
(2004) 09 PAT CK 0008
In the Patna High Court
Case No : L.P.A. No. 961 of 2004

Anil Kr. Saha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-2004

Acts Referred:

Bihar Agricultural Produce Markets Rules, 1975 — Rule 3(ii), 4

Citation : (2004) 4 PLJR 838

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : K.P. Yadav, Lalit Kishore, for the Appellant; R.B. Mahto with Ajay for the Respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 25th August 2004 passed by the learned single judge in CWJC. No. 6839 of 2004 whereby he has dismissed the writ application filed by the petitioner-appellant challenging the order passed by the Secretary, Agricultural Produce Market Committee, Bhagalpur (respondent No. 5) declaring that petitioner-appellant shall be ceased to be a voter of the traders' constituency No. 2 and, accordingly, shall be ceased to be a Chairman of the Market Committee. The facts which are not in dispute are that the appellant is enrolled as an advocate and he is nowhere connected with the firm known as M/s Lalji Sah Bishun Prasad (respondent No. 6) as a partner or anybody. According to the provision of the Bihar Agricultural Produce Markets Act 1960, it has been enacted to provide for the better regulation of buying and selling of Agricultural Produce and the Establishment of Markets for Agricultural Produce in the State of Bihar and for matters connected therewith. Section 9 of the Act contains a provision with regard to constitution of the second and subsequent Market Committee and sub-section (ii) provides for electing two representatives of the licensed traders under this Act in the manner prescribed. Rule 4 of the Bihar Agricultural Produce Markets Rules 1975 deals with persons qualified to

vote. Sub rule (ii) of Rule 4 contains a provision with regard to trader's constituency, which runs thus:

"All traders other than co-operative societies holding valid licence of Market Committee, on the date of provisional publication of voters' list under sub-rule (iii) of rule 5 shall be the voters of a trader's constituency under sub-rule (ii) of rule 3, unless disqualified u/s 10 or rule 6."

2. According to the said provision all traders shall be voters of a trader's constituency unless disqualified u/s 10 of the Act. The explanation provides that a firm or a corporation in a trader's constituency shall nominate a person for vote on its behalf and intimate to the authority concerned. Thus, in view of the aforesaid provisions so far trader's constituency is concerned two representatives are to be elected and in case of a firm right has been given to it to nominate a person to vote. Licensee has been defined u/s 2(g), which means a person or association, firm or company granted a licence under this Act. Trader has been defined u/s 2 (w), which means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a commission agent or a person ordinarily engaged in the business of processing agricultural produce.

3. Thus, conjoint reading of the aforesaid provisions show that two representatives of the traders' constituency have to be elected. In case of a firm a right has been given to it to nominate a person to vote. In the present case, the appellant is stated to be an enrolled advocate and after being authorized by the firm M/s Lalji Sah, Bishun Prasad to vote on its behalf in terms of the provision contained under rule 4 (ii) and Explanation (1), his name was included in the voter list and thereafter he was nominated as a Chairman.

4. The question that falls for determination in this case is as to whether a person who has been nominated by a firm to vote from a trader's constituency only can be treated as a trader and voter and will also be nominated as a Chairman of the Market Committee. The Secretary of the Society having noticed the fact that the appellant's nomination was only for voting held that he can vote only but cannot be appointed as a Chairman of the Market Committee.

5. Learned counsel appearing for the petitioner has assailed the order primarily on two grounds. Firstly, he says that once the appellant has been nominated by the firm to vote he became voter and accordingly he could be nominated as a Chairman. After the election as voter the only mode to challenge the election is by way of filing an election petition u/s 9 (6) of the Act which provides that an election may be challenged by an election petition before the prescribed authority and no court shall have any jurisdiction with regard to or in connection with any election under this section. In that view of the matter, the Secretary has no jurisdiction to nullify the election as well as nomination as a Chairman of the Committee. Secondly, he submitted that once the appellant has been authorized to vote and he became a voter, he may become a Chairman being one of the

voters of the electoral roll in terms of the provision of the Act.

6. Learned counsel appearing for the other side on the other hand submitted that the provision cannot be interpreted in a way as to frustrate the very object for which the provision has been made. Elaborating the submission, he submitted that the very purpose of insertion of section 9(1) (ii) is that there should be two representatives of the traders' community so that the persons nominated must have some nexus or relation with the traders' community. An outsider only by virtue of nomination to vote under the aforesaid provision cannot become a voter or a Chairman as that would frustrate the very object of the provision. He also submitted that even assuming that an election petition is only a remedy to remove the appellant from the post but it cannot be lost sight of the fact that when the matter comes to the notice of the Court and if this court finds that the appellant cannot remain as a member or a Chairman, this court will not interfere with the order impugned for the simple reason that allowing him to continue, in fact, would amount to perpetuating illegality.

7. The object as stated above of the provision u/s 9(1) (ii) is that there should be two representatives of the traders' community. No doubt in case of a firm or a company, it is legally entitled to nominate a person to vote and he cannot be debarred from exercising the right to vote. But the question is whether a person authorised to vote only in case of being elected can be made a Chairman also?

8. After plain reading of the aforesaid provision it appears that a person on being nominated by the traders' community can vote only. If the person is not a trader he cannot be nominated as Chairman. The one of the partners of the firm has filed an affidavit showing that a right of vote was only given to the appellant. He is not in any way connected with the firm. In such a situation, we are of the view that the only right given to the appellant was a voting right not beyond that. In that view of the matter, he cannot be a voter in the true sense and cannot be appointed as a Chairman.

9. No doubt, it is true that an election petition is the proper course to determine such a dispute. This court generally does not interfere with such a matter but the question arises here is that the appellant enrolled as an advocate could represent the traders' community which, in our view, appears to be nothing less than a fraud on the very provision which has been made for representation of the trader's community. Once the matter comes to the notice of this court and the court finds violation of a provision then it should interfere with the matter even if an alternate remedy, as stated above by learned counsel for the appellant, is available.

10. Accordingly, we agree with the order passed by the learned single judge on a ground different than what has been given by him. In the result, the appeal is dismissed.