

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.46675 OF 2018

Date:27.12.2018

Between:

M/s. Sri Narsi Reddy Chillies Traders,
Rep., by its Proprietor Arikatla Subba
Reddy, Shop No.B6-364, Market Yards,
Guntur District

.. Petitioner

And

The State of Andhra Pradesh, rep., by its
Principal Secretary, Agriculture and
Marketing Department, Secretariat
Buildings at Velagapudi, Guntur
District and others

.. Respondents



The Court made the following:

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ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Agriculture appearing for respondents 1 to 3, Sri Ch. Srinivas, learned Standing Counsel for Agricultural Market Committee appearing for respondents 4 and 5 and Sri K. Madhava Reddy, learned counsel appearing for respondent No.6.

2. Sri Arikatla Subba Reddy claims to be doing business in Chillies. He was Managing Partner of Omkar Chillies Traders in Shop No.B6-364 allotted to him in Market Yard in Guntur District. He claims to have retired from the said partnership firm, but continued his activities as Commission Agent in the name of M/s. Sri Narsi Reddy Chillies Traders. According to petitioner, he was allotted Shop No.C4/426. However, he claimed to be running the activities from Shop No.B6-364, though he was allotted Shop No.C4/426. Petitioner now challenges the decision of the Chairman of the Market Committee, Guntur, dated 22.08.2017, allotting Shop No.B6-364 to respondent No.6 and the subsequent decision of the Agricultural Market Committee dated 09.02.2018 ratifying the said decision of the Chairman.

3. The challenge is primarily on two grounds. Firstly, the Chairman is not competent to take executive decision of allotting shops and only the Market Committee is competent and the decision taken by the Chairman is *per se* illegal and therefore the question of ratification will not validate the said decision.

In support of his contention, he placed reliance on Rule 28 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 (for short, 'the Rules'). Secondly, he would submit that petitioner is entitled to notice and opportunity before evicting him from the subject premises and therefore on that ground also, the action of the respondents is illegal.

4. Material on record and the averments in the affidavit filed in support of the Writ Petition itself would show that the petitioner was allotted Shop No.C4/426. No material is placed on record to show that he was allowed to occupy Shop No.B6-364 as he is paying rents to Shop No.B6-364. Thus, admittedly, the shop allotted was C4/426 and not B6-364. Therefore, *per se* allotment of Shop No.B6-364 to unofficial respondent does not amount to affecting the right of the petitioner to carry on his business and illegally throwing him out of shop validly allotted to him.

5. Though learned counsel for the petitioner sought to contend that since 1987 he has been carrying on business in Shop No.B6-364, Ex.P3 at page No.21 issued on 30.04.2014 would show that he was allotted Shop No.C4/426. There is no material to show that he has protested against such allotment and insisted for allotment of Shop No.B6-364.

6. The contention of learned counsel for petitioner that the Chairman is not competent is stated to be rejected. Under Rule 28 (1) of the Rules, the Chairman of the Market Committee is entitled to take all executive decisions concerning the Market Committee. Even otherwise, the Market Committee has ratified the said decision. Assuming that the decision made by the Chairman

on 22.08.2017 was not valid in law, the ratification by the Executive Committee validates the said decision.

7. In **National Institute of Technology and another Vs Pannalal Choudhury and another**¹ disciplinary action was initiated against Registrar/Deputy Registrar (Accounts) on the allegation of serious financial irregularities. The Principal Secretary by order dated 16.8.1996 dismissed the respondent from service of the then Regional Engineering College which later became National Institute of Technology. It appears there were certain resolutions passed by the Board of Governors authorizing the Principal Secretary to take disciplinary action. The decision of the Principal Secretary to dismiss the respondent from service was also considered by the Board of Governors in their meeting held on 22.8.1996. The Board of Governors approved earlier minutes and also approved the action taken against the respondents by the Principal Secretary. Before the High Court, it was urged that there is no power vested in the Board of Governors to delegate the power to take disciplinary action on the Principal Secretary and that the decision to ratify the order of the Principal Secretary by the Board of Governors would not validate the ex-facie illegal order. The said contention was found favour before the High Court and writ petition was allowed.

8. On review of the precedent decisions and what is meant by 'ratification' the Supreme Court held as under:

“29. The expression “ratification” means “the making valid of an act already done”. This principle is derived from the Latin maxim “*rati habitio mandato aequiparatur*” meaning thereby “a subsequent ratification of an act is equivalent to a prior authority to perform

¹ (2015) 11 SCC 669

such act". It is for this reason, the ratification assumes an invalid act which is retrospectively validated.

30. The expression "ratification" was succinctly defined by the English Court in one old case, *Hartman v. Hornsby* [*Hartman v. Hornsby*, 142 Mo 368 : 44 SW 242 at p. 244 (1897)] as under:

"Ratification' is the approval by act, word, or conduct, of that which was attempted (of accomplishment), but which was improperly or unauthorisedly performed in the first instance."

.....

33. Applying the aforementioned law of ratification to the facts at hand, even if we assume for the sake of argument that the order of dismissal dated 16-8-1996 was passed by the Principal and Secretary who had neither any authority to pass such order under the Rules nor was there any authorisation given by the BoG in his favour to pass such order yet ***in our considered view when the BoG in their meeting held on 22-8-1996 approved the previous actions of the Principal and Secretary in passing the respondent's dismissal order dated 16-8-1996, all the irregularities complained of by the respondent in the proceedings including the authority exercised by the Principal and Secretary to dismiss him stood ratified by the competent authority (Board of Governors) themselves with retrospective effect from 16-8-1996 thereby making an invalid act a lawful one in conformity with the procedure prescribed in the Rules.***

34. In such circumstances, the respondent's grievance that the dismissal order had not been passed by the competent authority i.e. the BoG no longer survived.

35. In the light of the foregoing discussion, we differ with the view taken by the High Court and accordingly hold that the dismissal order dated 16-8-1996 was passed by the competent authority, namely, the BoG as prescribed in the Rules and hence it was legal and proper. It is accordingly upheld."

(emphasis supplied)

9. Learned counsel for the petitioner further sought to contend that as per the Circular Instructions, dated 20.12.1990, a detailed procedure was required to be followed before allotment of shops, whereas that procedure was not followed. As can be seen from the subject itself, the Circular Instructions are applicable for allotment of shops, whereas in the present case there is no new allotment made to unofficial respondent, but its request for shifting the business from Shop No.C4/426 to Shop No.B-364 is accepted and the said decision of the Chairman was ratified by the Market Committee. Thus, the said contention is also stated to be rejected.

10. Learned Standing Counsel also informs the Court that by conducting panchanama on 20.12.2018, the possession of the shop was handed over to respondent No.6.

11. Therefore, I do not see any illegality in the decision taken by the Market Committee in allotting Shop No.B6-364 to unofficial respondent. The Writ Petition merits no consideration.

12. The Writ Petition is accordingly dismissed. There shall be no order as to costs. Pending Miscellaneous Petitions, if any, shall stand closed.

Date:27.12.2018

KH

P. NAVEEN RAO, J

