(1992) 04 KAR CK 0013

In the Karnataka High Court

Case No : W.A. No. 2623 of 1991

V.L. Shivappa APPELLANT

Vs

Director, Agricultural Marketing RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 123

Citation : (1992) ILR (Kar) 1396 : (1992) 3 KarLJ 118

Hon'ble Judges : S.P. Bharucha, C.J;Shivashankar Bhat, J

Bench : Division Bench

Advocate : Mohandas N. Hegde, for the Appellant; K. Chandranath Ariga, for S.G. Sundaraswamy, for R-2, G. Subba Rao, for R-3 to R-5, C.S.S. Mallappa and S.V. Krishnaswamy for R-3 to R-7, for the Respondent

Final Decision : Allowed

Judgement

S.P. Bharucha, C.J.—The Appeal requires us to interpret Section 123 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966.

2. Briefly, the facts that give rise to this Appeal are the following: The Agricultural Produce Market Committee, Tiptur (the second respondent) had invited tenders for the construction of a Ryoth Bhavan, shops and godowns. The tender of the original third respondent was accepted. It required him to carry out the work for the sum of Rs. 49.31 lakhs. During the course of the work the original 3rd respondent made claims for escalation charges. It is in dispute as to whether or not the work was completed. At any rate, the Market Committee considered the 3rd respondent''s claim and agreed to pay 50% thereof provided that the 3rd respondent gave an undertaking in writing that he would not make any further claim and that he would complete the contract work within the stipulated period. However, the 3rd respondent failed to comply with the condition and the Market Committee passed a resolution calling upon the 3rd respondent to complete the tender work within the stated period failing which the contract would be terminated.

3. On 28th May 1987 the Director, Agricultural Marketing, Karnataka (1st respondent) passed the order which was impugned in the Writ Petition. It was passed under the provisions of Section 123(e) of the said Act. By the said order, he directed the Market Committee to pay to the 3rd respondent within 15 days from the date thereof the sum of Rs. 13,09,000/- in settlement of his claims on account of escalation charges. On 4th June 1987 the Market Committee recorded the order passed by the 1st respondent.

4. Thereupon this Writ Petition was presented by a member of the Market Committee. The learned single Judge noted that the petitioner contended that that the impugned order fell outside the scope and ambit of the powers of the first respondent and that his direction to the Market Committee to pay Rs. 13,09,000/- to the 3rd respondent was unjustified. The learned Judge held that the first respondent was competent to issue the impugned order and was justified in doing so. We must note that there is no discussion in the order under appeal of the ambit and the scope of Section 123 of the said Act, and that is what really requires consideration.

5. Section 123 reads thus:

"123: inspection, inquiry, submission of statements, etc. -The Chief Marketing Officer or any officer authorised by him by general or special order in this behalf, may -

(a) inspect or cause to be inspected the accounts and offices of a Market Committee;

(b) hold inquiry into the affairs of a market committee;

(c) call for any return, statement, accounts or report which he may think fit to require such committee to furnish;

(d) require a committee to take into consideration -

(i) any objection on the ground if illegality or inexpediency or impropriety which appears to him to exist to the doing of anything which is about to be done or is being done by or on behalf of such committee; or

(ii) any information he is able to furnish and which appears to him to necessitate the doing of a certain thing by such committee;

and to make written reply to him within a reasonable time stating its reasons for doing, or not doing such thing;

(e) direct that anything which is about to be done or is being done should not be done, pending consideration of the reply, and anything which should be done, but is not being done should be done within such time as may direct."

6. Thus, the Chief Marketing Officer, and it is not in dispute that the first respondent could be so categorised, is empowered by Section 123 to inspect or have inspected the accounts and offices of a Market Committee, to hold an

inquiry into the affairs of a Market Committee and to call for any written statement, accounts or reports therefrom as he may think fit. By reason of Sub-section (d) the Chief Marketing Officer may require a Market Committee to take into consideration any objection in respect of something which is being done or about to be done by a Market Committee or any information that he furnishes which in his view necessitates the doing of something by a Market Committee. The Chief Marketing Officer may require the Market Committee to reply to him in writing stating its reasons for doing or not doing these things. Sub-section (e) is, as we read it, a power to issue interim directions, that is to say, directions that operate pending consideration by the Chief Marketing Officer of the reply that the Market Committee is bound to furnish to him under Sub-section (d). Pending such consideration, the Chief Marketing Officer may direct the Market Committee to do something that it is doing or is about to be done or to do something which should be done but is not being done.

7. The powers that are conferred upon the Chief Marketing Officer by Section 123 relate to supervision over the manner of functioning of a Market Committee. They do not extend to the final decision of what is essentially a civil dispute between a Market Committee and a part with whom it has entered into a contract.

8. Upon our interpretation of Section 123, therefore, the impugned order passed by the first respondent was outside the scope and ambit of his powers.

9. Sections 126, 126A and 128 were also referred to on behalf of the original third respondent''s heirs and legal representatives. Section 126 deals with the power of the State Government to call for the proceedings of a Market Committee and pass orders thereon to modify, annul or reverse orders passed by a Market Committee. In the instant case, the impugned order was not passed by the State Government and it did not modify, annul or reverse an order of the Market Committee. Section 126, therefore, has no application. Section 126-A gives the State Government power to issue directions to the Market Committee which, in its opinion, are necessary and expedient for carrying out the purpose of the Act. It is not the State Government, which has given such directions nor is it shown that such directions are necessary or expedient for carrying out the purpose of the Act. Section 128 deals with the liability of the members, officers and employees of the Market Committee for loss, waste and misappropriation and has no application to the case on hand.

10. It was submitted that the appellant had been a member of the Market Committee which passed the resolution to pay to the third respondent 50% of his claim on account of escalation charges and that, therefore, it was not open to the appellant to file the Writ Petition. The appellant was a party to the resolution of the Market Committee which agreed to pay to the third respondent 50% of his claim on account of escalation charges provided the third respondent gave an undertaking in writing that he would not make further claims and that he would complete the contract work within the stipulated period. It is not disputed that

the third respondent did not give the undertaking which was a condition of the Market Committee''s resolution.

11. It was submitted that the third respondent had died, and therefore, had been unable to honour the aforementioned condition. The third respondent died during the pendency of the Writ Petition and, therefore, this submission has to be rejected.

12. It was submitted that the claim of the third respondent was in a far larger sum than Rs. 13,09,000/ ordered to be paid to him and that the sum of Rs. 13,09,000/- had been ordered to be paid upon the basis of the report of the Expert Committee appointed by the first respondent. This really begs the question, namely, had the first respondent the power u/s 123 to decide a claim made by a contracting party against a Market Committee. In own view he had not and, therefore, the value of the findings of the Expert Committee must also be in question.

13. We appreciate that by reason of the responsibility that the first respondent assumed as aforesaid the third respondent and his heirs and legal representatives lost their right to claim in civil proceedings such amount as and by way of escalation charges, if any, as they would be entitled to. Having regard to all the facts and circumstances, we direct the Deputy Commissioner, who now functions in place of the Market Committee, to consider the case of the original third respondent for escalation charges in the light of such materials as may be available, including the report of the Expert Committee, but excluding the order of the first respondent, and to pass an appropriate order thereon. He shall also consider whether the heirs and legal representatives of the third respondent are entitled to a refund of the earnest money deposited or any part thereof. He shall do so as expeditiously as possible.

14. The Appeal is allowed. The order under Appeal is set aside. The Writ Petition is made absolute subject to the aforesaid.

