G. V. GUNAYYA CHETTY & ANR A

v.

V. DASARATHARAMAIAH & ORS.

April 21, 1975

[A. ALAGIRISWAMI, P. N. BHAGWATI AND P. K. GOSWAMI, JJ.] B

Andhra Pradesh Agricultural Produce and Live-Stock Markets Act, 1966, *cl. (iv) of sub-sec.* (1) *of sec.* 5 *and proviso to cl. (iv), and section* 7 *and* 22—*Market committee, constitution of—Members representing traders to be elected, but they are to be nominated by Government when market committee is constituted for the first time—Nomination of members representing traders to the newly constituted market committee after supersession, if legal.* C

The Government, by a notification issued under sec. 3, sub-sec. (3) of the Andhra Pradesh Agricultural Produce and Live-Stock Markets Act, 1966, declared the area comprised in Machilipatnam, Bandar and Divi taluka to be notified area for the purposes of the Act. This was followed by a notification dated 30th October, 1969 constituting a Market Committee for the notified area under s. 4, sub-s. (1) of the Act. The Market Committee was to consist of twelve members to be appointed in the manner set out in s. 5, sub-s. (1) of the Act. Six out of these twelve members were nominated by the Government from among the growers of agricultural produce and owners of livestock under s. 5, sub-s. (1), cl. (i), two were nominated by the Government from among traders under proviso to s. 5 sub-s. (1) cl. (iv) and the Agriculture Extension Officer. Movva was nominated by the Government as departmental representative under s. 5, sub-s. (1), cl. (iii)(a). The Chairman of the Market Committee was elected on 24th January, 1970. In consequence of the judgment of the High Court of Andhra Pradesh in *Donde Rama Rao* v. *State* A.I.R. 1971 Andhra Pradesh 353), the Government superseded the Market Committee for a period of six months on the ground that it was not competent to perform the duties imposed on it by or under the Act. The initial period of six months for which the Market Committee was superseded was further extended and just before the expiration of the extended period of supersession, the Government made an order dated 7th December, 1972 constituting a new Market Committee by nominating six persons out of growers of agricultural produce and owners of livestock under s. 5, sub-s.(1), cl.(i), the President of the Diviseema Cooperative Marketing Society, Avanigadda under s. 5, sub-s. (1), cl. (ii), the Agricultural Extension Officer. Movva as departmental representatives under s. 5, sub-s. (1), cl. (iii)(a) and three persons representing traders under the proviso to sub-cl. (iv) of s. 5, sub-s. (1). Though Divi taluk formed part of the notified area, no grower or trader fom Divi Taluk was nominated on the Market Committee; all the six representatives of growers belonged to Badar Taluka while all the three representatives of traders belonged to Machilipatnam taluk. Respondents Nos. 1 and 2, who were two of the traders from Divi Taluk, therefore, filed Writ Petition No. 1693 of 1973 in the High Court of Andhra Pradesh challenging the validity of the order dated 7th December, 1972 in so far as it nominated representatives of traders on the Market Committee under the Proviso to cl. (iv) of sub-s. (1) of s. 5. The argument of respondents Nos. 1 and 2 was that it was the main part of cl. (iv) of sub-s.(1) of s. 5 which applied and not the Proviso and, therefore, the Government was not entitled to nominate representatives of traders but they were liable to be elected by traders licensed under s. 7, sub-s. (1) from amongst themselves. The learned Single Judge of the High Court dismissed the Writ Petition. Thereupon Respondents 1 and 2 preferred an appeal under cl. 15 of the Letters Patent to a Division Bench of the High Court. D E F G H

The Division Bench disagreed with the view taken by the learned Single Judge and held that when the Government constituted the new Market Committee by its order dated 7th December, 1972 on the expiration of the period of supersession of the earlier Market Committee, it did not constitute a new

A Market Committee for the first time, and therefore, the case was governed, not by the proviso, but by the main part of s. 5, sub-s. (1), cl. (iv) and the order dated 7th December, 1972 was invalid in so far as it nominated three members from among traders purporting to act under the proviso to s. 5, sub-s. (1), cl. (iv). The appellant thereupon brought the present appeal with special leave obtained from this Court.

B Dismissing the appeal ,

HELD : The main part of cl. (iv) of sub-s. (1) of s. 5 enacts that, as a general rule, members representing traders are to be *elected* "by the persons licensed under sub-s.(1) of s. 7 in the notified area from among themselves". But the licence contemplated under sub-s. (1) of s. 7 is a licence to be granted by the Market Committee, and therefore, it must follow *a fortiori* that when a market committee is to be constituted for the first time, there would be no C "persons licensed under sub-s. (1) of s. 7" in existence who could elect members on the Market Committee under the main part of cl.(iv) of sub-s.(1) of s. 5. That is why the proviso was enacted to deal with such a situation, it says that when a Market Committee is being constituted for the first time, the elective method being obviously inapplicable, members representing traders shall be nominated by the Government in the manner set out there. The Market Committee which is constituted by the Government on the expiration of the period of supersession must necessarily be a new market committee *vis-a-vis* D the earlier one which is superseded. But that does not mean that it is a market committee constituted for the first time. It would indeed be doing violence to the language of the proviso to say that such a market committee is one constituted for the first time for a notified area, when there was already an earlier market committee constituted for the same notified area, though it was subsequently superseded. The proviso to cl. (iv) of sub-s. (1) of s. 5 had, therefore, no application and the Government was not entitled to nominate members representing traders on the Market Committee constituted by it E under the order dated 7th December, 1972. It was the main part of cl. (iv) of sub-s. (1) of s. 5 which applied. [225H, 226ADE, GH 227DHF]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1731 of 1974

Appeal by special leave from the judgment and order dated 27-8-74 F of the Andhra Pradesh High Court in Writ Appeal No. 716 of 1973.

S. V. Gupte, A. V. Rangam and A. Subhashini, for the appellant.

A. Subba Rao, for the respondent.

G The Judgment of the Court was delivered by

BHAGWATI, J.—This appeal, by special leave, raises a very short question of construction of certain provisions of the Andhra Pradesh Agricultural Produce and Live-Stock Markets Act, 1966 (hereinafter referred to as the Act). The narration of a few facts giving rise to the appeal would help to appreciate the question which arises for H determination, but it would be convenient first to refer to the relevant provisions of the Act before we recapitulate the facts.

The Act is a species of legislation which has now been enacted in almost all States of India with a view to providing satisfactory conditions for the growers of agricultural produce to sell their produce on equal terms and at reasonable prices. Section 2 gives definitions of the

various terms used in the Act, while sec. 3 provides for issue of notification by the Government declaring a specific area "to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock. Then comes s. 4, which says in sub-s. (1), which is the only sub-section material for our purpose :

> "The Government shall constitute, by notification, a market committee for every notified area from such date as may be specified in the notification and the market committee so constituted shall be a body corporate by such name as the Government may specify in the said notification, having perpetual succession and a common seal with power to acquire, hold and dispose of property and may, by its corporate name, sue and be sued."

The composition of market committee is laid down in s. 5. Sub-s. (1) of that section provides :

> "Every market committee shall consists of such number of members, being not less than twelve and not more than sixteen, as may be fixed for it by the Government and shall be constituted in the following manner :—
>
> (i) not less than one-half of the members, to be appointed by the Government, after consultation with the Director of Marketing, from among the growers of agricultural produce and the owners of livestock and products of livestock in the notified area ;
>
> (ii) one non-official from the notified area, to be elected by the members of the local cooperative marketing societies ; or in the absence of such societies to be elected as specified in clause (iv) ;
>
> (iii) (a) one representative, having jurisdiction over the notified area, of the Agricultural Department or the Animal Husbandry Department, to be appointed by the Government ;
>
> (b) two representatives, one each, of the municipality within which the office of the market committee is located and of the gram panchayats comprised in the notified area, to be elected by the members of the municipality and the gram panchayats respectively ; or in the absence of such municipality both representatives to be elected by the members of the gram panchayats ; or in the absence of a gram panchayat, only one representative to be elected by the municipality ;
>
> (iv) the remaining members, to be elected in the prescribed manner by the persons licensed under sub-section (1) of Sec. 7 in the notified area from among themselves :
>
> Provided that where a market committee is constituted in any notified area for the first time, the Government shall appoint

A the members under this clause from out of a panel of traders of the notified agricultural produce, livestock or products or livestock in the notified area, furnished by the Director of Marketing to the Government."

Sub-section (2) says that every market committee shall elect two B of its members other than those mentioned in clause (iii) of sub-s. (1), to be respectively Chairman and Vice-Chairman, and sub-sec. (3) enacts that save as otherwise provided in the Act, the term of office of the members appointed or elected under sub-s. (1) shall be three years from the date of the election of the Chairman. The other sub-sections of sec. 5 are not material and we need not refer to them. C Sub-s. (2) of s. 6 empowers the Government to extend the term of office of the members of the market committee for a period not exceeding one year subject to the proviso that no such extension shall be given for a period exceeding six months at a time. What is to happen on the expiration of the term of the office of the members of the market committee, whether original or extended, is set out in sub-s. (1) of s. 6. That sub-section says that on the expiration of the term of the office D of the members of the market committee, the Government shall reconstitute the market committee. Then follow certain other sections which have no bearing on the controversy before us and we may, therefore, straight go to section 22 which deals with supersession of market committee. That section is very material and we may reproduce it in *extenso*.

E

"*Supersession of market committees.*—(1) If in the opinion of the Government a market committee is not competent to perform or persistently makes default in performing the duties imposed on it by or under this Act, or abuses its powers, they may, by notification, supersede such committee for a period not exceeding one year in the first instance and may, by order, extend, from time to time the period of supersession so however, that the total period of supersession in the case of any market committee shall not exceed two years:

F

Provided that before issuing a notification under this G sub-section, the Government shall give to the market committee an opportunity of making representation on the action proposed and shall consider the explanation or objection, if any, of the market committee thereon.

(2) As from the date of publication of a notification under sub-section (1), superseding a market committee, H the following consequences shall ensue—

(a) all the members as well as the Chairman and Vice-Chairman of the market committee shall be deemed to have vacated their offices;

(b) all the assets vested in the market committee shall, subject to all its liabilities, vest in the Government.

(3) Where a market committee has been superseded— A

(a) the Government may, by order, appoint a suitable person or persons to exercise the powers and perform the functions of the market committee during the period of its supersession and transfer to such person or persons the assets and liabilities of the superseded market committee as on the date of such transfer, and B

(b) the Government, may at any time before the expiration of the period of supersession, constitute a new market committee under sub-section (1) of section 4 and transfer thereto the assets and liabilities of the superseded market committee as on the date of such transfer." C

Bearing in mind these relevant provisions of the Act, we may now turn to the facts leading up to the present appeal before us. D

The Government, by notification issued under s. 3, sub-s. (3) of the Act, declared the area comprised in Machilipatnam, Badar and Divi taluks to be notified area for the purposes of the Act. This was followed by a notification dated 30th October, 1969 constituting a Market Committee for the notified area under s. 4, sub-s. (1) of the Act. The Market Committee was to consist of twelve members to be appointed in the manner set out in s. 5, sub-s. (1) of the Act. Six out of these twelve members were nominated by the Government from among the growers of Agricultural produce and owners of live-stock under s. 5, sub-s. (1), cl. (i), two were nominated by the Government from among traders under the proviso to s. 5, sub-s. (1), cl. (iv) and the Agriculture Extension Officer, Movva nominated by the Government as departmental representative under s. 5, sub-s. (1), cl. (iii)(a). It does not appear from the record whether the other three members were appointed as contemplated by s. 5, sub-s. (1), cls. (ii) and (iii)(b). The Chairman of the Market Committee was elected on 24th January, 1970 and the term of office of the members of the Market Committee was, therefore, three years from that date as provided in s. 5, sub-s. (3). E F G

It, however, appears that in the case of Market Committee constituted by the Government for some other notified areas, writ petitions were filed in the High Court of Andhra Pradesh challenging the validity of the nominations made by the Government under s. 5, sub-s. (1), cl. (i) and clause (iv) proviso. The ground of challenge in regard to the nominations made under s. 5, sub-s. (1), cl. (i) was that the Government had not complied with the mandatory requirement of that provision which enjoined it to consult the Director of Marketing before nominating members from among the growers of agricultural produce and owners of livestock in the notified areas in regard to nominations made under the proviso to s. 5, sub-s. (1), cl. (iv), the challenge was based on the ground that the nominations were made by the Government outside the panel of traders H

A furnished by the Director of Marketing. These grounds of challenge were upheld by the High Court in a decision reported in *Donda Ram Rao* v. *State*(1) and it was held that the nominations made under s. 5, sub-s. (1), cl. (i) and the proviso to cl. (iv) were in contravention of those respective provisions and were accordingly invalid. Though this decision was given in regard to the Market Committees
B of other notified areas, it equally applied to the Market Committee constituted for the notified area of Machilipatnam, Bandar and Divi taluks and hence it was obvious that the nominations made by the Government from among the growers of agricultural produce and owners of livestock under s. 5, sub-s. (1), cl. (i) and from among traders under the proviso to s. 5, sub-s. (1), cl. (iv) were invalid. But that would leave only one or at the highest four validly appoint-
C ed members on the Market Committee and the quorum for a meeting of the Market Committee under rule 29 of the Andhra Pradesh Agricultural Produce and Livestock Markets Rules, 1969 made under s. 33 of the Act being save, it would be incompetent to the Market Committee to exercise its powers and discharge its functions. The Government, therefore, after giving an opportunity to the exist-
D ing members of the Market Committee to be heard, passed an order dated November, 1971 under section 22, sub-s. (1) of the Act superseding the Market Committee for a period of six months on the ground that it was not competent to perform the duties imposed on it by or under the Act. The consequence of this supersession was that all the members of the Market Committee were
E deemed to have vacated their offices and all the assets vested in the Market Committee, subject to all its liabilities, became vested in the Government. *Vide* sub-s. (2) of s. 22. The Government by another order of the same date made under s. 22, sub-s. (3), cl. (a) appointed the Assistant Director of Marketing to exercise the powers and perform the functions of the Market Committee during the period of its supersession. It may be stated that none of the per-
F sons affected challenged the order of supersession made by the Government and it does not form the subject matter of challenge even in the present appeal.

It appears that the initial period of six months for which the Market Committee was superseded was further extended and just before the expiration of the extended period of supersession, the
G Government made an order dated 7th December, 1972 constituting a new Market Committee by nominating six persons out of growers of agricultural produce and owners of livestock under s. 5, sub-s. (1), cl. (i), the President of the Divisecma Cooperative Marketing Society, Avanigadda under s. 5, sub-s. (1), cl. (ii), the Agricultural Extension Officer, Movva as departmental representatives under s. 5, sub-s. (1), cl. (iii)(a) and three persons representing traders under
H the proviso to sub-cl. (iv) of s. 5, sub-s. (1). Though Divi taluk formed part of the notified area, no grower or trader from Divi Taluk was nominated on the Market Committee all the six representatives of growers belonged to Badar taluk, while all the representatives of traders belonged to Machillipatnam taluk. Respon-

(1) A.I.R. 1971 Andhra Pradesh 353.

dents Nos. 1 and 2, who were two of the traders from Divi Taluk, therefore filed Writ Petition No. 1693 of 1973 in the High Court of Andhra Pradesh challenging the validity of the order dated 7th December, 1972 in so far as it nominated representatives of traders on the Market Committee under the Proviso to cl. (iv) of sub-s. (1) of s. 5. The argument of respondents Nos. 1 and 2 was that it was the main part of cl. (iv) of sub-s. (1) of s. 5 which applied and not the Proviso and, therefore, the Government was not entitled to nominate representatives of traders but they were liable to be selected by traders licensed under s. 7, sub-s. (1) from amongst themselves. The appellant who was one of the representatives nominated by the Government, resisted this argument and defended the order dated 7th December, 1972. The learned Single Judge, who heard the writ petition in the first instance, rejected the contention of respondents Nos. 1 and 2 and held that when the Government constituted the new Market Committee by issuing the order dated 7th December, 1972, it constituted the Market Committee for the first time, and therefore, under the proviso to s. 5, sub-s. (1), cl. (iv), the Government was entitled to nominate members from out of the panel of traders furnished by the Director of Marketing and the order dated 7th December, 1972 did not suffer from any infirmity. On this view, the learned Single Judge dismissed the writ petition.

Respondent Nos. 1 and 2 being aggrieved by the order made by the learned Single Judge preferred an appeal under cl. 15 of the Letters Patent to a Division Bench of the High Court. The Division Bench disagreed with the view taken by the learned Single Judge and held that when the Government constituted the new Market Committee by its order dated 7th December, 1972 on the expiration of the period of supersession of the earlier Market Committee, it did not constitute a new Market Committee for the first time, and therefore, the case was governed, not by the proviso, but the main part of s. 5, sub-s. (1), cl. (iv) and the order dated 7th December, 1972 was accordingly invalid in so far as it nominated three members from among traders purporting to act under proviso to s. 5, sub-s. (1), cl. (iv). The appellant thereupon brought the present appeal with special leave obtained from this Court.

The sole question that arises for determination in this appeal is as to which provision applied in the present case: the main part of cl. (iv) of sub-s. (1) of s. 5, or its proviso. The answer to the question depends upon whether the Market Committee was constituted for the first time when the Government made the order dated 7th December, 1972. The main part of cl. (iv) of sub-s. (1) of s. 5 enacts that, as a general rule, members representing traders are to be *elected* "by the persons licensed under sub-s. (1) of s. 7 in the notified area among themselves". But the licence contemplated under sub-s. (1) of s. 7 is a licence to be granted by the Market Committee, and therefore, it must follow a *fortiori* that when a market committee is to be constituted for the first time, there would be no "persons licensed under sub-s. (1) of s. 7" in existence who could elect members on the Market Committee under the main part

of cl. (iv) of sub-s. (1) of s. 5. That is why the proviso was enacted to deal with such a situation. It says that when a Market Committee is being constituted for the first time, the elective method being obviously inapplicable, members representing traders shall be nominated by the Government in the manner set out there. Whenever, therefore, a question arises as to which is the appropriate method to be adopted in appointing members representing traders—whether elective method under the main part of cl. (iv) of sub-s. (1) of s. 5, or nominative method under the proviso—the inquiry which has to be made is: is the Government constituting the market committee for the first time, or has it already been constituted once before and in view of the expiration of the term of office of its members or its supersession, it is being constituted again?

Let us first take a case where a market committee has been constituted for a notified area for the first time and the term of office of its members, whether original or extended, expires. The Government is then required to reconstitute the market committee under s. 6. 'Reconstitute', according to its plain natural connotation, means nothing else than 'constitute again'. The Government has, therefore, to constitute the market committee again. That would clearly be a new market committee, but it would not be a market committee constituted for the first time, for there was already an clearly be a new market committee, but it would not be a market came to an end by efflux of time. The proviso to cl. (iv) of sub-s. (1) of s. 5 can, therefore, obviously, on its plain language, have no application in such a case. The *raison d'etre* for the necessity of nomination under the proviso would also not be there.

Then, does it make any difference whether a market committee constituted for a notified area for the first time is superseded and on the expiry of the period of supersession, a new market committee is constituted by the Government under sub-s. (1) of s. 4 as contemplated by sub-s. (3)(b) of s. 22? The market committee which is constituted by the Government on the expiration of the period of supersession must necessarily be a new market committee *vis-a-vis* the earlier one which is superseded. But that does not mean that it is a market committee constituted for the first time. It would indeed be doing violence to the language of the proviso to say that such a market committee is one constituted for the first time for a notified area, when there was already an earlier market committee constituted for the same notified area, though it was subsequently susperseded. There is no scope here for verbal semantics. It is a simple question we have to ask for ourselves: is this a market committee constituted for the first time for this notified area or has there been a market committee before so that this is not the first time that a market committee is constituted for this notified area? If this question is asked, the answer is simple and self-evident. When there is a market committee constituted for a notified area and it is superseded and on the expiry of its supersession, a new market committee is constituted by the Government, it is impossible to see how it can be said that the new market committee is a market

committee constituted for the first time for this notified area. Whether a market committee is constituted for the first time or not would depend on the question whether there was an earlier market committee for the same notified area or not and not on the question whether it is a new market committee constituted under sub-s. (1) of s. 4, or a market committee reconstituted under s. 6.

Here in the present case, there was a market committee constituted by the Government for the notified area of Machilipatnam, Bandar and Divi taluks under the notification dated 30th October, 1969 and this Market Committee functioned until it was superseded by the order dated 23rd November, 1971. It may be reiterated once again that the supersession of this Market Committee on the ground that by reason of want of sufficient members to constitute quorum, it was not competent to perform the duties imposed on it by or under the Act, was not challenged before us and we must, therefore, proceed on the basis that it was a market committee which had existence until it was superseded and it was not *non-est ab initio* When, therefore, the Government made the order dated 7th December, 1972 on the expiration of the period of supersession of this Market Committee, it undoubtedly constituted a new market committee—new *vis-a-vis* the old which was superseded—but that was not a market committee constituted for the first time for the notified area of Machilipatnam, Bandar and Divi taluks. There was already an earlier Market Committee for this notified area which was superseded and this was a second Market Committee constituted for this notified area on the expiration of the period of supersession of the earlier one. The proviso to cl. (iv) of sub-s. (1) of s. 5 had, therefore, no application and the Government was not entitled to nominate members representing traders on the Market Committee constituted by it under the order dated 7th December, 1972. It was the main part of cl. (iv) of sub-s. (1) of s. 5 which applied and so far as representation of traders was concerned, "persons licensed under sub-s. (1) of s. 7 in the notified area" were entitled to elect members from among themselves. We must, therefore, hold that the Division Bench of the High Court was right in taking the view that the order dated 7th December, 1972 was invalid in so far as it purported to nominate three members from among traders under the proviso to cl. (iv) of sub-s. (1) of s. 5.

The appeal, therefore, fails and is dismissed with costs in this court.

V.M.K. *Appeal dismissed.*