

G. V. Gunayya Chetty and Another

Vs

V. Desarathamaiah and Others

Civil Appeal No. 1731 of 1974

(Y. V. Chandrachud, P. K. Goswami, P. N. Bhagwati JJ)

21.04.1975

JUDGMENT

BHAGWATI, J. –

1. This appeal, by special leave, raises a very short question of construction of certain provisions of the Andhra Pradesh Agricultural Produce and Livestock Markets Act, 1966 (hereinafter referred to as the Act). The narration of a few facts giving rise to the appeal would help to appreciate the question which arises for determination, and it would be convenient first to refer to the relevant provisions of the Act before we recapitulate the facts.

2. The Act is a species of legislation which has now been enacted in almost all State of India with a view to providing satisfactory conditions for the growers of agricultural produces to sell their produce on equal terms and at reasonable prices. Section 2 gives definitions of the various terms used in the Act, while Section 3 provides for issue of notification by the Government declaring specified area "to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock". Then comes Section 4, which says in sub-section (1), which is the only sub-section material for our purpose :

The Government shall constitute, by notification, a market committee for every notified area from such date as may be specified in the notification and the market committee so constituted shall be a body corporate by such name as the Government may specify in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property and may, by its corporate name, sue and be sued.

The composition of market committee is laid down in section 5. Sub-section (1) of that section provides :

Every market committee shall consist of such number of members, being not less than twelve and not more than sixteen, as may be fixed for it by the Government and shall be constituted in the following manner :-

(i) not less than one-half of the members, to be appointed by the Government after consultation with the Director of Marketing, from among the growers of agricultural produce and the owners of livestock and products of livestock in the notified area;

(ii) one non-official from the notified area, to be elected by the members of the local

co-operative marketing societies; or in the absence of such societies to be elected as specified in clause (iv);

(iii) (a) one representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry Department, to be appointed by the Government;

(b) two representatives, one each, of the municipality within which the office of the market committee is located and of the gram panchayats comprised in the notified area, to be elected by the members of the municipality and the gram panchayats respectively; or in the absence of such municipality both representatives to be elected by the members of the gram panchayats; or in the absence of a gram panchayat, only one representative to be elected by the municipality;

(iv) the remaining members, to be elected in the prescribed manner by the person licensed under sub-section (1) of Section 7 in the notified area from among themselves :

Provided that where a market committee is constituted in any notified area for the first time, the Government shall appointed the members under this clause from out of a panel of trader of the notified agricultural produce, livestock or products or livestock in the notified area, furnished by the Director of Marketing to the Government.

Sub-section (2) says that every market committee shall elect two of its members other than those mentioned in clause (iii) of sub-section (1), to be respectively Chairman and Vice-Chairman, and sub-section (3) enacts that save as otherwise provided in the Act, the terms of office of the members appointed or elected under the sub-section (1) shall be three years from the date of the election of the Chairman. The other sub-section of Section 5 are not material and we need not refer to them. Sub-section (2) of Section 6 empowers the Government to extend the term of office of the members of the market committee for a period not exceeding one year, subject to the proviso that no such extension shall be given for a period exceeding six months at a time. What is to happen on he expiration of the terms of the office of the members of the market committee, whether original or extended, is set out in sub-section (1) of Section 6. That sub-section says that on the expiration of the term of the office of the members of market committee, the Government shall reconstitute the market committee. Then follow certain other section which have no bearing on he controversy before us and we may, therefore, straight go to Section 22 which deals with supersession of market committee. That section is very material and we may reproduce it in extenso :

Supersession of market committee - (1) If in the opinion of the Government a market committee is not competent to perform of persistently makes default in performing the duties imposed on it by or under this Act or abuses its powers, they may, by notification, supersede such committee for a period not exceeding one year in the first instance and may, by order, extend, from time to time the period of supersessions however, that the total period of supersession in the case of any market committee shall not exceed two year :

Provided that before issuing a notification under this sub-section, the Government shall give to the market committee an opportunity of making representation on the

action proposed and shall consider the explanation or objection, if any, of the market committee thereon.

(2) As from the date of publication of a notification under Sub-section (1), superseding a market committee, the following consequences shall ensue -

(a) all the members as well as the Chairman and Vice-chairman of the market committee shall be deemed to have vacated their offices;

(b) all the assets vested in the market committee shall, subject to all its liabilities, vest in the Government.

(3) Where a market committee has been superseded -

(a) the Government may, by order, appoint a suitable person or persons to exercise the powers and perform the functions of the market committee during the period of its supersession and transfer to such person or persons the assets and liabilities of the superseded market committee as on the date of such transfer, and

(b) the Government, may, at any time before the expiration of the period of supersession, constitute a new market committee under sub-section (1) of Section 4 and transfer thereto the assets and liabilities of the superseded market committee as on the date of such transfer.

Bearing in mind these relevant provisions of the Act, we may now turn to the facts leading up to the present appeal before us.

3. The Government, by a notification issued under Section 3, sub-section (3) of the Act, declared the area comprised in Machilipatnam, Bandar and Divi taluks to be notified area for the purposes of the Act. This was followed by a notification dated October 30, 1969 constituting a market committee for the notified area under Section 4, sub-section (1) of the Act. The market committee was to consist of twelve members to be appointed in the manner set out in Section 5, sub-section (1) of the Act. Six out of these twelve members were nominated by the Government from among the growers of agricultural produce and owners of livestock under Section 5, sub-section (1), Clause (i); two were nominated by the Government from among traders under the proviso to Section 5, sub-section (1), Clause (iv) and the Agriculture Extension Officer, Movva was nominated by the Government as departmental representative under Section 5, sub-section (1), Clause (iii)(a). It does not appear from the record whether the other three members were appointed as contemplated by Section 5, sub-section (1), clause (ii) and (iii)(b). The Chairman of the Market Committee was elected on January 24, 1970 and the term of office of the members of the market committee was, therefore, three years from that date as provided in Section 5, sub-section (3).

4. It, however, appears that in the case of market committee constituted by the Government for some other notified areas, writ petitions were filed in the High Court of Andhra Pradesh challenging the validity of the nominations made by the Government under Section 5, sub-section (1), clause (i) and clause (iv) proviso. The ground of challenge in regard to the nominations made under Section 5, sub-section (1), clause (i) was that the Government had not complied with the mandatory requirement of that provision which enjoined it to consult the Director of Marketing before nominating members from among the growers of agricultural produce and owners of livestock in the notified area and in regard to nominations made under the proviso to Section 5, sub-section (1),

clause (iv), the challenge was based on the ground that the nomination were made by the Government outside the panel of traders furnished by the Director of Marketing. These ground of challenge were upheld by the High Court in a decision reported in *Donda Ram Rao v. Government of A. P.* (AIR 1971 AP 353) and it was held that the nominations made under Section 5, sub-section (1), clause (i) and the proviso to clause (iv) were in contravention of those respective provisions and were accordingly invalid. Though this decision was given in regard to the market committees of other notified areas, it equally applied to the market committee constituted for the notified area of Machilipatnam, Bandar and Divi taluks and hence it was obvious that the nominations made by the Government from among the growers of agricultural produce and owners of livestock under Section 5, sub-section (1), clause (i) and from among traders under the proviso to Section 5, sub-section (1), clause (iv) were invalid. But that would leave only one or at the highest four validly appointed members on the market committee and the quorum for a meeting of the market committee under Rule 29 of the Andhra Pradesh Agricultural Produce and Livestock Markets Rules, 1969 made under Section 33 of the Act being seven, it would be incompetent to the market committee to exercise its powers and discharge its functions. The Government, therefore, after giving an opportunity to the existing members of the market committee to be heard, passed an order dated November 23, 1971 under Section 22, sub-section (1) of the Act superseding the market committee for a period of six months on the ground that it was not competent to perform the duties imposed on it by or under the Act. The consequence of this supersession was that all the members of the market committee were deemed to have vacated their offices and all the assets vested in the market committee, subject to all its liabilities, became vested in the Government. Vide sub-section (2) of Section 22. The Government by another order of the same date made under Section 22, sub-section (3), clause (a) appointed the Assistant Director of Marketing to exercise the power and perform the functions of the market committee during the period of its supersession. It may be stated that none of the persons affected challenged the order of supersession made by the Government and it does not form the subject-matter of challenge even in the present appeal.

5. It appears that the initial period of six months for which the market committee was superseded was further extended and just before the expiration of the extended period of supersession, the Government made an order dated December 7, 1972 constituting a new market committee by nominating six person out of growing of agricultural produce and owners of livestock under Section 5, sub-section (1), clause (i), the President of the Diviseema Co-operative Marketing Society, Avani-gadda under Section 5, sub-section (1), clause (ii), the Agricultural Extension Officer, Movva as departmental representatives under Section 5, sub-section (1), clause (iii) (a) and three persons representing traders under the proviso to sub-clause (iv) of Section 5, sub-section (1). Though Divi taluk formed part of the notified area, no grower or trade from Divi taluk was nominated on the market committee : all the six representatives of growers belonged to Bandar taluk, while all the three representatives of traders belonged to Machilipatnam taluk. Respondents Nos. 1 and 2, who were two of the traders from Divi taluk, therefore, filed Writ Petition No. 1693 of 1973 in the High Court of Andhra Pradesh challenging the validity of the order dated December 7, 1972 in so far as it nominated representatives of traders on the market committee under the proviso to clause (iv) of sub-section (1) of Section 5. The argument of respondents Nos. 1 and 2 was that it was the main part of clause (iv) of sub-section (1) of Section 5 which applied and not the proviso and, therefore, the Government was not entitled to nominate representatives of traders but they were liable to be elected by traders licensed under Section 7, sub-section (1) from amongst themselves. The appellant who was one of the representatives nominated by the Government, resisted this argument and defended the order dated December 7, 1972. The learned Single Judge, who heard the writ petition in the first instance, rejected the contention of respondent Nos. 1 and 2 and held that when the

Government constituted the new market committee by issuing the order dated December 7, 1972, it constituted the market committee for the first time, and therefore, under the proviso to Section 5, sub-section (1), clause (iv), the Government was entitled to nominate members from out of the panel of traders furnished by the Director of Marketing and the order dated December 7, 1972 did not suffer from any infirmity. On this view, the learned Single Judge dismissed the writ petition.

6. Respondents Nos. 1 and 2 being aggrieved by the order made by the learned Single Judge preferred an appeal under Clause 1 of the Letters Patent to a Division Bench of the High Court. The Division Bench disagreed with the view taken by the learned Single Judge and held that when the government constituted the new market committee by its order dated December 7, 1972 on the expiration of the period of supersession of the earlier market committee, it did not constitute a new market committee for the first time, and therefore, the case was governed, not by the proviso, but by the main part of Section 5, sub-section (1), clause (iv) and the order dated December 7, 1972 was accordingly invalid in so far as it nominated three members from among traders purporting to act under the proviso to Section 5, sub-section (1), clause (iv). The appellant thereupon brought the present appeal with special leave obtained from this Court.

7. The sole question that arise for determination in this appeal is as to which provision applied in the present case : the main part of clause (iv) of sub-section (1) of Section 5, or its proviso? The answer to the question depends upon whether the market committee was constituted for the first time when the Government made the order dated December 7, 1972. The main part of clause (iv) of sub-section (1) of Section 5 enacts that as a general rule, members representing traders are to be elected "by the persons licensed under Sub-section (1) of Section 7 in the notified area from among themselves. "But the licence contemplated under sub-section (1) of Section 7 is a licence to the granted by the market committee, and therefore, it must follow a fortiori that when a market committee is to be constituted for the first time, there would be no "persons licensed under sub-section (1) of Section 7" in existence who could elect members on the market committee under the main part of clause (iv) of sub-section (1) of Section 5. That is why the proviso was enacted to deal with such a situation. It says that when a market committee is being constituted for the first time, the elective method being obviously inapplicable, members representing traders shall be nominated by the Government in the manner set out there. Whenever, therefore, a question arises as to which is the appropriate method to be adopted in appointing member representing traders - whether elective method under the main part of clause (iv) of sub-section (1) of Section 5, or nominative method under the proviso - the inquiry which has to be made is : is the Government constituting the market committee for the first time, or has it already been constituted once before and in view of the expiration of the terms of office of its members or its supersession, it is being constituted again ?

8. Let us first take a case where a market committee has been constituted for a notified area for the first time and the term of office of its members, whether original or extended, expires. The Government is then required to reconstitute the market committee under Section 6. 'Reconstitute', according to its plain natural connotation, means nothing else than constitute again. The Government has therefore, to constitute the market committee again. That would clearly be a new market committee but it would not be a market committee constituted for the first time, for there was already an earlier market committee of which the term of office of membership came to an end by efflux of time. The proviso to clause (iv) of sub-section (1) of Section 5 can, therefore, obviously, on its plain language, have no application in such a case. The *raison d'etre* for the necessity of nomination under the proviso would also not be there.

9. Then, does it make any difference whether a market committee constituted for a notified area for

the first time is superseded and on the expiry of the period of supersession, a new market committee is constituted by the Government under sub-section (1) of Section 4 as contemplated by sub-section (3)(b) of Section 22 ? The market committee which is constituted by the government on the expiration of the period of supersession must necessary be a new market committee vis-a-vis the earlier one which superseded. But that does not mean that it is market committee constituted for the first time. It would indeed be doing violence to the language of the proviso to say that such a market committee is one constituted for the first time for a notified area, when there was already an earlier market committee constituted for the same notified area, though it was subsequently superseded. There is no scope here for verbal semantics. It is a simple question we have to ask ourselves : is this a market committee constituted for the first time for this notified area or has there been a market committee before so that this is not the first time that a market committee is constituted for this notified area ? If this question is asked, the answer is simple and self-evident. When there is a market committee constituted for a notified area and it is superseded and on the expiry of its supersession, new market committee is constituted by the Government, it is impossible to see how it can be said that the new market committee is a market committee constituted for the first time for this notified area. Whether a market committee is constituted for the first time or not would depend on the question whether there was an earlier market committee for the same notified area or not and not on the question whether it is a new market committee constituted under sub-section (1) of Section 4, of a market committee reconstituted under Section 6.

10. Here in the present case, there was a market committee constituted by the Government for the notified area of Machilipatnam, Bandar and Divi taluks under the notification dated October 30, 1969 and this market committee functioned until it was superseded by the order dated November 23, 1971. It may be reiterated once again that the supersession of this market committee on the ground that by reason of want of sufficient members to constitute quorum, it was not competent to perform the duties imposed on it by or under the Act, was not challenged before us and we must, therefore, proceed on the basis that it was a market committee which had existence until it was superseded and it was not non-est ab initio. When, therefore, the Government made the order dated December 7, 1972 on the expiration of the period of supersession of this market committee, it undoubtedly constituted a new market committee - new vis-a-vis the old which was superseded - but that was not a market committee constituted for the first time for the notified area of Machilipatnam, Bandar and Divi taluks. There was already an earlier market committee for this notified area which was superseded and this was a second market committee constituted for this notified area on the expiration of the period of supersession of the earlier one. The proviso to clause (iv) of sub-section (1) of Section 5 had, therefore, no application and the Government was not entitled to nominate members representing traders on the market committee constituted by it under the order dated December 7, 1972. It was the main part of clause (iv) of sub-section (1) of Section 5 which applied and so far as representation of traders was concerned, "persons licensed under sub-section (1) of Section 7 in the notified area" were entitled to elect members from among themselves. We must, therefore, hold that the Division Bench of the High Court was right in taking the view that the order dated December 7, 1972 was invalid in so far as it purported to nominate three members from among traders under the proviso to clause (iv) of sub-section (1) of Section 5.

11. The appeal, therefore, fails and is dismissed with costs in this Court.

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