IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P No.16108 of 2021
and W.M.P Nos.17037, 17041 & 17043 of 2021

Vengu @ G.Manimaran ...Petitioner

Vs.

1. The Government of Tamil Nadu,
   Represented by its Secretary,
   Agriculture Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner of Agriculture Marketing,
   Chepauk,
   Chennai - 600 005. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent made in G.O.(Ms)No.105 Agriculture (AM2) Department dated 23.07.2021 and quash the same.

For Petitioner : Mr.Kumaresh Babu
for Mr.V.Balamurugane

For Respondents: Mr.R.Shunmugasundaram
Advocate General assist by

Mr.Baranidharan
Government Advocate

ORDER

This writ petition has been filed challenging the impugned Government order dated 23.07.2021, withdrawing the members who were nominated to the 24 Market Committees and appointing Special Officers in their place for a period of one year.

2.The case of the petitioner is that he was one of the member who was nominated to the Market Committee through Government Orders that were passed in the year 2020. The grievance of the petitioner is that by virtue of the impugned Government order dated 23.07.2021, all the members who were nominated to the Committee have been withdrawn and in their place, Special Officers have been appointed for a period of one year. Aggrieved by the same, the present writ petition has been filed before this Court.

3.The learned counsel for the petitioner submitted that Market Committee is established by the Government in exercise of powers under Section 5 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 (herein after called as "Act"). The learned counsel submitted that the Members of the Committee shall act in accordance with the directions issued by the Government. The learned counsel further submitted that Section 33 of the Act deals with reconstitution of the Market Committee and the said provision also prescribes various contingencies where such reconstitution of a Committee can take place. The learned counsel further submitted that the Special Officer is appointed for a period not exceeding one year to manage the affairs of the Market Committee pending the constitution of a new Market Committee. According to the learned counsel for the petitioner, none of the contingencies as provided under Section 33 of the Act has arisen in the present case and therefore, there was absolutely no reason to withdraw the Members and to appoint a Special Officer till the constitution of a new Committee.

4.The learned counsel for the petitioner further developed his arguments by submitting that Section 10(3) of the Act gives power to the Government to withdraw any Member or Members who were nominated to the Market Committee under Section 10(2) of the Act and the vacancy can be filled up through fresh nominations. The learned counsel submitted that even though such a power is vested with the Government to withdraw any Member or Members nominated, it cannot be exercised in an arbitrary fashion and there must be a valid ground for withdrawing the nominations. The learned counsel further submitted that there is a vested right for a Member who has already been nominated and the least that is expected of the Government is to assign a reason as to why they are withdrawing the Member or Members who have been nominated earlier by the Government. The learned counsel submitted that wherever there is arbitrariness in exercising the power under Section 10(3) of the Act, the same can be put to challenge before this Court by way of filing a writ petition. Therefore, the learned counsel by pointing out to the impugned Government Order dated 23.07.2021, submitted that there is absolutely no reason assigned in the Government Order and the Government Order itself has been passed only based on an opinion given by the learned Advocate General and the proposal that was given by the Commissioner of Agricultural Marketing &

Agri Business through letter dated 20.07.2021. These two communications have not been furnished to the petitioner and he does not know for what reasons his nomination has been withdrawn. Hence, the impugned Government Order requires the interference of this Court.

5.The learned counsel for the petitioner in order to substantiate his submissions, relied upon the judgement of the Hon'ble Supreme Court in B.P.Singhal vs. Union of India reported in (2010) 6 SCC 331 and Om Narain Agarwal and Others vs. Nagar Palika, Shahjahanpur and others reported in (1993) 2 SCC 242.

6.Per Contra, Mr.R.Shunmugasundaram, learned Advocate General appearing on behalf of the respondents submitted that the very nature of duty that is performed by the Member or Members of the Market Committee is advisory in nature and there is no vested right for a Member to continue forever. The learned Advocate General by reading Section 5 of the Act submitted that the Market Committee itself is established by the Government for getting the advise and with a view to enforce the provisions of the Act, and as and when the Government deems it fit to withdraw the Member or Members from the Committee, the same can be done by virtue of the powers under Section 10(3) of the Act. The learned Advocate General further submitted that there is no legal right for the Member to continue for the entire tenure and as and when the Government wants change in Members, it is always open to the Government to withdraw the Member and nominate a Special Officer during the intervening period and thereafter, nominate a new Member. The learned Advocate General therefore submitted that there is absolutely no reason to interfere with the impugned Government Order dated 23.07.2021.

7.The learned Advocate General in order to substantiate his submissions relied upon the judgement of the Division Bench of this Court in the case of Raja Palayam Paruthi Panchu Sangam and others vs. State of Tamil Nadu and others reported in AIR 1996 Mad 29.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.A careful reading of the impugned Government Order dated 23.07.2021, reveals the fact that the Members were nominated to the Market Committee for a period of three years by virtue of the Government Order dated 15.06.2007. In the year 2010, it was further extended for a further period of twelve months from 15.06.2010 to 14.06.2011. Thereafter, by virtue of Government Order dated 31.05.2011, the Members of the Market Committees were withdrawn in exercise of power under Section 10(3) of the Act even before the expiry of the tenure and Special Officers were appointed for a period of one year from 31.05.2011 to 30.05.2012. The tenure of the Special Officers was further extended from 31.05.2012 up to 29.11.2020. This was done by virtue of nine Government orders that were passed during the period from 2012 to 2020.

10.When the extended tenure of the Special Officers of the Market Committees was due to expire on 29.11.2020, Members were nominated to the 24 Market Committees as per 10(2) of the Act by virtue of four Government Orders that were issued in the year 2020.

11.It is seen from the impugned Government Order that a legal opinion was received from the learned Advocate General of Tamil Nadu through letter dated 19.07.2021 and a proposal was also received from the Commissioner of Agricultural Marketing & Agri business through letter dated 20.07.2021 and pursuant to the same, the Members who were nominated to 24 Market Committees were withdrawn in exercise of powers under 10(3) of the Act. In their place, the Special Officers have been appointed for 23 Market Committees for a period of one year as per Section 33(1) and (2) of the Act.

12.The only issue that arises for consideration in the present case, is as to whether the State Government while exercising its power under Section 10(3) of the Act is expected to assign reasons or provide opportunity to the Member or Members of the Market Committee before withdrawing their nominations. The very scheme of the Act shows that the Market Committee is appointed as an extended hand of the Government in order to carry out the object of the enactment. The Members of the Market Committee are not elected and on the other hand they are merely nominated by the Government. The Market Committee is expected to enforce the provisions of the Act and Rules and the by-laws in the notified area as per the directions given by the Government from time to time. A very wide power has been given to the Government under Section 10(3) of the Act to withdraw any Member or Members nominated under 10(2) of the Act and fill up the vacancy or vacancies by fresh nomination.

13.The question is as to whether the Government while exercising this power should put the Member on notice or assign any reasons for the withdrawal of the nomination, requires consideration. By definition, the nomination of a Member in a Market Committee that is established under Section 5 of the Act, is completely left to the discretion of the Government. Anyone can be nominated to the Market Committee under Section 10(2) of the Act provided they satisfy the requirements under the said provision. There is no election or selection of a Member and it is merely a nomination by the Government. When such is the discretion that has been vested on the Government while nominating a Member under Section 10(2) of the Act, the same discretion must be extended even when the Government exercises its power of withdrawal of nomination under Section 10(3) of the Act.

14.The learned counsel for the petitioner by placing reliance upon the judgement of the Hon'ble Supreme Court in B.P.Singhal vs. Union of India referred supra, submitted that the nomination of the Member to the Market Committee cannot be treated akin to the doctrine of pleasure and the Members do not hold the office under the pleasure of the Government and therefore could be removed from the office at any time.

15.The judgement relied upon by the learned counsel for the petitioner has absolutely no relevance to the facts of the present case. That was a case where the Hon'ble Supreme Court was dealing with the doctrine of pleasure in relation to the Governor appointed in a State and the President of India.

16.The next judgement that is relied upon by the learned counsel for the petitioner in Om Narain Agarwal and Others vs. Nagar Palika, Shahjahanpur and others referred supra, again deals with an issue where the nominated Members held office during the pleasure of the State Government. By considering the relevant provisions, the Hon'ble Supreme Court has held that there is no requirement to afford an opportunity to the nominated Members before their removal. The Hon'ble Supreme Court further held that such a removal does not put any stigma on the performance or character of the nominated Members and it is done purely on political considerations.

17.The above judgements does not in any way come to the aid of the petitioner. Even in the present case, even though the sentence “during the pleasure of the State Government” has not been specifically employed in the Act, the nomination made by the State Government under Section 10(2) of the Act is akin to the doctrine of pleasure and such nomination of Members of the Market Committees is done purely on political considerations.

18.It will also be relevant to refer to the judgement cited by the learned Advocate General in Raja Palayam Paruthi Panchu Sangam and others vs. State of Tamil Nadu and others referred supra. The relevant portions in the judgement are extracted hereunder:

> 21.The next contention of the learned counsel for the petitioners is that Section 10 of the Act providing for the constitution of market committee is undemocratic, invalid and therefore, it is liable to

be struct down. The contention of the learned counsel for the petitioners is that under the old Act 23 of 1959 the market committee shall consist of 18 members of whom 9 were elected from licencees and 4 were nominated by Government of whom one should be the producer residing in the notified area. The Tamil Nadu Act 27 of 1989 provides for nomination of non-official and official members numbering 16 only by the Government of whom 8 shall be from the producers. The learned counsel for the petitioners would submit that the provisions of Section 10 is not in consonance with democratic set up and leave it open to the arbitrary way of nominating the representatives by the Government who would be only henchmen and thereby the market committee is made a tool to its own political influence or gain whoever may be the ruling party. It is, further contended that the constitution of the market committee as per Section 10 of the said Act is undemocratic as the purchasers and sellers have no proper and adequate representation.

22.Per contra, the learned Advocate General submitted that the practice of election for the constitution of market committee has been done away with and the procedure of nomination by the Government as is the practice in other Boards, Corporations, Local bodies etc. in Tamil Nadu and as prevalent in other States is provided for, taking into account the huge expenses involved in the conduct of elections in the constitution of market committee which is functioning only with limited resources. The learned Advocate General further submitted that the primary object of the Act is to help and benefit the producers and traders who are given adequate representation in the constitution of market committees and therefore the contention of the petitioners that the nominated members are going to be only henchmen of the party in power has no merit.

23.In para 4.4.1 of the report of the Working Group on drawing up model agricultural produce market Act, it is pointed out that the direct election of the non-official members of the market committees by the formers may be a very cumbersome and costly process. The learned Advocate General also relied on para 4.4.2 of the said report which reads thus:

> "4.4.2 It is almost like a general election in which electoral rolls will have to be prepared, published and finalised after hearing objections. Elaborate arrangements will also have to be made

for setting up a large number of polling booths, providing security during the election process and for counting of votes, etc. The number of voters being very large, a lot of man-power and financial resources will be required to conduct these elections."

24. In N. Sreerama Murthy v. State, , a Division Bench of the Andhra Pradesh High Court while upholding the validity of a similar provision in Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 empowering the Government to nominate members of market committee held as follows:

"6. Sri Venugopala Reddy, learned Counsel for the petitioners, contends that the Division Bench, striking down S. 5(1) and (2) of the principal Act, declared that it was the elected members that on best subserve the interests of the different interests represented on the market committee. The amended Act gives a go by to the system of election and is contrary to the intendment of the judgment of this court. He argues that if the provisions were held to be violative of Art. 14 because the principle of election was not observed with respect to the representatives of the growers of the agricultural produce and owners of livestock and products of livestock as well as in the case of traders the amended provision must also be held to be violative of Art. 14 of the Constitution. We must point out thai this is not the correct interpretation of the earlier judgment of this Court. The Court, in declaring the said provision to be violative of Art. 14 pointed out that growers of agricultural produce and owners of livestock and products of livestock on the one hand and the traders in agricultural produce, owners of livestock and products of livestock on the other, represent two vital interests in the market committee and if one interest was represented by those elected from among themselves, and according to ihc Bench elected representatives are better suited to safeguard the interests of the particular section the other section also ought to have been given an opportunity to be represented by members elected from among themselves. Such a discrimination was held to be striking at the root of the validity of that provision. What would have been the provision if the legislature had made provision for nomination of both the interests, that is, growers of agricultural produce and owners of livestock and products of livestock on the one hand and the traders on the other, did not come up for consideration in that case. Whatever may be said about the system of nomination as compared to the system of election to particular body, when all the interests are to be informally represented either by elected representatives or by nominated members, none of such groups can complain of hostile discrimination. That is what the legislalure in its wisdom, has now done. Now, both the traders and the growers of agricultural produce and owners of livestock and products of livestock, are to be nominated by the Government by a notification. May be, if provision was made for election of the representatives of the growers and owners of livestock and products of livestock, would have been better, but the legislature in its wisdom must have thought nomination of persons representing the two groups was in the best interests of the market committees. Whatever criticism on such a provision may be open to, cannot certainly be questioned on the ground that it is violative of Art. 14 of the Constitution. May be, the Legislature, after considering the several aspects, was of the view that the interests of the traders as well as the growers of agricultural produce and owners of livestock and products of livestock are better served by nomination of the members of those categories. May be, the administrative difficulties and financial burden of conducting elections to several market committees especially when growers of agricultural produce and owners of livestock run into several lakhs weighed with the legislature in abandoning the election process. Or may be, it thought that on committees like this, persons with special knowledge or experience may not come forward to seek election and the Government preferred to secure their services by nominating them to these committees in the hope that the committee would function better. Those are matters entirely for the legislature to consider and decide. It is not the province of this Court to say that the method of election alone is to be preferred as against the method of nomination in constituting the market committees. It is a matter of opinion. So long as such nomination does not violate any provision of the Constitution, the Court cannot substitute its own view in matters such as these and strike down the legislation. It may be pointed out that the passage from the judgment of this Court relied upon by the learned counsel to the effect that interests are best protected by permitting the affected owners of those interests to elect their representatives to the market committee were made only to emphasise that the others interest was not similarly represented by the elected members but was represented only by nominated members. It was never meant that the persons to man the market committees must be chosen only by the process of election from among the members of that category. In our view, inasmuch as all the interests envisaged by the Act are represented by persons nominated by the Government, no question of hostile discrimination arises so as to hold the said amended provisions of the enactment to be violative of Art. 14 of the Constitution."

25.The Division Bench of the Andhra Pradesh High Court in para 8 of the decision referred above, further observes thus:

"8. It would thus be seen that this Act as a fairly comprehensive Act covering the purchase and sale of notified agricultural produce, livestock and products of livestock and intended to provide facilities for marketing of these products' and to put a check on unauthorised collections to which (he growers of agricultural produce and owneis oflivestock and products of livestock are exposed in the process of sale of their stock. Having regard to the fact that the growers run into lakhs only an agency like the Government may be able to identify the person suitable and sufficiently qualified for being nominated to the committees to represent the various interests. It is not any subordinate authority, but the Government which is the highest administrative authority, that is vested with the power to nominate persons of each category on the committee. It is well settled that if such a power is vested in the highest authority, it is assumed that it would act fairly having regard to the provisions of the Act and its intend-ment and to advance the purposes of the Act. The provisions made in the amended subsections (1) and (2) of S. 5 of the Act, read with the other provisions of the Act referred to above, provide sufficient guidelines to this highest authority of the State in the matter of nominating the members to the committee; be it from the category of growers or of traders. In Jyoti Pershad v. Union Territory of Delhi, , a similar contention that the Act itself did not provide any guidelines was repelled and it was observed that ''it is not essential for the legislation to comply with the rule as to equal protection, that the rules for the guidance of the designated authority, which is to exercise the power or which is vested with the discretion, should be laid down in express terms in the statutory provision itself." The Supreme Court then referred with approval to the following observations made in Kedarnath v. State of West Bengal, AIR 1953 SC 404 at P.409 :--

> "The Saurashtra case would seem to lay down the principle thaf if the impugned legislation indicates the policy which it is to seek to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the standard indicated in the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and therefore, obnoxious to Art. 14". The Supreme Court further laid down that "such guidelines may thus be obtained from or afforded by (a) the preamble read in the light of the surrounding circumstances which necessitated the legislation, taken in conjunction with well-known facts of which the Court might take judicial notice or of which it is appraised by evidence before it in the form of affidavits, being an instance where the guidance was gathered in the manner above indicated (b) or even from the policy and purpose of the enactment which may be gathered from other operative provisions applicable to analogous or comparable situations or generally from the object sought to be achieved by the enactment."

26.We are in entire agreement with the view expressed by the Division Bench of the Andhra Pradesh High Court in N. Sree Rama Murthy v. State, AIR 1981

(Andh Pra) 395. Therefore, it has to be held that the attack on the validity of Section 10 of the Act is unsustainable.

19.The Division Bench of this Court was considering the scope of Section 10 of the Act. While doing so, the Division Bench had upheld dispensing with the election for the constitution of the Market Committee and replacing the same by appointing Members through nomination. Thus the Government was given a free hand to nominate Members of its own choice. When such a free hand is given for nomination, no bar can be placed while the Government decides to withdraw the nomination. Obviously, the nomination is purely based on political considerations depending upon the party in power.

20.The requirement for assigning reasons or for providing an opportunity will arise only where an action leads to civil consequences. It is now a well settled law that wherever an action leads to civil consequences, adherence to the principles of natural justice is mandatory failing which the action itself will get vitiated.

21.In the considered view of this Court, the withdrawal of nomination of Member or Members does not result in any civil consequences. It does not cause any stigma on the performance or character of the nominated Members. The nomination happens by exercising discretion and withdrawal of nomination also happens by exercise of discretion. Therefore, there is no vested right for a member to claim that he has to be given reasons and must be given an opportunity before the nomination is withdrawn.

22.In view of the above discussion, this Court does not find any illegality in the impugned Government Order dated 23.07.2021 and it is well within the powers of the Government under Section 10(3) of the Act to withdraw the nomination of the Members of the Market Committees and appoint Special Officers till new Members are nominated. There is no arbitrariness in the issuance of the impugned Government Order as contended by the learned counsel for the petitioner.

23.In the result, this writ petition stands dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Secretary,
   Agriculture Department,
   Fort St. George,
   Chennai - 600 009.

2. The Commissioner of Agriculture Marketing,
   Chepauk, Chennai - 600 005.

+1cc to Mr.Muthukumarasamy, Advocate, S.R.No.37621
+1cc to the Government Pleader, S.R.No.38032

W.P No.16108 of 2021
and W.M.P Nos.17037, 17041 & 17043 of 2021

PCH(CO)
RGA(24/08/2021)