 grounds.

6. Firstly, he contended that it is violative of Article 14 of the Constitution. The main contention of the petitioner is that according to Section 11(1) of the Act, the members who were elected will have voting power and the persons who are not nominated u/s 11(1)(viii) have no power to vote. On the other hand, those 3 members nominated u/s 11(1)(ix) only have voting power along with the elected members. That is discriminatory and therefore, this voting power is liable to be quashed.

7. Repelling this argument, the learned Counsel for the 2nd respondent submitted that from the reading of Section 11(1)(viii) and 11(1)(ix), it is clear that the officer nominated by the Director is not a member as defined u/s 2(25) of the Act. From the bare reading of Section 11(1)(viii) it is clear that the word "member" is conspicuous in its absence. But in regard to Sub-sections (1) to (7) and (9) the word "member" is present in all the sub-sections. Therefore, as rightly pointed out by the learned Counsel for the respondent, the officer nominated by the Director under Clause (viii) to Sub-section (1) of Section 11 is not a member and therefore, he was not authorised to cast his vote but insofar as others are concerned, they are members of the Marketing Committee and therefore, they are conferred with voting power. Such being the case, it cannot be said that it offends Article 14 of the Constitution as both are not similarly placed.

8. The learned Counsel for the petitioner further argued that as far as elected members are concerned, qualification and other requirements are prescribed but insofar as the 3 nominated members u/s 11(1)(ix) no qualification is prescribed as a result of which the Government may nominate a person who has adverse interest against the Marketing Committee which would work disadvantageous to the Market Committee. Therefore, this provision is liable to be quashed.

9. It may be mentioned here that the petitioner has not questioned the authority of the Government to nominate 3 members under this provision of law. It is also true that no qualification is prescribed insofar as those 3 persons to be nominated by the Government but the Government has got ample power to withdraw them if they are working adverse to the interest of the Marketing Committee. Therefore, it also cannot be held that conferring voting power on those persons would adversely affect the interest of the Market Committee. Under the circumstances, the argument that even if a person has a prejudicial interest could be nominated and in such an event conferring voting power is against the statute also cannot be accepted.

10. In *Seaford Court Estates Limited v. Asher*, has held that whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judge's trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature.

11. Therefore, the argument of the learned Counsel for the petitioner that Clause (ix) of Sub-section (1) of Section 11 incorporated by the Agricultural Produce Marketing (Regulation) (Amendment) Bill, 1998, and prior to that, there was no question of the Government nominating 3 members to the Committee is liable to be accepted. The object for bringing out this amendment is very clear which reads:

"Section 11 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 provides for Constitution of second and subsequent Market Committees, There was no provision for nomination of members to a Market Committee

except nomination of an officer by the Director of Agricultural Marketing. Since Market Committees handle huge public funds released by way of marketing fees, constructive guidance and vigilance are necessary for proper utilisation of funds for various developmental activities. In order to ensure this it was considered necessary to nominate three members by amending Section 11. Accordingly, the Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Ordinance, 1997 was promulgated on 22nd May, 1997".

From this it is clear that the Government felt it necessary to nominate 3 members for the utilisation of funds for various developmental activities and that being the case, the Government conferred the voting power also on those nominated powers to vote to give effective administration of the Marketing Committee. Therefore, the contention of the learned Counsel for the petitioner that it is unguided power and the same would be arbitrarily utilised, etc. is liable to be rejected.

12. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , their Lordships have placed reliance on a decision rendered by the Supreme Court in the case of *Budhan Choudhry and Others Vs. The State of Bihar*, , and quoted the same which reads thus:

"It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from other left out of the group, and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical or according to objects of occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure".

In this case the main contention of the petitioner is that there is discrimination between the person nominated under Sub-clause (viii) and 3 persons nominated under Clause (ix) of Sub-section (1) of Section 11. As stated above, the person nominated by the Director is not a member and the persons nominated by the Government under Sub-clause (ix) are members under Sub-section (2) of Section 25 of the Act. Therefore, there is a difference and that cannot be classified that there existed a discrimination offending Article 14 of the Constitution. Therefore, this argument also is rejected.

13. The learned Counsel further placed reliance on a decision rendered by the Supreme Court in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, ,

wherein their Lordships have held that when power is vested in a high authority like the Central Government, abuse of power cannot be lightly assumed. And in any event, if there is abuse of power, the arms of the Court are long enough to reach it and to strike it down. The power conferred on the Passport Authority to impound a passport u/s 10(3)(c) cannot, therefore, be regarded as discriminatory and it does not fall foul of Article 14. But every exercise of such power has to be tested in order to determine whether it is arbitrary or within the guidelines provided in Section 10(3)(c).

14. In this case as stated above, there is no discrimination as such. On the other hand, the Government with a view to provide adequate protection to the large amount involved and also to have better administration of the Committee retained power to nominate persons and further to have effective control over the management, the voting power also was conferred on them and that cannot be held to be illegal or offending Article 14 of the Constitution.

15. The further argument of the learned Counsel that Section 11(1)(ix) has been inserted without application of mind is not sustain-able if taking into consideration the object with which Section 11(1)(ix) was incorporated as detailed above. Similarly, it cannot be said that the voting right has no rational nexus with the object to be achieved. When the section has nothing to do with the object sought to be achieved such power should not be conferred on the respondent 1, etc., is also not based on any precedents. It cannot be construed that the section gives arbitrary power to the Government with mala fide intention to accommodate their supporters and throw away such others at any time without any basis and it is a mockery of democratic system, etc. also cannot be accepted if one takes into consideration the definition as provided u/s 2(25) of the Act.

16. At this stage, it is also necessary to quote usefully the observations made by their Lordships of the Supreme Court in *The State of Bombay and Another Vs. F.N. Balsara*, wherein it is held:

"I now come to Section 39 of the Act which has been impugned on the ground that it offends against Article 14 of the Constitution which states that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". The meaning and scope of this article has been fully discussed in the case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, , and the principles laid down in that case may be summarised as follows:

(1) The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds.

(2) The presumption may be rebutted in certain cases by showing that 6n the

face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

(3) The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

(4) The principle does not take away from the State the power of classifying persons for legitimate purposes.

(5) Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

(6) If a law deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

(7) While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis".

So if the power conferred on the nominated members is tested in the light of the principles laid down by their Lordships it is abundantly clear that this cannot be held to be invalid or violative of any of the Articles of the Constitution much less Article 14.

17. For the foregoing reasons, I do not find any merit in this petition and accordingly, it is dismissed.