

(2016) 03 BOM CK 0177
In the Bombay High Court
Case No : Writ Petition No. 11866 of 2015

Shri Namdev Bhagwanrao Ghule, Parbhani	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 11, Section 15, Section 44

Citation : (2016) MCR 1132

Hon'ble Judges : S.V. Gangapurwala and A.M. Badar, JJ.

Bench : Division Bench

Advocate : Shri V. D. Hon, Senior Advocate i/by Shri Subhash V. Mundhe, Advocate, for the Petitioner; Shri A.M. Phule, AGP, for the Respondent/State; Shri B.N. Patil, Advocate, for the Respondent No. 2; Shri V.D. Salunke, Advocate, for the Intervenor

Final Decision : Dismissed

Judgement

S.V. Gangapurwala, J.—The petitioner assails order/notification dated 01.12.2015 thereby bifurcating Agricultural Produce Market Committee Jintur (for short "A.P.M.C. Jintur") and constituting Agricultural Produce Market Committee, Bori (for short "A.P.M.C. Bori").

2. Mr. Hon, the learned senior counsel submits that, the A.P.M.C. Jintur is established in the year 1961. At that time there were 231 villages, but later on due to establishment of new taluka only 170 villages are covered under the area of operation of A.P.M.C. Jintur. Village Bori is also under the area of operation of A.P.M.C. Jintur. Said village is hardly 13 to 15 kilometers away from Jintur. Most of the villages in the area of operation of A.P.M.C. Jintur are situated around Jintur within 25 to 30 K.M. radius. Jintur A.P.M.C. is near to all the villages and surrounding agriculturists. Earlier because of the local M. L. A. the Government had issued notification on 01st March 2004 bifurcating A.P.M.C. Jintur. The said notification was challenged in Writ Petition No. 1822 of 2004. This Court set aside

the said notification on 26.02.2015. Same attempt is made vide notification dated 01.12.2015 by bifurcating A.P.M.C. Jintur.

3. The learned senior counsel further submits that, vide order dated 21.02.2015, the respondent No. 3 has superseded A.P.M.C. Jintur and appointed administrator/board as per Section 15 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (hereinafter for the sake of brevity referred as to the "Act of 1963"). The said order was challenged in Writ Petition No. 2146 of 2015. The said petition was disposed of on the basis of statement made by the Assistant Government Pleader that, they are going to conduct the election of A.P.M.C. Jintur. Instead of holding elections, the impugned notification has been issued bifurcating A.P.M.C. Jintur.

4. The learned senior counsel submits that, the procedure required to be followed at the time of bifurcating A. P. M. C. is not at all adhered. This Court in Writ Petition No. 1822 of 2004 had set aside the earlier notification bifurcating A.P.M.C. Jintur on the ground that there is no effective consultation with the A.P.M.C. as per Section 44 of the Act of 1963. In spite of the aforesaid judgment, the impugned notification is passed which is contrary to the judgment. The procedure laid down U/Sec. 44 of the Act of 1963 has been given go-bye. There has to be effective consultation with the Market Committee and the State Marketing Board. According to the learned senior counsel, vide the impugned notification 39 villages are deleted from A.P.M.C. Jintur for establishment of A.P.M.C. Bori. The question of financial viability would arise. The financial condition of A.P.M.C. Jintur is very weak. While bifurcating A.P.M.C. Jintur this aspect has not been considered. The learned senior counsel relies on the judgment of the Division Bench of this Court in the case of Shivram Sonbaji Girhipunje and others v. State of Maharashtra and others reported in 2010(1) Mh.L.J. 602.

5. The learned senior counsel further submits that, the allocation of villages to the newly created Market Committee is unscientific and unreasonable. The villages near to A.P.M.C. Jintur have been allotted in the area of A.P.M.C. Bori. The same is illogical and unreasonable. In the instant case, there is no resolution passed by A.P.M.C. Jintur for bifurcation of A.P.M.C. Jintur into A.P.M.C. Bori. In absence of Market Committee, administrative board has sent the proposal on 28.02.2015. This shows that, there is no effective consultation. The learned senior counsel submits that, in Writ Petition No. 2146 of 2015, when this Court was to restore charge to A.P.M.C. Jintur at that time intentionally the authorities had made a statement that they are going to conduct the elections of A.P.M.C. Jintur. However, instead of conducting elections, the respondents started the process of bifurcating the A.P.M.C. Jintur.

6. The learned senior counsel submits that, as per Section 44 of the Act of 1963, the authority has to consult with the Market Committee. Section 11 of the Act of 1963 clearly indicates that, there must be Chairman, Vice Chairman and other members. But there are no elected members in the said A. P. M. C. The

administrative board is of Government officers. In absence of any elected board, the members of the administrative board have sent the proposal with the help of local M.L.A. The law does not permit the administrative board to take such type of policy decision. The same is illegal. Further the impugned notification if perused, shows that after decision of Agricultural Marketing Board, Pune, there is no consultation with the A.P.M.C. Jintur. The impugned notification is politically motivated. The learned senior counsel relies on the judgment of this Court in the case of *Sopanrao Onkarrao Sathe and another v. State of Maharashtra and others* reported in 2011(1) Mh.L.J. 739.

7. The learned senior counsel submits that, the respondents have failed to consider that A.P.M.C. Jintur has a loan outstanding for development of sub market yards. If the said A.P.M.C. is bifurcated, it will create great problem to A.P.M.C. Jintur as it would affect the financial condition. It is submitted that, till today newly constituted Bori A.P.M.C. has not started its work. The District Deputy Registrar was the President of the administrative Board. The D. D. R. himself and one another member of the administrative board passed a resolution for bifurcation. The D. D. R. states that, he himself has consulted with the Maharashtra State Agricultural Board, Pune. The same is against the propriety. The D. D. R. ought to have allowed the election of A.P.M.C. Jintur to be completed and the elected managing committee only could have proceeded to take the decision whether to bifurcate A.P.M.C. Jintur or not. In absence of Managing Committee, D.D.R. himself has done all these activities, which is improper. According to the learned senior counsel since fifteen years, there is sub market at Bori. So by creating another A.P.M.C. Bori, no purpose would be served. The said notification be set aside.

8. The learned Assistant Government Pleader for respondents/State submits that, bifurcating an A.P.M.C. is an administrative decision. The allocation of villages, aspect of financial viability and convenience has been considered by the authorities. The Court would not go into the correctness of the said question. The learned A. G. P. relies on the judgment of the Division Bench of this Court in a case of *Agricultural Produce Market Committee v. State of Maharashtra* reported in 2007(6) Bom.C.R. 537.

9. According to the learned A. G. P. before issuing the order/notification dated 01.12.2015, the respondents have considered various aspects in the interest of farmers of the said area. Before bifurcating said A.P.M.C. it has been considered that, since 1971 sub yard is established at Bori. So the agriculturists residing near the vicinity of Bori use to approach sub yard Bori. The other factors are also considered, such as total area under cultivation and total yield of agriculturists residing in Bori vicinity. The chart of the same is annexed along with the affidavit in reply. The survey was conducted. The agriculturists residing in the vicinity of Bori were required to travel 15 to 20 K.M. to approach A.P.M.C. Jintur. If A.P.M.C. Bori is established, the transportation cost of agriculturists would be reduced. The A.P.M.C. Bori is constituted, the administrator has taken charge and looking

and managing the day today affairs of the market committee since 01.12.2015. The A.P.M.C. Jintur has also transferred amount in the account of A.P.M.C. Bori towards administrative expenses. Sufficient infrastructure is available at A.P.M.C. Bori i. e. 03.03H land, five godowns, office building, auction place in the market and six employees are working with A.P.M.C. Bori from the date of establishment of market yard. Though the board of administrators is appointed for A.P.M.C. Jintur, the said board can exercise powers of the said committee as per Section 15A(2) of the Act of 1963. Consultation is effectively conducted. The decision is taken purely in the interest of farmers. The decision to bifurcate the A.P.M.C. Jintur and create A.P.M.C. Bori is taken by the authorities after consultation with A.P.M.C. Jintur and Director of Marketing Board, Pune.

10. Mr. Patil, the learned counsel for the respondent No. 2/Maharashtra State Agricultural Marketing Board, Pune Division submits that there is effective consultation as required under the statute. Letter dated 09.07.2015 from D.D.R. Parbhani in respect of giving consultation on the issue of bifurcation was received by the respondent No. 2. The respondent No. 2 held its meeting of Board of Directors on 19.11.2015. In the said meeting the subject in respect of bifurcation was discussed in detail. The resolution No. 4 was passed after considering the said proposal. There is an effective consultation and subsequently letter dated 27.11.2015 was issued to the D.D.R. Parbhani. After considering and studying the situation and the complete data, decision was taken by the Board of Directors and the resolution was passed. The learned counsel submits that, A.P.M.C. Jintur was sanctioned loan of Rs. 1,00,00,000/- (Rs. One crore only) by the respondent No. 2 for the development of main market at Jintur sub market at Bori. The said amount is not disbursed as yet. Now that amount will be distributed amongst the two market committees and will be recovered separately from their income.

11. Mr. Salunke, the learned counsel for the intervenor submits that, the petitioner does not have any locus standi to file present petition. The petitioner is not affected as A.P.M.C. Jintur exists. A.P.M.C. Bori is formed for the benefit and convenience of agriculturists. The petitioner is not elected member of A.P.M.C. Jintur. The present petition at the behest of such a petitioner is not maintainable. Total procedure for bifurcation of A.P.M.C. Jintur is followed. The D. D. R. has effectively consulted with the State Marketing Board. The learned counsel relies on the judgment dated 14.06.2002 passed by this Court in Writ Petition No. 2928 of 1991 to submit that, the resolution passed by the market committee is sufficient consultation.

12. We have considered the submissions canvassed by the learned counsel for respective parties. Before we advert to the contentions put forth by the learned counsel for respective parties, it would be necessary to refer to the relevant provisions of the Act of 1963.

The Maharashtra Agricultural Produce Marketing (Development And Regulation) Act, 1963

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15A. (1) Notwithstanding anything contained in sub-section (3) of section 15 or any other provisions of this Act, where the term of office of two years, five years or as the case may be, the extended term of office, if any, under the proviso to sub-section (3) of Section 14 of the member of any Market Committee has expired, the Director or any officer not below the rank of the District Deputy Registrar of Co-operative Societies, authorised by him shall by order in writing direct that

(a) all members of the Committee shall, as from the date specified in the order, cease to hold and vacate their offices as members or otherwise; and

(b) [the Administrator or the Board of Administrators appointed by the Director or such authorised officer shall manage the affairs of the Committee], during the period from the date specified in the order up to the day on which the first meeting of the reconstituted Committee after the election is held, where there is a quorum (hereinafter in this section referred to as "the said period") such election shall be held within a period of [six months] from the date [the Administrator or the Board of Administrators] assumes office:

Proviso -----

(1A)

(2) During the said period, all the powers and duties of the Committee and its various authorities under this Act and the rules and bye-laws made thereunder or any other law for the time being in force shall be exercised and performed by [the Administrator or the Board of Administrators].

16.

17.

44. (1) Where the State Government is satisfied that for securing efficient regulation or marketing of any agricultural produce in any market area [and for ensuring the economic viability of the Market Committee], it is necessary that two or more Market Committees therein should be amalgamated or any Market Committees, therein should be divided into two or more Market Committees, then the State Government may, after consulting the Market Committees or Committee, as the case may be, [and the [State Marketing Board]] by notification in the Official Gazette, provide for the amalgamation or division of such Market Committees into a single Market Committee or into two or more Market Committees, for the market area in respect of the agricultural produce specified in the notification with such constitution, properly, rights, interest and authorities and such liabilities, duties and obligations (including provisions in

respect of contracts, assets, employees, proceedings and such incidental consequential and supplementary matters as may be necessary to give effect to such amalgamation or as the case may be, the division] as may be specified in the notification.

13. The order/notification dated 01.12.2015 bifurcating A.P.M.C. Jintur and establishing A.P.M.C. Bori is assailed by the petitioner on following counts.

(i) Absence of effective consultation as required U/Sec. 44 of the Act of 1963.

(ii) The weak financial condition of A.P.M.C. Jintur.

(iii) The same is unreasonable.

14. The scope of judicial review of administrative decisions has its inherent limitations. In such cases, judicial review is concerned with reviewing not the merits of the decision, but the decision making process. The Court does not have the expertise to correct the administrative decisions. The Court would confine itself to the question of legality i. e. whether the decision making authority exceeded its powers, committed an error of law, committed breach of rules or abused its powers and that there is no procedural impropriety.

15. This Court would not sit as an appellate authority over the decision taken by the Committee. This Court would be concerned with regard to the adherence to decision making process. The State Government while taking decision to divide and bifurcate any market committee into two or more market committees has to satisfy that same is necessary for securing efficient regulation of marketing of agricultural produce in the market area. The said satisfaction is a subjective satisfaction based on objective assessment of the relevant factors.

16. In the instant case, while taking a decision to bifurcate A.P.M.C. Jintur and establish A.P.M.C. Bori, the respondents have considered that the distance between Jintur and Bori is 15 to 20 K.M. It is difficult for farmers to travel 15/20 K.M. to A.P.M.C. Jintur. The other factors such as the financial viability, the number of villages that would be attached, agricultural produce received by the A.P.M.C. Jintur and A.P.M.C. Bori is also considered. So also has conducted survey regarding the quantity of agricultural produce that is likely to be received in future by Jintur and Bori independently. The respondents have also considered the income, expenditure of A.P.M.C. Jintur and A.P.M.C. Bori for last five years, the financial viability and feasibility of A.P.M.C. Jintur and A.P.M.C. Bori, if A.P.M.C. Jintur is divided. The convenience of agriculturists also is one of the factor that has been considered by respondents. All these factors were considered prior to taking the decision of bifurcating A.P.M.C. Jintur. The respondents have done the necessary exercise. As such, it can be safely concluded that, the respondents have considered relevant factors while taking decision to divide A.P.M.C. Jintur and establish A.P.M.C. Bori.

17. The petitioner has harped more on the aspect of non adherence to the requirement of effective consultation. The object of consultation is to render

decision making process meaningful, so that it may serve its needed purpose. The meaning of consultation varies from case to case, depending upon its fact, situation and the context of the statute, as well the object it seeks to achieve. There cannot be any straight jacket formula in this regard. Ordinarily and broadly consultation means communication of the views between the consultee and the consultor. Direct discussion is not an indispensable ingredient of any consultation. The extent, nature and importance of consultation depends on the subject, object and the context thereto under a particular statute. No hard and fast rule can be laid down with regard to the manner in which consultation must take place. It is for the Court to determine in each case in the light of the facts and circumstances, whether the consultation as appearing in the provision has taken place or not.

18. In the present case at the relevant time elected body was superseded and the administrative board was acting as Committee. Section 15A(2) of the Act of 1963 succinctly lays down that during the period, the administrative board is appointed, all the powers and duties of the committee and its various authorities under the Act, the Rules and bye-laws made thereunder or any other law for the time being in force shall be exercised and performed by the administrator. The administrative board/administrator as such steps into the shoes of the Managing Committee and is empowered to take the decision, which otherwise can be taken by the Committee. Administrator/board has passed a resolution on 28.02.2015 for establishing separate A.P.M.C. Bori. The Maharashtra State Marketing Board, Pune in its meeting considered and discussed said resolution. It took into consideration the income, expenditure for last five years of A.P.M.C. Jintur and A.P.M.C. Bori. It also considered that if A.P.M.C. Bori is independently established, then both A.P.M.C.s" that is A.P.M.C. Jintur and A.P.M.C. Bori would be financially sound. The transportation charges of the agriculturists in the vicinity of Bori would be reduced and thereafter approved the said proposal. The same was discussed by the Marketing Board on 19.11.2015 and the same was referred to the D. D. R. Parbhani. As such it would be seen that the mandate of consultation as contemplated U/Sec. 44 of the Act of 1963 has been complied. Various aspects were discussed and considered. The complete material was before the Marketing Board. The same would satisfy the test of consultation.

19. Considering the above, challenge to the said order/notification fails. The respondents have exercised the powers in proper manner. There is no error in the decision making process. The writ petition as such is dismissed. No costs.

20. As on merits, we have negated the contentions of the petitioner, the contention with regard to the locus standi of the petitioner as raised by the intervenor is not considered.