

(2002) 06 KAR CK 0059
In the Karnataka High Court
Case No : Writ Petition No. 21020 of 2002

Sri. Somanath

APPELLANT

Vs

Vijayakumar and Others

RESPONDENT

Date of Decision : 17-06-2002

Acts Referred:

Karnataka Agriculture Produce Marketing Committee Act, 1966 — Section 16, 16 (1) (a), 17

Citation : (2002) 4 KCCR 2304

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Umesh R. Malimath, for the Appellant; Jayakumar S. Patil, for Respondent 1, I.G. Gachchinmath, for Respondent 4, Kumar, for Respondent 5 and B.S. Patil, for Respondent 6, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—IA-I for additional grounds and IA-II for additional statement of facts are allowed.

2. The Petitioner-Sri Somanath, S/o. Siddagonda Bagalkot, the Chairman, APMC, Bijapur is seeking for the following prayers:

a) a writ in the nature of mandamus or any other writ or order or direction, directing the 5th Respondent to allow the application produced at Annexures "G" and "H" pending final disposal of the case filed u/s 17 of the Act for disqualification by the Petitioner as per Annexure-G dated 9.5.2002.

b) A direction to the 5th Respondent to complete the disqualification proceedings as against the Respondents 1 and 2 within a period of two weeks or such time this Hon'ble Court deems fit and no confidence motion initiated as per Annexure "F" may be stayed till disposal of the disqualification proceedings.

c) A direction to the 5th respondent to allow the 3rd Respondent to participate in the meetings of the APMC, Bijapur.

3. The facts are as under:

The Petitioner filed an application against Respondents 1 to 3 to disqualify them under the provisions of the Karnataka Agricultural Produce Marketing Committee Act, 1966 (for short APMC Act) u/s 17. Election to the committee members of Bijapur was held on 8.1.2000. 17 members were elected. The Chairman and the Vice-Chairman were thereafter elected. The Petitioner was elected as Chairman by obtaining maximum votes of 10 out of 17 members. Respondent No. 1 contested the post of Chairmanship but he could not get any majority.

4. According to the petition averments, the first Respondent gave false information and got elected to the Committee as an agriculturist from the agricultural constituency, even though he is a Trader. His election is hit by Section 16(1)(a). The second Respondent was elected from the agricultural Constituency and he is also a Trader. His election is also opposed to Section 16 of the Act. The third Respondent is a nominee of Co-operative marketing societies. The Society has cancelled his membership. The Secretary of the fourth Respondent has intimated and sent the Resolution to the Hon"ble Director.

5. The sixth Respondent is the Minister for Agricultural marketing and also the District Minister. The Hon"ble Minister wanted his nephew by name Sri Aski to be posted as a Cess Collector in the market yard. He was working in the main market. He was transferred as a Cess Collector outside the main market. The Petitioner refused to post the nephew. The sixth Respondent wanted his favourite and a puppet as a Chairman by removing the Petitioner. No confidence motion proceedings were initiated at Annexure "F".

6. The Petitioner in the light of disqualification of Respondents 1 to 3 moved the Director by way of an application u/s 17 in terms of Annexures "G" and "H". Annexure "G" is a copy of the petition filed and Annexure "H" is an interim stay application filed by the Petitioner.

7. According to the petition averments, the Director is not taking up the matter at the instance of the sixth Respondent. The fifth Respondent may not render justice in the matter. The Petitioner filed a Writ Petition and the same came to be withdrawn. In the absence of any further proceedings, he is before this Court.

8. When the matter was listed on 21.5.2002, this Court passed an order ordering emergent notice and interim stay, in the light of the allegations made against a Sitting Minister.

9. Respondent 6 - the Minister, has filed his affidavit denying the allegations made against him. The other contesting Respondents have also filed their affidavit. Matter was listed for orders and in view of the urgency, the matter is taken up for final disposal with the consent of the Counsels.

10. Heard Sri Umesh Malimath, learned Counsel appearing for the Petitioner. He has placed an argument of malafide against sixth Respondent. He refers to me the pleadings to contend that the sixth Respondent is interested in this case and

hence, the fifth Respondent is not taking up the matter. Three more affidavits are also filed in terms of the additional statements by three other members supporting the petition. Learned Counsel also submits that the Respondents are disqualified in terms of the Act. They cannot participate in the elections. He refers to the pleadings again. He further says that this Court has to issue a direction staying "no confidence" proceedings till the matter is decided by the Director in terms of the proceedings initiated by the Petitioner in terms of Annexures "G" and "H". He says that such a direction can be issued by this Court.

11. Per contra, Sri Jayakumar S. Patil, learned Counsel contends that a Division Bench of this Court in 1998 (6) KLJ 557 (Parappa v. Nandarayappa and Ors.) has already ruled that the Director can consider only disqualification subsequent to election but not pre-disqualification. He further invites my attention to para 9 to contend that no individual person has any Statutory right to invoke the discretionary jurisdiction of the Director. The Counsel also says that in such matters, the Court could not interfere. Learned Counsel also says that though, the Petitioners were elected long ago, it is only now these proceedings are initiated at the time when no confidence motion is tabled against the Petitioner. He wants the petition to be dismissed.

12. Heard Sri Gachchinmath, learned Counsel appearing for APMC. Sri B.S. Patil, learned Counsel appearing for the Minister states that the allegations of malafide are not based on facts. Learned Government Pleader is also heard.

13. After hearing the Counsels at great length, I have carefully perused the material placed on record. It is seen that the Petitioner is facing no confidence proceedings. According to the petition averments, Respondents-1 to 3 are disqualified in terms of the provisions of Karnataka Agricultural Produce Marketing Committee Act. Proceedings are initiated in terms of Annexures "G" and "H". The petition averments show that the sixth Respondent is interested and hence proceedings are not taken up by the fifth Respondent causing injustice to the Petitioner, according to petition averments. Let me see as to whether the Petitioner can, prima facie, maintain a petition as sought to be done in terms of Annexures "G" and "H". A reading of Annexure "G" gives me an impression of a adjudicatory proceeding before an authority. The drafting of Annexure "G" and the prayers made would show that the proceedings are initiated as if the Director is adjudicating an issue between the parties. An interim stay application is also filed in terms of Annexure-"H". Section 17 of the APMC Act provides for disqualification of a Sitting Member. Sub-section (2) provides for suo-motu proceedings or the proceedings on a Report by the Secretary or otherwise by the Director. It cannot be equated to any Judicial proceedings as sought to be made out by the Petitioner. In fact, this very question has been considered by the Division Bench in 1998 (6) KLJ 557 and the Division Bench in unmistakable terms has ruled that a reading of Section 17 makes it clear that the Director of A.P.M.C. gets jurisdiction to decide the disqualification aspect of a Sitting Member

only if it has been caused to him subsequent to his election. But if the disqualification was of a period anterior to the election, having bearing on the validity of election itself, then such issue can be decided by jurisdictional Munsiff in election petition.

A reading of Section 17, in the light of the binding Division Bench judgment makes it clear to me that the proceedings before the Director, *prima facie*, seems to be not in accordance with law. However, in view of no decision by the Director, the decision with regard to maintainability is left open to him. This, *prima facie*, is noticed only in the light of the amended prayer as sought for by the Petitioner. When the proceedings *prima facie* itself is not maintainable, the question of granting of stay either by the Director or by this Court would not arise in this case. Therefore, the Petitioner's prayer in terms of the amended prayer cannot be granted in the light of a binding Division Bench judgment. The Division Bench has also in para 9 has categorically ruled that no individual person has any Statutory right to invoke the jurisdiction of the Director, though if complaint is made by any individual person making allegation, then the Director can consider such complaint as an information only for the purpose of invoking his *suo-motu* jurisdiction. Assuming that the proceedings are valid, even then, it is nothing but an information in terms of the ruling of this Court. In information proceedings, no stay can be granted by this Court. Therefore, the request of stay in the light of pending proceedings at Annexures "G" and "H" legally cannot be granted. This prayer is rejected.

13. The next prayer is for a direction, directing the 5th Respondent to allow the application produced at Annexures "G" and "H". *Prima facie*, this prayer also, in the light of the judgment of this Court, cannot be granted. It is for the Director to act on the information submitted by the Petitioner. No direction can be issued as sought for by the Petitioner.

15. However, the Petitioner has made allegations of malafide against the fifth and sixth Respondents. Respondent 6 is a Sitting Minister and Respondent 5 is a Director before whom Annexures "G" and "H" are filed. Let me see as to whether the allegations of malafide can be accepted or not by this Court. The only allegation made in the Writ Petition is that the sixth Respondent-Minister wanted his nephew one Sri Aski to be posted as an Assistant Commissioner in the market yard and that the same has not been accepted by the Petitioner. This is the only allegation. This allegation is reiterated by three other Directors in identical words in terms of the affidavits filed along with the additional facts. The Minister concerned denied the allegation in toto. Malafide allegations are serious in character. It cannot be made in a light manner. Malafide allegations mar the career of any individual holding any position in the society. Respondent No. 5 is holding a responsible position as a Director and Respondent No. 6 is holding a responsible post of a Minister of Agricultural Market. The Petitioner has not chosen to give any details as to when the so-called incident that has taken place, in the affidavit. The affidavit is silent. It is also not shown to me by any material

either by way of any writing or by way of complaint by the Petitioner in the light of the so-called request from the sixth Respondent. It is also not clear from the material on record as to what action the Petitioner has taken, in the light of the obligations sought for by the sixth Respondent. Therefore, in the absence of any details and in the light of no additional material, a mere self-serving statement cannot be accepted by a Court of law. Moreover, it is to be seen that this allegation is made at the time when the Petitioner is facing no confidence motion. An impression is given to this Court that this allegation is made only to get over no confidence proceedings. A further impression is given to this Court that this Court is made as a tool to stall no confidence proceedings against the Petitioner. In these circumstances, I deem it proper to reject the entire malafide allegations as devoid of merits. Since, I have come to this conclusion that the allegations are not malafide and that there is no basis, I further deem it proper to impose costs of Rs. 2,500/- payable to fifth and sixth Respondents each, by the Petitioner within a period of four weeks from today.

16. Lastly, the Counsel for the Petitioner made an appeal that this Court has to give time schedule to the Director to dispose of Annexures "G" and "H". In the normal proceedings, I would have accepted this request but in the case on hand, the Division Bench, in unmistakable terms has stated that such a complaint is only an information. In information proceedings, no direction as a matter of right can be given that too at the instance of the Petitioner in the given set of facts in this petition. This request is also rejected.

16. In the result, this petition stands dismissed with costs quantifying at Rs. 5,000/- payable at Rs. 2,500/- each to fifth and sixth Respondents within four weeks from today.