

(2000) 02 KAR CK 0048

In the Karnataka High Court

Case No : Writ Petition No. 1149 of 2000 connected with Writ Petition Nos. 44446 and 46316 of 1999; 951 and 2302 of 2000

T. Krishnappa

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 10-02-2000

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 10

Citation : (2000) 7 KarLJ 132

Hon'ble Judges : R. Gururajan, J

Judgement

R. Gururajan, J.-These petitions are filed against the "displeasure removal" of "pleasure nominees" of APMC from Members/Chairman/Vice-Chairman by the State Government.

2. W.P. No. 1149 of 2000.-This petition is filed by the Chairman, Agricultural Produce Marketing Committee ("APMC" for short), Nagamangala challenging Annexure-D, dated 5-1-2000 bearing No. SMA-SAMATU-114:MRE-99 and also seeking for a writ of prohibition prohibiting respondents 1 and 3 from preventing the petitioner from functioning as elected Director of Marketing Federation representing Mandya District as per Annexure-C. In the petition it is stated that the petitioner is an agriculturist and a Member of Marketing Committee, APMC, Nagamangala. His name is found in the voters' list of Agricultural Constituency of respondent 3-Marketing Committee. Initially the Government issued an order bearing No. CNW/172/MRE/96, dated 24-10-1997 for a period of two years under Section 10 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 ("the Act", for short). The first respondent thereafter, vide order dated 16-6-1998, Annexure-A nominated the petitioner as Chairman in place of Mr. D.H. Rame Gowda in exercise of its power under Section 10 of the Act. Subsequently, Annexure-B, dated 6-10-1999 was issued continuing the term of the Marketing Committee from 13-11-1999 for a further period of one year vide Government notification dated 24-10-1997. Thereafter Annexure-D was issued by the State Government and respondent 2 is nominated in place of the

petitioner in terms of its nomination vide order dated 16-6-1998 (Annexure-A).

3. Petitioner's essential contentions are that Annexure-D is unsustainable in law. Once the term of the nomination Committee has been extended for a further period of one year, respondent 1 has no competence to pass an order in terms of Annexure-D. Respondent 2 is not an agriculturist and hence his nomination as Adhyaksha is illegal and liable to be quashed. It is also stated that respondent 2 is an influential person with the present Government and by using the good office of the persons he has been appointed as the Chairman of respondent 3-Committee. Counter statement has been filed by the contesting respondent, respondent 2.

4. Respondent 2 has denied these averments. It is further averred that nomination being a "pleasure nomination", the Government is justified in its action in exercise of its power under Section 10(4)(a) of the Act. Respondent 2 has also filed several documents evidencing the factum of his being an agriculturist as understood in law. Respondent 2 wants the petition to be dismissed. The State Government has also filed an affidavit and in the affidavit it is stated that before the completion of the period of two years, the Chairman of the first Committee Sri Rame Gowda, who was nominated as Chairman and in his place the present petitioner was nominated in exercise of the power under Section 10 of the Act vide Annexure-A. The term of the office of the Members of the Committee was extended for a period of one year vide Annexure-B. The nomination of the petitioner as Chairman of the first Committee is cancelled and respondent 2 has been nominated in place of the petitioner. The said cancellation is in exercise of the power under Section 10(1) read with Section 10(2) and 10(4) (a) of the Act.

5. A common counter has been filed by APMC contending that the petitioner's nomination being "pleasure nomination", has to suffer the "displeasure removal" exercised by the Government in terms of proviso to Section 10(4)(a) of the Act.

6. W.P. No. 44446 of 1999 Facts.-The petitioner is an agriculturist by profession and his village comes within the area of APMC, Sirsi. The State Government, in exercise of its power under Section 10 of the Act, issued a Notification, Annexure-A thereby nominating the petitioner as the Chairman of the second respondent-Committee. The term of nominated members was for a period of two years. Thereafter, being satisfied with the performance of the nominated member and in particular the petitioner, the State Government issued Notification, Annexure-B extending the term by one more year from 3-3-1999 or until further orders, whichever is earlier. Annexure-B is dated 26-2-1999. Thereafter, the Government had issued Annexure-C thereby removing the petitioner and others in exercise of powers under Section 10 of the Act. The contentions are that the respondents could not have invoked their power under proviso to sub-section (4)(a) of Section 10 of the Act. After the expiry of two years' term, the Government has no power to remove them since the "pleasure" gets extinguished after two years.

7. Counter-statement has been filed in this case by the APMC. The APMC has traced the history and the object of the Act and also has stated that the State Government, in exercise of its power, has issued the present impugned order and hence no grounds are made out for an interference in this petition.

8. W.P. No. 46316 of 1999 Facts.- The first petitioner is the Chairman and the other two petitioners are the members of the respondent 2-APMC, Raichur. They state that the Raichur Market Committee was formed in the year 1977. In terms of bifurcation Devadurg APMC was constituted in addition to the Raichur APMC. The first Committee was formed on 25-10-1997 vide Annexure-A. Thereafter, the State Government extended the period of petitioners by one more year from 27-10-1999 vide Annexure-C. Subsequently, Annexure-D has been issued removing the petitioner and the same is questioned as illegal and unsustainable.

9. W.P. No. 951 of 2000.-The first petitioner is the Chairman and the other two petitioners are members of APMC, Devadurga. They state that the State Government nominated the petitioners as per Annexure-A and thereafter extended the term by one more year in terms of Annexure-B. Annexure-C, dated 4-12-1999 was issued constituting a new Member. The same contentions as in W.P. No. 46316 of 1999 are mentioned in this petition also.

10. W.P. No. 2302 of 2000.-Petitioner is the President of APMC, K.R. Pet. Petition averments are that one Patel Channe Gowda died in 1998 and the State Government issued a notification dated 15-7-1998 appointing the petitioner as the Chairman of the Committee. Thereafter, Annexure-B was issued extending the period of Chairman, Vice-Chairman and the Members for a period of one year from 6-11-1999. Annexure-C was issued stating that after three years elections are to be held for the said Committee. Annexure-D, dated 20-1-2000 was issued removing the petitioner and others in exercise of the power under Section 10 of the Act. Petitioner contends that the Constitution of Members in terms of Annexure-D is nothing but a subsequent Market Committee by nomination and constitution of such second Committee is done in violation of Section 11 of the Act. Annexure-D is contrary to law inasmuch as the second subsequent Market Committee other than as provided under Section 11 of the Act is not available under the Act. When steps have already been taken for holding elections, it could not have been constituted by nomination which is unsustainable in law.

11. Respondent 2-APMC has filed a counter reiterating the same stand in the case on hand.

12. Sri B. Keshava Iyengar, learned Senior Advocate, assisted by Sri F.V. Patil, Sri C. Shivappa, Sri R.S. Hegde and Sri Shivakumar Kalloor, learned Advocates appeared for the petitioners. Sri B.G. Sreedharan, learned Senior Counsel appeared for the Committee and Sri Motigi, learned Additional Government Advocate appeared for the State Government. Sri Jayakumar S. Patil, learned Counsel appears for respondent 2 in W.P. No. 1149 of 2000. Sri L.M. Pandurangaswamy, learned Counsel appears for respondents 3 and 5 to 15.

13. The petitioners' learned Counsel essentially argues that in all these cases the petitioners have been validly nominated under Section 10(4) of the Act initially for a period of two years. Their terms have been extended by one more year in exercise of the power conferred on the Government in terms of proviso to Section 10(4) of the Act. The main argument is that the Act is an Act providing for the better regulation of marketing of agricultural produces. The Act provided for nominated members and also for elected members. The nominated members initially have a term of office for a period of two years. It is their case that the subsequent extension for a period of one year is "without pleasure" and is a tenure office having a tenure of one year. It is the specific case of the petitioners that the impugned orders suffer from want of jurisdiction and power in the absence of "pleasure" available in the proviso to sub-section (4)(a) of Section 10 of the Act. Mr. Keshava Iyengar, learned Senior Counsel, reading the averments, submits that the Government in their wisdom have chosen to remove the word "pleasure" in the proviso and the wordings in the proviso categorically indicates that it is a "tenure" office providing for a term of one more year after two years. The theory of "pleasure" cannot be read into the provision and therefore, according to him and other learned Counsel appearing for the petitioners, the removal, in the absence of "pleasure", by the respondents, is not only contrary to the very Act but also contrary to the very provision of Section 10(4)(a) of the Act. Mr. Iyengar, learned Senior Counsel also invited my attention to Articles 80, 83, 156, 331 and 333 of the Constitution of India. In particular he relies on sub-clause (3) of Article 156 of the Constitution to contend that the Governor shall hold office for a term of five years from the date on which he enters upon his office and on expiry of the term he continues to hold his office until his successor enters upon the office notwithstanding the expiration of his term. His contention is that the "pleasure" of the President under Article 156(1) is not available to proviso to Article 156(3) of the Constitution. He relies on a judgment of the Hon'ble Supreme Court in Krishna Ballabh Sahay and Others v Commission of Inquiry and Others, AIR 1969 SC 258. Mr. Iyengar, while concluding, stated that the judgment of this Court in S. Govindappa v Chief Secretary to Government of Karnataka and Another, 1992(2) Kar. L.J. 296 (DB) is not applicable to the facts of this case. He relies on the case of Dr. L.P. Agarwal v Union of India, AIR 1992 SC 1872.

14. Sri Shivappa and Sri Shivakumar Kalloor, learned Counsels argued that a reading of Annexure-D would show that a new Committee has been constituted which is nothing but a second Committee or the subsequent Committee. According to them, the second Committee can be constituted only as provided under Section 11 of the Act, i.e., by way of election and therefore they say that the present orders suffer from violation of Sections 10 and 11 of the Act and therefore they argued that this Court has to strike it down for want of power by the Government. Mr. R.S. Hegde, learned Counsel appearing for the petitioner in W.P. No. 44446 of 1999 argues that once the power is exercised by way of "pleasure" under Section 10(4) of the Act, the said plea gets itself extinguished

for the subsequent extension under the proviso. His arguments is that only elections are the only answer and not removal during the extended period.

15. In addition to these arguments, in respect of each one of the petition, petitioners have also addressed arguments dealing with the respective facts in respective petitions. Mr. Iyengar, learned Senior Advocate appearing in W.P. No. 1149 of 2000 further invites my attention to the wordings of Annexure-D to contend that Annexure-D is nothing but removal of Adhyaksha (Chairman of the Committee). There is no reference to removal of the Member as such in the impugned order. He also invited my attention to the non-mentioning of Annexure-B (extension) in Annexure-D. He argues that without cancelling Annexures-B and D is issued. There are contradictions on account of removal of Adhyaksha without removing the Membership for an extended period by the State Government. He further argues that respondent 2 is favoured and he has been nominated with good office of the present Government and therefore the nomination of respondent 2 is bad in law on that count also. He further argues that while interpreting a statute, the Court has to take into consideration the legislative intention of the wordings in the proviso to understand that it is an exception to the main section. He states that once the "pleasure theory" is extended while nominating, the said theory cannot be extended for the extended period. That would be the correct interpretation according to him. The same argument is also adopted by Sri Shivappa and others insofar as interpretation is concerned. But Mr. Hegde, learned Counsel appearing for the petitioner in W.P. No. 44446 of 1999 argued that it is only an enabling provision and even then according to him, the theory is not available to the respondents for the extended period.

16. Sri Shivappa, learned Counsel, invited my attention to the facts of his case and argues that the entire footing is removal and therefore a new body is constituted without cancelling the extension. Mr. Shivakumar Kallor, learned Counsel also adopts the same line of reasoning and in addition he also argues that such wholesale removal is in violation of Section 11.

17. Per contra, Sri B.G. Sreedharan, learned Senior Counsel invited my attention to the various provisions of the Act to contend that while interpreting the object of the Act, the scheme of the Act and the purpose of the Act are also to be taken into consideration while deciding the case on hand. He invited my attention to Sections 4, 5, 6, 9, 10, 11, 42, 127 and 129 to show me the object of the Act. Mr. B.G. Sreedharan, learned Senior Counsel relies on the judgment of the Supreme Court in AIR 1991 SC 1305 in support of the contention of the object of the Act in addition to D.V. Kempaiah and Others v The Chief Marketing Officer, Karnataka and Others, AIR 1979 Kant. 195 and Vasavi Traders v State of Karnataka and Others, 1982(2) Kar. L.J. 357 (DB). He states that the Act is a three tier Act. Section 10 provides for a nomination initially for a period of two years with an extension of one year under the proviso thereby fixing a ceiling of three years for the first Committee. He states that the object of this nomination for three years is to give a breathing time for holding elections under Section 11

of the Act. He states that there is no third tenure Committee other than the nominated member Committee and elected member Committee. He disputes the contention of the respondents to contend that the "pleasure theory" is equally applicable to the extended period as well. According to him, otherwise we would be reading something more than what is intended in the proviso by Legislature. The Legislature, in their wisdom under Section 10(4) of the Act nominates for an initial period of two years extending for a term of one year in the proviso. The extension of the term refers to the initial nomination for two years. According to him, only the period is extended without any alternation whatsoever in the matter of "pleasure". He invites my attention to the passage of Maxwell for the purpose of interpretation of statutes. He relies on *The Commissioner of Income-tax, Mysore, Travancore-Cochin and Coorg, Bangalore v The Indo Mercantile Bank Limited*, AIR 1959 SC 713, *S. Sundaram Pillai v V.R. Pattabiraman*, AIR 1985 SC 582, *A.N. Sehgal and Others v Raje Ram Sheoram and Others*, AIR 1991 SC 1406, *Om Narain Agarwal and Others v Nagar Palika Shahjahanpur and Others*, AIR 1993 SC 1440, *State of Uttar Pradesh v Uttar Pradesh State Law Officers Association*, AIR 1994 SC 1654, to contend that the golden rule is a "harmonious construction" taking into consideration the legislative intention, the object of the Act and the purpose of the Act.

18. Sri Jayakumar S. Patil, learned Counsel reiterates that the "pleasure theory" is equally applicable to the extended period in terms of the proviso. Otherwise, according to him, the Court would be doing a harm to the very proviso in creating a tenure office for the extended period, which according to him, is not the correct way of interpretation. He, while refuting the contention with regard to the unsustainable order at Annexure-D argues that a careful reading of Annexures-A, B and D would show that the arguments of the other side is not based on any legal foundation. He states that what is extended under Annexure-B is only an extension to the Committee and a reference is made to 1997 order. According to him, in 1997 order the petitioner's name is not found and therefore the petitioner cannot take advantage of Annexure-B to contend that Annexure-D is bad in law as contended by the other side. He concludes by saying that if Annexure-D is bad, Annexure-A is equally bad. He argued that a person who had the benefit of an unsustainable order, cannot complain of an unsustainable nature of another order as sought to be done in the case on hand. He relies on *Uttar Pradesh State Law Officers Association's case*, supra and *Om Narain Agarwal's case*, supra with regard to the "pleasure theory". The learned Government Advocate supports the respondents and states that this Court may not be right in excluding the "pleasure theory" in the proviso. He argued that a harmonious reading of Section 10(4)(a) of the proviso would show that the "pleasure" is equally applicable for the extended period. He contends that once the "pleasure theory" is accepted, they cannot question the wisdom of the Government or the jurisdiction of the Government since they hold the office on "pleasure". The question of issuing notice does not arise in a "pleasure appointment". He argued that proviso to Article 156(3) of the Constitution is

clearly distinguishable when compared to the language in Section 10(4)(a) of the Act. Mr. Pandurangaswamy, learned Counsel for the contesting respondents in W.P. No. 2302 of 2000 adopts the argument of Sri B.G. Sreedharan, learned Senior Counsel and contends that the various contentions so raised by the petitioners have no foundation and wants me to dismiss the writ petitions.

19. After hearing the learned Counsels for the petitioners and respondents at great length, the following questions emerge for my consideration.-

(i) Whether the theory of "pleasure" as found in Section 10(4)(a) of the Act is available for the extended term of office of the members in terms of proviso to Section 10(4)(a)?

(ii) Whether the principles of interpretation of statute provide for excluding of "pleasure" in the proviso?

(iii) Whether the impugned order creates a new Committee and whether the new Committee suffers violation of Section 11 of the Act?

(iv) Whether Annexure-D in the writ petitions is bad in law for the reason of non-cancellation of Annexure-B, the extended order?

(v) Whether Annexure-D in W.P. No. 1149 of 2000 is only an order removing the Adhyaksha thereby retaining its member?

(vi) Whether the rules of natural justice is applicable while removing a nominated member under Section 10(4) of the Act?

(vii) Whether the nomination of respondent 2 in W.P. No. 1149 of 2000 is not a bona fide decision and whether respondent 2 suffers from disqualification from being not an agriculturist?

20. Re. Point No. (i).-Before I consider the rival submissions, I deem it proper only to refer to Section 10(1), 10(1)(i) and 10(4)(a) proviso and Section 10(4)(c) of the Act. The APMC Act is essentially an Act for better regulation of marketing of agricultural produce and thereby regulate the administration of marketing of agricultural produce in the State. It is a three-tier system which provide for market area, market yard and market special yard. Market area is defined under Sections 219 and 222 and 223 define the terms "market special yard" and "market yard". A "market Committee" is provided under clause (20) of Section 2 of the Act. Chapter III of the Act deal with establishment of Market Committee and its incorporation. Section 10 provide for a constitution of a first Market Committee. It reads, notwithstanding anything contained in Section 11, the first Market Committee constituted for a market area shall consist of 11 agriculturists. The detail with regard to membership has been mentioned in the subsequent sub-section of Section 10 of the Act. Section 10(4)(a) provide for nomination of members of the first Committee for a period of two years from the date of notification under sub-section (1) subject to the "pleasure" of the State Government. The proviso refers to an extension of the term of office of the

members by such a period not exceeding one year in the aggregate. Section 11 of the Act, as mentioned earlier, provide for a constitution of a second and subsequent Market Committee by election only. In the case on hand, it is an admitted fact in all the petitions that all the petitioners were the members of the first Committee. All the Counsels for the petitioners agree that they were the members of the first Market Committee in terms of Section 10(4)(a) of the Act. They also agree and admit that the appointment/nominations is subject to the "pleasure" of the State Government. What they argue is that the proviso provides them the extension of term of office not exceeding one year and it has to be read without "pleasure". Their argument is that, it is not the intention of the Legislature to introduce "pleasure" for the extended period. Once the term is extended, according to them, it becomes a tenure office providing for no "pleasure". As mentioned earlier, the respondents emphatically dispute this legal proposition and contend that what is extended is only a term of office of the members and such extension, by no stretch of imagination can be exclude the "pleasure" of the Government. I find force in the submission of the respondents. A careful reading of Section 10(4)(a) of the Act and the proviso thereunder indicate that what is extended is the term of office of the members. When the initial term of office is subject to the "pleasure" of the State Government, the same "pleasure" has to be red to apply for the extended period as well. Otherwise, we would be creating a nominated tenure members which according to me, is not the object of Section 10(4)(a) of the Act. The APMC has to be administrated and regulated by a Committee. As argued by Sri B.G. Sreedharan, learned Senior Counsel, "pleasure appointment" is only to tide over the initial period before elections. Section 10 provide for "pleasure nomination" for a maximum period of three years and Section

11 provide for an elected body. That being the object of the Act, I find it difficult to accept the argument of Mr. Iyengar and others that the "pleasure" is not applicable to the petitioners, thereby creating one more membership, that is to say, a tenure membership. In fact, the crucial words of "extended term of office not exceeding one year in the aggregate" gives sufficient indication that what is extended is the term of office with the same pleasure as found in Section 10(4) (a) of the Act. If Section 10(4)(a) of the Act provide for "subject to pleasure", it cannot be excluded for an extended period. Therefore, I find myself unable to accept the argument of the learned Counsel for the petitions. Any other interpretation would result in creating or introducing one more set of members in between the "pleasure nominees" and the "elected members". This according to me, would be violating the very object of the Act. The Act essentially provides for a constitution of an elected body for administering the act in respect of a Committee. Section 10(4)(a) of the Act is only a first Committee and in the first Committee there cannot be two sets of nomination -one, a "pleasure nomination" and the second "tenure nomination". Therefore, looking from any angle, I am not able to appreciate the argument of exclusion of "pleasure" in the proviso as contended by the petitioners. The nomination under Section 10(4)(a)

of the Act continues to hold the office by extension and they continue to be the members of the first Committee. The first Committee members always hold the office subject to "pleasure". In the circumstances, the first question is answered against the petitioners.

21. This Court in the case of S. Govindappa, *supra*, has considered the "pleasure theory" and ruled that such removal is not in violation of Article 14 of the Constitution. It is further noticed that no right to continue exists for the complete period since the tenure is extendable by the "theory of pleasure".

22. Lord Reid in *Malloch v Aberdeen Corporation*, (1971)2 All ER 1278, at 1282 said.-

"'Acting at pleasure' means that there is no obligation to formulate reasons. The power to appoint includes the power to remove".

In *Uttar Pradesh State Law Officers Association's case*, *supra*, the Hon"ble Supreme Court was considering with regard to the termination of appointment of Law Officers by the Uttar Pradesh Government. While considering the case of the petitioner in para 7, the Hon"ble Supreme Court noticed as under.-

".... The appointments may, therefore, be made on considerations other than merit and there exists no provision to prevent such appointments. The method of appointment is indeed not calculated to ensure that the meritorious alone will always be appointed or that the appointment made will not be on considerations other than merit. In the absence of guidelines, the appointments may be made purely on personal or political considerations, and be arbitrary. This being so who come to be appointed by such arbitrary procedure, can hardly complaint if the termination of their appointment is equally arbitrary".

The Hon"ble Supreme Court has noticed that those who come by the back door, have to go by the same door. The "pleasure appointees" have to suffer the "displeasure removal" as well.

23. In *Om Narain Agarwal's case*, *supra*, the Hon"ble Supreme Court was considering the nomination of women members of Municipal Board. The Hon"ble Supreme Court considered the scope of proviso 4 to Section 9 of the Uttar Pradesh Municipalities Act. The proviso reads as under.-

"Provided also that a member nominated under this section, whether before or after February 15, 1990, shall hold office during the "pleasure" of the State Government, but not beyond the term of the Board".

24. While considering the removal, the Hon"ble Supreme Court has noticed at page 1447 as under.-

"The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the

Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the Legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution".

The Hon"ble Supreme Court also noticed at para 1448 as under:-

"It is well-established that the right of equality enshrined under Article 14 of the Constitution applies to equals and not to unequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member of the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionary in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office".

These two judgments answer that the removal being in accordance with law in view of my finding of "pleasure" as applicable even for the extended period.

25. Regarding Point No. (ii).-Sri B.G. Sreedharan, learned Counsel invited my attention to the object of the Act and also relied on the passage in Maxwell on the Interpretation of Statute, 12th Edition to contend that the proviso has to be interpreted in a harmonious way. He relies on a judgment of the Supreme Court in A.N. Sehgal's case, supra for this purpose. Per contra, Sri Shivappa, learned Counsel, relies on The Principles of Statutory Interpretation by Hon"ble Mr. Justice G.P. Singh. Maxwell in his book Interpretation of Statute, 12th Edition, as under:-

"Difficulties some times arising in construing provisos. It will, however, generally be found that inconsistencies can be avoided by applying the general rule that the words of a proviso are not to be taken "absolutely in their strict literal sense", but that a proviso is "of necessity.... limited in its operation to the ambit of the section which it qualifies".

26. In A.N. Sehgal's case, supra, the Hon''ble Supreme Court noticed as under:-

"It is cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect".

In Dwarka Prasad v Dwarka Das Saraf, AIR 1975 SC 1758, at page 1764 in para 17, the Hon''ble Supreme Court has held as under:-

"Having explained the approach we make to the specific "proviso" situation in Section 2(a) of the Act, what strikes us as meaningful here is that the Legislature by the amending Act clarified what was implicit earlier and expressly carved out what otherwise might be mistakenly covered by the main definition. The proviso does not, in this case, expand, by implication, the protected area of building tenancies to embrace "business" leases".

27. Hon''ble Mr. Justice G.P. Singh in his book principles of statutory Interpretation notices that a proviso is not normally construed as nullifying the enactment or as taking away the right completely confirmed by the enactment.

28. In the light of these pronouncements on the subject, and on the principles of interpretation of statutes it cannot be understood to mean exclusion of "pleasure" while interpreting the proviso. Proviso cannot be seen in isolation and it is to be seen as continuation of main provision. The pleasure theory embedded in the main provision has to be read in the proviso also. A cardinal rule of interpretation is to see that a harmonious construction is given in the light of the statute. The proviso cannot tear apart "pleasure" in the main proviso as contended by the petitioners. All the petitioners being members of the first Committee, have to suffer "pleasure" both under Section 10(4) and also in the proviso to Section 10(4). Therefore, on the principles of interpretation of statute, I am of the view that the "pleasure" has to be read into the proviso also and any other interpretation would result in not creating one more set of nomination "without pleasure". This cannot be done under the statute. Hence, the argument of the petitioners is rejected.

29. Regarding Point No. (iii).-The argument of Mr. Shivappa that by virtue of impugned order a new Committee has been created in contravention of Section 11 requires to be considered. At the first blush, it seems to be attractive. But on going deep into it, it is seen that what has been done in Annexure-D is nothing but replacement of the nominated members under Section 10(4)(a) of the Act. It is also clear from the wordings of the impugned order that while removing the earlier nominated members under Section 10(4)(a) of the Act. A replacement has been made so that the function of the Committee does not suffer. Once the "pleasure" theory is accepted, it matters very little as to whether it is the removal of one member or a body of the Committee. "Pleasure" can be applied either to an individual or to the Committee as well. Such wholesale replacement is not unknown to law while exercising "pleasure". In fact, as noticed in the earlier Uttar Pradesh case, *supra*, the entire body of Advocates were removed. The Court upheld the contention of Articles 14 and 16 of the Constitution. The contention that a second Committee is created by virtue of Annexure-D has no basis. It is the members of the first Committee who are replaced by another set of first Committee members. All the nominees are to be necessarily filled up for the first Committee. The second Committee can only be constituted under Section 11 of the Act. Therefore, the argument of Mr. Shivappa that the impugned order Annexure-D creates a second Committee, thereby attracting Section 11, does not appeal to me.

30. Regarding Point Nos. (iv) and (v).-The petitioner's name in W.P. No. 1149 of 2000 is not found in the 1997 order. In terms of Annexure-D he has been removed in exercise of the "pleasure theory" as Adhyaksha. Only a member can be Adhyaksha. If the Adhyaksha is removed by "pleasure theory", it cannot be contended that he continues to be member even after removal as Adhyaksha. In the case of Mr. Rame Gowda, a forceful argument was advanced to contend that Annexure-D is bad in law since it does not refer to the extension of Annexure-B. Without setting aside Annexure-B, the extension of members under Annexure-D cannot be issued. Alternatively it was argued that it can only be inferred that Annexure-D is nothing but removal of the Chairmanship of the petitioner. Though this argument was initially appealing to him, after hearing the learned Counsel for the respondents at great length, I find myself unable to accept this argument. The material facts would show that the State Government issued an order on 24-10-1997 appointing a set of members in exercise of their power under Section 10 of the Act. Thereafter, the Government in their wisdom appointed the petitioner as "Adhyaksha" in place of Rame Gowda. Admittedly, the name of the petitioner Mr. Krishnappa is not found in the Notification of 24-10-1997. The extension as referred to in Annexure-B is an extension of Committee i.e., "Adalitha Mandali" as could be seen from Annexure-B itself. That "Adalitha Mandali" is an "Adalitha Mandali" as referred to in the Notification dated 24-10-1997. If the petitioner is not found in the Notification dated 24-10-1997, petitioner cannot take advantage of Annexure-B to contend that Annexure-D is bad in law because of the issuance of Annexure-B. In view of the extension being

available only to Mandali of 1997, it cannot be contended that the petitioner survives even after Annexure-D as contended. This argument on facts, requires to be rejected by me. Once the State Government exercises its power of "pleasure" under Section 10(4) of the Act and removes the petitioner as "Adhyaksha", he cannot complain of the same. Respondent 2 has only replaced the petitioner who has replaced Rame Gowda. Now that the respondent 2 is continued in terms of Annexure-D, I do not find any illegality as contended forcibly by the petitioner.

31. Point No. (vi).-A feeble attempt was made contending that rules of natural justice is violated. Mr. Keshava Iyengar, learned Senior Advocate was fair in submitting that in "pleasure appointments" this opportunity of hearing is not available. This point is fully considered by this Court in S. Govindappa's case, *supra* and this Court, after noticing various judgments, has ruled that an opportunity to show cause against such termination dealing with "pleasure" is not available. Therefore, this point requires to be noticed for rejection.

32. Point No. (vii).-The petitioner's learned Counsel argued that respondent 2 is not an agriculturist. In the light of the various Annexures filed along with the statement of objections by respondent 2, the argument of respondent 2 being not an agriculturist, is factually unsustainable. Respondent 2 has produced various extracts and in all those annexures respondent 2's name is found and therefore, this argument of respondent 2 being not an agriculturist, is also liable to be rejected. Further, argument of the petitioner in W.P. No. 1149 of 2000 that the appointment of respondent 2 is not bona fide also requires to be rejected. A very bald allegation of influencing good office does not by itself take the petitioner any where for the purpose of annulling the appointment of respondent 2. Whenever allegations of grave nature are made, the same has to be supported with pleadings and for want of pleadings and evidence, this point is also answered against the petitioner.

33. The last argument of comparison of Article 156(3) of the Constitution is not tenable. The proviso to Article 156(3) provides that a Governor shall, notwithstanding the expiration of his term, continue to hold until his successor enters upon his office. The said Article 156(3) proviso, if read carefully in the light of the provisions of Section 10(4) of the Act, makes an interesting reading. There is no expiry in Section 10(4)(a) of the Act as in the case of Article 156(3) of the Constitution. On the other hand, proviso to Section 10(4)(a) provides only for extension. The extension, I have already held, is subject to "pleasure". Therefore, this argument is also not available to the petitioners. The petitioner has relied on Krishna Ballabh Sahay's case, *supra* to contend that these petitioners also can continue without interference. The Hon'ble Supreme Court has noticed that since no new Governor is appointed after the expiry of the term, the Governor continues under Article 156(3) proviso. In the case on hand, a replaced Committee is already appointed vide Annexure-D. Hence, on facts and on law, this point is also answered against the petitioners.

34. All the writ petitions are dismissed. The impugned orders in each of the writ petitions are upheld. The interim order of status quo stay is vacated consequent upon the dismissal of the writ petitions. The parties are to bear their respective costs.