

(2009) 06 KAR CK 0087

In the Karnataka High Court

Case No : Writ Petition No. 81909 of 2009

Satish Reddy and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 18-06-2009

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 44 (1), 44 (3)

Citation : (2009) ILR (Kar) 4285 : (2011) 5 KarLJ 493 : (2010) 1 KCCR 717

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : S.M. Chandrashekar, for the Appellant; S.S. Kumman, Government Advocate for Respondents 1, 2 and 4 and B.K. Patil, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

B.S. Patil, J.—Notice dated 11.06.2009 issued by the fourth respondent Tahasildar, Sedam of Gulbarga District is challenged in this writ petition. By the impugned notice Annexure-"A" dated 11.06.2009 it is notified by the Tahasildar, Sedam that the meeting to consider the no confidence motion against the President of the Agricultural Produce Marketing Committee, Sedam will be held on 19.06.2009 and the same will be presided over by the Tahasildar. The said meeting is called at 11 "o" clock in the morning in the premises of the APMC, Sedam. This notice is marked to the Secretary APMC and also to all the concerned informing them to be present at the specified time and place on 19.06.2009.

2. Learned Counsel Sri. S.M. Chandrashekar, appearing for the petitioner has canvassed the following contentions in support of the prayer made in the writ petition:

i. That the impugned notice convening the meeting issued by the Tahasildar is without jurisdiction as, it is the Secretary of the APMC who is required to

convene the meeting as provided under Sub-section 1 of Section 44 of Karnataka Agricultural Produce Marketing (Regulation and Development) Act 1966 (Act for short hereinafter).

ii. That the meeting convened being for the purpose of considering the no confidence motion only against the Adhyaksha, the Upadhyaksha shall preside over the meeting and not the Tahasildar.

iii. That even if the motion is against both Adhyaksha and Upadhyaksha, it is the Director or any other officer authorized by him who can preside over the meeting and the Tahasildar not being authorized by the Director cannot preside over the meeting.

iv. That though 1/3rd of the members have expressed their intention to move the motion of no confidence against both Adhyaksha and Upadhyaksha by giving separate requisitions, the Additional Director has directed the Secretary to convene the meeting for considering the no confidence motion only against the Adhyaksha and hence the impugned notice issued convening such meeting only against the Adhyaksha is illegal.

3. Learned Government Advocate Sri. S.S. Kumman appearing for the state submits that even if there are certain minor irregularities in convening the meeting the writ petition filed by the petitioners cannot be entertained as their intention is to continue in office imposing themselves against the will of the members which is undemocratic. He submits that since there is substantial compliance with the Rules, no interference is called for.

4. Having heard the Learned Counsel for the parties and on careful consideration of the materials on record, the controversy raised in this writ petition requires consideration in the background of the provisions contained u/s 44 of the Act read with Rule 49 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Rules 1968, hereinafter for short referred to as the Rules. Section 44(1) pertains to motion of no confidence, which reads as under:

(1) A motion of no-confidence may be moved by any member against the Chairman or the Vice Chairman after giving such notice as may be prescribed and such notice shall be supported by not less than one-third of the total number of members of the market committee. If a meeting for consideration of the no-confidence motion is not directed by the Chairman to be convened within fifteen days from the date of the notice, the Secretary of the market committee shall convene such meeting under the Chairmanship of the Tahsildar of the concerned taluk where the office of the market committee is situated.

5. Thus, as can be seen from Sub-section 1 of Section 44, if a meeting for consideration of the no confidence motion against the Chairman or the Vice Chairman as requisitioned by not less than 1/3rd of the members of the marketing committee is not directed by the Chairman to be convened within 15 days from the date of the notice (requisition) it is the duty of the Secretary of

the Marketing Committee who shall convene such meeting under the Chairmanship of the Tahasildar of the concerned taluka where the office of the marketing committee is situated. As per the proviso to Sub-section 3 of Section 44 where the motion of no confidence is moved both against the Chairman and the Vice Chairman, the Director of Agricultural Marketing or an officer authorized by him in this behalf shall preside over the meeting.

6. In the instant case, the motion of no confidence is not convened against both the Chairman and the Vice Chairman but it is convened only against the Chairman. Therefore, application of the proviso to Sub-section 3 of Section 44 does not arise. Therefore, the direction issued by the Additional Director to the Secretary APMC, Sedam to convene the meeting to discuss the no confidence motion against the Adhayaksha presided over by the Tahasildar cannot be termed as illegal or contrary to Section 44. Though it is contended by Sri. S.M. Chandrashekhar that the direction issued by the Additional Director to the Secretary is illegal, it is seen from Annexure-"B" that the direction is issued by the Additional Director after the same was approved by the Director. At any rate no exception can be found to the direction issued by the Director or the Additional Director to the Secretary to convene the meeting if the Secretary has failed to Act in accordance with Sub-section 1 of Section 44 to convene the meeting when the Chairman has failed to issue such direction to convene the meeting. If the Secretary does not Act then the whole purpose will be defeated as no meeting can be convened. Under such circumstances if the inaction of the Secretary is brought to the notice of the higher authorities they will be entitled to require the Secretary to act in accordance with law by issuing directions in exercise of their powers as superior authorities who are required to ensure adherence to the Rules and regulations from the subordinates. In fact as per Rule 49 of the Rules once a requisition or a notice of no confidence is received against the Chairman or Vice Chairman on receipt of the same the Secretary is required to intimate the same to the Director of Agricultural Marketing. The requirement of intimation to the Director of Agricultural Marketing also shows that the Director must be in the know of the things that are happening. Therefore, no exception can be taken to the direction issued by the Additional Director or the Director requiring the Secretary to convene the meeting in accordance with Section 44(1) of the Act.

7. In so far as the contention urged regarding the notice being issued by the Tahasildar convening the meeting and not by the Secretary as contemplated u/s 44(1) it is seen that there is an illegality committed in the procedure adopted. The language of Section 44(1) clearly states that the Secretary shall convene such meeting under the Chairmanship of the Tahasildar of the concerned taluka. The Tahasildar himself has no power to convene the meeting. His power is to preside over the meeting. Therefore, to this extent the contention urged by the Learned Counsel for the petitioner has to be accepted. It is well established principle that when the law requires a particular act to be done in a particular manner it has to be done in that manner. Since the language used in Sub-section

1 of Section 44 stating that the Secretary shall convene the meeting under the Chairmanship of the Tahasildar is clear and unambiguous it cannot be interpreted or understood to authorise the Tahasildar to convene the meeting.

8. The other contention urged by the Counsel for the petitioner that the Tahasildar having not been authorized by the Director to preside over the meeting he cannot preside over the meeting, is misconceived. The Additional Director, in the instant case, has not exercised his power under the proviso to Sub-section 3 of Section 44 while authorizing the Tahasildar to act on behalf of the Director by presiding over the meeting. Such an occasion has not arisen as the no confidence motion is not taken up against both the Chairman and the Vice Chairman. As already stated above, the Additional Director has issued Annexure-"B" direction in his administrative capacity as superior officer requiring the Secretary to act in accordance with law by convening the meeting.

9. The last contention urged by the Learned Counsel for the petitioner stating that where the motion of no confidence is for consideration against the Chairman, in accordance with Sub-rule 3(i) of Rule 49 of the Rules, the Vice Chairman shall preside and if the motion is for consideration against the Vice Chairman, the Chairman shall preside has also no substance in the present case. This procedure under Sub-rule 3 of Rule 49 will be applicable if the matter does not fall under Sub-section 1 of Section 44, in that the Chairman fails to issue a direction for convening the meeting for consideration of the no confidence motion requisitioned within 15 days from the date of notice. If the Chairman fails to so convene the meeting and the Secretary of the Market Committee who is enjoined with the duty to convene such meeting convenes the meeting then such meeting convened will be under the Chairmanship of the Tahasildar of the concerned taluka and not under the Chairmanship of the other office bearer i.e. the Chairman or the Vice Chairman as the case may be. If the provisions of Sub-section 1 of Section 44 and the provisions contained in Sub-rule 3 of Rule 49 are conjointly considered the result as mentioned herein above is inescapable. At any rate the provisions of a statute has to be construed not so as to yield to the Rules framed under the very statute. The Rules are framed for the purpose of giving effect to the provisions of the Act. In the instant case if the Rules are construed in the manner as stated herein above, the provisions contained u/s 44 pertaining to motion of no confidence will have full effect. Therefore, the last contention urged also does not merit acceptance.

10. In the result, it has to be stated that the notice issued by the Tahasildar convening the meeting is defective and therefore, deserves to be quashed. Accordingly impugned notice is set aside. However, the democratic process envisaged u/s 44(1) has to be carried out and the Secretary has to convene the meeting in accordance with the Provisions of Section 44(1) which has to be presided over by the Tahasildar. Therefore making it clear that it is the Secretary who shall convene the meeting for consideration of the no confidence motion against the Chairman presided over by the Tahasildar and reserving liberty to the

respondent to convene such a meeting in accordance with law and in the light of the observations made herein above, this writ petition is partly allowed.