

(2007) 08 KAR CK 0017

In the Karnataka High Court

Case No : Writ Petition No's. 3822 and 3823 of 2007

T.C. Dasaraiah and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 10, 145 (1)

Citation : (2008) 1 KarLJ 72

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : H.N. Shashidhara, for Kesvy and Company, for the Appellant; G. Chandrashekaraiah, A.G.A. for Respondent No. 1, H.K. Thimmegowda, G. Gangi Reddy, for Respondents 5 to 17 in W.P. No. 3823 of 2007 and G. Gangi Reddy, for Respondents 5 to 22 in W.P. No. 3822 of 2007, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—Petitioners in these two petitions have questioned the validity or otherwise of the impugned notification dated 13th February, 2007 bearing No. SAYI. 184-MRE.2005 vide Annexure-A in both petitions.

2. The grievance of petitioners in these two writ petitions is that, the first respondent-State Government has constituted (i) the second respondent-Market Committee, comprising of Chikkaballapur, Siddlaghatta and Bagepalli Taluks and (ii) the third respondent-Market Committee comprising of Gouribidanur and Gudibande Taluks under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Petitioners herein claim that, they are the elected members to the respective Market Committees for a period of five years. When things stood thus, it is the petitioners' case that, the Deputy Commissioner, Kolar District has published the draft notification for bifurcation of the second and third respondents herein, i.e., the two Market Committees as stated above into three Market Committees, viz., (i) Chikkaballapur Market

Committee, consisting of Chikkaballapur and Siddlaghatta Taluks (ii) Gouribidanur Market Committee consisting of Gouribidanur Taluk and (iii) Bagepalli Market Committee consisting of Bagepalli and Gudibande Taluks. Accordingly, the first respondent-State Government has issued the draft notification on 3rd June, 2005 intending to bifurcate the existing two Market Committees into three Market Committees and called for objections from the general public, particularly aggrieved persons. Upon receipt of objections filed by farmers and other persons of that area, the State Government has considered the same and overruled the same in the larger interest and consequently, a final notification has been issued on 13th February, 2007 vide Annexure-A in both petitions, bifurcating the existing Chikkaballapur Market Committee and Gouribidanur Market Committees into three Market Committees and appointed the Tahsildar as the Administrator to look into the administration of the said Committees. Being aggrieved by the impugned final notification, petitioners herein felt necessitated final notification, petitioners herein felt necessitated to present the instant writ petitions, seeking appropriate reliefs, as stated above.

3. The principal ground urged by petitioners in these two petitions is that, the action of first respondent-State Government in bifurcating the existing two Market Committees into three Market Committees when the term of the duly elected members of the existing Market Committees is not yet over, is arbitrary, illegal and capricious. Therefore, the impugned notification issued by first respondent is liable to be quashed at the threshold itself. Further, learned Counsel appearing for petitioners submitted that, the appointment of persons of the choice of first respondent as per Section 10 of the Karnataka Agricultural Produce Marketing (Regulation) Act (hereinafter called the "Act"), for a period of two years is with legal mala fide and the impugned notification issued is bad in law. Further, it is vehemently submitted on behalf of petitioners that, the action of first respondent in issuing the impugned notification is illegal for the reason that, the said authority has failed to notice that the term of the elected members in five years and that, the said term expires on 2nd June, 2010 since they have been noticed to be the duly elected members on 3rd June, 2005 under Sections 38 and 39 of the APMC Act and therefore, the said authority does not have any right as such under the relevant provisions of the Act to curtail the term of petitioners in the middle of the term and they also cannot issue the impugned notification. Hence, the impugned notification issued at Annexure-A is liable to be quashed. Further, learned Counsel appearing for petitioners pointed out that, the action of first respondent is a colorable exercise of power only with an intention to remove the petitioners herein, who are duly elected members out of political vendetta. Therefore, the impugned notification issued by first respondent is liable to be quashed. Further, he submitted that, the impugned notification issued by the Competent Authority is liable to be set aside and the relief sought for by petitioners may be granted.

4. Per contra, learned Counsel appearing for respondents 5 to 17 (in W.P. No. 3823 of 2007) and respondents 5 to 22 (in W.P. No. 3822 of 2007), inter alia

contended and substantiated the impugned notification issued by the first respondent stating that, the first respondent, by exercising the power conferred upon it under the relevant provisions of the Act, has, in the best interest of the public and the beneficiaries of the Market Committee, issued the impugned notification and no error or illegality as such has been committed nor there is any intentional curtailment of the term of the petitioners, who are duly elected members of the earlier Market Committees. The impugned decision taken is purely in the interest of the traders, farmers and also taking into account the other vital aspects of the matter. Further, he submitted that, having regard to the large area coming within the operation of the existing Market Committees, the first respondent thought it fit to bifurcate the existing Market Committees, to safeguard the interest of all the persons and to provide better and effective facilities and that, the said decision taken by first respondent is well-within the parameter of the statute. Therefore, he submitted that, the Competent Authority has not committed any error or illegality or material irregularity in taking the impugned decision. Further, he vehemently submitted that, when the draft notification was issued giving sufficient time for filing objections, only one or two petitioners have chosen to file their objections putting forth their grievances. The first respondent, after considering the objections that were filed and after affording reasonable opportunity to the persons, who came within the jurisdictional area of the earlier Market Committees, by following due procedure prescribed under the relevant provisions of the Act, has issued the impugned final notification. Further, to substantiate the said submission, learned Senior Counsel appearing for some of the respondents, referred above, placed reliance on the judgment of this Court in the case of V.A. Nadkarni and Another Vs. The State of Karnataka and Another, and submitted that, the principles of law laid down in the said case squarely applies to the facts and circumstances of the present case and the prayer sought for by petitioners cannot be considered and the instant writ petitions filed by petitioners are liable to be dismissed.

5. Further, Sri H.K Thimmegowda appearing for respondents 2 to 4-Agricultural Produce Market Committees, placing reliance on the judgment of this Court in the case of Smt. Tungamma and others Vs. State of Karnataka and others, , submitted that, petitioners herein cannot assail the correctness of the impugned notification as a matter of right for the reason that, the impugned decision taken by first respondent for bifurcating the existing Market Committees is an act of administration in exercise of the legislative power and not an administrative power and therefore, there is no obligation on the part of State Government to follow the principles of natural justice by hearing the parties to be affected or considering their objection before issuing the notification.

6. Learned Additional Government Advocate appearing for first respondent, at the outset, submitted that, the subject-matter involved in the instant writ petitions is directly covered by the well-settled principles of law laid down by the Apex Court and this Court in series of matters. The Competent Authority has taken the impugned decision after taking into consideration the welfare of the

farmers, traders, general public etc. Therefore, he submitted that, petitioners have not made out any good grounds to interfere in the impugned notification issued by the Competent Authority and the instant writ petitions filed by petitioners are liable to be dismissed.

7. I have heard learned Counsels appearing for petitioners in both petitions and learned Counsel appearing for respondents.

After careful evaluation of the material available on record and in the light of the submission made by learned Counsel appearing for all parties, the only question that arise for consideration in the instant writ petitions is as to.

Whether the impugned notification issued by first respondent vide Annexure-A is sustainable in law?

8. After careful perusal of the preamble of the impugned notification at Annexure-A, it emerges that, the Competent Authority, after duly following the procedure specified under Sections 3 and 4, has called for objections and after adhering to all the requirements of the statute, has issued the impugned notification under Sub-section (1) of Section 145 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 by Act No. 27 of 1966. The first respondent has taken into consideration the welfare of the members of the Market Committee and also keeping in mind the large area of operation involved and also the financial implications, the administrative expenses to mobilise the resources for maintaining the Market Committee and also keeping in mind, the distance of the area of operation and also for the convenience of the farmers, Commission Agents, Traders and public in general and it is justifiable that, a just and reasonable price is paid to the growers, and also to provide all the basic needs to the persons coming within the area of operation of the Market Committees. Having regard to all these aim and object and keeping in view the larger interest of public in general and persons who are directly connected with the Market Committee in particular and also having regard to the paramount consideration, the first respondent has taken the impugned decision to bifurcate the existing two Market Committees into three Market Committees. Therefore, I do not find any arbitrariness or illegality or mala fide as such in the decision taken by first respondent in bifurcating the existing Market Committees, as strenuously contended by learned Counsel appearing for petitioners. The said decision has been taken after considering various aspects into consideration such as the area of operation involved, to provide better facility and improve existing standard, quality of service, to offer quick and inexpensive facility to persons who approach the Market Committees and also having regard to the financial implications in maintaining the administration of the Market Committees etc. Therefore, interference by this Court in the impugned decision is not justifiable nor I find any good grounds to entertain the instant writ petitions and sustain the grounds urged by petitioners in the present writ petitions.

9. Further, regarding the principles of law laid down by this Court in the cases of

Nadkarni V.A. and Smt. Tungamma, as rightly pointed out by learned Counsel appearing for respondents, the ratio of law laid down by this Court in the said decisions fully applies to the facts and circumstances of the case on hand and I do not find any arbitrariness or unreasonableness in the decision taken by first respondent, bifurcating the existing two Market Committees into three Market Committees. The only main ground urged by petitioners in the instant writ petitions is that, they have been duly elected by the earlier Market Committees for a period of five years and that, the said period is not yet over and by virtue of the impugned notification, bifurcating the existing Market Committees, the tenure of the petitioners will be curtailed and would come to an end. Therefore, petitioners claim that, they must be permitted to continue as a matter of right as they have been duly elected for a period of five years and that, they must be allowed to complete the full term of five years as per the earlier notification and that, the impugned notification issued by first respondent would virtually take away their right of continuation. Further, having regard to the facts and circumstances of the case, I am of the view that, when the Legislature itself, after due deliberation with all the persons concerned, has thought it fit and taken a decision having regard to the totality of the case at its disposal, in exercise of the power conferred upon it to implement the object and reasons of enactment, which is in fact the privilege of the Legislature to take such a decision, in the best interest of the parties and which is beneficial for the persons coming under the said setup, it is not justifiable for this Court to interfere in the said decision and defeat the objects of the said enactment. But, in view of the impugned bifurcation of the existing Market Committees, it will not affect the right of these petitioners, in any manner. If the contention of these petitioners that, they should be permitted to continue and complete their full term, then, the bifurcation proceedings should be stalled and the said proposition is neither acceptable nor the same is permissible within the parameter of the relevant provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 and the Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968. When it is a policy decision taken by the State Government in the best interest of general public at large and members and constituents of Market Committees in particular, this Court is not justifiable in interfering with the impugned notification nor I find any good grounds to entertain the instant writ petitions.

10. Further, it is pertinent to note that, when the draft notification was issued on 27th September, 2006 and published in the Karnataka Gazette on 9th November, 2006 calling for objections/suggestions from the aggrieved persons, one or two petitioners herein have chosen to file their objections, putting forth their grievances, that too, the one put forth are also not satisfactory. Now, at this belated stage, when the draft notification has been approved and final notification is issued and bifurcation proceedings has already been given effect to, it is not proper and justifiable on the part of this Court to interfere in the impugned notification and stall the bifurcation proceedings, which has been done

after following due procedure.

12. Further, having regard to the facts and circumstances of the case, I do not think there is any substance in any of the grounds urged by petitioners. It is not for this Court to decide as to whether the market area would be an economically viable market area or not. The Legislature has entrusted the duty of establishing a market area to the State Government which is the Competent Authority and the State Government is ordinarily expected to discharge its duties in accordance with law and in the interest of public. Further, it is significant to note that, this Court cannot also lose sight of the fact that, sometimes it may be necessary to establish market areas in some places to encourage the economic growth in those places and to provide easy access to the beneficiaries coming under the market area even though the market area may not be a self-supporting one at the commencement. In such circumstances, the question is, whether the aggrieved party can redress the grievance before this Court by invoking the extraordinary jurisdiction as envisaged under Article 226 of the Constitution of India. It is pertinent to note that, as a consequence of setting up of three Market Committees in the place of two Market Committees, curtailment of term of these petitioners, who are elected as members of the then existing Committees itself is not sufficient to hold that, the action of the State Government would result in mala fides or arbitrariness and unreasonableness on its part. If the petitioners herein want to attach the action of any authority on the ground of mala fides, must establish it by alleging all necessary particulars and by adducing authenticated proof in support of those allegations and also taking into consideration all the circumstances and grounds in order to decide the question as to, whether the action of an administrative authority is mala fide, unreasonable and arbitrary or not. Therefore, I am of the considered view that, the grounds urged by petitioners in the instant writ petitions are not sufficient to come to the conclusion that, the decision taken by the Competent Authority in the instant case is unreasonable or mala fide. Therefore, I am forced to decline to interfere in the impugned notification issued by the Competent Authority. Having regard to the larger interest and broader aspects involved in taking the impugned decision, I am of the view that, the decision taken by the Competent Authority is just and proper. Therefore, taking into consideration the totality of the case on hand, having regard to the facts and circumstances of the case, and the legal aspects of the matter and also in view of the well-settled law laid down by this Court, referred above, the writ petitions filed by petitioners are liable to be dismissed as devoid of merits. Accordingly, they are dismissed.