

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

WRIT PETITION No.8625/2020 (APMC)

BETWEEN:

1. C.N.Thimmegowda,
S/o Late Nanjegowda,
Aged about 76 years,
Agriculturist,
Resident of Cheluru,
Gubbi Taluk,
Tumkur District - 572 117.
2. Oil Seeds Growers' Co-operative
Society Limited,
Cheluru, Gubbi Taluk,
Tumkur District - 572 117.
Represented by its President
C.N.Thimmegowda,
S/o Late Nanjegowda,
Aged about 76 years

... Petitioners

(By Sri A.V. Gangadharappa, Advocate)

AND:

1. The Director of Agricultural Marketing
No.16, 11th Cross,
Rajabhavana Road,
P.B.No.5309,
Bangalore - 560 001.

2. The Deputy Commissioner
Tumkur District,
Tumkur- 572 101.
3. The Tahsildar & Designated Officer
for Election to Agriculture Produce
Market Committee,
Gubbi Taluk,
Tumkur District - 572 216.
4. Agriculture Produce Market Committee,
Gubbi,
Gubbi Taluk,
Tumkur District - 572 216.
Represented by its Secretary
5. Oil Seeds Growers Co-operative Society Ltd.,
Hosakere,
Hagalavadi Hobli,
Gubbi Taluk,
Tumkur District- 572 216.
Represented by its Chief Executive

... Respondents

(By Sri T. Swaroop, Advocate for R4;
Sri Kiran Kumar, HCGP for R1 to R3;
v/o dated 30.07.2020, service of notice to
R5 is held sufficient)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to call for the records and proceedings and quash the letter dated 11.06.2020 issued by the R4 produced as Annexure-'K' and endorsement dated 12.06.2020 issued by the R3 is produced as Annexure-'L' by holding that R5 and its members of Board of Management are not eligible and entitled to be considered for the purpose of electing one representative from the Agricultural Co-operative Processing Societies Constituency to the R4 APMC, Gubbi as per provisions of Section 11(1)(iv) of the Karnataka Agricultural Produce Marketing (Regulation

and Development) Act 1966 and the procedure as contemplated under Rules 8 to 18 Rules 35 and 41 are not to be followed when electing representative to the Agricultural Produce Marketing Committee, Gubbi from the Agricultural Co-operative Processing Society Constituency and etc.

This Writ Petition having been heard and reserved on 01.10.2020 and coming on for pronouncement of orders this day, the Court made the following:

ORDER

The first petitioner was elected as Director of the second petitioner Society and thereafter it's President. The present petition is filed challenging the endorsement at Annexure-L dated 12.06.2020 whereby the respondent No.3 has issued an endorsement stating that the nomination of representative i.e., first petitioner herein, made by the second petitioner Society as a Member of the fourth respondent Marketing Committee cannot be considered. The said endorsement has further clarified that proceedings for holding of election to the fourth respondent Market Committee has already been set into motion as per the order of the Deputy Commissioner.

2. Elections are sought to be held in the year 2020 to the fourth respondent Market Committee with respect to representative from the constituency provided for under Section 11 (1) (v), in light of the vacancy that is stated to have arisen by virtue of cessation of membership of the petitioner in the managing committee of the second petitioner society and thereby his membership as a representative in the fourth respondent Market Committee having come to an end by virtue of Section 38 (2) of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 ("the Act", for short).

3. The first petitioner has averred that he was unanimously elected as the President of the second petitioner Society and he was nominated to represent the Society in the Agricultural Produce Market Committee (APMC) arrayed as respondent No.4 as per

the resolution dated 10.03.2020, copy of which is enclosed as Annexure-A.

4. It is stated that in the year 2015, the claim of second petitioner was sought to be ignored when elections were sought to be held for the vacant post of Representatives of Agricultural Co-operative Processing Societies in the fourth respondent Committee while contending that the procedure for election as contemplated in Rule 8 to 18, Rule 35 and 41 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Rules, 1969 (hereinafter referred to as "the Rules") were not required to be followed while filling up the post of Representative to the APMC from amongst the Agricultural Co-operative Processing Society. W.P.No.47421/2015 came to be filed and the same being dismissed, matter was taken up in appeal and the Division Bench in W.A.No.51/2016 had declared that elections as contemplated under Rule 41

of the Rules need not be adhered to. Hence, it is contended by the learned counsel for the petitioner that in the present case also, the question of holding elections does not arise.

5. It is further contended that the tenure of membership in the fourth respondent Committee is fixed under Section 39 of the Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 ("the Act", for short). The second and subsequent Market Committees that are constituted consist of the representatives from various constituencies including from Agricultural Co-operative Processing Societies are entitled to enjoy office for five years. It is further contended that as the nomination as representative of the second petitioner Society was accepted as per the Gazette notification dated 30.01.2017 at Annexure-E1 and accordingly, the representative of the second petitioner Society is entitled to remain in office till 30.01.2022.

6. Accordingly, it is submitted that the question of initiating election proceedings by the Deputy Commissioner afresh in the year 2020 is premature and is impermissible in law.

7. Sri. A.V.Gangadharappa, the learned counsel for petitioners, would further contend the stipulation under Section 38 (2) of the Act which provides that the membership in the Market Committee (i.e., 4th respondent) would cease on the membership of the petitioner in the Managing Committee of the Processing Society ceasing as provided under Section 38 (2) of the Act would not apply to the constitution of second and subsequent market committees as contemplated under Section 11 of the Act. It is submitted that Section 11 (v) provides for a representative of Agricultural Co-operative Processing Society would be a part of the Apex Market Committee. The tenure of such representative would be for a fixed period and be independent of

whether such representative's tenure in the managing committee of the Agricultural Processing Society has expired. It is further submitted that the fact that he is a part of the managing committee would be irrelevant and any member of a Co-operative Marketing/Processing Society would be eligible for being a representative of the Co-operative Processing/Marketing Society in the Apex Marketing Committee.

8. Attention is drawn to the language of Section 10 (1) (v) which relates to the constitution of the first market committee, which is in contradistinction to Section 11 (1) (v) of the Act, which deals with the constitution of the subsequent market committee.

9. It is submitted that as regards constitution of the first market committee from the constituency under Section 10 (1) (v) of the Act, a member of committee of management of an Agricultural Co-operative Processing Society would be eligible for nomination in the Apex

Market Committee. Accordingly, it is contended that Section 38 (2) would be applicable only with respect to the representatives in the Market Committee from the constituency under Section 10 (1) (v) of the Act and not with respect to the representatives from the constituency as envisaged under Section 11 (1) (v) of the Act.

10. Learned counsel also refers to the judgment passed by this court in the case of ***Venkanagouda v. State of Karnataka and Others*** reported in **ILR 2001 KAR 1126**. It is contended that the interpretation in Para 15 as regards Section 11 (iv) and (v), to the effect that election is by the members of the committee of management is contrary to the plain reading of the provision, and that the court has refused to distinguish the language used in Section 10 on the one hand and Section 11 on the other and has treated both provisions as identical, which is erroneous.

11. Learned counsel for the petitioners contends that the judgment of the Division Bench is to be treated as *per incurium*, as the interpretation placed is contrary to the express language of the statute and must be ignored and places reliance on the judgment of the Apex Court in the case of ***Indore Development Authority v. Shailendra*** reported in ***AIR 2018 SC 824***.

12. Alternatively, it is contended that as on date when the petitioner had ceased to be member of the Board of Management as on February, 2020 the fifth respondent was not eligible to be considered as a Agricultural Co-operative Processing Society as it had obtained license only on 20.05.2020.

13. The learned counsel appearing for the respondent No.4 would however contend that the procedure for filling up the vacancies in the Market Committee of the fourth respondent is as per the procedure under Rule 6 of the Karnataka Agricultural

Produce Marketing (Regulation and Development) Rules, 1968 and the Deputy Commissioner is the Authority concerned who by necessary order shall call upon the Co-operative Marketing/Processing Societies to elect a person to fill up the vacancy that has been created.

14. Accordingly, it is contended that the post in the fourth respondent Society has become vacant, consequent to the cessation of membership of the first petitioner in the Managing Committee of the second petitioner Society by efflux of time in light of Section 38 (2) of the Act. Hence, it is submitted that once the membership of the first petitioner having been terminated, he would also cease to be a member of the fourth respondent Committee and there would be a vacancy in the Marketing Committee as regards the constituency as envisaged under Section 11 (1) (v) of the Act. Accordingly, it is submitted that the vacancy is sought to be filled by holding elections as contemplated

under Proviso to Rule 41 as there is more than one Agricultural Co-operative Processing Society i.e., petitioner no.2 Society and respondent no.5 Society.

15. It is submitted that the fifth respondent Society has subsequently obtained the licence as a 'processor' as per Annexure-R1 on 20.05.2020 and accordingly is entitled to seek for election under the constituency stipulated in Section 11 (1) (v) of the Act while competing with the other Agricultural Processing Societies i.e., petitioner no.2 herein who also has a right to send a member as their representative to the Market Committee. Accordingly, it is contended that the Deputy Commissioner has rightly set into motion the election process. Hence, it is submitted that on 30.05.2020, in accordance with the procedure prescribed, and as the second petitioner and the fifth respondent being Agricultural Co-operative Processing Societies were carrying on the business in notified agricultural

produce within the market area, both were eligible to make nomination to the fourth respondent Committee. Accordingly, the process for election as envisaged under the Proviso to Rule 41 (1A) of the Rules had been initiated and the contention of the petitioner that there was no vacancy and holding of elections cannot be accepted.

16. It is further submitted that the Deputy Commissioner has sought to hold election and has directed the Tahsildar to take necessary action to fill up the vacancy and reliance is placed on the communication dated 28.05.2020 at Annexure-R9 filed along with memo dated 28.09.2020 and the communication of the Deputy Commissioner to the Tahsildar dated 30.05.2020 enclosed as Annexure-'E' to the writ petition.

17. The learned counsel appearing for the respondent-State has adopted the submissions of learned counsel appearing for fourth respondent and

submits that there is no illegality in the election process initiated.

18. Heard the learned counsel on both the sides.

19. Insofar as the contention that petitioner was elected to the Subsequent Committee of the APMC in the year 2017 and is entitled to continue in office till the expiry of five years from 2017 in terms of Section 39 of the Act and consequently the question of respondent No.2 taking steps for holding of election does not arise is a contention if addressed leads to resolution of the controversy on hand.

20. In support of such contention counsel for the petitioner has contended that the consequence under Section 38 (2) of cessation of membership in the market committee on his ceasing to be a member of the Managing Committee of the society concerned by 'efflux of his term of office or otherwise' would not apply to

membership in a subsequent Market Committee as envisaged under section 11 (1) (v) of the Act, which is in contradistinction to membership in the first market committee as envisaged under Section 10 of the Act.

21. It must be noted that the Division Bench in the case of **Venkanagouda (supra)** while interpreting Section 11 (1) (iv) and (v) and Section 38 (2) of the Act has interpreted the provisions harmoniously and held that the member of the Market Committee would lose his membership in terms of section 38 (2) once he ceases to be a member of the Managing Committee of the society.

The Division Bench at Para 15 has held as under:

15. On a reasonable interpretation, keeping in view the objective of the provision, we have to read the expression "from amongst them" by necessary implication in clauses (iv) and (v) of Section 11. This interpretation harmonises with and flows

from a reading of Section 38 (2) of the Act which clearly provides that a person who has been elected to the market Committee as a representative of the Co-operative Marketing Society or as a representative of the Co-operative Marketing Society or as a representative of the Co-operative Agricultural Processing Society shall cease to be the member of the Market Committee on his ceasing to be member of the Management Committee of such Society. In view of the above, it naturally follows that a person who ceases to be a member of the Managing Committee of the respective Co-operative Societies, and has been elected to the Agricultural Market Committee under Section 11 (iv) will definitely cease to be the member of the Agricultural Market Committee on his ceasing to be member of the Managing Committee of such Societies under Section 38 (2) of the Act.

22. It is also to be noted that the contrary view taken by a co-ordinate Bench of this court in

W.P.No.28808/1999 dated 13.04.2000 in the case of **Chikkappa Ningappa Shygoti v. State of Karnataka and Others**, which is on identical lines as canvassed by the petitioners herein, has been specifically overruled in para 19 of **Venkanagouda's case** referred to supra and the relevant extract reads as under:

"19 Moreover, there is no warrant to deviate from the plain language of Section 38 (2) and to give a restricted interpretation thereto so as to apply it only to the nominated members of Managing Committee".

23. The same position as that of the Division Bench has been reiterated in the judgment of **J.B.Puttamaregowda v. State of Karnataka and others** reported in **MANU/KA/0066/2020 Para 15 to 17.**

24. The same is the view taken by this court in identical circumstances in W.P.No.146928/2020 and

the petition has been disposed of by the order dated 26.06.2020.

25. No doubt, the learned counsel appearing for the petitioners, Sri.A.V.Gangadharappa has contended that the Division Bench in the case of **Venkanagouda (supra)** has grossly erred in adopting an interpretation which is contrary to the plain words by ignoring the distinction between composition of the first market committee under Section 10 which provides that "the member is to be a member of the committee of management" which is in contradistinction to composition of the subsequent market committee as envisaged under Section 11 which requires that the member of the society is eligible to act as a representative of the market committee. It is submitted that the judgment in **Venkanagouda's case** referred to supra is *per incuriam* as it has concluded contrary to the plain meaning of the provision of Section 11 (1) (v) of

the Act and reliance is placed on the judgment of the Apex Court in the case ***Indore Development Authority (supra)***.

26. It would be highly inappropriate for a Bench consisting of a Single Judge to declare the orders of the Division Bench per incuriam in the absence of any order of the Supreme Court contrary to what was decided in ***Venkanagouda's case***, this would be so even if the arguments appeal personally to the Bench.

27. As regards the contention that no elections need to be held by placing reliance on the order in W.A. No.51/2016, the relevant facts as to whether there was no rival contestant or other societies necessitating holding of election does not come forth in order of the division bench in W.A.No.51/2016 dated 13-02-2020. The Division Bench appears to be dealing with the case where election was not necessary which would be so if there are no multiple contestants or multiple societies

necessitating election as contemplated under Rule 41. The first and second proviso to Section 11 r/w Rule 41 does envisage holding of election in the event there are multiple societies to choose one representative to be sent as an envisaged under Section 11 of the Act. Accordingly it cannot be said that elections need not be held in light of the observations of the Division Bench in the aforesaid matter.

28. The other contention that is raised without prejudice to the contention of the petitioner raised supra, is that even as per the say of the respondents the term of the petitioner no.1 in the Market Committee came to an end on 28.02.2020 by virtue of his membership in the Managing Committee of the second petitioner Society having come to an end, on which date the fifth respondent Society still did not possess any licence as a Processing Society. If that were to be so, it is contended that the fifth respondent was not entitled

to participate in the elections since as on 28.02.2020 the second petitioner was the only Processing Society.

29. Section 12 provides that members of the Market Committee are to be elected in the manner prescribed by the Rules. Rule 41 provides for procedure of election of representative of the Agriculture Processing Co-operative Society to the Marketing Committee and the same procedure is made applicable for filling up of casual vacancies as per Rule 42 which is applicable in the present case.

30. It is clear that the Deputy Commissioner is the authorised officer to initiate the process of election to fill the vacancies. In the present case, the Deputy Commissioner was approached by the fourth respondent to hold the election to fill up the vacancy by letter dated 28.05.2020 (R.9) and it is subsequent thereto that the process of election is set into motion. As on such date, the fifth respondent had obtained

licence as per Annexure-R1 on 20.05.2020. It is further pointed out by the counsel appearing for the fourth respondent that application seeking licence as a Processing Society was sought for by the fifth respondent on 16.03.2020 (R.5 and R.6). If that were to be so, as there were more than one Processing Society as on the date when the Deputy Commissioner has set into motion the election process, the procedure followed by the Deputy Commissioner cannot be faulted. The delay to initiate the process of election though is to be frowned upon it does not in any way create a vested right in the petitioner so as to obstruct the election process initiated. The right to stand for election is not a fundamental right but is one created under a statute and in the absence of any timeline prescribed for filling up of the vacancy as long as the same is sought to be filled within a reasonable time, action of having initiated the election process cannot be faulted. The delay in the present case is not to the extent that would make it

impermissible calling for judicial interference. Accordingly, the said contention that has been raised without prejudice to the other contentions advanced is liable to be rejected.

31. The petitioners have also brought to the notice of this court that during the pendency of the present petition Calendar of Events has been issued on 13.07.2020 to elect the Chairman and Vice-Chairman of the fourth respondent APMC. Clearly, such action by the Deputy Commissioner would be impermissible unless election is held to fill up the vacancy in the fourth respondent Market Society, the filling up of which is a subject matter of the present petition is completed.

32. Accordingly, the writ petition is dismissed. It is noticed that the concerned authority was permitted to proceed with the elections with a further direction that results would not be announced as per the order

passed by this court dated 16.07.2020. Submission by both counsels that election is held but results are not announced is taken note of and in light of petition being dismissed, the results are permitted to be declared.

**Sd/-
JUDGE**

Vgr/Np

**SSDYJ:
29.10.2020**

ORDER

After the order was pronouounced, the learned counsel for petitioners has made an oral request for stay of the order passed today, till the expiry of the appeal time.

In light of order being passed after detailed consideration, taking note of the law laid down by the Division Bench in ***Venkanagouda v. State of Karnataka and Others*** reported in **ILR 2001 KAR**

1126, this court declines to consider the request of the learned counsel for petitioners. It would always be open for the petitioners to seek for appropriate relief before the Division Bench as against this order. The mere announcing of the result, election of which was held during the pendency of the writ petition would not render the appeal, if filed, infructuous as submitted by the counsel for the petitioners.

**Sd/-
JUDGE**

Vgr/Np