
(1983) 03 KAR CK 0018
In the Karnataka High Court
Case No : W.P. 5668/83

Venkatagiri Setty T.N.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-03-1983

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 38

Citation : (1983) 2 KarLJ 326

Hon'ble Judges : N. D. Venkatesh, J

Judgement

In this petition filed under Art. 226 of the Constitution of India the petitioner, who was a member of the third respondent market committee has applied for a writ of mandamus directed against the respondents for a direction to them not to hold elections to the committee till 30.4.1983 and to allow the existing Committee to function till then.

Elections were held to elect members of the Pavagada Agricultural Produce Market Committee on 4.3.1979. Results were announced on 16.3.1979 and a notification of this fact as provided in S. 27 of the Karnataka Agricultural Marketing (Regulation) Act, 1966 was published in the Kar. Gazette on 28.3.1979. Steps were taken to hold elections to the office of the Chairman and Vice-Chairman. At that stage, it is said some writ petitions were filed in this Court and further proceedings were stayed. Eventually on 16.4.1980 elections to the office of the Chairman and Vice-Chairman were held and in another writ petition the results were withheld and were published only on 1.5.1980. On that day the elected Chairman and Vice-Chairman assumed office and the Committee, according to the counsel for the petitioner, has been functioning only since then. The petitioner's contention herein is that the term of office of the Committee should be reckoned from that date i.e., 1.5.1980, and if so calculated the period of 4 years, the term of this committee comes to an end only on 30.4.1984. His grievance is that in spite of this fact the authorities, on the assumption that "the term of office of the Committee expires by 28.3.1983, are proceeding with arrangements to hold elections to constitute a new committee. This it is argued

by the learned counsel for the petitioner, is not correct.

The learned counsel submitted that the words "hold office" found in sub-sec. (1) of Sec. 38 means, to function as members in the market committee. In the instant case, he argues, there being no Chairman and Vice-Chairman and the authorities concerned having not made any alternate arrangements as provided in sub-sec. (3) of S. 43 of the Act, the committee could not function at all. He contends that in this view of the matter it cannot be said that the members of the committee had held office with effect from 29.3.1979, the date of the publication of the names of the elected members as provided under 27 of the Act in the Kar. Gazette, till 1.5.1980, the date on which the Chairman and the Vice-Chairman assumed office.

I am not inclined to agree with the learned counsel for the petitioner.

As provided in S. 38 (1) of the Act, the members elected to the market committee hold office for a term of four years. As to when the term commences is specified in S. 39 of the Act. It says that "the term of office of the members of a market committee shall commence on the date immediately after the expiry of the term of office of the out-going members of the market committee or on the date of the publication of the names of the elected members under S. 27, whichever is later". As already stated, the publications of names of the elected members under S. 27 of the Act was done on 28.3.1979 in this case. Applying the clear mandate of S. 39 (1), it has to be said that in this case the term of office of the members of this committee had commenced with effect from 29.3.1979. This would be so, even assuming, as the learned Counsel for the petitioner states, that the, market committee had not functioned until 1.5.1980. There was no legal hurdle in the way of the committee from functioning. It may be that this Court in some writ petitions had stayed the elections of the Chairman and Vice-Chairman and might have even stayed the elected Chairman and Vice-Chairman from assuming their respective offices. The offices of the Chairman and Vice-Chairman of a committee-are offices created by the statute (the Act) and come into being on the constitution of the committee for the first time. In law the authorities concerned could have made alternate arrangements to fill in the vacancy in the office of the Chairman or Vice-Chairman, as the case may be. Any elected member could have taken the, initiative in this direction and pursued the authorities concerned to make alternate arrangements. In this connection sub-sec. (3) of S. 43 and the proviso thereunder which are relevant, may be noted.

"43. Vacancy in office of Chairman and Vice-Chairman (1) & (2) (omitted as unnecessary).

(3) During the vacancy in the office of the Chairman and when there is no Vice-Chairman to take his place, then, notwithstanding anything contained in this Act, the Tahsildar of the Taluk in which the yard is situated shall exercise the powers and perform the functions of the Chairman until a Chairman or Vice-Chairman as

duly elected:

Provided that the Chief Marketing officer may at any time thereafter appoint any other officer to exercise the powers and perform the functions of the Chairman."

As sub-sec. (3) provides that during the vacancy in the office of the Chair-man if there is no Vice-Chairman to function as the Chairman, the Tahsildar of the Taluk will have the powers to exercise and perform the functions of the Chairman until the Chairman or the Vice-Chairman is duly elected. The proviso confers power on the Chief Marketing Officer to appoint any other officer to exercise the powers and perform the functions of the Chairman. The words "during the vacancy" found in sub-sec. (3) of S. 43 extracted above means-"during the time when that office was unoccupied". As found in the Shorter Oxford English Dictionary the word "vacancy" also means "unoccupied time" "the state or condition of being unoccupied"-absence of occupation etc. If an elected Chairman or Vice-Chairman cannot assume Office by virtue of the stay order issued by the Court, the office should be deemed to be vacant within the meaning of sub-sec. (3) and if that is so, nothing prevented the authorities from making alternate arrangements to exercise, the powers and perform the functions of the Chairman, In this case the committee came into being on 29.3.1979. In law it could have conducted its business. If for some reason they have not done so, that will not be a good ground to say that the committee did not function" and therefore its term of office cannot be said to have commenced during all that period.

In this view of the matter, the action taken by the authorities to hold fresh elections on the assumption that the term will come to an end by 28.3.1983 is correct and does not call for any interference.

For the reasons aforesaid, not issuing rule, the petition is dismissed.

Sri Devadhar, learned High Court Government Pleader appearing for the respondents is permitted to file his memo of appearance in three weeks time.