

Shambugowda Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Jul-14-2000

Reported in : AIR2000Kant381; ILR2000KAR3109; 2000(5)KarLJ359

Judge : Mohamed Anwar, J.

Acts : Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 - Sections 11(1), 41 and 44(2); Uttar Pradesh Municipalities Act, 1916 - Sections 9(D) and 87-A;

Appeal No. : Writ Petition No. 17031 of 2000

Appellant : Shambugowda

Respondent : State of Karnataka and Others

Advocate for Def. : Sri B.H. Sathish, Government Pleader and ;Sri B.G. Sridharan, ;Sri M.B. Naragund and ;Sri Udaya Holla, Adv.

Advocate for Pet/Ap. : Sri C.H. Jadhav, Adv.

Judgement :

ORDER

Mohamed Anwar, J.

1. Heard.

2. The petitioner, who was Chairman of the Agricultural Produce Marketing Committee, Bagalkot District ('the Committee' for short), has prayed to quash the order in No. E:07:Election:2000, dated 27-4-2000 of R-2, Director of Agriculture Marketing, Bangalore, passed removing him from the post of Chairman of the said Committee with immediate effect pursuant to the 'No-confidence Motion' passed by the Committee in its meeting held on 19-4-2000.

Admitted facts:

3. As on 19-4-2000 the Committee, consisted of 18 members. The post of one of its member was lying vacant and out of its remaining 17 members one was an official member nominated to the Committee by R-2 under Section 11(1)(viii) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 ('the Act' in short). Petitioner was the Chairman of the Committee prior to 19-4-2000. In response to a valid no-confidence motion notice in Form 27 given against him by the prescribed number of members of the Committee as envisaged by Section 44(1) of the Act, a meeting of the Committee was convened on 19-4-2000 to pass its resolution in that regard. The said meeting proceeding was commenced at 10.30 a.m. and was concluded by 11.00 a.m. on 19-4-2000 and 11 members of the Committee were present and participated in the meeting. They all unanimously supported the no-confidence motion against petitioner. Thereafter, at about 11.15 a.m. another member of the Committee, named Pandu Police, also came and was stated to have put his signature in the minute book supporting the said resolution of the Committee.

4. Later, on the same day, R-3, the Secretary of the Committee, submitted his report in No. APMC(B)/186-88/2000-2001 vide Annexure-B to R-2 seeking his further needful action under Section 44(2) of the Act. An objection was raised by the petitioner before R-2 against acceptance of the 'no-confidence motion' resolution against him. The ground of that objection was that the total number of the Committee members being 18, and only 11 of them having participated in the meeting and carried the motion, their number having fallen short of the requisite two-thirds of the total number of the members of the Committee, as required under Section 44(2) of the Act, that resolution was an invalid resolution. That objection of

petitioner was overruled by R-2 on the ground that the post of one member of the Committee having been left vacant, and another said official member being a nominated member, who was disqualified under Section 11(1)(viii) of the Act to vote in respect of Committee's any resolution under Section 44, the net number of the Committee members which was required for the purpose of computation of required 2/3rd was 16, and, therefore, 11 members out of this 16 having participated and voted in support of no-confidence motion, the Committee's said resolution was a valid resolution within the meaning of Section 44(1) and (2) of the Act. Accordingly, the impugned order, vide Annexure-D, was passed by R-2.

5. Mr. Jadhav, learned Counsel for petitioner, seeking to rely on a decision of the Supreme Court in *Raees Ahmad v State of Uttar Pradesh and Others*, assailed the validity of the impugned order of R-2 contending that his finding that the said nominated member cannot be counted for determination of 2/3rd strength of total number of Committee members is legally erroneous and not tenable. It was submitted that if said member is also taken into account, then the total number of the Committee members for the purpose comes to 17. In that event, the no-confidence motion moved and supported by only 11 members will not constitute 2/3rd of the total members of the Committee and thus it does not meet the requirement of sub-section (2) of Section 44, as the signature of said 12th member Pandu Police having been obtained in the resolution subsequent to the meeting he has to be ignored.

6. Mr. Naragund, learned Counsel for R-4, argued per contra. In support of his contention that the nominated member could not be counted as he could not have voted in the said meeting proceeding on account of disqualification attached to him by sub-clause (viii) of Section 11(1), relied on an unreported Single Bench decision of this Court in *Prabhakar v State of Karnataka and Others*.

7. To appreciate the rival contentions of both sides in the proper perspective, it is necessary to advert to the relevant provisions of Section 44 and Section 11(1)(viii) of the Act. Section 44 deals with Motion of no-confidence against the Chairman or the Vice-Chairman of the Market Committee. Its material provisions are:

'44. Motion of no-confidence.--(1) A motion of no-confidence may be moved by any member against the Chairman or the Vice-Chairman after giving such notice as may be prescribed and such notice shall be supported by not less than one-third of the total number of members of the Market Committee. If a meeting for consideration of the no- confidence motion is not directed by the Chairman to be convened within thirty days from the date of the notice, the Secretary of the Market Committee shall convene the meeting:

Provided.....

(2) If the motion against the Chairman or the Vice- Chairman is carried by a majority of not less than two-thirds of all the then members of the Market Committee, the Chairman or the Vice-Chairman, as the case may be, shall be removed from his office by an order passed to that effect by the Director of Agricultural Marketing. The order shall be communicated to the Secretary of the Market Committee and the Chairman or the Vice-Chairman concerned:

Provided.....

(3) x x x x x x'.

(emphasis supplied)

Section 11 relates to constitution and composition of a Market Committee, envisaging its total strength at 18. The relevant clause (viii) of its sub-section (1) reads:

'(viii) one shall be an officer not below the rank of Secretary of the concerned Market Committee nominated by the Director of Agricultural Marketing who shall have no right to vote under Section 41 or Section 44'.

8. In the light of these relevant provisions of the Act, now what has to be seen is whether or not the 'no-confidence motion' was passed against petitioner by a majority of not less than 'two- thirds of all the then members of the Market Committee'. Admittedly, the total strength of 'the then members of the Market Committee' was 17 at the time when motion for no-confidence against petitioner

was moved and passed in the said meeting on 19-4-2000. As already stated, the no-confidence motion in question had been carried in that meeting proceeding by 11 members of the Committee. It is an undisputed fact that after the meeting proceeding was over, one of the said member namely, Pandu Police appeared later whose signature was also said to have been obtained in the Minute book of the Committee. Since he did not actually participate in the proceeding of the meeting, his signature in the Minute book endorsing his approval of the result of the meeting is of no legal consequence and it has to be ignored from consideration.

9. Then the bone of contention between the parties centres around the said nominated member, raising the question whether or not he could be counted together with the said 11 members to determine the two-thirds strength of the total members of the Committee for the purpose of sub-section (2) of Section 44. If he is also accounted, then the total numbers of members of the Committee will be 17, and 11 members thereof will be little less than its $\frac{2}{3}$ strength. It was strenuously argued by Mr. Jadhav for petitioner, relying on Raees Ahmad's case, *supra*, that merely because the said nominated member of the Committee was not given a right to vote in the meeting proceeding held on 19-4-2000 in regard to no-confidence motion against petitioner, by reason of sub-clause (viii) of Section 11(1), his number cannot be excluded from being counted for the purpose of sub-section (2) of Section 44. Mr. Naragund argued otherwise drawing support from the unreported decision of this Court in Prabhakar's case, *supra*.

10. In the case of Raees Ahmad, *supra*, identical question had arisen for consideration of Supreme Court under Section 87-A read with Section 9(D) of the Uttar Pradesh Municipalities Act, 1916 ('the Act of 1916' for short). Section 87-A of the Act of 1916 dealt with no-confidence motion against President of the Municipality. The proviso to Section 9(D) thereof envisaged that the nominated ex officio members of the Nagar Panchayath (the Municipality) 'shall not have the right to vote in the meetings of the Municipality'. Sub-section (12) of Section 87-A contemplated:

'(12) The motion shall be deemed to have been carried only when it was been passed by a majority of two-third of the total number of members of the municipality'.

On behalf of respondent, it was contended before Supreme Court that, by virtue of disentitlement of the nominated ex officio members of the Nagar Panchayath to vote in the meetings of the Municipality (vide proviso to Section 9(D) of the Act of 1916) they should not be counted as part of the total number of the members of Municipality to determine two-third strength thereof for the purpose of Section 87-A(12). Repelling this contention, the Supreme Court held:

'5. . . .We find it difficult to accept this submission, given the plain words of the provisions quoted above. That nominated members may not vote does not imply that they cease to be members of the Municipality or that their numbers should be ignored in determining whether the President has lost the confidence of two-thirds of the members. So calculated, the vote of confidence against the President had not been carried as required'.

This proposition applies with all its force to the instant case for the purpose of determination of the requisite two-thirds of the members of the Market Committee to adjudicate the validity or otherwise of the no-confidence motion carried against petitioner in its meeting held on 19-4-2000. In view of the law so laid down by Supreme Court on number representing said official nominee member of the Committee will have to be counted for calculation of 2/3rd of the said total number of the Committee members i.e., 17 as contended by Mr. Jadhav. So, the decision of the Single Bench of this Court in Prabhakar's case, supra, striking a contrary view does not hold the field. The order of this Court in the case of Prabhakar, supra, was rendered on 3-3-1999. The case in Raees Ahmad, supra, was decided by Supreme Court on 10-12-1999. Therefore, the learned Judge in the case of Prabhakar, supra, could not have had the advantage of the proposition enunciated by the Supreme Court in Raees Ahmad's case, supra.

11. Another significant factor which reinforces the construction placed by the Supreme Court on the corresponding provisions under Section 87-A read with proviso to Section 9(D) of the Act of 1916 is the amendment effected in sub-

section (2) of Section 44 of the Act by amending Act No. 17 of 1980. The material phrase 'two-thirds of all the then members of the Market Committee' now occurring in sub-section (2) of Section 44 was originally worded as 'two-thirds of the total number of members of the Market Committee'. The effect of amendment of this phrase brought about by the amending Act No. 17 of 1980 is that the word 'all' is added to the then existing phrase, thereby making it crystal-clear that it is the 'two-thirds' of the number of all the existing members of the Market Committee which will have to be taken into account irrespective of any member/members thereof being a nominated member/members or not. Therefore, as laid down by Supreme Court, the said one nominated official member of the Committee cannot be excluded from the counting and that when his number is also taken into account, then two thirds of existing members at the material point of time i.e., 17, comes to 11.33. The crucial point for decision now would be, when 11 members of the Committee had carried no-confidence motion against petitioner and this number falling short of only 33 of an individual number to meet the requisite number envisaged in sub-section (2) of Section 44, what is the legal consequence of shortage by this fraction of one complete number. By any yardstick of calculation in such a situation, it is just and reasonable to hold that since this fraction of difference being less than 50% of a full one number, it is desirable to construe and conclude this difference as negligible and will have to be ignored. If this fractional difference were to exceed 50% of one number, then it ought to be calculated and taken into account as one whole number. Since the difference of .33 is liable to be ignored as of immaterial consequence, it necessarily follows that 11 members of the Committee who supported the no-confidence motion against petitioner make up 2/3rd of all its member fully satisfying the requirement of sub-section (2) of Section 44 of the Act. Therefore, the impugned order does not warrant interference.

12. For the reasons aforesaid, the petition is dismissed.