



Rules or the bye-laws against the alleged violator. [530-F-G]

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2. The Secretary is not competent to file a complaint or launch prosecution on his own, without a resolution or authorisation of the Marketing Committee concerned. His power is limited to conduct the proceedings, after he has been so authorised for and on behalf of the Market Committee. [530-H, 531-A]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 434 of 1993.

From the Judgment and Order dated 9.10.92 of the Karnataka High Court in CrI. A. No. 790 of 1988.

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G.V. Chandershekhar and P.Mahale for the Appellants.

S.K. Kulkarni and M.T. George for the respondents.

The Judgment of the Court was delivered by

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**DR. ANAND, J.** On 10.5.1993, while condoning the delay in the filing of the special leave petition, special leave was granted limited to the question "whether the Secretary, Agricultural Produce Marketing Committee is competent to file the complaint"?

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The Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as 'the Act') was promulgated with a view to provide for better regulation of marketing of agricultural produce and the establishment and administration of markets for agricultural produce and matters connected therewith in the State of Karnataka. The Act also provides for the constitution of marketing committees which are empowered to regulate the market of the notified agricultural commodities in the notified market areas. In the case of violation of the provisions of the Act and/or the Rules framed thereunder, penal action and punishments have been provided under the Act. In order to answer the question noticed above, it is desirable to first notice some of the relevant provisions of the Act and the Rules framed thereunder.

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*Section 2(20)* defines "marketing committee" or "committee" to mean a market committee constituted for a market area under this Act. A market functionary under *Section 2(21)* includes a broker, commission agent, an

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A exporter, a ginner, an importer, a presser, a processor, a stockist, a trader, and such other person as may be declared under the rules or the bye-laws to be a market functionary. *Section 2(39)* defines the "Secretary" to mean the Secretary of the market committee and includes, Additional Secretary or Assistant Secretary of the marketing committee and any other officer who is authorised by the Director of Agricultural Marketing to exercise the powers and perform the functions and duties of the Secretary. *Section 58* deals with the appointment of the Secretary and the technical staff of the marketing committee.

C *Section 9* provides for the establishment of the marketing committee and its incorporation and lays down that save as provided for in chapter IX, for every market area, there shall be a marketing committee having jurisdiction over the entire market area. *Sub-section (2) thereof inter alia* provides :

D (2) "Every market committee established under this Act shall be a body corporate by such name as the State Government may by notification specify. It shall have perpetual succession and a common seal and may sue and be sued in its corporate name and shall, subject to such restrictions as are imposed by or under this Act, be competent to contract and to acquire, hold, lease, sell or otherwise transfer any property and to do all other things necessary for the purpose for which it is established :

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F *Sub-section (3) of Section 9* declares that notwithstanding anything contained in any law for the time being in force, every market committee shall, for all purposes, be deemed to be a local authority.

G The powers, functions and duties of the Secretary have been provided in *Section 56* of the Act and the relevant parts of the Section lay down :

H *56. Powers, functions and duties of the Secretary.* - Subject to the powers of the Chairman under *Section 46* and the other provisions of this Act or the rules, the Secretary shall be the chief executive officer and the custodian of all the records and properties of the

market committee, and shall exercise and perform the following powers and duties, in addition to such other duties as may be specified in this Act, the rules or bye-laws, namely:- A

(i) convene in consultation with the Chairman the meetings of the market committee and of the sub-committees, if any, and maintain the minutes of the proceedings thereof;..... B

(iv) furnish to the market committee such returns, statements, estimates, statistics and reports as the market committee may from time to time require including reports, - (a) regarding the fines and penalties levied on, and any disciplinary action taken against the members of the staff and the market functionaries and others; (b) regarding over-trading by traders; (c) regarding contraventions of the Act, the rules, the bye-laws of the standing orders by any person; (d) regarding the suspension or cancellation of licences by him or by the Chairman or the Director of Agricultural Marketing; (e) regarding the administration of the market committee and the regulation of the marketing; C D

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(x) report to the Chairman and the Director of Agricultural Marketing immediately in respect of fraud, illegal acts, embezzlement, theft or loss of market committee funds or property; E

(xi) prefer complaints in respect of prosecutions to be launched on behalf of the market committee and conduct proceedings, civil or criminal, on behalf of the market committee. F

Rule 50 deals with the powers and duties of the Secretary and *inter alia* provides :

*50. Duties and Powers of the Secretary -*

(1) Subject to the provisions of the Act, the secretary shall be the Chief Executive Officer of the Committee and shall carry out the resolutions and directions of the Committee from time to time. G

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A (4) The Secretary shall maintain records of all disputes which come up for decision before the arbitrators and the disputes committee in the form prescribed in the by-laws.

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(11) The Secretary shall furnish to the Committee particulars of contraventions, if any, of the provisions of the act, the rules or the bye-laws by a market functionary and the action, if any, taken thereon as soon as may be after such contravention.

C *Section 63* of the Act deals with the powers and duties of the market committee and the relevant portion thereof reads as follows :

D *63. Powers and duties of market committee.* - (1) Subject to the provisions of this Act, it shall be the duty of a market committee,-

(i) to implement the provisions of this Act, the rules and bye-laws made thereunder in the market area;

E (ii) to provides such facilities for transport and marketing of agricultural produce therein as the State Government may from time to time direct;

F (iii) to do such other acts as may be required in relation to the superintendence, direction and control of markets or for regulating marketing of agricultural produce in any place in the market area, and for purposes connected with the matters aforesaid,

and for that purpose may exercise such powers and discharge such functions as may be provided by or under this Act.

G (2) (a) .....

(2) (b) a market committee may -

(i) regulate the entry of persons and vehicular traffic into the yard vesting in the market committee;

H (ii) prosecute persons for violating the provisions of this Act, the

rules and the bye-laws an compound such offences; A

(iii) acquire, hold and dispose of any movable or immovable property for the purpose of efficiently carrying out its duties;

(iv) impose penalties on persons who contravene the provisions of this Act, the rules or the bye-laws or the orders or directions issued under this Act, the rules or the bye-laws by the market committee, its Chairman or by any officer duty authorised in this behalf; B

(v) institute of defend any suit, action, proceeding, application or arbitration and compromise such suit, action, proceeding, application or abirtration; C

(vi) .....

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A conjoint reading of the aforesaid provisions of the Act and the Rules framed thereunder goes to show that the secretary of the Market Committee is an officer of the marketing committee, who is a Government servant, and is appointed by the Government and *functions* as the chief executive officer of the committee generally to carry out the resolutions and the directions of the committee from time to time. His *powers, functions* and *duties* have been specified under the Act and the Rules. D E

*Section 56(xi)* (supra) requires the Secretary of the marketing committee to *prefer complaints* in respect of the *prosecutions to be launched on behalf of the marketing committee* and *conduct proceedings*, civil or criminal *on behalf of the marketing committee*. Under Section 63 (2)(b)(ii) (supra) the power "*to prosecute persons for violating the provisions of the Act, the rules and the bye-laws and to compound such offences*" vests and rests with the market committee itself. Therefore, it is only after a decision is taken by the market committee to prosecute an offender under the Act that the Secretary is assigned the function to institute the complaint on its behalf and conduct the proceedings. Thus, without a resolution or an authorisation from the market committee, the Secretary by himself can not file any complaint against any person subject to the provisions of the Act for violating the provisions of the Act, Rules or the bye-laws. Thus, whereas the *power* to launch a prosecution vests with the market committee, the *functions* in respect thereof are required to be carried out by the Secretary H

A on behalf of the Market Committee. Since, every market committee is a body corporate having perpetual succession which may sue or be sued in its corporate name, the Act provides for the delegation of different *functions* to various officers including the Secretary under the Act. The *functions* of filing the complaint etc. against the offenders under the Act have been specifically vested in the Secretary. The *powers* of the committee and the *functions* of the Secretary in the matter of prosecuting the offenders are independent and cannot be confused nor the distinction between the *powers* of the committee and the *functions and duties* of the Secretary be overlooked. There appears to be sound logic in *not* vesting the *power* in the Secretary to launch prosecutions against the alleged offenders and to

B vest that *power* in the market committee itself. Since, the marketing committee consists largely of the elected representatives, elected in the manner provided under the Act, there is collective responsibility of the Market Committee to the functionaries of the marketing committee and therefore any prosecution which is required to be launched would need to be

C scrutinised and considered by the market committee itself because, the launching of prosecution, exposes the violator not only to face a trial but on conviction may be also subjected to penal consequences. The farmers of the Act therefore specifically left the *power* to *authorise* prosecution, in the marketing committee while providing for delegation of the *functions* to prosecute on behalf of the marketing committee, to the Secretary of the

D committee.

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From an analysis of the provisions of the Act and the Rules as hereinabove noticed, we are of the opinion that it is for the marketing committee to *decide* whether or not prosecution is required to be launched

F against an alleged violator and it is only after such a *decision* is taken that the Secretary of the market committee can be *authorised* by a resolution or otherwise, to file the complaint and conduct the proceedings against the offenders for than on behalf of the market committee in the appropriate forum. In the absence of any *resolution* or *authorisation* from the market committee, the Secretary does not have any *power* to independently prefer

G or file any complaint or launch a prosecution for the alleged violation of the Act, Rules or the bye-laws against the alleged violator. We, therefore, answer the question posed in the opening part of this judgment and hold that the Secretary agricultural produce marketing committee is *not* competent to *file* a complaint or launch prosecution on his own, *without* a

H *resolution* or *authorisation* of the marketing committee concerned. His

power is limited to conduct the proceedings, after he has been so authorised, for and on behalf of the Market Committee. A

On the facts of this case, we find from the record that the appellant as the Secretary of the agricultural produce marketing committee, Dakshin Kannada district, Karnataka filed a complaint before the IInd Addl. Chief Judicial Magistrate, Mangalore against the respondents *without being authorised* by the market committee to do so *and without any decision* of the market committee to prosecute the respondents for the alleged violation of the provisions of the Act and the Rules. An objection was raised before the Trial Court against the competence of the appellant to file the complaint without prior permission or authorisation from the marketing committee and thus, on the maintainability of the complaint itself by the respondent. The Trial Court upheld the objection and vide its order dated 27.10.1987 dismissed the complaint as not maintainable and acquitted the respondents. The order of the Trial Court was unsuccessfully challenged in an appeal before the High Court of Karnataka, which concurred with the view of the Trial Court and by its order dated 9.10.1992 held, after consideration of the provisions of the Act, that : B  
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"it is the committee which must take a decision to prosecute persons for any violation alleged and in the absence of such decision by the marketing committee, the "Secretary could not have filed the complaint." E

In view of the opinion that we have expressed above regarding the *power* and *functions* of the Secretary, the view of the High Court, upholding that of the Trial Court, is the correct view and calls for no interference. We find no merit in this appeal and dismiss the same. There shall, however, be no order as to costs. F

K.S.D.

Appeal dismissed.