

(2016) 10 BOM CK 0164
In the Bombay High Court
Case No : Writ Petition No. 1762 of 2015

Sunil Kailashchandra Rawat	Vs	APPELLANT
State of Maharashtra		RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 44

Citation : (2017) AIR(Bombay) 68 : (2017) 2 AIRBomR 705 : (2017) 3 ALLMR 669 : (2017) 3 MhLJ 865

Hon'ble Judges : Smt. Vasanti A Naik and Kum. Indira Jain, JJ.

Bench : Division Bench

Advocate : Mr. C.S. Dharmadhikari, Counsel, for the Petitioners; Mr. A.S. Fulzele, Addl. Govt. Pleader, for the Respondent Nos. 1 to 3; Mr. M.M. Agnihotri, Counsel, for the Respondent No. 4; Mr. Ashish Bhendarkar, Counsel, for the Respondent No. 6; Mr. R.S. Kalangiw

Final Decision : Allowed

Judgement

Smt.Vasanti A Naik, J.(Oral)—Rule. Rule made returnable forthwith. The writ petition is heard finally at the stage of admission, as a notice for final disposal is served on all the respondents.

2. Whether in the circumstances of the case, the State Government could have passed the order, bifurcating the Ramtek Mouda Agricultural Produce Market Committee into Mouda Agricultural Produce Market Committee and Ramtek Agricultural Produce Market Committee under Section 44 of the Maharashtra Agricultural Produce Market Committee (Development and Regulation) Act, 1963 is the question that falls for consideration in this writ petition.

3. The petitioners are the agriculturists from Ramtek and Mouda talukas. The petitioners claim to be the functionaries of Ramtek Mouda APMC as they market their agricultural produce in the said market yard. The petitioners are aggrieved by the order of the State Government bifurcating Ramtek Mouda APMC into

Ramtek APMC and Mouda APMC. According to the petitioners, Ramtek Mouda APMC has a robust market and the resources as well as the supply of the produce in the Market Committee would be divided by the impugned order of bifurcation, as a result of which the petitioners would be greatly affected. In 2001 the local leaders of the talukas had sought for the bifurcation of the Ramtek Mouda APMC and a proposal was forwarded by them to the then Hon'ble Chief Minister on 03/10/2001. In pursuance of the said request, the District Deputy Registrar, Nagpur forwarded the proposal for bifurcation to the State Marketing Board, as required by the provisions of Section 44 of the Act on 27/01/2004. On 01/03/2004, the State Marketing Board, vide resolution No. 10B opined that the bifurcation of Ramtek Mouda APMC was not economically viable. The decision of the State Marketing Board was conveyed to the State Government, on 10/05/2004. The issue in regard to the bifurcation of the Market Committee again cropped up in the year 2010, in view of the request from some agriculturists and it was decided in the meeting chaired by the Minister of Agriculture and Marketing, on 03/02/2011 that Ramtek Mouda APMC should not be bifurcated. In January, 2014, when the District Deputy Registrar made about 14 queries to the Market Committee, the bifurcation of the Market Committee being one of them, the Market Committee of Ramtek Mouda passed a resolution on 12/03/2014 that the Committee should not be bifurcated. Representations were again received by the District Deputy Registrar on 12/08/2014 and 01/11/2014 from some agriculturists from Mouda for the bifurcation of the Market Committee. In pursuance of the said representations, proposal was forwarded by the District Deputy Registrar to the State Marketing Board, on 19/12/2014 seeking the opinion of the Board, as required by the provisions of Section 44 of the Act. On 22/10/2014, the Board resolved by a resolution passed by circulation that the Market Committee should be bifurcated. On 23/12/2014, the State Marketing Board informed its decision to the District Deputy Registrar and on the same day, i.e. 23/12/2014, the District Deputy Registrar passed the impugned order bifurcating the Ramtek Mouda APMC into Ramtek APMC and Mouda APMC. Before the notification under Section 44 of the Act was published by the State Government, Administrators were appointed on Ramtek APMC and Mouda APMC, on 24/12/2014. The petitioners are aggrieved by the order of the District Deputy Registrar, bifurcating the Market Committee under Section 44 of the Act. The said order is impugned in the instant petition.

4. Shri C.S. Dharmadhikari, the learned counsel for the petitioners, submitted, by referring to the provision of Section 44 of the Act that before issuing a notification for bifurcation of the Market Committee, it is necessary for the State Government to consult the concerned Market Committee and the State Marketing Board. It is submitted that after the proposal was mooted in pursuance of the representations made by some agriculturists on 12/08/2014 and 01/11/2014 for the bifurcation of the Market Committee, the District Deputy Registrar did not consult the Ramtek Mouda APMC, as required by the provisions of Section 44 of the Act. It is submitted that it was necessary for the District Deputy Registrar to

consult the Ramtek Mouda APMC after the proposal was moved in pursuance of the representations made by the agriculturists on 12/08/2014 and 01/11/2014. It is submitted that the resolution of the Market Committee, dated 12/03/2014 that the Market Committee should not be bifurcated has nothing to do with the proposal, that was mooted in pursuance of the representations, dated 12/08/2014 and 01/11/2014. It is stated that the material forwarded to the State Marketing Board on 19/12/2014 along with the proposal was not forwarded to the Market Committee before it resolved against the bifurcation of the Market Committee on 12/03/2014. It is submitted that the resolution dated 12/03/2014 was not passed by the Market Committee on the proposal of the District Deputy Registrar under Section 44 of the Act and the same was passed in pursuance of a query made by the District Deputy Registrar to the Market Committee along with 13 other queries, that were made in January-February, 2014. It is submitted that apart from the fact that there was no consultation with the Market Committee as required by the provisions of Section 44 of the Act, there was also no effective consultation with the State Marketing Board. It is submitted that the proposal was sent to the State Marketing Board only on 19/12/2014 and though 20th and 21st of December, 2014 were holidays being Saturday and Sunday, the State Marketing Board hurriedly passed the resolution in favour of bifurcation on 22/12/2014, by circulation. It is stated that after the resolution was hurriedly passed by circulation on 22/12/2014, it was speedily communicated to the State Government District Deputy Registrar, on 23/12/2014. It is stated that on the day the District Deputy Registrar received the copy of the resolution, the impugned order of bifurcation of the Market Committee was passed. It is stated that the aforesaid facts clearly show that there was no effective consultation by the District Deputy Registrar with the State Marketing Board and the so called consultation was a farce. It is submitted that while passing the resolution, there was no meeting of minds of the Members of the Board. It is submitted that each of the Members of the Board, received a photostat copy of the resolution on 22/12/2014 and one Member of the Board did not know about the views of the other Members of the Board on the subject. The learned counsel relied on the judgments, reported in (2013) 16 SCC 206 (Ram Tawakya Singh v. State of Bihar), 1998 Mh.L.J. 68 (Ramrao Sitaram Kadam and others v. The District Deputy Registrar, Cooperative Societies, Nanded and others), 2001 Bom.C.R. 657 (Appasaheb Sheshrao Chavan and others v. State of Maharashtra and others, 2011 (1) Mh.L.J. 739 (Sopanrao s/o Onkarrao Sathe and another v. State of Maharashtra and others), 2003 (3) Mh.L.J. 442 (Kalwan Agriculture Produce Market Committee, Kalwan and others v. State of Maharashtra and others) and 2010 (1) Mh.L.J. (Shivram s/o Sonbaji Girhipunje and others v. State of Maharashtra and others) to substantiate his submission. It is submitted that in the absence of any discussion or deliberation by the Members of the State Marketing Board on the issue of bifurcation of the Market Committee, it cannot be said that there was effective consultation. It is stated that since the State Marketing Board had earlier decided against the bifurcation of the Market Committee in the year 2004, it was necessary for the State Marketing Board to

record at least a few reasons for the change of mind. It is submitted that even before the notification of bifurcation was issued on 25/12/2014, the State Government appointed the Assistant Registrars of the Cooperative Societies as Administrators and they took the charge of the separate Market Committees of Mouda and Ramtek on 24/12/2014. It is submitted that the order of bifurcation is passed on political diktat, after the change of the Government. It is stated that since there was no consultation by the District Deputy Registrar with the Ramtek Mouda APMC and the consultation with the State Marketing Board was a farce and was not effective and meaningful, the impugned order is liable to be set aside.

5. Shri Fulzele, the learned Additional Government Pleader appearing on behalf of the respondent Nos.1 to 3, has supported the impugned order. It is submitted that the petitioners do not have a locus standi to file the petition. It is stated that since the year 2001, there were requests for bifurcation of the Ramtek-Mouda APMC and after the said requests were declined on two occasions, once in the year 2004 and then in the year 2011, the process for bifurcation was again initiated, in view of the demands. It is submitted that since the District Deputy Registrar was of the view that the bifurcation of the Market Committee was viable, the District Deputy Registrar sought the opinion of the State Marketing Board by its communication, dated 19/12/2014. It is stated that on earlier occasions, the Market Committee had opposed the request for bifurcation of the Committee and the resolution of the Market Committee, dated 12/03/2014 shows that the Market Committee was not ready to cooperate in the matter of bifurcation of the Market Committee. It is submitted that it is clear from the resolution of the Market Committee, dated 12/03/2014, that the Market Committee had decided against the proposal of bifurcation. It is stated that in this background, the District Deputy Registrar did not seek the opinion of the Market Committee again. It is stated that after the Market Committee was bifurcated, both the Market Committees have proved their viability. It is stated that since the Market Committee was consulted in March, 2014 and since the District Deputy Registrar had consulted the State Marketing Board, that had accepted the proposal for bifurcation, the writ petition is liable to be dismissed.

6. Shri Agnihotri, the learned counsel for the State Marketing Board, submitted that the proposal received by the Board from the District Deputy Registrar and the resolution was circulated to all the Members and their consensus was sought on the same. It is stated that as per Rule 12 of the "Holding of Meeting Rules" of the State Marketing Board, the Board is entitled to take a decision on an important subject or matter by circulating the resolution. It is stated that since all the Members of the State Marketing Board were at Nagpur, during the Legislative Assembly Session, the Board was required to hold the meeting by circulation. It is submitted that eleven Members had consented for the bifurcation, two Members of the Board had abstained and one Member of the Board did not agree with the proposal. It is submitted that each of the Members of the Board have conveyed their opinion, after applying their mind to the

proposal. It is submitted that in the aforesaid set of facts, it cannot be said that the consultation with the State Marketing Board was not effective and meaningful.

7. Shri Kalangiware, the learned counsel for some of the Members of the erstwhile Market Committee, submitted that the impugned order is passed only due to the change of Government. It is submitted that there cannot be a change in the policy, only due to the change of Government. It is submitted by relying on the judgment of the Hon'ble Supreme Court, reported in (2011) 8 SCC 737 (State of T.N. v. K. Shyam Sunder) that unless, it is found that an act done by the Authority earlier in existence is either contrary to statutory provisions or is against public interest, the State should not change its stand merely because another political party has come into power. It is submitted that after the District Deputy Registrar received the representations for the bifurcation of the Market Committee on 12/08/2014 and 01/11/2014, a proposal was not sent by the District Deputy Registrar to the Ramtek-Mouda APMC for consultation, as required by the provisions of Section 44 of the Act. It is submitted that the resolution of the Market Committee, dated 12/03/2014 is not referable to the proposal, that was forwarded in pursuance of the representations, dated 12/08/2014 and 01/11/2014 seeking bifurcation, as the said resolution was passed on one of the 14 queries that were made by the District Deputy Registrar to the Market Committee in January-February, 2014. It is submitted that the material that was dispatched to the State Marketing Board along with the proposal for seeking the opinion of the Board was not forwarded to the Market Committee along with the queries in January-February, 2014 and the same could not have been practically sent to the Market Committee, as some of the documents appended to the proposal forwarded to the State Marketing Board relate to the year 2014.

8. Shri Bhendarkar, the learned counsel for the Mouda APMC, adopted the submissions made on behalf of the respondent Nos.1 to 3 and sought for the dismissal of the writ petition. According to the learned counsel, the impugned order was passed after considering the economic viability of the Market Committees.

9. Firstly, we are not inclined to uphold the objection raised on behalf of the respondent Nos. 1 to 3 in regard to the locus of the petitioners to file the petition. It is not disputed that the petitioners are the agriculturists in Ramtek and Mouda talukas and as per the statement of objects and reasons, the Act seeks to provide for more efficient regulation of the marketing of agricultural produce in market areas and markets. According to the petitioners, Ramtek Mouda APMC has a robust market and the resources would be divided in view of the bifurcation. According to the petitioners, the change in the structure of the Market Committee would cause loss to the APMC which in turn would cause loss to the petitioners. It is stated that the bifurcation would not be financially viable and that would adversely affect the petitioners. It is stated that the petitioners as market functionaries, market their agricultural produce in the market yard and

loss would be caused to them due to the division of the APMC. In our view, these averments would be enough to entitle the petitioners to file the petition, when the averments are not disputed and the respondents have not doubted the bona fides of the petitioners. We cannot uphold the objection raised by the learned Additional Government Pleader in the aforesaid background, more so, when the objection in regard to the locus of the petitioners is not raised by the respondent Nos.1 to 3 in their affidavit-in-reply or before the arguments began and the same is raised after the counsel for the petitioners had concluded his submissions on merits.

10. Turning to the circumstances of the case, we find that the impugned order is passed by the District Deputy Registrar, without consulting the Ramtek-Mouda APMC and without effectively consulting the State Marketing Board. It is well settled that the bifurcation of a Market Committee could be ordered only after effective consultation with the Market Committee and the State Marketing Board. It is time again held by this Court that the consultation with the Market Committee and the State Marketing Board is mandatory and not directory. It is also held by this Court in the judgments referred to herein above and relied on by the learned counsel for the petitioners that the consultation is not an empty formality and it should be real, effective and meaningful. It is held in the judgment, reported in 2013 (3) Mh.L.J. 44 that there could be no order of bifurcation before consulting the Market Committee and the State Marketing Board. It is further observed in the said decision that it is only after the proposal is mooted out that the Market Committee and the State Marketing Board should be consulted. In this background, it would be necessary to consider as to whether the District Deputy Registrar has consulted the Ramtek-Mouda Market Committee after the proposal was mooted. According to the petitioners, though the Government had taken a decision twice, i.e. in 2004 and 2011 that the Market Committee should not be bifurcated, the proposal dated 19/12/2014 was forwarded by the District Deputy Registrar to the State Marketing Board, on 19/12/2014 in pursuance of the representations made by the agriculturists on 12/08/2014 and 01/11/2014 seeking bifurcation of the Market Committee. The said fact is admitted by the State Government and the District Deputy Registrar in paragraphs 3 and 4 of the Affidavit-in-reply, filed on 03/03/2016. If the proposal was mooted in pursuance of the representations of the agriculturists, dated 12/08/2014 and 01/11/2014, as rightly submitted on behalf of the petitioners, the Market Committee should have been consulted after the proposal was mooted. We are, therefore, not inclined to accept the submission made on behalf of the State Government that since the Market Committee was earlier consulted and it had opined against the bifurcation vide resolution, dated 12/03/2014, it was not necessary to consult again. The proposals were mooted time and again for the bifurcation of the Market Committee from the year 2001 and not less than twice, the Government had decided not to bifurcate the Market Committee. The State Government, therefore, cannot rely on any earlier decision of the Market Committee when the last proposal was mooted in pursuance of the

representations made by the agriculturists on 12/08/2014 and 01/11/2014. The District Deputy Registrar, while forwarding a proposal in respect of bifurcation to the State Marketing Board, was obliged to send a similar proposal to the Ramtek-Mouda APMC. It is not in dispute that while the District Deputy Registrar sent the proposal to the State Marketing Board, on 19/12/2014, a similar proposal was not sent to the Ramtek-Mouda APMC. It would be worthwhile, to consider the impugned order, dated 23/12/2014, wherein the District Deputy Registrar makes a reference to the earlier stand of the Market Committee, opposing the bifurcation. It is apparent from a reading of the impugned order as also the other documents that the State Government did not consult the Ramtek-Mouda Market Committee before the Market Committee was bifurcated by the impugned order, dated 23/12/2014. We find that the Ramtek-Mouda APMC was neither consulted after the fresh proposal was mooted, nor was the Market Committee provided with the material, that accompanied the proposal remitted to the State Marketing Board, on 19/12/2014, when the proposal was sent to the APMC on the earlier occasion. It would be necessary to hold in the aforesaid set of facts that the State Government did not consult the Market Committee before the order of bifurcation of the Committee was passed.

11. It would now be necessary to consider whether there was effective consultation with the State Marketing Board.

It appears that the proposal was sent by the District Deputy Registrar for bifurcation of the Market Committee to the State Marketing Board, on 19/12/2014. The document carries the said date. The mode of communication of this document to the State Marketing Board is not known. Even assuming that the proposal was received by the State Marketing Board, on 19/12/2014 itself, 20th and 21st of December 2014 being nonworking days, it is surprising that the Board took a decision in favour of bifurcation, on 22/12/2014 by circulation. We have perused the photostat copy of the resolution, that is dispatched to each of the 14 Members of the Board. The resolution was not circulated to each of the 14 Members of the Board by rotation and a separate copy of the resolution was dispatched to each of the Members of the Board, who in turn have signed on the copies received by them. It is stated that a resolution could be passed by circulation as per the "Holding of Meeting Rules" of the State Marketing Board, if the resolution pertains to an important subject. It would not be necessary for us to dwell on the issue whether the bifurcation of the Ramtek-Mouda APMC was an important subject or not, as we are concerned whether the bifurcation of the Ramtek-Mouda APMC was an urgent important subject of emergency for which the Board could not have held a meeting wherein the issue in regard to the bifurcation of the Market Committee could have been deliberated. We are surprised that the proposal was dispatched by the District Deputy Registrar to the State Marketing Board, on 19/12/2014 and all the Members of the State Marketing Board have endorsed on a separate resolution on 22/12/2014, though 20th and 21st of December, 2014 were not the days for business. We are astonished at the speed at which the proposal was mooted, was dispatched and a

decision on the proposal was taken by the State Marketing Board. The proposal was dispatched to the Board on 19/12/2014 and the decision of the Board was not only reached on 22/12/2014, but was also communicated to the State Government on 23/12/2014 and on the very same day, the impugned order of bifurcation of the Market Committee was passed. The longish order of bifurcation dated 23/12/2014 makes us believe that it was either prepared earlier or the District Deputy Registrar waited till the dead of night to prepare and sign it. It is time and again laid down by this Court that consultation is not an empty formality and the same should be effective and meaningful. In our considered view, the consultation with the State Marketing Board, in this case is neither effective nor meaningful. One Member of the State Marketing Board was not aware about the view of the other Member of the Board on the subject of bifurcation. In a consultation, meeting of minds between the parties is necessary and each Member of the State Marketing Board ought to have been made aware about the view of the other Member or Members on the subject. Such a consultation may take place at a conference table or through correspondence, as laid down by the Hon'ble Supreme Court in the judgment reported in (2013) 16 SCC 206, but in such a consultation, it is necessary that every person, who is consulted should know the subject with reference to which he has been consulted and the view of the other Members on the subject. We often find that there could be change in the mind of the Members, if a subject is discussed and examined in the light of the views expressed by the Members. In the instant case, the State Marketing Board, hurriedly, sent the photostat copies of the resolution pertaining to the bifurcation of the Ramtek-Mouda APMC to each of its Members separately on 22/12/2014. If all the Members were present at Nagpur during the Assembly Session that was in progress at the relevant time, we fail to gauge as to why the Members did not unite for a meeting to discuss the subject of bifurcation of the Market Committee, which according to the State Marketing Board, was an important subject. Though it is stated by the State Marketing Board in the affidavit-in-reply, filed on its behalf that the proposal received from the District Deputy Registrar along with the resolution was circulated amongst the Members of the Board for seeking their views, on a perusal of the communication issued by the Managing Director of the State Marketing Board, dated 22/12/2014 to each of its Members that only the copy of the resolution was circulated amongst the Members and not the proposal and the material, that was received from the District Deputy Registrar. The said fact could be substantiated from the enclosures, that are referred to in the communication dated 22/12/2014 that was dispatched by the Managing Director of the State Marketing Board, Pune to its Members on 22/12/2014. We find that though the Board had received the proposal on 19/12/2014, or sometime thereafter, each of the Members of the Board had received the communication, dated 22/12/2014 with a copy of the resolution pertaining to the bifurcation of the Market Committee on 22/12/2014 only and on the same day eleven Members of the State Marketing Committee have opined in favour of the bifurcation of the Market Committee and one against the bifurcation by merely tick marking one of the three options, one relating to

the acceptance of the proposal for bifurcation, the second relating to the rejection of the proposal for bifurcation and the third relating to abstention. It cannot be said in the circumstances referred to herein above, that there was an effective consultation with the State Marketing Board before the order of bifurcation of the Market Committee was passed by the State Government. We find that the consultation with the State Marketing Board was a farce and the same was not effective and meaningful. We also do not find anything in the resolution of the State Marketing Board to point out as to why it had changed its mind, when it had earlier decided that the bifurcation was not viable. The consultation was not effective and the decision of bifurcating the Market Committee was tainted, could be gathered from the fact that even before the notification bifurcating the Market Committee was published in the official gazette on 25/12/2014, the Administrators were appointed on the two Market Committees by the impugned order, dated 23/12/2014 and the Administrators took the charge of the two independent Market Committees, on 24/12/2014. We are not inclined to accept the submission made on behalf of the State that since by the impugned order, the State has only implemented its policy of establishing a Market Committee in each taluka, the order may not be interfered with. Even if according to the policy of the State Government, a Market Committee is necessary in each of the talukas in the State of Maharashtra, a Market Committee that concerns two or more talukas cannot be divided or bifurcated without following the mandatory provisions of Section 44 of the Act. In a given case it may not be necessary for an Authority to accept the opinion of the body that is consulted but if the statute so requires that the body should be consulted, the decision cannot be rendered by the Authority concerned without complying with the mandatory provision pertaining to consultation. Even if, the State Government is desirous of implementing its policy of establishing a Market Committee for each taluka, the decision should not be implemented dehors the provisions of the statute, specially when the provisions are mandatory like the one in the case in hand that relate to effective consultation with the Market Committee and the State Marketing Board.

12. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order of the District Deputy Registrar, dated 23/12/2014 and the notification of the State Government, dated 25/12/2014 are hereby quashed and set aside. Rule is made absolute in the aforesaid terms with no order as to costs.

13. At this stage, Shri Fulzele, the learned Additional Government Pleader seeks a stay of this judgment for a period of six weeks. Since the matter lingered in this Court for more than a year in the absence of an affidavit-in-reply, that was filed by the State Government and its Authorities only in March, 2016 and since the Market Committees for Mouda and Ramtek are not constituted till date, as per the provisions of Section 13(1) of the Act, we grant the prayer made by the learned Additional Government Pleader and stay our judgment for six weeks. Order accordingly.