HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.11512 OF 2015, W.P.No.35352 OF 2014, W.P.No.36673 OF 2014, W.P.No.37259 OF 2014, W.P.No.4304 OF 2015, W.P.No.4317 OF 2015, W.P.No.8239 OF 2015, W.P.No.13130 OF 2015, W.P.No.13425 OF 2015, W.P.No.13572 OF 2015 & W.P.No.15283 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard Sri Satyam Reddy, learned Senior Counsel, Sri V.Ravi Kiran Rao, learned counsel for petitioners and the learned Advocate General for respondents.

The petitioners in the instant batch of writ petitions pray for Mandamus declaring Amendment Act 5 of 2015 as published in G.O.Ms.No.22 Law (A) Department dated 15.04.2015, giving retrospective effect to Amendment Act from 01.01.2012 whereby the term of office of petitioners has been reduced from three years to one year under sub-Section (3) of Section 5 of the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 (for short, 'the Act'), as arbitrary, illegal, violative of Article 14 of the Constitution of India.

The averments and the facts in all the writ petitions are similar. For convenience and disposal of the batch, the background facts in W.P.No.11512 of 2015 are adverted to as under.

The petitioners were nominated as Chairmen of Agricultural Market Committees by the State with a term of three years, under Section 5 of the Act. Through G.O.Rt.No.1401, Agriculture and Cooperation (AM.1) Department dated 27.11.2013, the 1st petitioner was appointed as Chairman, Agricultural Market Committee, Choppadandi, Karimnagar District and it is alleged that

1st petitioner was appointed/nominated for a period of three years through the instant GO. It is matter of record and as well not disputed by the respondents that the other petitioners were appointed/nominated for a period of three years as Chairmen of various Agricultural Market Committees in the State of Telangana. Reference to further details in this behalf, in our considered opinion, is besides the point and the details are accordingly omitted from narration.

It is further averred that the 1st respondent issued Ordinance No.1 of 2014 dated 16.08.2014 reducing the term of Chairman appointed under Section 5 of the Act. The petitioners filed W.P.No.24877 of 2014 and batch challenging the Ordinance. This Court through judgment dated 07.11.2014 set aside Ordinance No.1 of 2014. The 1st respondent issued Ordinance No.1 of 2015 dated 13.02.2015 to amend Section 5 of the Act and the same was subject matter of challenge in W.P.No.3882 of 2015. The Chairman working in different Agricultural Market Committees filed writ petitions and obtained *status quo* order.

The writ petition is filed challenging the Amending Act which was promulgated in the place of Ordinance No.1 of 2015. At the time of enactment of Amendment Act 5 of 2015, the petitioners were functioning as Chairmen of Market Committees. The statutory scheme under the Act and the Amendment Act is as follows:

Sec-tion	BEFORE AMENDMENT	AFTER AMENDMENT
5	**(1)** Every market committee shall consist of ***eighteen*** members and shall be constituted by the Government by notification in the following manner:-	**(1)** Every market committee shall consist of ***fourteen*** members and shall be constituted by the Government by notification in the following manner:-

The case of petitioners is that the Amendment Act is retrospective in nature and comes into effect from 01.01.2012. Through the amendment, the term of office of members already nominated under Section 5(1) of the Act is reduced to

	i) ***eleven*** members to be ***appointed*** by the Government in consultation with the Director of Marketing from among the following categories of growers of agriculture produce, owners of live stock and products of livestock in the notified area, namely:- **a)** growers of agricultural produce who are small farmers; **b)** growers of agricultural produce other than small farmers; **c)** owners of livestock and products of livestock: Provided that, there shall at least be [8][five] members from among persons belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, minorities and women: Provided further that, there shall be at least ***[five]*** members representing the category of small farmers; **(ii) [*three*]** members to be ***appointed*** by Government in consultation with the Director of Marketing from among the licensed traders in the notified area[2][xxx]; **(iii)** one member to be ***appointed*** by the Government from among the Presidents or persons-in-charge, if any, for the time being performing the functions of Primary Agricultural Co-operative Societies or the Co-operative Marketing Societies having their areas of operation within the notified area; **(iv)** the Assistant Director of Marketing having jurisdiction over the notified area or any other officer nominated in this behalf by the Director of Marketing; **(v)** the Assistant Director of Agriculture or Assistant Director of Horticulture or Assistant Director of Animal Husbandry or Assistant Director of Fisheries having jurisdiction over the notified area or any other officer nominated in this behalf by the concerned Head of the Department; **(vi)** Chairperson of the Municipality or the Sarpanch of the Gram Panchayat, as the case may be, in whose jurisdiction the office of the Market Committee is located: Provided that in the case of a Municipal Corporation constituted under any law relating to Municipal Corporations for the time being in force in the State, one person as may be nominated by the Corporation shall represent the Corporation in the Agricultural Market Committee concerned where a notified area comprises the Corporation also.	**i)** ***eight*** members to be ***nominated*** by the Government in consultation with the Director of Marketing from among the following categories of growers of agriculture produce, owners of live stock and products of livestock in the notified area, namely:- **a)** growers of agricultural produce who are small farmers; **b**) growers of agricultural produce other than small farmers; **c)** owners of livestock and products of livestock: Provided that, there shall at least be [8][five] members from among persons belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, minorities and women: Provided further that, there shall be at least ***[three]*** members representing the category of small farmers; **(ii)** ***[two]*** members to be ***nominated*** by Government in consultation with the Director of Marketing from among the licensed traders in the notified area[2][x x x]; **(iii)** one member to be ***nominated*** by the Government from among the Presidents or persons-in-charge, if any, for the time being performing the functions of Primary Agricultural Co-operative Societies or the Co-operative Marketing Societies having their areas of operation within the notified area; **(iv)** the Assistant Director of Marketing having jurisdiction over the notified area or any other officer nominated in this behalf by the Director of Marketing; **(v)** the Assistant Director of Agriculture or Assistant Director of Horticulture or Assistant Director of Animal Husbandry or Assistant Director of Fisheries having jurisdiction over the notified area or any other officer nominated in this behalf by the concerned Head of the Department; **(vi)** Chairperson of the Municipality or the Sarpanch of the Gram Panchayat, as the case may be, in whose jurisdiction the office of the Market Committee is located: Provided that in the case of a Municipal Corporation constituted under any law relating to Municipal Corporations for the time being in force in the State, one person as may be nominated by the Corporation shall represent the Corporation in the Agricultural Market Committee concerned where a notified area comprises the Corporation also.
	(2) Every market Committee shall have a Chairman ***appointed*** from among its members specified in Clause (i) of sub-section (1) and Vice-Chairman be ***appointed*** from among its members specified in Clause (i) or Clause (ii) of sub-section (1), by the Government in consultation with the Director of Marketing;]	**(2)** Every market Committee shall have a Chairman ***nominated*** from among its members specified in Clause (i) of sub-section (1) and Vice-Chairman be ***nominated*** from among its members specified in Clause (i) or Clause (ii) of sub-section (1), by the Government in consultation with the Director of Marketing;]
	(3) Save as otherwise provided in this Act, the term of office of the members ***appointed*** under sub-section (1) shall be ***three*** years from the date of ***appointment***: Provided that a member ***appointed*** under [1][Clause(ii) of sub-section (1) shall cease to hold office, if he ceases to be a trader ;	***(3) Save as otherwise provided in this Act, the term of office of the members nominated under sub-section (1) shall be one year from the date of nomination:*** ***Provided that a member nominated under [1][Clause(ii) of sub-section (1) shall cease to hold office, if he/she ceases to be a trader ;***

one year from the date of nomination. As already extracted, a few further changes to the constitution of committees are made through the Amendment Act 5 of 2015 and the petitioners have not raised any dispute against other amendments to the Act. The challenge to Amendment Act 5 of 2015 is primarily on Section 5 of the Act whereby the term of committee is reduced from three years to one year by giving retrospective effect to the Amendment Act.

In this behalf, the legal objections against retrospective operation of Amendment Act 5 of 2015, are that the Amendment Act has no rationale or nexus to the object sought to be achieved through amendment; and that the retrospective operation of the Amendment Act namely Section 5(2) of the Act is illegal, discriminatory and unconstitutional. The Amendment Act insofar as Market Committees is concerned is violative of Article 142 of Constitution of India as Special Market Committees are left

	(6) Any person removed under sub-section (5) from the Office of Chairman or Vice-Chairman shall be ineligible for ***appointment*** to either of the said offices, until the date of next reconstitution of the market committee under sub-section (1) of Section 6.	**(6)** Any person removed under sub-section (5) from the Office of Chairman or Vice-Chairman shall be ineligible for ***nomination*** to either of the said offices, until the date of next reconstitution of the market committee under sub-section (1) of Section 6.
	(9) The member ***appointed*** to fill a vacancy under sub-section (8) shall hold office for the remainder of the term of his predecessor.	**(9)** The member ***nominated*** to fill a vacancy under sub-section (8) shall hold office for the remainder of the term of his predecessor.
	(10) When any vacancy occurs in the office of a Chairman or Vice-Chairman, it shall be filled in the manner laid down in sub-section (2) and the person ***appointed*** to fill in such vacancy shall hold office only for the remainder of the term to his predecessor.	**(10)** When any vacancy occurs in the office of a Chairman or Vice-Chairman, it shall be filled in the manner laid down in sub-section (2) and the person ***nominated*** to fill in such vacancy shall hold office only for the remainder of the term to his predecessor.
	(11) ------------	***(11) "Notwithstanding anything contained in any provisions of this Act, members of the Committee, including Chairman and Vice Chairman, shall hold the office during the pleasure of the Government".***
5-A	Constitution of Market Committee for Special Markets:- (1) Every market committee constituted for a special market under sub section (1-B) of Section 4 of the Act, shall consist of eighteen members in the following manner as nominated ***and appointed*** by the Government,	Constitution of Market Committee for Special Markets:- (1) Every market committee constituted for a special market under sub section (1-B) of Section 4 of the Act, shall consist pf eighteen members in the following manner as nominated ***(and appointed omitted)*** by the Government,
	(2) Every market committee shall have a Chairman ***appointed*** from among its members specified in clause (1) of sub-section (1) and Vice-Chairman ***appointed*** from among its members specified in clauses (i) and (ii) of sub-section (1) by the Government in consultation with the Director of Marketing.	**(2)** Every market committee shall have a Chairman ***nominated*** from among its members specified in clause (1) of sub-section (1) and Vice-Chairman ***nominated*** from among its members specified in clauses (i) and (ii) of sub-section (1) by the Government in consultation with the Director of Marketing.
	(3) Save as otherwise provided in this Act, the term of office of the members ***appointed*** under sub-section (1) shall be three years from the date of ***appointment***;	**(3)** Save as otherwise provided in this Act, the term of office of the members ***nominated*** under sub-section (1) shall be three years from the date of ***nomination***;
	Provided that a member ***appointed*** under clause (ii) of sub section (1) shall cease to hold office if he ceases to be a trader.	Provided that a member ***nominated*** under clause (ii) of sub section (1) shall cease to hold office if he ceases to be a trader.
6	**(3) (a)** Where, for any reason there is delay in the constitution or reconstitution of the Market committee in accordance with the provisions of this Act, the Government [or the Director of Marketing] ***may appoint*** a person or persons to manage the affairs of the Market committee [until the market committee is reconstituted]	**(3)(a)** Where, for any reason there is delay in the constitution or reconstitution of the Market committee in accordance with the provisions of this Act, the Government [or the Director of Marketing] ***may nominate*** a person or persons to manage the affairs of the Market committee [until the market committee is reconstituted]
	(b) The person or persons so ***appointed*** shall, subject to the control of the Government and to such instructions or directions as they may issue from time to time, exercise the powers, discharge the duties and perform the functions of the market committee and take all such action as may be required in the interests of the Market committee.	**(b)** The person or persons so ***nominated*** shall, subject to the control of the Government and to such instructions or directions as they may issue from time to time, exercise the powers, discharge the duties and perform the functions of the market committee and take all such action as may be required in the interests of the Market committee.
	(c) 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 market committee shall be payable out of the market committee fund.	**(c)** The Government may fix the remuneration payable to the person or persons so ***nominated***. The amount of such remuneration and other costs, if any, incurred in the management of the market committee shall be payable out of the market committee fund.
	(d) The Government may at any time, and shall at the expiration of the period of ***appointment*** of person or persons so ***appointed*** arrange for the constitution or reconstitution of the Market committee in accordance with the provisions of this Act. The person or persons so ***appointed*** shall cease to mange the affairs of the Market committee on such constitution or reconstitution.	**(d)** The Government may at any time, and shall at the expiration of the period of ***nomination*** of person or persons so ***nominated*** arrange for the constitution or reconstitution of the Market committee in accordance with the provisions of this Act. The person or persons so ***nominated*** shall cease to mange the affairs of the Market committee on such constitution or reconstitution.

out from the reduction of term.

On 21.04.,2015, this Court, while granting interim order o f *status quo*, on the submissions made at Bar, framed the following legal ground for consideration:

"Whether the Legislature while making an enactment can flout the constitutional provisions and that the retrospective operation of Amendment Act from the date even before the State of Telangana was formed stands to scrutiny of constitutional provisions".

The 1st and 2nd respondents filed counter and a petition to vacate the interim order dated 21.04.2015 and the reply of the 1st and 2nd respondents is that the 1st respondent/Telangana State Legislature is competent to make law on the instant subject as it squarely falls in State list. The prospective or retrospectivity of law is not decisive in deciding the constitutionality of the challenge in the writ petitions. Through retrospective operation, the term of a committee by operation of law is reduced to one year

11	**(1)** Execution of contracts:- (1) Every contract entered into by a market committee shall be in writing and shall be signed on its behalf by the chairman and two other members thereof and if the market committee has been superseded, by the person or persons ***appointed*** under sub-section (3) of Section 22.	**(1)** Execution of contracts:- (1) Every contract entered into by a market committee shall be in writing and shall be signed on its behalf by the chairman and two other members thereof and if the market committee has been superseded, by the person or persons ***nominated*** under sub-section (3) of Section 22.
22	**(3) (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	**(3) (a)** the Government may, by order, ***nominate*** 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
33	**(2)(i)** the ***appointment*** and removal of members of a market committee.	**(2)(i)** the ***nomination*** and removal of members of a market committee.
	(ii) The ***appointment*** of the Chairman and Vice-Chairman of a Market committee and their term of office;	**(ii)** The ***nomination*** of the Chairman and Vice-Chairman of a Market committee and their term of office;
Validation	---------	***Notwithstanding anything contained in any provisions of this Act, the members of the Committee, including Chairman and Vice Chairman, whose term expiring under the provisions of this Act, their continuation in the office, from the date of expiring of their term, are validated in all respects, as if they deemed to have been validly nominated for the said period.***

from the date of nomination, as against three years available in unamended section. According to 1st respondent, once the competence of State Legislature is accepted by the petitioners, the State legislature can make law prospectively or retrospectively.

It is further alleged that the petitioners were appointed by nomination and not by election to the Market Committees and no statutory or assured right of three year term can be claimed by petitioners or inferred from the construction of the Act. It is to be stated for clarity that the petitioners either by pleading or oral submissions are not questioning the competence of State Legislature vis-à-vis "the Act". Once the legislative competence is not challenged, it is replied that the State Legislature is well within its competence to make law either prospectively or retrospectively. The retrospective operation of a few sections of the Amendment Act cannot be found fault with and the reasons stated to assail the Amendment Act are vague and there is neither arbitrariness nor discrimination. The 1st and 2nd respondents aver that on 14.02.2015, in line with the provisions of Amendment Act No.5 of 2015 where the term of the constituted committee viz., one year expired, persons in-charge were appointed to such committees and are discharging the functions and duties under the Act. The legal or factual objections raised against the Amendment Act are unsustainable and liable to be rejected. The constitution of committees was on nomination basis and no vested or statutory right can be inferred or presumed by persons who were nominated to committees under the Act.

It is further alleged that the 1st respondent has taken a decision to appoint regular market committees under the provisions in force and prayed for dismissing the writ petition and vacating the interim order dated 21.04.2015.

Sri S.Satyam Reddy and Sri V.Ravi Kiran Rao, learned counsel appearing for the petitioners, contend that though the competence of State Legislature to make or amend the law is not raised, the retrospective operation and discrimination in reducing the term of a Market Committee and not reducing the term of Special Market Committee is unconstitutional and arbitrary. According to learned counsel, there is discrimination and violation of Article 14 of the Constitution of India. The findings of this Court in W.P.No.24877 of 2014 and batch dated 07.11.2014 are ignored by the 1st respondent while issuing Ordinance No.1 of 2015 or enacting Amendment Act 5 of 2015. The legal objections when summarized read as follows:

(a) the retrospective effect of Amendment Act is unsustainable and unconstitutional;
(b) there is no rationale in reducing the term of market committees and that retaining the term of office of Special Market Committees is discriminatory; and
(c) though the appointment of petitioners was by nomination into committees, the process involves verification of relevant criterion and on being satisfied, a Government Order was issued.

With the issuance of a Government Order, the persons were nominated as Committee Members for term stipulated in Section 5 of unamended provision and the expectation of a term of three years cannot be taken away through impugned amendment.

The learned counsel placed reliance upon the decision in **HARBILAS RAI BANSAL V. STATE OF PUNJAB**[1].

The learned Advocate General appearing for respondents submits that the challenge to Amendment Act on any of the aforementioned grounds, in the absence of challenge to the competence of State Legislature, is unsustainable and liable to be rejected *in limini*. He further contends that the Telangana State Legislature is competent to make law on the instant subject and entitled to make amendments to all the acts in vogue in the then composite State which are by operation of law in the State of Telangana. According to the learned counsel, the State legislature of Telangana is as much competent as any other State legislature to make, repeal or amend a law covered by the State list in the Constitution. The Act is operational in State of Telangana and the State desired to introduce amendments to an existing law and the amendment is neither unconstitutional nor illegal from any stand point. He categorically contends that the mere amendment to an existing law with retrospective effect cannot be challenged as unconstitutional. He contends that all the legal/factual objections raised by the petitioners are no more *res integra* in view of the authoritative pronouncements of the Apex Court and are to be rejected in limini. As regards comparison between Market Committees and Special Market Committees, it is explained that these two are in two different operational areas and as a matter of fact, a few Special Market Committees were constituted.

The learned Advocate General relies upon the decisions reported in (1) **M/S RATTAN LAL AND CO. AND ANOTHER V. THE ASSESSING AUTHORITY, PATIALA AND ANOTHER**[2]**,** (2) **T.VENKATA REDDY AND OTHERS V. STATE OF ANDHRA PRADESH**[3]**,** (3) **STATE OF HIMACHAL PRADESH v. NARAIN SINGH**[4], (4) **OM NARAIN AGARWAL AND OTHERS V. NAGAR PALIKA SHAHJAHANPUR AND OTHERS**[5] and **AVJINDER SINGH SIBIA** v**. S.PRAKASH SINGH BADAL AND OTHERS**[6]**.**

In **M/S RATTAN LAL's** case (2 supra)**,** the Apex Court held as under:

> "We may now deal with some arguments which are common both sets of cases before considering the case of the Haryana amendment. It is argued that the organisation of the State took place on November 1, 1966 and the amendment in some of its parts seeks to amend the original Act from a date anterior to this date. In other words, the Legislature of one of the States seeks to amend a law passed by the composite State**. This argument entirely misunderstands the position of the original Act after the reorganisation. That act applied now as an independent Act to each of the areas and is subject to the legislative competence of the legislature in that area**. **The Act has been amended in the new States in relation to the area of that State and it is inconceivable that this could not be within the competence. If the argument were accepted then the Act would remain unamendable unless the composite State came into existence once more. The scheme of the States Reorganization Acts makes the laws applicable to the new areas until superseded, amended or altered by the appropriate legislature in the new States. This is what the legislature has done and there is nothing that can be said against such amendment."**

In **T.VENKATA REDDY** 's case (3 supra)**,** it was held thus:

> "The above view has been approved by another Constitution Bench of this Court in A.K. Roy etc. v. Union of India & Anr.(1) Both these decisions have firmly established that an ordinance is a 'law' and should be approached on that basis. The language of clause (2) of Article 123 and of clause (2) of Article 213 of the Constitution leaves no room for doubt. An ordinance promulgated under either of these two articles has the same force and effect as an Act of Parliament or an Act of the State Legislature, as the case may be. When once the above conclusion is reached the next question which arises for consideration is whether it is permissible to strike down an ordinance on the ground of non-application of mind or mala fides or that the prevailing circumstances did not warrant the issue of the Ordinance. In other words, the question is whether the validity of an ordinance can be tested on grounds similar to those on which an executive or judicial action is tested. <u>The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no other. Any law made by their legislature, which it is not competent to pass, which is violative of the provisions in Part III of the Constitution or any other constitutional provision is (1) [1982] 2 S.C.R. 272 at page 299 ineffective.</u> It is a settled rule of constitutional law that the question whether a statute is constitutional or not is always a question of power of the legislature concerned, dependent upon the subject matter of the statute. the manner in which it is accomplished and the mode of enacting it. While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are precluded from inquiring into the propriety of the exercise of the legislative power. It has to be assumed that the

legislative discretion is properly exercised. The motives of the legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the legislature had applied its mind to the provisions of a statute before passing it. The propriety expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts. An ordinance passed either under Article 123 or under Article 213 of the Constitution stands on the same footing. When the Constitution says that the ordinance making power is legislative power and an ordinance shall have the same force as an Act, an ordinance should be clothed with all the attributes of an Act of legislature carrying with it all its incidents, immunities and limitations under the Constitution. It cannot be treated as an executive action or an administrative decision.'

In **NARAIN SINGH**'s case (4 supra), the Apex Court held as under:

> "The power of the Sovereign legislature to legislate within its field, both prospectively and retrospectively cannot be questioned. This position has been settled in many judgments of this Court. Some of them may be considered below. In Bhubaneshwar Singh & another Vs. Union of India & others - (1994) 6 SCC 77, the Court expressly approved the aforesaid position in Para 9 at page 82-83. In so far as validating Acts are concerned, this Court in Bhubaneshwar Singh (supra) also considered the question in para 11 and held that the Court has the powers by virtue of such validating legislation, to "wipe out" judicial pronouncements of the High Court and the Supreme Court by removing the defects in the statute retrospectively when such statutes had been declared ultra vires by Courts in view of its defects.
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> This Court in Bhubaneshwar Singh has held that such legislative exercise will not amount to encroachment on the judicial power. This Court has accepted that such legislative device which removes the vice in previous legislation is not considered an encroachment on judicial power. In support of the aforesaid proposition, this Court in Bhubaneshwar Singh (supra) relied on the proposition laid down by the Chief Justice Hidayatullah, speaking for the Constitution Bench in Shri Prithvi Cotton Mills Ltd. and another Vs. Broach Borough Municipality and others -(1969) 2 SCC 283.
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> Again in the case of Indian Aluminium Company etc. etc. Vs. State of Kerala and others -AIR 1996 SC 1431, this Court while summarizing the principle held that a legislature cannot directly overrule a judicial decision but it has the power to make the decision ineffective by removing the basis on which the decision is rendered, while at the same time adhering to the constitutional imperatives and the legislature is competent to do so [See para 59 sub-para (9) at page 1446.]"

In **OM NARAIN AGARWAL**'s case (5 supra), it was held as under:

> "Section 39 deals with resignation by a member of the Board. Section 40 provides the grounds for removal of a member of the Board. Sub-section (5) of Section 40 deals with suspension of a member. From a perusal of the above provisions it is clear that the term of an elected or nominated member is coterminous with the term of the Board. The normal term of the Board is five years, but it may be curtailed as well as extended. If the term of the Board is curtailed by dissolution or supersession, the term of the member also gets curtailed. Similarly, if the term of the Board is extended, the term of the member is also extended. Apart from the curtailment of the term of a member of the Board by dissolution of supersession of the Board itself, the term of a member also gets curtailed by his resignation or by his removal from office. Section 40 specifically provides the grounds under which the State Government in the case of a city, or the prescribed authority in any other case, may remove a member of the Board. The removal under Section 40 applies to elected as well as nominated members. In respect of a nominated member, power of curtailment of term has now been given to the State Government under the fourth proviso to Section 9 added after the third proviso through the amending Act of 1990. In the cases before us, we are concerned with the removal of nominated members under the fourth proviso to Section 9 of the Act and we are not concerned with the removal as contained in Section 40 of the Act. The right to seek an election or to be elected or nominated to a statutory body, depends and arises under a statute, The initial nomination of the two women members itself depended on the pleasure and subjective satisfaction of the State Government. If such appointments made initially by nomination are based on political considerations, there can be no violation of any provision of the Constitution in case the Legislature authorised the State Government to terminate such appointment at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of any residents of the Municipal Board behind them as may be present in the case of an elected member. In case of an elected member, the legislature has provided the grounds in Section 40 of the Act under which the members could be removed. But so far as the nominated members are concerned, the Legislature in its wisdom has provided that they shall hold office during the pleasure of the Government. It has not been argued from the side of the respondents that the Legislature had no such power to legislate the fourth proviso. The attack is based on Articles 14 and 15 of the Constitution.
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> In our view, such provision neither offends any Article of the Constitution nor the same is against any public policy or democratic norms enshrined in the Constitution. There is also no question of any violation of principles of natural justice in not affording any opportunity to the nominated members before their removal nor the removal under the pleasure doctrine contained in the fourth proviso to Section 9 of the Act puts any stigma on the performance or character of the nominated members. It is done purely on political considerations.
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> ….We are not impressed with the reasoning given by the High Court that the fourth proviso to Section 9 of the Act in any manner deprived the fundamental right of equality as enshrined in Article 14 of the Constitution. It is well established that the right of equality

enshrined under Article 14 of the Constitution applies to equals and not to enequals. The nominated members of the Board fall in a different class and cannot claim equality with the elected members. We are also not impressed with the argument that there would be a constant fear of removal at the will of the State Government and is bound to demoralise the nominated members in the discharge of their duties as a member in the Board. We do not find any justification for drawing such an inference, inasmuch as, such contingency usually arises only with the change of ruling party in the Government. Even in the case of highest functionaries in the Government like the Governors, the Ministers, the Attorney General and the Advocate General discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to demoralise or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remain in the office."

(*emphasis added*)

In **AVJINDER SINGH SIBIA** (6 supra), it was held thus:

14. It appears that the petitioner was only a nominated member of the Market Committee, Raikot (Ludhiana), whereas in the Constitution Bench judgment of Hon'ble the Apex Court in the case of Ram Dial and others AIR 1965 SC 1518 (supra) the appellants, who had been removed by a notification, were elected members of the municipality, and they had been removed on the ground of a resolution passed by outgoing members of the committee belonging to a different political party, who had lost their seats to the appellants in elections. Moreover, the provisions of Section 14(e) of the Punjab Municipalities Act No. 3 of 1911 had given unfettered discretion to the Government to remove elected representatives/ members of municipal committees without any notice to them, and/or without a right of hearing which, on the contrary, was envisaged under Section 16, a parallel provision, of the same Act which also provided for removal of a member of municipal committee in public interest. As regards the Amendment Act No. 5 of 2007 impugned herein which has superseded all the market committees with nominated members in the State, it does not seem to carry an element of mala fide, inasmuch as, it has been passed to supersede all such committees in the State and not any individual market committee. Further, provisions of Section 35 of the Act, which have been heavily relied upon by learned senior counsel for the petitioner, are to apply in individual cases, on the ground of incompetency. An order passed in exercise of powers under Section 35 would essentially be stigmatic in nature and, therefore, before passing any such order, it may require granting an opportunity of hearing to the aggrieved person. The Act in question has been passed by the legislature by exercising powers within its legislative competence and in no manner, it casts any stigma like the one in-built in the grounds under Section 35 of the Act. Moreover, we are also not inclined to accept the submission of learned senior counsel that the doctrine of pleasure would not apply if the statute provides for specific term of the office. This submission was also urged before Hon'ble the Apex Court which could not find favour vide the judgment (Om Narain Aggarwal and Ors v. Nagar Palika, Shahjahanpur and Ors.). The arguments raised on behalf of the appellants are contained in para 9 of the judgment as under (Para 8 of AIR):

> 9. Learned Counsel for the private respondents submitted that once the power of nominating the women members is exercised by the State Government, such nominated members cannot be removed prior to the completion of the term of the Board unless they are removed on the grounds contained under Section 40 of the Act. It was also contended that the State Government cannot be allowed to remove a nominated member at its pleasure without assigning any reason and without affording any opportunity to show cause. Once a women member is nominated she gets a vested right to hold the office of a member of the Board and the State Government cannot be given an uncanalised, uncontrolled and arbitrary power to remove such member. It is contended that such arbitrary and naked power without any guidelines would be contrary to the well established principle of democracy and public policy. It would hamper the local bodies to act independently without any hindrance from the side of the Government.

15. The Hon'ble Court in para 13 of the judgment held that the nominated members of the Board fall in a different class and cannot claim equality with the elected members. The Hon'ble Court has also held that even the highest functionaries in the Government, like the Governors, the Ministers, the Attorney General and the Advocate General, discharge their duties efficiently, though removable at the pleasure of the competent authority under the law, and it cannot be said that they are bound to become demoralised or remain under a constant fear of removal and as such do not discharge their functions in a proper manner during the period they remained in the office. This observation of the Hon'ble Court was given in answer to an additional argument raised in the case that in such cases, there would be a constant fear of removal at will of the State Government and is bound to demoralise the nominated members in discharge of their duties as members of the Board. The Hon'ble Court has also held that the right to seek an election or to be elected or nominated to a statutory body depends and arises under the statute. If such appointments have been made initially by nomination on political consideration, there can be no violation of any provision of the Constitution, in case the Legislature authorises the State Government to terminate such appointments at its pleasure and to nominate new members in their place. The nominated members do not have the will or authority of the persons to be affected by the act of such body. It also appears from the ratio of the judgment that as the provision challenged therein did not put any stigma on the performance or character of the nominated members, their removal without affording an opportunity did not offend any provision of the Constitution. Though in an earlier judgment (State of Bihar v. Abdul Majid) while dealing with the doctrine of pleasure, the Hon'ble Court has held that to the extent of deviation from the doctrine of

pleasure, a civil suit would be maintainable but in the Judgment of 1993 (supra), no such liberty appears to have been granted. Moreover, looking to the nature of appointment as being nominated, it would not be open to assail the amendment on the ground of livelihood and even if a party takes the plea of doctrine of livelihood, this being a question of private interest would have to yield to public interest. In the instant case, the Legislature in its wisdom has passed the impugned amendment superseding all' the market committees with nominated members and has left it to the administrative exercise of discretion of the Government under Section 35 of the Act, and rightly so,, because in that case, it would cast stigma on the members of the committee and under such circumstances, even though they are nominated, they would be entitled to a personal hearing. Though there is no specific mention about the doctrine of pleasure in the Act to be applicable in this case, but in the facts and circumstances of the case, as the petitioner was nominated to the Board and it was not a selection or election, the doctrine of pleasure may be read into the Act and would certainly apply, thus, principle of natural justice as regards giving of hearing before removal from office in the absence of any stigma would not be attracted. Irrespective of doctrine of pleasure, as argued by learned senior counsel, the impugned Act No. 5 of 2007 whereby all the nominated market committees in the State have been superseded is also justified on the ground that nomination to an office which if made under a Statute can be taken away by suitable amendments in that statute as a nomination does not create a fundamental right or a common law right in favour of a nominated member to continue in the office.

16. From the written statement submitted on behalf of the State detailing the reasons for introducing the amendment in the Act, it appears that there are valid reasons for the State Government, as discussed hereinabove to bring the amendment. Besides, if the exercise of the legislative powers is bona fide, there is no reason for this Court to interfere with the impugned enactment. As said hereinabove, nomination to a committee is always made out of political expediency, therefore, its further continuance may depend upon the statute whereunder the member is nominated and by introducing suitable amendments in the statute the same can be discontinued. As regards the settled principles of law as enunciated by Hon'ble the Apex Court in the judgments cited hereinabove, we are not oblivious of the fact that the mandate of these judgments have to be applied in similar set of facts and circumstances of a case and if a statute cannot stand on the anvil of such established principles of law applicable for testing the constitutional validity of its provisions, it need not be said that such a statute would not endure. However, if an Act passed by a State Legislature does not suffer from any incompetence and/or arbitrariness, and the actions taken thereunder do not cast any stigma on the affected person, this Court would be loath in exercising its powers under the writ jurisdiction.

Now the short point that arises for consideration is – whether the challenge to Amendment Act 5 of 2015 on the aforementioned grounds is made out by the petitioners.

For brevity and convenience, as the material averments are not in dispute, we avoid reiteration of the averments but refer in nutshell for deciding each one of the objections. Further, none of the objections canvassed in the batch is no more *res integra* and is squarely covered by the decisions relied upon by the respondents. Hence, the contentions are determined, recording brief findings.

The first objection against the impugned amendment is that the retrospective operation of amendment Act from the date even before the State of Telangana was formed does not stand to scrutiny.

The State of Telangana is formed under the Andhra Pradesh Reorganization Act, 2014 (Act 6 of 2014) and separate State is carved out w.e.f., 02.06.2014. The Act was in force in the composite State and is applicable or operational in the new States as an Act by respective legislatures. As held by the Supreme Court in ***M/s Rattan Lal's*** case (2 supra) Act 6 of 2014 enables the operation of existing laws to the new States until superseded, amended or altered by the appropriate legislature in the new States. That means the Act is a law in the new States and subject to constitutional fetters or limits, the legislatures are competent to address the requirements of legislation and amend the present law to its present needs. To observe otherwise, it would certainly lead to anomalous situation in implementation of the existing laws by the new States. Therefore, on consideration of the Act, Act 6 of 2014 and scheme of constitution in distribution of subjects between State and Union, we are of the view that no constitutional provision is violated through enactment of Amendment Act 5 of 2015 by the Telangana State Legislature.

As already observed, the other challenge to Amendment Act 5 of 2015 is to the retrospective operation of Amendment Act 5 of 2015. The binding precedents on the principle of competence to make retrospective operation are well settled and do not require reiteration of the decisions referred to above, as the petitioners do not challenge the competence of State Legislature to make law on agriculture products. The Amending Act being retrospective in operation by itself is not a ground to accept challenge to the Amendment Act. Therefore, the challenge on the ground of Amendment Act being retrospective must fail and is accordingly rejected.

The other contention on the basis of motives or discrimination in the term of office held by committees and special committees is merely referred to and rejected *in limini*. The legislative action under our Constitution is subject only to the limitations prescribed by the Constitution. The enactment of competent legislature cannot be tested on the grounds available against an executive order. The challenge on the ground of motives or discrimination is factually and legally untenable and is accordingly rejected.

It is an admitted fact that the petitioners were nominated to the committee in accordance with unamended Section 5 of the Act. The nomination to post or a committee as held by the Apex Court in **OM NARAIN AGARWAL**'s case (5 supra) and **AVJINDER SINGH SIBIA**'s case (6 supra) have a few trappings and uncertainties. Merely because at the time of nomination a three year tenure was provided in the Statute, the same cannot be treated as a vested right under the Statute. The fact that before nomination an effort of short listing or selecting eligible applicants does not make any difference to the term of office of the Committee. It is one thing to reduce the term of office of an elected body and another to reduce the term of office of a nominated body. The State Legislature, as already noted, made a further few changes to the principal act to keep these sections in line with Section 5 of the Act. The exigencies of administration and vicissitudes with the change of political power are considered in great detail in the decisions referred to above and we are in agreement with the ratio/ reasoning in the cases referred to above on the State Legislature's power to determine the term of office to nominated posts.

By applying the ratio/reasoning in the above decisions, the last challenge to Amendment Act 5 of 2015 is liable to be rejected and is accordingly rejected. Except the above, no other point is argued by the learned counsel.

For the above reasons, the writ petitions fail and are accordingly dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

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DILIP B. BHOSALE, ACJ

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S.V.BHATT, J

Date: 18.06.2015
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[1] AIR 1996 SC 857
[2] AIR 1970 SC 1742
[3] (1985) 3 SCC 198
[4] (2009) 13 SCC 165
[5] (1993) 2 SCC 242
[6] AIR 2008 P & H 67