

**HON'BLE Ms. JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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W.P.M.P.Nos.12 & 13 of 2015 in W.P.No.12 of 2015;
W.P.M.P.Nos.56 & 57 of 2015 in W.P.No.51 of 2015;
W.P.M.P.Nos.59 of 2015 in W.P.No.53 of 2015;
W.P.M.P.Nos.140,141&142 of 2015 in W.P.No.132 of 2015;
W.P.M.P.Nos.143 of 2015 in W.P.No.133 of 2015;
W.P.M.P.Nos.144, 145 and 146 of 2015 in W.P.No.134 of 2015;
And
W.P.M.P.Nos.152 & 153 of 2015 in W.P.No.140 of 2015

COMMON ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

In these bunch of seven Writ Petitions the main relief claimed is for issuance of an order or direction, more particularly one in the nature of a writ of mandamus, declaring the Amendment Act No.6 of 2014 [Andhra Pradesh (Agricultural, Produce and Livestock) Markets (Amendment) Act, 2014] (in short “the Act 6 of 2014”) and Amendment Act No.10 of 2014 [Andhra Pradesh (Agricultural, Produce and Livestock) Markets (Amendment) Act, 2014] (in short “the Act 10 of 2014”), as illegal and unconstitutional.

2) When the matter came up for admission, as the constitutional validity of provisions of a statute are involved, we were inclined to admit the writ petitions and accordingly an order of admission was passed. As the Court was essentially sitting only to hear the urgent and other matters, which could not wait till the conclusion of the vacation and considering the paucity of time on 07.01.2015, the learned counsels had addressed brief arguments with respect to interim orders that may be passed pending disposal of the writ petitions. Accordingly the arguments were heard on WPMPs only. The interim reliefs which have been prayed in all these cases may be summarized as under:

Petitioners were appointed as office bearers in the year 2013 in exercise of the powers as existing then and they are entitled to be in office till 2016 and as such pending disposal of the writ petitions they shall be directed to be continued in office and no new appointments/nominations should be made in their place.

3) All the petitioners were Chairmen, Vice Chairman and Members / Directors of the respective Agricultural Market Committees (in short “the AMCs”). All the petitioners came to be appointed as office bearers in 2013 in their respective AMCs. The term of office is for three years and they were entitled to be in office till 2016 (individual dates are not being mentioned for the purpose of this order) and by virtue of the amendment brought into the Andhra Pradesh (Agricultural, Produce and Livestock) Markets (Amendment) Act, 2014 (in short “the Act”) in 2014 they ceased to be office bearers. Hence the writ petitioners challenged the amendment as arbitrary, illegal, mala fide and violative of Art.14 and Art.19 and unconstitutional.

4) In 2014, the erstwhile State of Andhra Pradesh came to be bifurcated into two states viz., State of Telangana and State of Andhra Pradesh and by virtue of the Andhra Pradesh Reorganization Act, 2014, respective States have adopted and made amendments with respect to the Act. The present case concerns with the agricultural market committees situated in Andhra Pradesh and as such the developments in relation to State of Andhra Pradesh are only relevant and are being dealt with.

5) So far as the present writ petitions are concerned A.P. Ordinance No.2 of 2014 dated 31.07.2014, Act 6 of 2014, dt.16.09.2014 (Act 6 of 2014 and Act 10 of 2014) are relevant.

6) The sum and substance of these ordinances are so far as they are relevant for the purpose of the present case are that –

The procedure with respect to filling up of the office bearers which was initially by way of 'appointment' by the Government came to be replaced with the procedure of 'nomination'.

The term of office which was earlier three years was reduced to two years by Act of 6 of 2014 and further to one year by Act 10 of 2014.

The number of members were also increased from 18 to 19 in Section 5(1)(a)(i) and 11 to 12 in Section 5(1)(a)(ii).

Section 38 of the Act which was introduced by Act 6 of 2014 was omitted by virtue of Act 10 of 2014.

7) On behalf of the petitioners lead arguments were advanced by the learned Senior Advocates Sri P. Gangaiah Naidu for N.Bharath Babu, Sri Satyam Reddy for K.V.Rajasree and Sri O.Manohar Reddy. Sri M. Srinivasa Rao, Sri A. Jagannadha Rao and P.Venkata Rao learned counsel for the petitioners also while adopting the arguments of the learned Senior Advocates have made their submissions.

8) The sum and substance of the arguments for the purpose of interim orders is that there was total irrationality in the amendments carried out particularly in abrogating the vested rights of the appointed members, who are entitled to be in office for a period of three years from the date of their initial appointments. By mere substitution of the words 'nomination/nominated' in place of 'appointment/appointed' cannot bring in any material change so far as the rights of the members who were appointed earlier in exercise of the statutory power as existing in 2013. This mere change of nomenclature cannot nullify the appointments made earlier. It was urged that while considering the similar ordinance issued by the State of Telangana by Ordinance No.1 of 2014 this Court found that a hostile discrimination was meted out to the petitioners by removing them and there was violation of Article 14 and such action was held to be bad by the Division Bench of this Court in the Case of **M. Thirupathi Rao and others V. The State of**

Telanagana and Others^[1]. The law declared by the Hon'ble Supreme Court in the case of **State of Tamilnadu and Others Vs. K. Shyam Sunder and Others**^[2], would squarely apply to the present case as the very exercise of the power is colourable and thus a Writ of Mandamus may be issued in favour of the petitioners declaring the amendments as arbitrary, illegal, offending Article 14 and unconstitutional.

9) In addition Sri Gangaiah Naidu, learned Senior Counsel would urge that though they are prepared to make detailed submissions with respect to the various aspects of the matter considering the fact the Court is sitting in vacation and paucity of time he pleads for grant of limited interim direction for allowing the existing office bearers to continue in their respective posts until the disposal of the writ petition which can be heard immediately after reopening of the Court and such interim arrangement would not cause any prejudice to the State or to the respective organizations.

10) On the other hand the learned Advocate General for the State of Andhra Pradesh Sri P. Venugopal by placing reliance on the judgment of the Division Bench in **M. Thirupathi Rao case (1 Supra)** cited by the learned counsel for the petitioners would urge that the Division Bench had categorically recognized that an Act cannot be set at naught by attributing motives and *mala fides* to the Legislature as long as the Act in question is within the Legislative competence of the respective Legislature. He would further submit that as a matter of fact, when the petitioners challenged the Act 6 of 2014 on behalf of the State a submission was made that suitable amendments were made by issuance of an ordinance keeping in view of the Judgment delivered by the Division Bench. As a matter of fact, by virtue of the Act 10 of 2014 the anomalies which were noticed by the Division Bench in the case of **M. Thirupathi Rao case (1 Supra)** were

removed so far as the State of Andhra Pradesh is concerned. He specifically points out omission of Section 38 which was in pari metria with clause 3 of the Telangana Ordinance 1 of 2014. Further by placing reliance on the Judgment of the Division Bench of this court in

B. Issac Prabhakar Vs. Government of Andhra Pradesh^[3], he submits that the appointments as members of the AMCs are not akin to the appointments of civil servants in terms and such appointments being political appointments they do not enjoy such protection as available to the Civil servants. He further submits that earlier when the Act 6 of 2014 was challenged, the Division Bench did not pass any interim orders. This Court neither suspended the provisions of the amendments made in the Act nor directed the continuance of the petitioners.

11) Having considered the rival submissions, at this juncture it would be appropriate for us to take note of the interim orders passed by this Court on 26.11.2014 in W.P.No.29406 of 2014 and Batch:

“Learned Advocate General for the State of Andhra Pradesh submits on instructions in tune with the judgment delivered by us whereunder the challenge to an Ordinance, having similar provision has been upheld by this Court only in part, by giving effect to a suitable amendment, therefore, some time should be given.

At request, we adjourn the matters for a fortnight. In the meantime, we direct the respondents not to make any fresh appointment in respect of the Agricultural Market Committees.”

12) This order came to be passed when the petitioners laid a challenge to the Act 6 of 2014. It is clear from the above, this Court while injuncting the State from making fresh appointments did not stay or suspend any of the provisions of the Act 6 of 2014. We may also notice Section 38 of the Act, which came to be introduced by the Act 6 of 2014 reads as under:

“38(1) Notwithstanding anything contained in the

principal Act, all the members, Vice-Chairman and Chairman of every Market Committee holding office on the commencement of the Andhra Pradesh (Agricultural Produce and Live stock) Markets (Amendment) Act, 2014, Act No.6 of 2014 shall cease to hold office as such and thereupon it shall be competent for the Government to appointment a person or persons to exercise the powers and perform the functions of the Market Committee until Market Committee is reconstituted in accordance with the provisions of section 5 of the principal Act as amended by this Act.

(2) the person or persons so appointed shall, subject to the control of the government and to such instructions and directions as may be issued, from time to time, exercise the powers, discharge the duties and perform the functions of the Market Committee and take all such actions as may be required in the interest of the Market Committee.

(3) the government, may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the Committee shall be payable from out of the Market Committee Fund.”

13) Section 38 of the Act came into operation with effect from 16.09.2014. By operation of Section 38 of the Act a statutory cessation has been made with respect to the office bearers and this was the position even as on 26.11.2014. Further, we may also take notice that on 31.12.2014 the Division Bench closed the Writ Petition by giving liberty to the petitioners to enable the petitioners to challenge the amendments brought in by Act 10 of 2014. Act 10 of 2014 was published in Gazette on 30.12.2014 whereby and whereunder Section 38 of the Act was omitted. It may be noted that virtue of Sub-section 2 of Section 1 of the Act, the Omission of Section 38 of the Act was given effect from 30.12.2014, while other sections of the Act 10 of 2014 were deemed to have come into force with effect from 01.01.2012. In other words the provisions of Act 10 of 2014 were given retrospective effect except with regard to Section 8 of the Act. A careful analysis of the amendments reveal that Section 38 of the Act was in operation

between 16.10.2014 and 30.12.2014. By operation of Section 38 of the Act petitioners ceased to be office bearers of the respective AMCs on and after 16.10.2014. Passing of any interim order at this stage by way of interim order allowing the petitioners virtually would amount this Court appointing them or nominating them as office bearers, which power is specifically vested with the Government under Sections 5 and 5A of the Act. Learned Advocate General had placed on record various proceedings issued on 01.08.2014 to show through which person in-charges were appointed in respective AMCs. As a matter of fact a copy of G.O.Ms. No.41 of 2014 was also placed on record as a material document by the petitioners themselves. Further the fact that the person in-charges have been appointed is not in dispute by virtue of G.O.Ms.No.41 and consequent proceedings having been issued is not in dispute. Further, issuance of proceedings appointing person in-charges pursuant to G.O.Ms.No.41 is not in dispute. In that view of the matter, we are unable to accede to the prayer of the petitioners to allow them to continue as office bearers pending disposal of the writ petitions. As we are only passing orders in W.P.M.Ps., we do not consider it desirable to express any opinion with respect to the judgments relied on either on behalf of the petitioners or by the learned Advocate General. However, we may point out a distinctive fact with respect to the Division Bench Judgment in **M. Thirupathi Rao case (1 Supra)** wherein in Telengana Ordinance 1 of 2014 was considered. The Division Bench took care to point out that the ordinance was prospective in nature as stated supra. The provisions of Act 10 of 2014 except Section 8 was brought into force with effect from 01.01.2012 by giving retrospective effect. Whether, giving such retrospective effect and the effect of the same or the issues which need to be considered while considering the validity of the provisions in final hearing. It is needless to mention that any appointments made shall be subject to the result of the main writ petitions.

14) Accordingly all the W.P.M.Ps. are dismissed. No order as to costs.

C. PRAVEEN KUMAR, J

CHALLA KODANDA RAM, J

Date:09.01.2015.

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**HON'BLE Ms. JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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Date: 9th January, 2014.

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[1] W.P.Nos.24877 of 2014 & Batch ([MANU/AP/1807/2014](#))

[2] (2011) 8 SCC 737

[3] 1995 (3) ALT 695