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**(2001) 03 KAR CK 0020**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 1204 of 2001**

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| Smt. Tungamma and others      | Vs | APPELLANT  |
| State of Karnataka and others |    | RESPONDENT |

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**Date of Decision :** 09-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 2 (19)

**Citation :** AIR 2001 Kar 252 : (2001) ILR (Kar) 2785

**Hon'ble Judges :** H. Rangavittalachar, J

**Bench :** Single Bench

**Advocate :** Sri F.V. Patil, for the Appellant; Sri Satish, High Court Government Pleader, Sri B.G. Sridharan, Sri C. Shivakumar and Sri G.M. Chandrashekar, for the Respondent

**Final Decision :** Dismissed

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## Judgement

The Court

1. The members of the Elected Committee of the APMC, Davangere have filed this petition, challenging the notification of the State Government of Karnataka bifurcating Davangere APMC into that of "Davangere" and "Jagalur" in exercise of the powers u/s 145 of the Agricultural Produce Marketing Committee Regulation Act (hereinafter referred to as "the Act") in this petition under Article 226 of the Constitution of India.

2. Petitioners have contended in the writ petition that, at an election held on 24-7-1997 petitioners and 2 others were elected for the Committee, while 3 others were nominated to the Committee of management of Davangere, APMC. The term of office was for 5 years. The third respondent herein was elected as the President of the Committee. While the Committee was functioning, respondent 1 issued a notification dated 28-6-1999 vide Annexure-B proposing to bifurcate the APMC, Davangere and inviting objections. Petitioner/Committee had passed a resolution opposing the bifurcation. Though respondent had

notified the proposal but did not take any further action on this proposal, until a vote of no confidence was moved against the 3rd respondent-President on 15-11-2000 charging the latter of showing undue favour in allotting certain land to Bapuji Bank under the control of the Hon'ble Minister Mallikarjun, similarly allotting two acres of land to the cold storage to one I.P. Vishwaradhya, Chairman of sister concern of Bapuji Education Association besides selling shops to the tenants though the shops were fetching huge rents of Rs. 50,000/- p.m. and without prior sanction awarding contract to the tune of two and half crores. It is only to frustrate this no confidence motion, the 3rd respondent influencing the Minister got the final notification Annexures-E and EI u/s 145 published. The notifications Annexures-E and EI is liable to be quashed on the grounds that the notifications are issued without applying its mind to the objections filed and providing opportunity to personally hear the petitioners and also on the ground of being issued with a mala fide intention to frustrate the no confidence motion.

3. Respondent 2 and respondents 6 and 7 have filed detailed statement of objections to this writ petition.

4. Respondent 2 in his objection statement while denying the petition averments, has specifically denied the charges of irregularities and favouritism.

5. Insofar as the charge of allotting land to Bapuji Bank, it is stated, that what is allotted to the Bank was land in a conservancy lane made with the approval of petitioners/Committee; similarly the charge of selling 34 shops is denied; it is stated that 2nd respondent is only contemplating to allot the said shops on lease/licence basis and it is never contemplating to sell. Respondent also has denied of awarding any contract as alleged; it is stated that it is in the process of inviting tenders. Insofar as allotting place for cold storage, it is stated that the same was done only when the Committee passed a resolution by majority vote of 12/5 and even the same is pending approval of the Director.

6. Respondent 3 has filed separate statement of objections and he has denied the allegations against him of committing irregularities.

7. Sri B.S. Keshava Iyengar, learned Counsel for the writ petitioner submitted firstly that the act of State Government in issuing notification of bifurcation Annexures-E and EI is purely an "Administrative act", and therefore it should have been preceded by a personal hearing to the affected parties like the petitioner.

Secondly, the State Government had not applied its mind to the objections raised, while issuing the impugned notifications.

Lastly that the notification Annexures-E and EI is issued with a mala fide intention to help respondent 3 and therefore liable to be struck down.

8. In answer to this Sri B.S. Sridhar, learned Counsel appearing for the APMC submitted that the power exercised by the State Government u/s 145 of the APMC Act is "Legislative in character", and hence petitioner is not entitled to be

heard before issuing the notification or contend that there must be an application of mind to the objections raised by them to the proposal of bifurcation.

9. On the question of mala fides, learned Counsel submitted, that the allegations made against the President are denied as factually wrong, besides it is vague. He therefore prayed for dismissal of the writ petition.

10. I will now advert to the contentions of Sri B.S. Keshava Iyengar. Since the Point Nos. 1 and 2 raised by the learned Counsel for petitioner Sri B.S. Keshava Iyengar are interconnected they are disposed off together.

11. Before considering the contention it is required to state that, it is well-recognized that "No person can claim right to be heard before the making of Legislation". Prof, Wade in his Administrative Law, 7th Edition, page 570 states "There is no right to be heard before the making of Legislation". The author again at page 895 of the same edition while dealing the chapter of preliminary consultation has stated "In the case of rules and orders which are clearly legislative as opposed to administrative, there is normally no room for the principles of natural justice which entitles persons affected to a fair hearing in advance.

12. In *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, , on the question of applicability of rules of natural justice to legislative action it has been held quoting with approval the following passage in *Bates v Lord Hailsham of Marylebone*:-

"In the present case, the Committee in question has an entirely different function: it is legislative rather than administrative or executive. The function of the Committee is to make or refuse to make a legislative instrument under delegated powers. The order, when made, will lay down the remuneration for solicitors generally and the terms of the order will have to be considered and construed and applied in numberless cases in the future. Let me accept that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness. Nevertheless, these considerations do not seem to me to affect the process of legislation, whether primary or delegated. Many of those affected delegated legislation and affected very substantially, are never consulted in the process of enacting that legislation; and yet they have no remedy. Of course, the informal consultation of representative bodies by the legislative authority is a commonplace; but although a few statutes have specifically provided for a general process of publishing draft delegated legislation and considering objections (see, for example, the Factories Act, 1961 Schedule 4), I do not know any implied right to be consulted or make objections, or any principle upon which the Courts may enjoin the legislative process at the suit of those who contend that insufficient time for consultation and consideration has been given. I accept that the fact that the order will take the form of a statutory instrument does not per se make it immune from attack, whether by injunction or otherwise; but

what is important is not its form but its nature, which is plainly legislative".

The rules of natural justice are not applicable to legislative action, plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed.

13. But then the further question then calls for consideration is to make a distinction between a Legislative act and Administrative act. On this question, learned Author Prof. Wade states in the same page referred to above:

"A distinction often made between Legislative and Administrative acts is between the general and particular. A Legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases. An administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction and the application of a general rule to a particular case in accordance with the requirements of a policy or expediency or administrative practice".

14. M.P. Jain and S.N. Jain, in his Book on Principles of Administrative Law, Third Edition, page 25 quoting Schwartz "An Introduction to American Administrative Law, states as to how to discriminate "Administrative Power from Legislative Power" as no articulate norms have yet been evolved either in India or other countries to characterise a function of the Administration as "Legislation". A general test usually advocated is that the power to lay down rules of "General applicability is Legislative while the power to make orders in specific cases is administrative".

15. In Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, (cited by the learned Counsel for respondents Sri B.S. Sridhar), another test was laid down viz., "If certain other provisions of any statute is made applicable by any declaration or Act of the State Government" then such declaration or Act was held to be Legislative. This is how it has been held:

"We are concerned in the present case with the power of the State Government to make a declaration constituting a geographical area into a town area u/s 3 of the Act which does not require the State Government to make such declaration after giving notice of its intention so to do to the members of the public and inviting." their representations regarding such action. The power of the State Government to make a declaration u/s 3 of the Act is legislative in character because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation".

(emphasis supplied)

16. In the light of the above discussion, point that arises for consideration is "Whether the power of the State Government in issuing notification u/s 145 of the Act is Administrative or Legislative in character and whether the petitioners were required to be heard personally before issuing the notification of bifurcation.

17. It therefore becomes necessary to examine the nature of power of State exercising u/s 145 of the Act. Section 145 of the Act is extracted for ready reference,

"Section 145. Division of market area into two or more separate marked areas.--

(1) Subject to the procedure specified in Sections 3 and 4, the State Government may divide a market area into two or more separate market areas,

(2) When during the term of a market committee the market area for which it is established is divided into two or more separate market areas, the following consequences shall ensue:

(a) the market committee constituted for the market area under this Act shall be deemed to have been dissolved and the State Government shall constitute separate market committees u/s 10 for each of the separate market areas subject to such conditions as may be prescribed, and the (Director of Agricultural Marketing) shall also simultaneously declare a specified area and a specified place as the market and the market yard for each of the new market areas;

(b) the term of office of the newly constituted committees shall be the same as is applicable to the first market committee under sub-section (3) of Section 10;

(c) the assets, rights and liabilities of the dissolved market committee shall be disturbed by the State Government between the new market committees in accordance with such rules as may be prescribed;

(d) any appointment, notification, notice, fee, order, scheme, licence, permission, bye-law or form, made, issued or imposed by the market committee which has been dissolved in respect of any part of the area subject to the authority of the new market commodities shall be deemed to have been made, issued or imposed by such market committee concerned unless and until it is superseded by any notification, notice, fee, order, scheme, licence, permission, rule, bye-law or form made, issued or imposed by it.

(3) If any difficulty arises in giving effect to the provisions of this section, the State Government may by order published in the Official Gazette, as the occasion may require, do anything which appears to it to be necessary to remove the difficulty".

18. Market area has been defined u/s 2(19) of the Act as under:

"Section 2(19) "Market area" means any area declared to be a market area u/s 4".

19. Sections 3 and 4 of the Act provides the procedures and consequences of declaration of "Any area" as a market area. Sections 3 and 4 of the Act reads as under:

"Section 3. Notification of intention of regulating the marketing of specified agricultural produce in specified area.--(1) The State Government, may, by

notification, declare its intention of regulating the marketing of such agricultural produce, in such area, as may be specified in the notification. The notification may also be published in Kannada in a newspaper circulating in such area.

(2) The notification shall state that any objections or suggestions which may be received by the State Government within such period as shall be specified in the notification, not being less than thirty days, will be considered by the State Government.

Section 4. Declaration of market area and the regulation of marketing of specified agricultural produce therein.--After the expiry of the period specified in the notification issued u/s 3, and after considering such objections and suggestions as may be received before such expiry, the State Government may, by another notification, declare the area specified in the notification issued u/s 3 or any portion thereof to be a market area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued u/s 3 shall be regulated under this Act in such market area. A notification under this section may also be published in Kannada in a newspaper circulating in such area".

20. A combined reading of Section 2(19) and Sections 3 and 4 of the Act, discloses that firstly that buying and selling of the notified agricultural commodities should take place only in the notified area and defining persons who are eligible or competent to sell and the conditions under which they should so sell. In other words, the application of the rest of the provisions of the Act mainly depend upon this demarcation and definition of geographical territory. Secondly, the provisions of the "Act" applies to all "Buyers" and "Sellers" competent to trade in the Market Area. It does not address to particular cases or groups, but to address to trading community in general.

21. What Section 145, does or empowers is to give power to the State Government to divide this "Notified Market Area" into two or more market areas; When it is done only the territory of the Market Area originally fixed under Sections 3 and 4 of the Act is redefined or altered, but the other consequences that flow under Sections 3 and 4 and other sections are not altered viz., the regulation of trade, and its general character of application are not affected. Thus the power exercised u/s 145 is "Legislative" in character and not "Administrative" as it is not addressed to any particular case or any one single instance. This view of mine is also fully supported by the reasonings of the Supreme Court in AIR 1981 1127 (SC) . In the said case before a 3 member Bench of the Supreme Court, the traders of Maharashtra, Karnataka and Bihar had called in question the act of the Agricultural Produce Marketing Committee of the 3 States asking them to shift their place of business to the market area on many grounds. One of the grounds raised was that before changing the place of market yard, the State Government was obliged to invite and hear objections. Repelling such a contention, the Hon"ble Supreme Court has held that the change of market yard is a Legislative function and the principles of natural justice cannot be invoked before so changing. This is how it has been held:

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of the principles of natural justice and the notification disestablishing the market yard at one place and establishing it elsewhere was therefore, bad. It was said that even as there was express provision for inviting and hearing objections before a "market area" was declared under the Act, so should objections be invited and heard before a "market yard" was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons, wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the contest, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice. In *Bates case*, *supra*, Megarry J., pointed out that the rules of natural justice do not run in the sphere of legislation".

However Sri Keshava Iyengar, learned Counsel referring to *Baldev Singh and Others Vs. State of Himachal Pradesh and Others*, , contended that a declaration of a notified area by the State Government is an "Administrative decision", and therefore principles of natural justice has to be followed.

22. To this submission, suffice it to refer to *Sundarjas case*, *supra*, where the Hon"ble Supreme Court has rejected such a contention after specifically referring to *Baldev Singh's case*, *supra*, at para 27 as under:

"In *Baldev Singh's case*, *supra*, a similar question arose for consideration. An attempt was made to constitute a notified area as provided u/s 256 of the Himachal Pradesh Municipal Act, 1968, by including portions of the four villages for such purposes. The residents of the villages who were mostly agriculturists challenged the validity of the notification before the High Court on the ground that they had no opportunity to have their say against that notification. The High Court summarily dismissed the writ petition. In the appeal before this Court, it was argued that the extension of notified area over the Gram Panchayat limits would involve civil consequences and therefore, it was necessary that persons who would be affected thereby ought to be given an opportunity of being heard. Ranganath Misra, J., did not accept that contention, but clarified (at p. 515 of SCO : (at p. 1242 of AIR)".

23. Even otherwise, in view of the decision in *P.K. Podwal* presided by a Larger bench than *Baldev Singh's case*, *supra*, quoted above the contention deserves to be rejected.

24. For the reasons stated Points 1 and 2 raised by Sri Keshava Iyengar is answered as holding that, "The act of bifurcating an established market by a notification u/s 145 of the Act the State Government exercises Legislative power and not "Administrative power" and therefore there is no obligation on the part of the State Government to follow the principles of natural justice like hearing the petitioners or considering their objections before issuing the notification.

25. Insofar as the next contention raised by the petitioner that the Act of the State Government in issuing the notification is for collateral purposes exercised with intention of favouring the 3rd respondent and the decisions referred to by the learned Counsel, it has to be stated that there cannot be two opinions that any action of the State Government or notification issued for mala fide purposes is non est. But then, the petitioner in order to succeed has to establish mala fides. In this case, as noted above, the case of the petitioners is that the President, 3rd respondent was guilty of irregular exercise of power and it is only when the petitioners moved a resolution to remove him by vote of no confidence at the behest of the 3rd respondent, the State which had kept in cold storage the preliminary notification, suddenly to frustrate the vote of no confidence published the final notification. It has to be stated that the allegations made against the 3rd respondent is denied on affidavit by him and also by the contesting respondent. Secondly, except a bald statement that the respondent 4 from his political influence being the District Minister got the bifurcation notification published, no further facts are pleaded so as to come to a conclusion that the final notification was issued as contended. What was the nature of relationship between the 3rd respondent and the District Minister and whether the District Minister was under the influence of the 3rd respondent and what was the motive for the District Minister to help the 3rd respondent are not pleaded or stated. Hence by mere bare assertions it is not possible to hold that the exercise of power by the State Government was for mala fide purposes. On the question of delay in issuing the final notification it is to be said that by mere fact that there was a delay in publication of the final notification will not lead to only conclusion to hold that it was so done to help the 3rd respondent. It is hard to understand what is the interest of the State to help the 3rd respondent. Therefore, I am not in agreement with the said contention.

For the reasons stated above, this writ petition is dismissed. No costs.