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Court : Karnataka

Decided On : Dec-03-1970

Reported in : AIR1971Kant316; AIR1971Mys316; (1971)1MysLJ133

Judge : A. Narayana Pai, C.J. and ;D. Noronha, J.

Acts : Mysore Agricultural Produce Marketing (Regulation) Act, 1966 - Sections 39(2) and 41

Appeal No. : Writ Petn. No. 3348 of 1970

Appellant : H. Siddappa

Respondent : The Deputy Commissioner, Hassan District, Hassan and ors.

Advocate for Def. : S.G. Doddakalagowda, High Court Government Pleader and ;C. Srinivasa Vakil, Adv.

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Adv.

Disposition : Writ petition dismissed

Judgement :

A. Narayana Pai, C.J.

1. ThePetitioner, who has been elected to the Agricultural Produce Market Committee, Arsikere, from the Agriculturists' Constituency and is a candidate for

election as Chairman of the Committee, prays for the issue of a writ directing that the holding of election to the offices of Chairman and Vice-Chairman be postponed till the Committee is fully constituted under Section 11 of the Mysore Agricultural Produce Marketing (Regulation) Act, 1966.

2. Section 11 of the Act, dealing with the constitution of the second and subsequent Marketing Committees states that the Committee shall consists of the following members:--

1. Seven members elected by the Agriculturists;

2. Two members elected by traders;

3. One member elected by Commission Agents holding licences; and

4. One representative each of the Taluk Marketing Co-operative Society, Producers' Society, Taluk Development Board Local Authority, and one official member who is subordinate to the Chief Marketing Officer.

In the case of the Arsikere Market Committee with which we are concerned the first three constituencies have already returned their representatives. The Taluk Marketing Co-operative Society also has sent its representative. There had been some writ petitions relating to the representation of the Producer's Society. Taluk Board and the Local Authority, which have since been disposed of.

3. Section 41 dealing with the election of Chairman and Vice-Chairman provides in its first Sub-section that:--

'Every market committee shall choose two members representing the agriculturists' constituencies of the market committee to be respectively the Chairman and Vice-Chairman thereof.....' and further provides in its second Subsection :--

'On the constitution of a market committee under Section 11 or on its reconstitution a meeting shall be called within four weeks from the date of commencement of the term of office of the members of the market committee by the prescribed officer who shall himself preside over the meeting, but shall have no right to vote.....'

4. Commencement of the term of office is dealt with in Section 39 of the Act which reads as follows:--

' (1) 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 outgoing members of the market committee or on the date of the publication of the names of the elected members under Section 27, whichever is later.

(2) When not less than two-thirds of the representatives of agriculturists, and not less than two-thirds of the total number of members of a market committee are available to function as members after a general election, the market Committee shall, notwithstanding anything contained in this Act be deemed to be duly constituted, and the market committee so constituted shall he competent to exercise the powers and perform the functions of the market committee.'

5. Now, on the facts stated above, if the provisions of Sub-section (2) of Section 39 are applicable to the situation or may be availed of, then there is no legal bar to the committee proceeding to elect the Chairman and the Vice Chairman because not less than two-thirds of the representatives of agriculturists and not less than two-thirds of the total number of members of the market committee, are available. If however, as contended on behalf of the petitioner, the Committee referred to in Section 41, particularly sub-sections (1) and (2), -- is the Committee to which all the constituencies mentioned in Section 11 have actually returned their representatives, then of course, it may be necessary to wait till such constituencies, elections from which have not yet been completed, return their candidates. We use the word 'constituency' as inclusive of the institutions mentioned in various clauses of Section 11 as those entitled to send their representatives.

6. The matter therefore turns exclusively upon the interpretation of Sections 39 (2) and 41 (1) and (2).

7. One guidance for ascertaining the intention of the Legislature is that Section 41 calls upon the 'Market Committee' to elect a Chairman and a Vice-Chairman and not its members to choose one among themselves, to function as Chairman or

Vice-Chairman. Another guidance is that the election of Chairman and Vice-Chairman is required to be held within four weeks from the date of commencement of the term of office of the members of the Market Committee. The date of commencement is the publication of the names of the elected members under Section 27. Section 27 reads:--

'The Deputy Commissioner shall publish the names of all the elected members by a notification in the official Gazette.'

Ordinarily, therefore one would expect the representatives of all the constituencies to be present and available upon such a publication but there may be circumstances or events which prevent the publication of the names of all such as some defect in the action taken in respect of the election from one or other of the constituencies or an order by a competent Court staying the election or postponing the election from one or other of the constituencies.

8. It is apparently to deal with such situations and to enable the committee to function and carry on all its activities, that provision is made in subsection (2) of Section 39 enabling the committee to function and exercise all itspowers when not less than two-thirds of the representatives of agriculturists and two-thirds of the total number of members of the committee are available to function as members. The express provision of Sub-section (2) of Section 39 is that when such a number of members is available, the committee shall be deemed to be duly constituted and that the Committee so constituted shall be competent to exercise the powers and perform the functions of the committee, notwithstanding anything contained in the Act.

9. The argument is, firstly, that what may be described as the deemed constitution under Sub-section (2) of Section 39 is intended only to enable the committee to exercise its powers and perform its functions, but that it is unnecessary in the context to understand the said expression as comprehending or including the election of Chairman and Vice-Chairman also and, secondly, that the nonobstante clause should, in the context be so interpreted as not to whittle down the effect of what is described as the mandatory provisions of Section 41.

10. On the first suggestion, viz., that the election of a Chairman and a Vice-Chairman should not be regarded as either a power or a function of the committee, the emphasis is on the fact that the powers and duties of Chairman and Vice-Chairman and the powers and duties of the committee as such are dealt with in separate sections and the election of a Chairman and a Vice-Chairman is not one of the matters set out in the list of duties and powers of the committee set out in Section 63. But Section 39 (2) uses the word 'function' which, in its normal accepted sense, means activity proper to anything or a mode of action by which it fulfils its purpose. The manner in which the Committee exercises its powers and performs or discharges its duties is in our opinion, fully expressed by describing it as the functioning of the committee. In other words, the committee functions or undertakes activity appropriate to it or acts in such a way as to fulfill its purpose when the committee in accordance with the provisions of the statute exercises its powers and performs its duties. Section 46 enumerates the powers and duties of Chairman. Apart from presiding over the meetings of the Committee, the Chairman is required to watch over the financial and executive administration of the committee and to exercise supervision and control over its officers and servants. The Vice-Chairman exercises the powers of the Chairman in his absence and, even in the presence of the Chairman, he exercises such powers and performs such duties of the Chairman, as the Chairman may, from time to time, delegate to him. Hence the entire functioning of what may be called the totality of the function of the committee is an actability which comprises or comprehends the functioning of the Chairman, also, because it is the Chairman who provides the necessary guidance, supervision and control over the general administration.

11. Viewed in this light, there can be little doubt that when Sub-section (2) of Section 39 refers to a committee as one deemed to have been duly constituted and competent to exercise the powers and perform the functions of the market committee, it does mean a committee which has the power or duty of electing the Chairman and the Vice-Chairman for the purpose of the effective functioning of the committee.

12. The same line of reasoning is also, in our opinion, sufficient to hold that the non obstante clause in subjection (2) of Section 39 is not a clause which is

independent of Section 41 or one which permits Section 41 to operate independently, but a clause which permits or requires the provisions of Sub-section (2) of Section 39 to operate even though the language of Section 41 may indicate a different operation. In other words, what the argument describes as the mandatory provision of Section 41 should give way and not obstruct the operation of Sub-section (2) of Section 39; that is to say, when the 41st Section refers to a committee constituted or reconstituted under Section 11, it means and includes, if the occasion so requires, a Committee which under Sub-section (2) of Section 39 is deemed to be a committee duly constituted with competence to exercise all the powers and perform all the functions of the committee.

13. In view of this clear opinion of ours as to the effect of Section 39 (2), it is unnecessary to discuss the other arguments relating to elections from other constituencies set out in the affidavit in support of the petition.

14. We do no find, therefore, sufficient ground to grant the prayer in the writ petition.

15. The writ petition is dismissed.

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