

(2002) 08 KAR CK 0050

In the Karnataka High Court

Case No : Writ Appeal No's. 4408-09 and 4414 of 2001

Veeranna and Another

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 26-08-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1)
Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 10 (4) (a),
44 (1), 44 (2), 63 (2) (a)

Citation : (2003) 2 KCCR 1542

Hon'ble Judges : R.V. Raveendran, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : V.T. Rayaraddi, in Writ Appeal Nos. 4408 and 4409 of 2001 and B. Veerappa, in Writ Appeal No. 4414 of 2001, for the Appellant; M.B. Prabhakar, A.G.A. for Respondent 1 in Writ Appeal Nos. 4408 and 4409 of 2001, for Respondents 1 to 3 in Writ Appeal No. 4414 of 2001 to 3, N.G. Sridharan, for Respondent 2 in Writ Appeal Nos. 4408 and 4409 of 2001, B.S. Patil, for Respondents 3 to 9 in Writ Appeal Nos. 4408 and 4409 of 2001, B.G. Sridharan, for Respondent 4 in Writ Appeal No. 4414 of 2001 and A.R. Sharadhamba, for Respondents 8 and 11 to 13 in Writ Appeal No. 4414 of 2001, for the Respondent

Judgement

R.V. Raveendran, J.—The Appellants in these appeals had filed Writ Petition Nos. 2767 of 2001, 19683 of 2001 and 4882 of 2001 for striking down Act 8 of 2001, that is The Karnataka Agricultural Produce Marketing (Regulation) (Amendment) Act, 2001 ("The Amending Act" for short) as un-constitutional.

2. The Amendment Act modified Section 10(4)(a) and Section 44(1), substituted Section 44(2) and added clause-(13) to Section 63(2)(a) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 ("APMC Act" for short). We may refer to the amendments briefly.

2.1) Section 10(4)(a) with its proviso, before amendment read thus:

(4)(a) Save as otherwise provided in this Act (but subject to the pleasure of the

State Government) the members of the first market committee shall hold office for a period of two years from the date of notification under Sub-section (1):

Provided that the State Government may by notification extend the terms of office of the members by such period or periods not exceeding one year in the aggregate.

By the amendment, period of one year specified in the proviso is substituted as "two years".

2.2) Section 44(1) of the Act before amendment read thus:

44. Motion of no-confidence-(1) A motion of no-confidence may be moved by any member against the Chairman or the Vice-Chairman after giving such notice as may be prescribed and such notice shall be supported by not less than one third of the total number of members of the market committee. If a meeting for consideration of the no-confidence motion is not directed by the Chairman to be convened within thirty days from the date of the notice, the Secretary of the market committee shall convene the meeting:

Provided that a motion of no-confidence shall not be moved within a period of one year after the failure of a similar motion of no-confidence moved earlier.

By the amendment, the word "six months" is substituted for "one year" in the proviso to Section 44(1).

2.3) Section 44(2) as it stood before the amendment and Section 44(2) as substituted read as follows.

Section 44(2) (before amendment) Section 44(2) (after amendment) If the Motion against the Chairman or the Vice-Chairman is carried by a majority of not less than two-thirds of all the then members of the market committee, the Chairman or the Vice- Chairman, as be removed from his office by an order passed of that effect by the Director of Agricultural Marketing. The order shall be communicated to the Secretary of the Market Committee and the Chairman or Vice-Committee and the Chairman or Vice-Chairman or Vice-Chairman concerned.

If the motion against the Chairman or the Vice-Chairman or both is carried by a majority of the total number of members present and voting at a meeting specially convened for the purpose, the Chairman or the Vice-Chairman shall forthwith vacate the office of the Chairman or Vice-Chairman as the case may be.

2.4) Section 63(2)(a) of the APMC Act after addition of clause-(xiii) reads thus:

63. Powers and duties of market committee.-

(1)

(2) Without prejudice to the generality of the foregoing provision-

(a) a market committee shall-

(i) to (12)....

(xiii) contribute to the Floor Price Scheme and Raita Sanjeevini Accidental Insurance Scheme at such rate as may be determined by the Director of agricultural Marketing.

3. The learned Single Judge who heard the said writ petitions with other similar matters, dismissed them by common order dated 24.7.2001, upholding the validity of the amendments. Feeling aggrieved, Petitioners in the writ petitions have filed these appeals re-iterating the contentions urged before the learned Single Judge.

4. Before dealing with the validity of the amendments to the APMC Act, it will be relevant to refer to the grounds on which a law enacted by a Legislature can be struck down. In *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, , the Supreme Court held thus:

A law made by the Parliament or the Legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in part-III of the Constitution or of any other constitutional provision. There is no third ground....

It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the Clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are suppose to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom.

We will now consider the challenge to several provisions of the Amendment Act in the light of the said principles.

Re: Amendment to Section 10(4)(a):

5. Section 10 relates to the constitution of the First Market Committee. Section 11 relates to constitution of the second and subsequent market committees. Under the scheme of the Act, First Market Committee consists of only ex-officio members and nominated members and the second and subsequent market committees will have both elected members as also ex-officio members and nominated members. Clause (a) of Sub-section (4) of Section 10 provides that

save as otherwise provided in the Act but subject to the pleasure of the State Government, members of the first market committee shall hold office for a period of two years from the date of notification under Sub-section (1); and the proviso thereto enable the State Government to extend that term of office of the members by such period/s not exceeding one year in the aggregate (which is now been made into two years by the amendment).

6. The Appellants rely on the principle of construction that in the absence of clear indication to the contrary, a proviso would not take away the substantive rights given by the Section or Sub-section (vide the decision of the Supreme Court in *Madhu Gopal Vs. VI Additional District Judge and Others*, . The Appellants contend that when Sub-section (4)(a) of Section 10 specifies the term of office of the First Market Committee as two years, the extension cannot be for an equal period. It is contended that providing for a long tenure for nominated members would affect the democratic functioning of the Agricultural Produce Market Committees; and that the tenure of the nominated first market committee should be as short as possible so that the management can be shifted to the elected representatives as quickly as possible. It is submitted that any provision which permits the Executive to further extend the term of office of the nominated first committee would delay and defeat, the democratic process in regard to the conduct of the affairs of the Agricultural Produce Market Committee. It is next contended that if at all the period had to be extended, extension ought to have been by amending the main Sub-section that Section 10(4)(a) and not the proviso to Section 10(4)(a).

7. It is true that any provision for extension of the term of office of the first market committee will delay the Elected Body coming into management u/s 11. But that by itself is not a ground to hold that the amended proviso to Section 10(4)(a) is un-constitutional. As pointed out in *McDowell's* case, a challenge can be only on two grounds, one is lack of legislative competence, second is violation of the provisions of part-III or any other provision of the Constitution. It is not the contention of the Appellants that the Karnataka State Legislature lacks the competence to make the amendment. Any provision relating to elections and constitution of elected bodies can only be a right regulated by statute and not a fundamental right. The amended provision does not affect any fundamental right or other provisions of the Constitution.

8. The Appellants contend that providing for a span of two plus two in all four years for the nominated members, thereby preventing the elected members taking over management makes the provision arbitrary and unreasonable and therefore violative of Article 14. If the enactment provides that the first nominated committee shall hold office for a particular period (subject to extension by the State Government due to some justifiable reason) and only then there should be elections, it is not arbitrary or unreasonable. It is a legislative policy. Similarly, if the period of extension is changed from one year to two years, that by itself will not make the provision unreasonable or arbitrary.

Even if we are of a different view in regard to the tenure of nominated committee or have reservations about the wisdom of postponing the handing over of management to an elected body, that by itself is not a ground for holding that the provision of the statute is unconstitutional. So long as the challenge to the amendment to proviso to Section 10(4)(a) is concerned does not come under the grounds permitted, the challenge is liable to be rejected. The remedy if any for the Appellants is therefore to appeal to the legislature for shortening the span of the office of the nominated members.

Re. Amendment to Section 44(1) proviso:

9. The Proviso to Sub-section (1) of Section 44 earlier provided that a motion of no confidence will not be moved within a period of one year after failure of a similar motion of no confidence moved earlier. By the Amendment Act, the waiting period for moving another no confidence motion is reduced from one year to six months. The effect therefore is that a motion of no confidence can be moved immediately after the expiry of six months after moving a similar motion earlier. The Appellants urge two contentions in support of the challenge. The first contention is that when a no confidence is moved and fails, earlier, Chairman or the Vice-Chairman had an un-interrupted and peaceful term of one year. When it is reduced to six months by the amendment Act, it introduces a continuous uncertainty and creates pressure on the office of the Chairman and Vice-Chairman. The second contention is that the Section as it stands, has been in force, for nearly 14 years and had not given rise to any complaints and therefore there is no justification or reason for making an amendment.

10. Here again, the grounds urged are not those on which the validity of a statutory provision can be challenged. Whether the period between one no confidence motion and another should be one year or six months or any other period is again a matter for the legislature to decide in its wisdom and not for the Courts. Further, merely because a provision has been in the Statute Book for a period of about 15 years is not a ground for not amending it if the legislature feels that the provision requires amendment. Therefore, the challenge to the amendment to proviso to Section 44(1) is also rejected for the same reasons given by us for rejecting the challenge to the amendment to the proviso to Section 10(4)(a).

Re: Substitution of Section 44(2)

11. Section 44(2) as it stood before the amendment provided that a motion for removal of a Chairman or Vice-Chairman from the office shall be carried by a majority of not less than two-thirds of all the then members of the market committee. The term "two-thirds of all the then members of the market committee" would refer to two-thirds of the actual total strength of the market committee.

12. The said section has now been substituted by a provision which provides that if the motion against the Chairman or Vice-Chairman or both is carried by a

majority of the total number of members present and voting at a meeting specially convened for the purpose, the Chairman or the Vice-Chairman as the case may be, shall forthwith vacate his office.

13. The Appellants contend that for carrying a motion of no-confidence, normally all statutes provide a minimum requirement of two-third of total members of the body or at least a simple majority of the total members of the body. It is submitted the removal of Chairman or Vice-Chairman is never by a no-confidence motion carried out by a simple majority of the total number of members actually present and voting at a meeting. It is pointed out that if the strength of a committee is 17 and if the quorum required is 6, only 4 members out of six can carry out a motion to remove the Chairman and Vice-Chairman, and that would be wholly un-democratic apart from encouraging "horse-trading". Reference is invited to the provisions of the Karnataka Panchayat Raj Act, 1993 and the Karnataka Municipalities Act, 1964 to demonstrate that normally what is required for passing a no confidence motion, is not less than two-third of the total number of elected body and not two-third or half of the total number of bodies present and voting. The Appellants contend that the amendment introduces a procedure which is not found in any legislation till now and it will lead to disastrous results in so far as the functioning of the market committees are concerned. The Appellants contend that most of the market committees in the State are controlled by the members belonging to Janata Dal; that the Congress party which has come to power in the State wants to somehow or the other wrest the control of the market committees from Janata Dal; and that with that object, Sub-section (2) of Section 44 has been substituted. It is pointed out that Section 11 has been earlier amended providing for voting rights to three members nominated by the State Government; and that therefore the minority of elected members with the help of nominated members can now remove the Chairman and Vice-Chairman inspite of the simple majority enjoyed by Janata Dal in most of the Market Committees. In other words, the contention is that substitution of Section 44(2) is motivated by the malafides on the part of the majority members of the legislature.

14. It is now well settled that the legislature as a body cannot be accused of having passed a law for an extraneous purpose. The reasons for passing a law are those that are stated in its objects and reasons and if none are so stated, as appears from the provisions enacted by it. Even assuming that the executive, in a given case, had an ulterior motive in moving a legislation, that motive cannot render the passing of the law malafide, as "transferred malice" is unknown in the field of legislation. (vide K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, . We may also refer in this behalf to the following observation of a Constitution Bench of the Supreme Court in T. Venkata Reddy and Others Vs. State of Andhra Pradesh, :

It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the legislature concerned,

dependent upon the subject matter of the statute, the manner in which it is accomplished and the mode of enacting it. While the Courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the legislative discretion is properly exercised. The motives of the legislature in passing a statute is beyond the scrutiny of Courts. Nor can the Courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. The propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the Courts.

(Emphasis supplied)

Therefore, the contention based on malafides and ulterior motives in passing the Amendment Act is liable to be rejected. Equally untenable is the contention of the Appellants with reference to the provisions of the Panchayat Raj Act and the Municipalities Act which provide a motion of confidence to be moved and passed by two-third of the total number of the body instead of a simple majority of the number of members present and voted. Different laws made with reference to different subjects cannot be taken together for the purpose of comparison and to contend that the provisions of one are discriminatory when read with the provisions of the other. Each law will have to be read separately in its own context. What is to be seen is whether the provision of the statute in question, by itself is discriminatory or arbitrary. Of course, when the same legislature enacts a number of connected laws, their combined operation may be taken into consideration for determining whether the provisions anyone of the them are discriminatory. (vide *The State of Madhya Pradesh Vs. G.C. Mandawar*, and *State of Tamil Nadu and Others Vs. Ananthi Ammal and Others*, . Even if the Appellants are able to persuade us to take a view that the State should have made similar provisions for no-confidence, relating to all local bodies, that will not further the cause of the Appellants. Legislation is within the realm of the legislature. So long as no constitutional infirmity is shown, we cannot interfere on the ground of want of uniformity. Hence the second ground to challenge the substitution of Section 44(2) is also liable to be rejected as having no merit.

Re. Amendment to Section 63(2)(a) by addition Clause (13):

15. Section 63 deals with the powers and duties of the market committee. Clause (13) is added to Sub-section (2)(a) to enable the market committee, without prejudice to the generality of its power under the provisions of Sub-section (1), to contribute to the Floor Price Scheme and Raita Sanjeevini Accidental Insurance Scheme at such rate as may be determined by the Director of Agricultural Marketing. It is not in dispute that both these Schemes are meant for the benefit of the farmers/agriculturists. The object of the Act is to provide for better regulation of marketing of agricultural produce and establishment of agricultural markets for agricultural produce and matters connected thereof. Learned Counsel for the Appellants fairly submitted that as the provision is for

the ultimate benefit or advantage of agriculturists/farmers, Appellants did not want to challenge the same. In view of the above, challenge to Section 63(2)(a) (13) is rejected.

16. We have found no merit in the challenge to the Amendment Act. The Appellants have not been able to point out any error in the order of the learned Single Judge. Consequently, these appeals are rejected.