

(1975) 07 KAR CK 0016
In the Karnataka High Court

V.A. Nadkarni and Another

APPELLANT

Vs

The State of Karnataka and Another

RESPONDENT

Date of Decision : 10-07-1975

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 112 (2),
112 m, 145 (1), 145 (2) (a)

Citation : AIR 1976 Kar 141 : (1975) 2 KarLJ 464

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Advocate : T.S. Ramachandra, for the Appellant; M. Ramakrishna, Govt. Pleader,
for the Respondent

Judgement

1. This Writ Petition is filled by two petitioners. The first petitioner was formerly the President of the Taluk Development Board, Bhatkal. The second petitioner was the Chairman of the Kumta Agricultural Produce Market Committee. In this writ petition, they have questioned the validity of the notification dated 18-6-1975 issued by the State Government u/s 145(1) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as the Act), dividing Kumta Market Area into two Market Areas and of the two notifications dated 18-8-1975 issued u/s 145(2)(a) of the Act constituting market committees for the two new Market Areas.

2. There was a Market Area established under the Bombay Agricultural Produce Markets Act, 1939, comprising of Kumta, Ankola and Honnavar Taluks and Bhatkal Petha of the District of North Kanara. The 2nd petitioner was the Chairman of the said Market Committee. Being desirous of dividing the said market area into two separate Market Areas, the Government initiated action under the provisions of the Act by publishing a draft notification stating that two Market Areas namely, Kumta Market area consisting of Kumta and Ankola Taluks and Honnavar Market Area constituting of Honnavar and Bhatkal Taluks would be established in the place of the Kumta Market Area which had jurisdiction over all

the four taluks. It invited representations and objections with regard to the above proposal. Some persons including the petitioners, filed objections to the proposal of the State Government. After taking into consideration the representations and objections and the opinion of the State Agricultural Marketing Board as required u/s 112 of the Act, the State Government decided to establish two market areas as stated above in the place of the former Kumta Market Area. The first notification which is questioned in this writ petition is the notification under which two market areas are established. The second and third notifications which are impugned in this case are those under which the State Government nominated members to the Market Committees of the two new Market areas.

3. Sri T. S. Ramachandra, learned Counsel for the petitioners, urged three contentions in support of the writ petition:

(1) the action of the State Government in issuing three notifications is liable to be set at naught on the ground of mala fides;

(2) as the State Government has violated Section 112 of the Act, the notifications are liable to be declared as void, and

(3) the appointment of Sri M. A. Wahab as Chairman of the Kumta Market Committee is illegal.

4. The third contention raised by Sri T. S. Ramachandra, can be conveniently disposed of first. Sri M. A. Wahab has not been impleaded as a party to this petition. Hence the question whether he is qualified to be a Chairman or not, cannot be gone into in his absence. The third contention is therefore rejected.

5. I shall now advert to the first contention urged by Sri T. S. Ramachandra, namely, the action of the State Government suffers from mala fides. In support of the above contention, the learned Counsel urged three grounds:

(i) the market area consisting of Bhatkal and Honnavar Taluks would not be an economically viable one;

(ii) the action of the State Government in splitting one market area into two market areas was an unwise step as there was no need to do so; and

(iii) as the 2nd petitioner who is a member of Congress Organisation party, has to vacate his office as Chairman of the Kumta Market Committee which had originally jurisdiction over the four talukas, the action taken by the State Government consisting of Ministers belonging to Congress (R) party, has to be declared as void I do not think there is any substance in any of these three grounds. It is not for this Court to decide 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 a high authority. The State Government is ordinarily expected to discharge its duties in accordance with law and in the interest of public. The 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, even though the market area may not be a self-supporting one at the commencement. Similarly, whether the action is wise step or not is again not for adjudication in a petition under Article 226 of Constitution

6. It may be that as a consequence of setting up of two Market Committees in the place of one, a Chairman who belonged to an opposition group lost his post. That by itself is not sufficient to hold that the action of the State Government is the result of mala fides on its part. A person who wishes to attack the action of any authority on the ground of mala fides, must establish it by alleging all necessary particulars and by adducing proof in support of those allegations. The Court should take into consideration all the surrounding circumstances in order to decide the question whether the action of and administrative authority is mala fide or not. I am of the view that the grounds urged in support of the first contention are not adequate to draw an inference that the action of the Government is mala fide. They do not even require to be controverted.

7. The next contention is that there has been infringement of Section 112(2) of the Act. Section 112(2) requires that any action taken under Sections 4, 5, 6 and 127 of the Act should be taken in consultation with the State Agricultural Marketing Board. When the above petition came up for preliminary hearing on the last day, the learned Government Pleader who was present in Court, was asked by the Court to produce materials relating to the consultation with the Board. Accordingly he has produced the file of the State Government. It is seen therefrom that the State Agricultural Marketing Board has passed a resolution on 31-5-1974 stating that the Board has agreed for the establishment of an independent Market Committee at Honnavar after bifurcating the market area of the Agricultural Produce Market Committee, Kumta, into two market areas. In the said file, there is also a letter of the Chief Marketing Officer, dated 26th June, 1974, stating that the Board had passed the resolution on 31-5-1974 and a copy of the resolution is enclosed with it. On looking into the letter of the Chief Marketing Officer and the copy of the resolution of the Board, Sri T. S. Ramachandra, learned counsel, contended that although there was consultation with the Board, there was no effective consultation. He argued that all the material necessary for giving its advice had not been furnished to the Board. There is no basis for this allegation. The Board consists of persons who are quite knowledgeable and who know the consequences of establishing a market area in a given place. It cannot be said that there was no effective consultation.

8. The next submission made by him in this regard was that the Government had not consulted the Board but the Chief Marketing Officer had consulted the Board. I do not think that the opinion tendered by the Board can be ignored merely on the ground that the person who had sought the opinion, was not the Government but the Chief Marketing Officer. The Chief Marketing Officer is a functionary under the Act who is intimately connected with the administration of market areas and

sub-section (2) of Section 112 of the Act does not say that the State Government alone should consult the Board with regard to the matters referred to therein.

9. I do not think there is any infringement of Section 112(2) in this case. Even granting for purposes of argument that the law required the State Government to consult the Board, but the Board had given its advice pursuant to the letter of the Chief Marketing Officer, still it cannot be said that there is no effective consultation, because, there has been substantial compliance with the requirement of law. What is material in the circumstances of this case is whether the opinion of the Board was available to the State Government before taking a decision u/s 3 and not whether the consulting authority was different from the one who should have consulted the Board.

10. The other limb of the argument of Sri T. S. Ramachandra in support of his second contention is that the opinion of the Board had been recorded by it even before the representations and objections were received by the State Government to the draft notification and that therefore the opinion of the Board was no opinion at all. The Act does not state that the Board should be supplied with the representations and objections received to the draft Notification. The State Government has to take its decision on the basis of the objections and representations and the opinion expressed by the Board. It does not state that the objections and representations should be sent to the Board before it tenders its advice. Hence I do not find any substance in this part of the case of the petitioners.

11. There is one other ground on which the second contention of the learned Counsel has to be rejected. It cannot be said that in all cases where one authority should consult another authority before taking any action, any action taken would be void on the ground of want of consultation particularly when the advice tendered by the consulted authority is not binding on the consulting authority. This view is in accord with the decision of Supreme Court in State of U.P. Vs. Manbodhan Lal Srivastava, in which the Supreme Court while interpreting Art. 320(3) of the Constitution, held that non-consultation with the Public Service Commission whose opinion was not binding on the Government would not vitiate the decision taken by the Government in a disciplinary proceeding although the Constitution required the State Government to consult the Public Service Commission on such matters. In the instant case also the advice tendered by the State Agricultural Marketing Board is not binding on the State Government.

12. Sri T. S. Ramachandra, learned Counsel for the petitioners, however, drew my attention to the decision of Supreme Court in Chandramouleshwar Prasad Vs. The Patna High Court and Others, in which the Supreme Court held that the appointment of the District Judge by the Government without consultation of the High Court was void. The decision of the Supreme Court in that case is distinguishable from the facts of the present case. In Chandramouleshwar Prasad's case, the Supreme Court was interpreting Article 233 of the

Constitution providing for the appointment of District Judges which formed an essential part of the Scheme of administration of justice in the States. The importance of consultation with the High Court in that context has to be determined with special reference to the position assigned to the High Court by the Constitution so far as matters pertaining to subordinate Judiciary are concerned. In that decision, there is no reference to the decision of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, . The principle enunciated by the Supreme Court in *Chandramouleshwar Prasad*'s case cannot be extended to a provision in a Statute dealing with the establishment of Market Committees. Sri Ramachandra also drew my attention to the decision of Supreme Court in *Naraindas Indurkha Vs. The State of Madhya Pradesh and Others*, and contended that non-consultation with the Board would vitiate the action of the State Government. He cannot receive any support from the above two decisions, because the case on hand is not one where there is no consultation at all. As already mentioned, the Board had conveyed its opinion to the State Government on the desirability of establishing two Market Areas in the place of one Market Area. There is thus, no substance in any of the contentions urged in support of the petition.

13. Hence the petition is dismissed at the stage of preliminary hearing.

14. Petition dismissed.