

G. Pullaiah Vs. Govt. of A.P. and Others

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Court : Andhra Pradesh

Decided On : Jan-21-1994

Reported in : AIR1995AP126; 1994(1)ALT314

Acts : Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 - Sections 1; Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969; [Constitution of India](#) - Articles 153, 226, 309 and 361

Appeal No. : Writ Petition No. 2438 of 1993

Appellant : G. Pullaiah

Respondent : Govt. of A.P. and Others

Advocate for Def. : Advocate General and ;M.R.K. Choudhary, Adv.

Advocate for Pet/Ap. : Kannabhiran for T. Jagadish, Adv.

Judgement :

ORDER

1. This writ petition has been filed seeking a declaration that for the Market Committees of Bhadrachalam and Boorgam-pahad of Khammam District, only non-tribal should be appointed as Chairmnian. The matter arises under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, hereinafter referred to as 'the Markets Act'. Under rule making powers, rules have been framed titled 'Andhra Pradesh (Agricultural Produce and Livestock) Market Rules,

1969 which are hereinafter referred to as the 'Market Rules'. The Markets Act is intended to regulate the purchase and sale of agricultural produce, live stock and products of livestock and the establishment of markets therefor. The prime object of the Markets Acts is to eliminate middlemen so that the owner and grower of the livestock gets the maximum price for the commodity. By a notification, market committees are constituted fixing the respective strength thereof. The composition of the market committee should consist of the growers of agricultural produce, owners of livestock, President of the Co-operative Marketing Society, Officers of Agricultural or Animal Husbandry Department, 'the Chairman of the Municipality or Sarpach of Gram Panchayat concerned and licenced traders in the notified area. The committee is constituted by nomination by Government. It is stated that several agricultural market committees were constituted by nominating members of the committee including the Chairman thereof including that of Boorgam pahad. In so far a Boorgampahad is concerned, the Agricultural Market Committee was constituted by appointing Chairman and members thereof vide C. O. Ms. No. 122, dated 25-2-1993 and they assumed charge of their office on 10-3-1993. As such, no relief can be granted in so far as Boorgampahad Agricultural Market Committee is concerned. The relief sought for in this writ petition has to be considered only with regard to Bhadrachaltn Agricultural Market Committee is concerned. Writ petition was admitted on 2-4-1993 and interim stay was granted, as such no committee was constituted in so far as Bhadrachalam Agricultural Market Committee is concerned. Mr. Srimanthula Krishnajuna Rao filed an impleadment petition in WPMP No. 15359/93 stating that being a politician of that area, he is espousing the cause of the non-tribals in that area and further that he being a tribal is expecting himself to be appointed as the Chairman of the said committee. The impleadment petition was ordered on 10-9-1993. Government has also filed a counter.

2. Mr. Kannabhiran, the learned counsel appearing for Mr. T. Jagadish, learned counsel for the petitioner, submits that inasmuch as the Bhadrachalam Agricultural Market Committee is situated within the notified tribal area, as 40% of the population are tribals, the Parliamentary Constituency covering the said area, the Assembly Constituency covering the said area, the local authorities be it Zilla Praja Parishad, Mandala Praja Parishad or Panchayat pertaining to the said area, have

been reserved for Scheduled Tribes and that on the same analogy, Bhadrachalam Market Committee also ought to have been reserved to be filled up by tribal candidates. The 1st contention is that the general laws made are not operative in the scheduled areas unless a notification to that effect is issued by the Governor in exercise of his powers under Schedule V of Indian Constitution. But, this argument has got no force as, if only the Government wants to modify or curtail the applicability of any statute in scheduled areas, the general statute cannot be made applicable. But, it cannot be said that the general law is inapplicable in scheduled areas unless the notification of its applicability in scheduled areas is issued by the Governor. All statutes which are enacted in a State are operative in the State as mentioned in the said statute including the scheduled areas and, if only the Governor in exercise of his legislative powers under Schedule V of Indian Constitution feels that the applicability of particular statute causes hardship to the tribals, then he can issue a notification modifying the statute or making the said statute inapplicable its entirely in the scheduled area/s. As such, I, hold that the Markets Act, 1966 is applicable to the entire State of Andhra Pradesh including all scheduled areas therein.

3. The next contention which is vital is that even assuming that Markets Act, 1966 is applicable in the scheduled areas, it was incumbent upon the Governor to issue notification making a provision for constitution of Agricultural Market Committees in tribal areas, only by nominating from among tribals and not to allow the participation of any non-tribals. The basis for this argument is that when a Parliamentary Constituency, Assembly Constituency, the Mandala Praja Parishads and Zilla Praja Parishads are reserved for the persons among scheduled tribes, there is no reason or justification to deny the said benefit to the tribals in so far as the agricultural market committees are concerned. It is contended that safeguards not only with regard to the reservations to the elective posts mentioned above were made, but also were made with regard to alienations of the lands, application of Moneylenders Act etc. for scheduled areas and the tribals being gullible persons, it is better that their community people govern the Agricultural Market Committee also and induction of non-tribals to manage the Agricultural Market Committees within tribal area will be detrimental to the interests of the tribals and will not further or better the interests of the tribals. A reading of Schedule V

appended to the Constitution is necessary to dwell upon this argument, legislative power is conferred upon the Parliament and the State Assemblies in Schedule VII with 3 lists; list I pertaining to the Parliament exclusively, List II pertaining to the Assemblies exclusively and List III concurrent list from which legislation can be made either by the Parliament or the State Legislative Assemblies as contemplated under Art. 246 of the [Constitution of India](#). Under clause 5 of the Vth Schedule to Constitution, the Governor is conferred with exclusive power to issue notification that any particular Act of Parliament or of the Legislature of the State shall not apply to a schedule area or any part there in the State or shall apply to a schedule area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and that the same can also be made with retrospective effect. The Governor is conferred with the power of making regulations covering every aspect in a tribal area including the enumerated subjects regarding transfers of land, allotment of lands and carrying of business of moneylending in schedule area. While making such regulations, the Governor can repeal or amend any Act or Parliament or of the legislature of the State or any existing law-which is for the time-being applicable to the area in question. Two fetters, of course, have been placed on the rights of the Governor, namely, that (1) the regulation made shall be assented to by the President; and (2) the same shall be made in consultation with the Tribes Advisory Council for enforcement of the same. But the same is applicable only when the regulation is made seeking to amend or repeal the existing law or the Act made by the Legislature or, Parliament. In the instant case, admittedly, the Governor did not exercise any such power either amending or annulling the Markets Act, 1966 in so far as its application to tribal areas is concerned. As such, the Markets Act, 1966 had been in operation without any amendments thereto. But the argument is that when reservation has been made for schedule tribe candidates for all the representative posts, there is no reason not to make such a beneficial provision for the Agricultural Market Committee also. But the authority to make such a regulation or to issue a notification, as the case may be, is only the Governor under Schedule V of Indian Constitution. The Governor under Schedule V exercises his power in his capacity as Governor and as the enumerated authority under Schedule V and not as a general power exercised under Article 163 of the

[Constitution of India](#). In so far as the powers exercised by the Governor under Art. 163 of Indian Constitution are concerned, they are all the decisions taken by the Council of Ministers headed by the Chief Minister and the Governor as a Constitutional head assents to the same. Essentially, those functions are the functions discharged by the Council of Ministers headed by the Chief Minister and are not comparable to the powers of the Governor under Schedule V. Under Schedule V, the Governor alone has to exercise the powers and is the law making body or authority, and his powers are legislative in nature. In the instant case, the Governor did not make any special regulations regarding the agricultural market committees constitute in schedule areas. However much this court feels that there should have been the benefit of reservation to the scheduled tribes even in the agricultural market committees in schedule areas, this Court does not possess any right or power to issue any direction to the Governor to frame such beneficial regulation in favour of the schedule tribes. It is not for the Governor alone to take decision in that regard and there cannot be any compulsion for the courts to make legislation in that regard. The Constitution places limitations on three wings of the democracy i.e. Legislature, Judiciary and Executive and each has to function within confined limits and cannot and should not transgress the same. As this court is not having either legislative power or issue directions to legislature on a particular aspect, I cannot issue a writ to the Governor to make any regulation. Further, the Governor has also got a constitutional immunity from being amenable to the jurisdiction of the court by virtue of Art. 361 of Constitution. In *Mullikarjuna Rao v. State of A.P.*, : [1990]2SCR418 , the Supreme Court was dealing with the order passed by the Administrative Tribunal when the said Tribunal issued directions to frame rules in a particular manner and disapproving the said action of the Tribunal, the Court held 'The Special Rules have been framed under Art. 309 of the Constitution. The Power under Art. 309 of the Constitution to frame rules is the legislative power. This power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The High Courts or the Administrative Tribunals cannot issue a mandate to the State Government to legislature under Art. 309 of the Constitution. The Courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its rule making power in any manner.

The courts cannot assume to itself a supervisory role over the rule-making power of the executive under Art, 309 of the Constitution.' In the latest judgment of the Supreme Court in State of J. & K. v. A. R. Zakki : AIR 1992 SC1546 , the Supreme Court held that a writ of mandamus cannot be issued to the Legislature to enact a particular legislation. Same is true as regards the executive when it exercises the power to make rules, which are in the nature of subordinate legislation. The Supreme Court held that as the power of legislation vests in the legislature and as the executive is empowered to make subordinate legislation and as the rule-making power is legislative in nature, no writ can be issued to legislate in a particular manner. As such, I hold that the prayer sought for by the writ petitioner to issue a writ or direction to the Governor to invoke V schedule, to Constitution and issue notification that tribals alone should be appointed as office bearers of Agricultural Market Committee cannot be granted. This court is only empowered to test in statute or regulation with regard to its legislative competence or its conformity with fundamental rights and should it find that there is no legislative competence to make any statute or regulation or when it violates any of the fundamental rights, this court can strike down the same. But, in no event this Court can issue a direction to frame a statute or rule or regulation in a particular manner.

4. The power of nomination regarding members' and chairman of agricultural market committees is vested in the State Government. It is stated by the writ petitioner that he made representation to the State Government during the month of January, 1991 to nominate only tribals in the agricultural market committees situated in schedule areas. The Government filed a counter emphatically denying filing of any such application by the writ petitioner. As yet, the new market committee for the Bhadrachalam has not been constituted. It is stated that because of the pendency of this writ petition and the subsistence of interim orders, the said steps have been stalled, and as such, Special Officer is manning the said agricultural market committee. As it is stated by the Government that no application was filed by the writ petitioner, no relief can be granted to the writ petitioner in the instant case. However, while constituting the agricultural market committee and nominating the Chairman and members thereof to Bhadrachalam Market Committee, it is left to the State Government to consider as to whether there should be any tribal representation in the said committee.

5. The writ petition is dismissed and the interim order is vacated. No costs.

6. Petition dismissed.

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