

Raghunath and Others Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Sep-21-1999

Reported in : ILR2000KAR277; 2000(2)KarLJ237

Judge : R.V. Raveendran, J.

Acts : Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 - Sections 2(19-A and 21), 4, 5, 8(1), 72, 73, 79-A, 81, 82-A, 146(1) and 148; Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968 - Rule 79; [Constitution of India](#) - Article 14; Karnataka Shops and Commercial Establishments Act; [Industrial Disputes Act, 1947](#)

Appeal No. : Writ Petition Nos. 31599 to 31628, 31629 to 31663 and 32573 to 32575 of 1999

Appellant : Raghunath and Others

Respondent : State of Karnataka and Others

Advocate for Def. : Sri K.M. Shivayogiswamy, Government Pleader and ;Sri B.G. Sridharan Adv.

Advocate for Pet/Ap. : Sri Gangadhar R. Gurumath, Adv.

Judgement :

ORDER

1. These matters involving common questions are heard together finally by consent, and disposed of by this order. In this order, the term 'Act' will refer to the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, the term 'Rules' will refer to the Karnataka Agricultural Produce Marketing (Regulation) Rules, 1968, the term 'Market Committee' will refer to an Agricultural Produce Market Committee established under the Act, and the term 'Bye-laws' will refer to the Bye-laws framed by the respective Market Committees under Section 148 of the Act.

2. The petitioners in W.P. Nos. 31599 to 31628 of 1999 claim that they are licensed Weighmen under the Market Committee, Bidar. The petitioners in W.P. Nos. 31629 to 31663 of 1999 claim that they are licensed Weighmen under the Market Committee, Gadag. The petitioners in W.P. Nos. 32573-32575 of 1999 claim that they are licensed Weighmen under the Market Committee, Mundaragi.

3. The petitioners claim that the State Government formulated a scheme known as the Weighmen Welfare Scheme in regard to the Weighmen working in the Bangalore Market Yard under the control and jurisdiction of Market Committee, Bangalore, with effect from 1-4-1996. It is contended by petitioners that Licensed Weighmen operating in other market yards in the State, under the control of other Market Committees are also discharging similar functions and, therefore, all Licensed Weighmen, whether they are licensed by the Market Committee, Bangalore, or by the other Market Committees in the State should be treated equally and there should be no discrimination between similarly situated persons. It is the claim and contention of the petitioners that when a Licensed Weighman of Sindhanur Market Committee filed W.P, No. 6825 of 1997 seeking a relief similar to the relief granted to the Weighmen in Bangalore Market Committee, this Court by order dated 12-8-1998 directed that the representation of the petitioner therein be considered in the light of the order dated 11-4-1996 in W.A. No. 3554 of 1995 and the scheme formulated by the Government which was incorporated in the said order, pertaining to licensed Weighmen of Bangalore Market Committee.

4. Petitioners claim that they are also entitled to similar relief. They have, therefore, filed these petitions seeking a direction to respondents 1 and 2 to consider their cases also in terms of the judgment dated 12-8-1998 in W.P. No.

6825 of 1997. The petitioners have not referred to the facts of the case in W.A. No. 3554 of 1995. Nor have they claimed any specific relief except stating that they may be given relief in terms of the order dated 12-8-1998 in W.P. No. 6825 of 1997.

5. The learned Government Pleader (appearing for the State and the Director of Agricultural Marketing) and Sri B.G. Sridharan, learned Counsel (appearing for the Market Committees), stated that in the absence of any prayer for a specific relief, the petitions should be rejected. They also contended that the earlier orders of this Court are being interpreted in different ways before different authorities by the Licensed Weighmen in different market yards leading to confusion and chaos. It is also submitted that the decision in W.P. No. 6825 of 1997 merely directed that the representation of the petitioner therein should be considered in the light of the judgment in W.A. No. 3554 of 1995; that the judgment in W.A. No. 3554 of 1995 made it clear that the relief granted was restricted only to the Weighmen of the Bangalore Market Committee and will not apply to other Market Committees; and that, therefore, the effect of the decision in W.P. No. 6825 of 1997 is that the Weighmen in other market yards are not entitled to any relief; and consequently the petitioners in these petitions are also not entitled to any relief.

6. Though the petitioners have failed to aver what their rights are and specify the relief they are seeking, the learned Counsel for petitioners stated that the petitioners have given a representation to the Director of Agricultural Marketing stating that the Weighmen of Sindhanur Market Committee have been given increased remuneration of Rs. 1,860/- per month and therefore the Market Committees of Bidar, Gadag and Mundaragi should also pay a remuneration of Rs. 1,860/- per month to their Weighmen (petitioners) in view of the order of this Court in W.P. No. 6825 of 1997. It is stated that the relief sought in the petitions is with reference to the said request for payment of Rs. 1,860/- per month.

7. The Act has been enacted to provide for better regulation of marketing of agricultural produce and the establishment and administration of markets for agricultural produce in the State of Karnataka. The Act regulates only marketing of notified agricultural produce. The Schedule to the Act enumerates the several

agricultural produce and the regulation is restricted to such of those produce which the State Government, by notification issued under Sections 4 and 5 declares as an agricultural produce, the marketing of which shall be regulated in the market area. It is necessary to refer to the relevant provisions of the Act and the rules to identify and determine the status, rights, obligations and position of Weighmen, in relation to the Market Committees.

Relevant provisions of the Act:

7.1 Section 2(21) of the Act defines 'market functionary' as including a broker, a commission agent, an exporter, a ginner, an importer, a presser, a processor, a stockist, a trader and such other persons as may be declared under the rules or the bye-laws to be a market functionary.

7.2 Section 2(19-A) defines 'market charges' as meaning all charges in connection with the handling of agricultural produce such as the commission of commission agents, brokerage, remuneration for weigh-ment, loading, unloading, cleaning, sorting, counting, sieving and dressing of agricultural produce.

7.3 Section 8 provides for control of marketing of agricultural produce after the market is established. Section 8(1)(b)(ii) provides that no person shall, without or otherwise than in conformity with the terms and conditions of a licence granted by the Market Committee, operate in the market area or in any market therein as a trader, commission agent, broker, processor, Weighman, warehouseman or in any other capacity in relation to marketing of the notified agricultural produce.

7.4 Section 72 deals with grant of licences. It provides that subject to the provisions of the Act and the rules made in that behalf, a Market Committee may on an application made by any person in such form as may be prescribed and after making such enquiries as it deems fit, grant or renew a licence for the use of any place in the market area for the sale of the notified agricultural produce or for operating therein as a trader, commission agent, broker, processor, Weighman, measurer, surveyor, warehouseman or any other market functionary in relation to the marketing of agricultural produce. Section 73 confers on the Market Committee the power to suspend or cancel any licence granted to any market functionary.

7.5 Section 79 prohibits market functionaries from soliciting or receiving remuneration for his services by way of commission, fees, charges or in any other form except as prescribed by the rules or bye-laws. Section 79-A provides that all market charges payable after the sale of the agricultural produce shall be recovered from the buyer.

7.6 Section 81 requires the licensed market functionaries operating in the market area to maintain accounts and submit returns/reports to the Market Committee as prescribed. Section 82 requires every market functionary to render assistance in the collection and prevention of evasion, of payment of fee. Section 82-A directs that no market functionary shall, without giving a notice of not less than seven days to the Market Committee, participate in any demonstration or strike.

Relevant provisions of rules:

7.7 Rule 79 of the Karnataka Agricultural Marketing (Regulation) Rules, 1968 ('the Rules', 'for short) deals with licensed Weighmen and is extracted below.-

'79. Licensed Weighmen, measurers, surveyors, hamals, carmen, public carrier, etc.-

(1) No person shall operate as a Weighman, measurer, surveyor, hamal, carmen, owner of public carrier or as any other market functionary in any market area except under a licence in Form 37 granted by the Market Committee.

(2) Any person desires to hold a licence to operate in the market areas as a.-

(i) Weighman, measurer, surveyor or as any other market functionary shall apply in Form 44;

(ii) Hamal, cartman, owner of public carrier or as any other market functionary shall apply in Form 45,

and shall also pay such fee not exceeding rupees one hundred as may be specified in the bye-laws. On receipt of such application the Market Committee may, if it finds no grounds to refuse, grant or renew the licence in Form 37. On the grant of such licence the applicant shall execute an agreement in such form as the

Market Committee may determine, agreeing to comply with these rules and the bye-laws of the Market Committee.

(3) The licence granted under sub-rule (2) shall, unless renewed, remain in force till end of the market year in which it has been granted.

(4) No person shall be entitled to do business as a market functionary other than that for which he holds a licence.

(5) No person who is in the service of another person or firm whether holding any licence granted by the Committee or not shall be eligible to hold a licence as a Weighman, measurer. If any licensed broker, Weighman, measurer or surveyor enters service or does business other than that for which he holds a licence, he shall be deemed to have committed a breach of the conditions of the licence.

(6) The committee may after giving the applicant an opportunity of being heard, for reasons to be recorded in writing, refuse to grant or renew a licence to any person, if the committee is satisfied that the applicant is not likely to further the efficient working of the market under the control of the committee or is otherwise not qualified or disqualified under the Act, rules or bye-laws'.

8. A conspectus of the above provisions will make it clear that a Weighman is a market functionary who operates in the market yard, on the basis of a licence obtained from the Market Committee. All Weigh-men will have to obtain licences by paying the prescribed licence fee like any other market functionary for each marketing year and get it renewed every year. Each Market Committee, in the discharge of its statutory obligation of regulating the marketing of notified agricultural produce, controls and supervises the activities of all market functionaries, including the Weighmen. It can give directions to all market functionaries, including the Weighmen. Each category of market functionaries has defined functions in the market yard and distinct role to play in the marketing of notified agricultural produce. The rates of remuneration of different categories of market functionaries (weighmen, measurers, surveyors, hamals, carmen etc.,) are fixed by the Market Committees under the bye-laws. But the Market Committees do not have any control over the quantum of total remuneration earned by any

market functionaries, nor assure the market functionary any specified or minimum periodical income. The remuneration/income of a market functionary depends on the quantum of trade or quantum of work done by him.

9. The following factors have a bearing on determination of the claim of the petitioners that they are the employees of the Market Committee and Market Committee is liable to pay a minimum wage to them.-

(a) None of the Weighman is either engaged or appointed by the Market Committee either on daily wage basis or on temporary basis or permanent basis. The Market Committee does not pay any wages to the Weighmen. The Market Committee does not assure any work to the Weighmen.

(b) Each Weighman like any other market functionary has to apply for and obtain a licence from the Market Committee to operate as a Weighman in the market yard by paying the prescribed licence fee. Apart from paying the licence fee prescribed under the bye-laws and obtaining a licence, a Weighman is also required to execute an agreement in such form as the Market Committee may determine agreeing to comply with the rules and bye-laws of the Market Committee.

(c) As per the bye-laws of the Market Committees, the Weighmen are required to weigh the agricultural produce/commodity in the presence of the seller and buyer and prepare Weighment slips and give a copy to the seller, a copy to the buyer and another copy to the Market Committee.

(d) The Weighment charges payable to a Weighman are regulated by the Bye-laws of the respective Market Committees. The Weighment charges after the sale, is liable to be borne and paid by the buyers of goods (vide Section 79-A). The Weighment charges, before the sale is liable to be borne by the seller or other market functionaries like traders and commission agents, who may make use of the services of Weighmen. There is a statutory bar against the Weighmen receiving any remuneration other than Weighment charges.

(e) The intention of having independent licensed weighmen (as contrasted from the Weighmen employed by Traders and commission agents) is to ensure that the

agriculturist and sellers who bring the produce to the market yard is assured of correct Weighment for which he can get payment, Manipulations in weight by middlemen is avoided by ensuring Weighment by licensed weighmen, who are not employees of any one, but who operate under the directions/instructions of the Market Committee.

(f) There is no attendance requirements in regard to Weighmen. They are free agents. The Market Committee does not require or insist that these Weighmen should work everyday. The Weighmen normally present themselves during the early hours in the market yard when the market opens and the officials of the Market Committee will direct the Weighmen to operate in respect of specified auction platforms, or shops. Such directions are normally oral. The assignment of Weighmen to a particular auction platform or shop/s would depend on the commodities available for sale with each commission agent/trader and commodities brought by agriculturists for sale in auction/selling platforms, and the quantity of arrivals and other circumstances.

(g) If there is any dispute in regard to Weighment made by the Weighman, the Market Committee settles such disputes under Section 84 of the Act.

10. Having regard to the functions of the Weighman as a market functionary, as envisaged and enumerated in the Act and the rules, it cannot be said that the relationship between the Market Committee and a Weighman is that of an employer and employee. He is only a Licence Holder permitted to carry on a trade/vocation in the market area. In the discharge of some of his functions, he may at best be an agent of the Market Committee. The market functionary has an obligation to pay licence fee to the Market Committee. But there is no obligation on the Market Committee to pay any fee, charge, consideration, remuneration, much less a salary to any market functionary under the Act. When the relationship is not that of employer and employee, the question of the Weighmen requiring the Market Committees to pay a minimum wage to them does not arise.

11. The petitioners contend that the work of Weighmen is constantly supervised by the Market Committees; that the Market Committees allot the work to them; that apart from the work assigned to them by the respective Market Committees, they

cannot operate independently in the market yards; that they are accountable to the Market Committee in regard to their work; that their hours of work and manner of work are regulated by the Market Committees; and that therefore there is a relationship of employer and employee between the Market Committee and the Weighmen and such relationship ought to have been recognised, if not for the purpose of other enactments, but, at least for the purpose of applying the minimum wages to such Weighmen. It should however be remembered that the supervision, control and regulation, which is referred to by the petitioners is applicable not only to Weighmen, but all categories of market functionaries. The Market Committees are statutory authorities established for supervising, controlling and regulating the marketing and merely because the Market Committee exercise supervisory control over the Weighmen, it cannot be said that the same would result in a relationship of employer and employee. Having regard to the provisions of the Act and the rules, Weighmen are licensed market functionaries discharging the functions specified in the Act, rules and the respective bye-laws of the Market Committee, and it is not possible to hold that the Weighmen have any position or status other than 'licensed market functionaries'.

12. The petitioners herein contended that all licensed Weighmen, under the provisions of the Act, are equal, whether they are licensed by Bangalore Market Committee or by other Market Committees. They contend that irrespective of the place of their work, the duties and functions of Weighmen under the Act are the same; and therefore if some relief had been granted to the Weighmen of Bangalore Market Committee, without recognising them as employees of the Market Committee, the Weighmen licensed by other Market Committee should also be extended the same benefits, even though this Court while approving the scheme relating to Bangalore Market Committee made it clear that the scheme was applicable only to Bangalore A.P.M.C. The petitioners contend that the State Government has decided to extend such benefit to Weighmen all over the State and has issued guidelines dated 31-10-1996, but only the implementation thereof is being postponed on account of certain administrative difficulties. He therefore stated that having regard to Article 14 of the Constitution, this Court should direct the respondents to formulate similar schemes and extend the benefits as in the case of the Weighmen of the Bangalore Market Committee to the Weighmen of

the respondent Market Committees. They also rely on three decisions of Division Benches of this Court in this behalf.

13. The first is the decision (two orders) of the Division Bench dated 28-2-1996 and 11-4-1996 in *Agricultural Produce Market Committee Weighmen's Association v Agricultural Produce Market Committee, Ban-galore, connected with Agricultural Produce Market Committee, Bangalore v Agricultural Produce Market Committee Weighmen's Association and Others* . The facts of that case are of some relevance. There were about 86 Weighmen operating in the Bangalore market yard. The Weighmen Association initiated proceedings before the Labour Officer-cum- Enforcement Authority under the Minimum Wages Act, 1948, against Bangalore Market Committee seeking minimum wages for its members, who were licensed Weighmen. The Market Committee resisted the claim contending that the Weighmen were not employees of the Market Committee, the Market Committee was not paying any wages or salary to the Weighmen. The authority under the Minimum Wages Act, apparently being under a wrong notion that Weighmen licensed by the Market Committee were similar to Weighmen and other employees employed in the shop cum godowns situated in the market yard (which were covered by the Karnataka Shops and Commercial Establishments Act) held that licensed Weighmen were entitled to minimum wages from the Market Committee, vide its order dated 14-6-1995 and consequently directing the Bangalore Market Committee to pay minimum wages to the Weighmen with effect from 6-10-1994. That order was challenged by the Bangalore Market Committee in *A.P.M.C's case*, supra. The learned Single Judge while admitting the matter, by order dated 18-8-1995 stayed the order of the Labour Officer holding that if the order was not stayed it will lead to irreversible consequences. Feeling aggrieved by the order of stay, the Weighmen's Association filed W.A. No. 3554 of 1995. The said appeal arising from the interim order as also the main writ petition were thereafter taken up for hearing together.

13.1 During the course of hearing, there was a suggestion that the matter could amicably be settled whereby the Weighmen are assured of an income, which is equal to the minimum wages, without however recording a finding that the provisions of the Minimum Wages Act are applicable to Weighmen. On the basis

of the suggestion, a draft scheme was prepared. The Court considered the said scheme and passed an order dated 28-2-1996 directing that such scheme should come into effect from 1-4-1996 and the State Government should approve the said scheme before the end of March 1996 and adjourned the matter to 25-3-1996. While doing so, the Court clarified as follows:

'It is made clear that the scheme has been prepared for the benefit of the licensed Weighmen of the Market Committee of Bangalore only and framing of the scheme should not be taken as a precedent for being adopted to all the Market Committees all over the State irrespective of their status'.

13.2 The Draft Scheme so approved in the case of Bangalore Weighmen, found in the file, is extracted below:

'The scheme is known as 'A.P.M.C., Bangalore Licensed Weigh men Welfare Scheme'.

This scheme shall come into force with effect from 1-4-1996.

All those Weighmen, who are licensed for the marketing year by A.P.M.C., Bangalore, are governed by this scheme.

Constitution.--The scheme is headed by a committee known as Licensed Weighmen's Welfare Committee' consisting of the following representatives.-

(a) Two representatives nominated amongst the licensed Weighmen operating in the A.P.M.C. Yard;

(b) One representative of A.P.M.C., Bangalore;

(c) One Officer to be nominated by the Director of Agricultural Marketing, Government of Karnataka, who shall not be below the rank of Class-I Officer.

Weighment Charges Fund.--All Weighment charges collected from the buyer shall constitute 'Weighment Charges Fund'. The said fund shall be deposited in a Scheduled Bank in the A.P.M.C., Yard, Bangalore and the said fund shall be operated under the joint signatures of the two members of the Committee, one of

whom should be representative of licensed Weighmen.

The licensed Weighmen are entitled to receive Weighment charges in respect of transactions carried on by the buyer and the seller of notified agricultural produce in the market yard, at the rates prescribed under the bye-laws. However, if a licensed Weighman functions for a minimum period of 8 hours on each day of marketing and for 30 days, he will be entitled to receive not less than Rs. 1,200/- (Rupees One Thousand Two Hundred only) per month from out of the said fund.

The said Welfare Committee is empowered to take such measures that may become necessary to ensure the remuneration of Weighment charges to each of the licensed Weighmen, not less than Rs. 1,200/- a month during the marketing year.

That the said committee shall equitably disburse excess amount, if any, that remains over, at the end of the marketing year to the licensed Weighmen.

That the said committee shall meet, at least once in a month, during the marketing year, to transact business for the purpose of carrying out the scheme smoothly and effectively.

The licensed Weighmen are required to carry on their activities during the marketing year, in accordance with the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, read with the K.A.P.M. (R) Rules, 1968, and the Bye-laws framed by the A.P.M.C., Bangalore'.

13.3 Thereafter, the matter was finally disposed of by the following order on 11-4-1996.

'In terms of the order, dated 28-2-1996 of this Court, the learned HCGP, Sri K. Vishwanath submits, that the Government has since approved the scheme on 27-3-1996 and on 28-3-1996. Under a memo Government Order in this regard has been produced.

Sri M.S. Mandanna, learned Counsel for the appellant in W.A. No. 3554 of 1995 submits that Agricultural Produce Market Committee Weighmen Association have

withdrawn the Reference No. 44 of 1995 before the Presiding Officer, Labour Court, Bangalore on 21-3-1996 as directed by this Court in the aforesaid order. Copy of the order passed by the Labour Court in that regard is produced under a memo on 3-4-1996.

In view of the above, the impugned order, dated 14-6-1995 of the Labour Court, copy of which is marked as Annexure-U, stands substituted by the scheme which has since received the approval of the Government. The terms of the scheme would become effective from 1st April, 1996 as indicated in the order of this Court, dated 28-2-1996. The scheme approved by the Government would form part of the order of this Court.

Writ appeal as well as the writ petitions stand disposed of'.

13.4 Thus the dispute raised by the Weighmen of Bangalore Market Committee in Reference No. 44 of 1995 before the Labour Court for holding that they should be made permanent employees of the Market Committee was withdrawn. The order of the Labour Court directing the payment of minimum wage was also set aside in view of the scheme. This Court also made it clear that the scheme was formulated only for the benefit of the Weighmen of Bangalore APMC and for none else. There is no finding that licensed Weighmen are employees of the Market Committee or that they are entitled to minimum wages under Minimum Wages Act, from the Market Committee.

14. Thereafter, one Veeresh who was a licensed Weighman of Sindhanur APMC, filed W.P. No. 6825 of 1997, a public interest litigation, seeking a direction to the State, the Director of Agricultural Marketing and Sindhanur Market Committee to consider his representation dated 25-9-1996 and pass appropriate orders for the grant of benefit of the scheme framed by the Government pertaining to the licensed Weighmen of Bangalore APMC in pursuance of the directions of this Court contained in the order dated 11-4-1996 in W.A. No. 3554 of 1995 and connected matters. The Division Bench disposed of the said petition by order dated 12-8-1998 without considering the matter on merits, with the following observations.-

'..... The learned Counsel appearing for the respondents have vehemently argued that the petitioner is not entitled to the same treatment even in terms of the judgment of this Court. Without commenting on the rival contentions raised at the Bar, we deem it proper to dispose of this petition at this stage with direction to the respondents to consider the representation of the petitioner in the light of the judgment of the Court and the scheme of the Government already framed and incorporated in the judgment pertaining to the licensed Weighman of A.P.M.C., Bangalore, within a period of three months'.

Thus the Division Bench in Veeresh's case did not decide any dispute or issue, nor accepted any contentions/claim of the petitioner therein. It merely directed the concerned authority to consider the representation given by the petitioner and nothing more.

15. Thereafter some licensed Weighmen of Haveri Market Committee filed W.P. Nos. 24714 and 25336-25340 of 1998 seeking a direction to the State, the Director of Agricultural Marketing and the Haveri Market Committee to implement the scheme in toto which was formulated and approved by the State as per directions of this Court in W.A. No. 3554 of 1995, disposed of on 11-4-1996, to the petitioners who were working in Haveri Market Committee. In the said petitions, the petitioners contended that even though they were entitled for minimum wages as per the Minimum Wages Act, the respondents did not pay them minimum wages and therefore they may at least be given the benefit of the scheme formulated in the case of Bangalore APMC extended to them. Having regard to the contention of the petitioners therein that they were entitled to minimum wages under the Minimum Wages Act, the Division Bench without examining the matter on merits and without expressing any opinion on the rival contentions, disposed of those petitions by the following short order on 29-7-1999.-

'The petitioners in these writ petitions are directed to approach the Labour Court for payment of minimum wages as per the scheme and the Labour Court will consider the same.

These writ petitions are accordingly disposed of'.

It would again be seen that the Division Bench did not consider any of the contentions of either party nor hold that the Weighmen are entitled to minimum wages, but merely disposed of the petitions directing the petitioners to approach the Labour Court if their grievance was that they were entitled to minimum wages and that the same was not paid.

16. Thus, none of the three judgments/orders of the Division Benches of this Court laid down any principle bearing on the relationship between the Market Committee and the Licensed Weighmen, nor decided upon the status of the Weighmen, nor accepted their claim that they should be treated as employees of the Market Committees and be paid minimum wages. The first decision records a settlement. The second decision merely directed consideration of a representation in accordance with the earlier decision. The third decision merely directed that the petitioners therein avail the remedy under law with reference to the right claimed by them. Hence, none of the three decisions contain anything that can be of any assistance to the petitioners.

17. The guidelines dated 31-10-1996 issued by the State Government referred to by petitioners is extracted below.-

18. At the outset, it should be remembered that the Bangalore market yard under the control of the Bangalore Market Committee is different from the other market yards in the State having regard to the volume of trade, number of transactions, and the number of commodities marketing of which is regulated in the said market. Having regard to the large number of commodities which are regulated and the huge volume of transactions, the Bangalore market yard functions full-time all through the year and there will be perennial work for the Weighmen of Bangalore market yard. On the other hand, in many a rural market yards, the transactions are only seasonal depending on the special crop/s of that area. In the case of such Market Committees, the volume of trade will be comparatively high during relevant crop season and minimal during 'non-season period'. While several Weighmen may be required to function during the 'crop season', during other periods, there will be need for hardly a few Weighmen and that too not for the entire day. Different market yards specialize in different notified agricultural produce, during

different seasons. For example, there are some place where the seasonal crop is cotton, somewhere the seasonal crops are certain forest produce, somewhere the seasonal crops are specific food grains. In view of the specialized seasonal working of different Market Committees, it was made clear by the Division Bench, that the scheme that was made for the benefit of the licenced Weighmen of Bangalore cannot and may not be applied to the Weighmen licensed by other Market Committees.

19. The contention that all Weighmen are equal under the Act, may not be true for the purpose of creating a scheme for ensuring a minimum income. In fact treating the Weighmen licensed by Bangalore Market Committee as equal to Weighmen in other places for the purpose of extending similar scheme relating to minimum income would virtually amount to treating unequals as equals.

20. During hearing, Sri P.S. Rajagopal, Advocate orally sought the permission of this Court to intervene in the matter and make submissions on the ground that some Market Committees were assigning other work (that is work other than the duties and functions of Weighmen) and the manner in which such Weighmen were treated clearly established a relationship of employer and employee between the Market Committee and the Weighmen and some Weighmen have already approached the authorities under the Industrial Disputes Act for a declaration or appropriate relief on the basis that they are workmen. What is under consideration in these petitions is whether a person licensed under the Act as a 'Weighman' and discharging the functions of a 'Weigh-man' under the Act is an employee of the Market Committee and whether Market Committee is liable to pay minimum wages. The question whether persons licensed as Weighmen, who are otherwise employed by Market Committees, are workmen or not, does not arise for consideration in these cases.

21. Mere discharge of the functions of Weighmen as provided under the Act, will not give rise to a relationship of employer and employee or an obligation to pay minimum wages. It is however be made clear that if the Market Committee employs licensed Weighmen in other capacities regularly or extracts other work which has no connection to the functions of a licensed Weighmen and such

employment or extraction of work can lead to an inference relating to the relationship of employer and employee, de hors the duties attached to that of Weighmen, this decision will not come in the way of such persons establishing such relationship in accordance with law before the appropriate forum. This decision holding that there is no relationship of employer and employee between the Market Committee and Weighmen and that the Market Committee is not liable to pay wages, much less minimum wage, will not apply where any person is able to establish relationship of employer and employee with reference to other duties assigned to him.

22. The State Government has already issued guidelines to the Market Committees to create Weighmen Welfare Funds. But these guidelines are not legally enforceable. It is for the Market Committees, to examine whether it is feasible or possible or necessary to have such a Welfare Fund in regard to Weighmen, having regard to the relevant factors like turnover of sales in the market yard, expected arrivals per day during seasons and off-seasons, number of Weighmen licensed, the number of traders and commission agents. Bangalore Market Committee has more than 80 Weighmen. There are several Market Committees where only a few Weighmen (as few as 2 to 3) will suffice. Further, even these few Weighmen will have no work at all during off-seasons and they may attend to their other private work. Wherever the Market Committees have not introduced Welfare Funds, the respective Weighmen can always give representation to the Market Committees for creation of Weighmen welfare funds and it is for the Market Committees to consider the need and feasibility for establishing such funds and if they decide to establish such a welfare funds, then do so in accordance with the guidelines issued by the State Government with suitable or appropriate modifications/alterations/additions.

23. The petitioners are also permitted to give representations to the State Government, Director of Agricultural Marketing and the respective Market Committees for increasing the weighment charges now provided to ensure that they get an income sufficient to make two ends meet. If in a particular Market Committee, the weighment charges presently in force are inadequate with reference to the quantum of work available, such Market Committee may, by

taking the average work that is available to a Weighman and other relevant circumstances, provide for appropriate increases in the weighment charges by amending the Bye-laws, so that the Weighmen can make a reasonable living income. These observations (in paras 22 and 23) are not however intended to recognise or create any right in Weighmen. It is wholly within the administrative discretion of the respective Market Committees.

24. Subject to the above observations, these petitions are disposed of as follows:

(i) The claim of the petitioners that they are employees of the Market Committees and that they are entitled to minimum wages from the respective Market Committees, is rejected.

(ii) The respondent-Market Committees may however examine, within one year, the feasibility of establishing a Welfare Fund for their respective Weighmen with reference to relevant circumstances and observations made above. If they decide to establish a fund, it will be on such terms as they may decide. There is however no legal obligation to either establish a Welfare Fund, or if such fund is decided to be established, to establish it on the same terms as the Welfare Fund established by the Bangalore Market Committee.

25. Sri K.M. Shivayogiswamy, learned Government Pleader is permitted to file memo of appearance and Sri B.G. Sridharan, learned Advocate, is permitted to file Vakalath in six weeks.

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