

(2004) 08 PAT CK 0055
In the Patna High Court
Case No : CWJC No. 6839 of 2004

Anil Kumar Saha

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 13
Bihar Agricultural Produce Markets Rules, 1975 — Rule 4

Citation : AIR 2005 Patna 27 : (2004) 2 BLJR 1517 : (2004) 4 PLJR 201

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Navniti Prasad Singh, for the Appellant; K.P. Yadav, Ram Balak Mahto Ajay, for respondent Nos. 4 and 5, Shashi Bhushan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Prasad, J.—The prayer in the writ petition is for quashing the communication dated 8.5.2004 (Annexure-6) issued by the Secretary, Agriculture Produce Market Committee, Bhagalpur (Respondent No. 5) declaring that the petitioner has ceased to be a voter of Traders Constituency No. 2, and, as such, . ceased to be the Chairman of the Market Committee, and, further, for quashing the consequential direction of the Director (Marketing), Bihar State Agriculture Produce Market Board, Patna (Respondent No. 3) dated 22.5.2004 (Annexure-8) delegating the power of counter- signing cheques in the Assistant. Director, Agriculture Marketing, Bhagalpur.

2. According to the case of the petitioner in every Market Committee constituted under the provisions of the Bihar Agricultural Produce Markets Act, 1960, hereinafter referred to as "the Act", and the Rules framed thereunder two members are elected members from the Traders Constituency. For the purpose of election of trader member, voters list for Traders Constituency is prepared. Traders can be individuals or firms like partnership. According to the petitioner, in terms of Rule 4 (ii) Explanation I in case of licensee trader being a firm, it can

nominate any person to be a voter in its behalf and such a person who is declared a voter becomes eligible for contesting from Traders Constituency for membership of the Committee. It is contended that after completion of the election in terms of Section 13 of the Act, the State Government notifies the list of elected members and from amongst the elected members notifies a Chairman. According to the petitioner, he was nominated by the partnership firm of Respondent No. 6, who is a licensee trader in terms of Rules 4(ii) read with Explanation I of the Rules to be the voter on their behalf, and his name was included in the voter list of Traders Constituency No. 2 under Rule 5(ii) in form 1 B representing the firm of Respondent No. 6. Accordingly, he filed nomination seeking election from Traders Constituency No. 2 of the Market Committee in which he was declared elected. The State Government published a notification in Bihar Gazette Bhagalpur u/s 13 of the Act notifying the elected members of the Bhagalpur Market Committee and the Petitioner who was elected from Traders Constituency No. 2 was notified as Chairman of the Market Committee by the State Government on 28.2.2004 vide Annexure-3. It is alleged that the petitioner gave direction to the Secretary to produce books etc., which was not obeyed by the Secretary as he is not ready to divest his powers in favour of the elected and notified Chairman. On 5.4.2004 the Secretary, however, inquired from Respondent No. 6 as to the status of the petitioner, to which Respondent No. 6 in reply dated 7.4.2004 affirmed that the petitioner had been nominated by the firm and elected and notified by the State Government. On 8.4.2004 the Secretary again sought for further information from Respondent No. 6 as petitioner's name was not mentioned in the application for grant of trader's licence or its renewal, and in reply sent by Respondent No. 6 on 10.4.2004 the proprietor of Respondent No. 6 vide Annexure-5 wrote that in view of provision of the Act, and the Rules the petitioner was nominated for contesting the election of the Market Committee, and, as such, the entry of his name in the application for renewal of licence was neither required nor necessary, whereupon the impugned order was passed. Thereafter, Respondent No. 6 on 17.5.2004 vide Annexure-7 informed the petitioner that his nomination by the firm has neither been withdrawn nor cancelled and he still continues to be the voter representing the firm. The Director in view of the controversy raised with regard to competency of the petitioner to be the Chairman delegated the Assistant Director with the power for counter-signing on cheques vide impugned order, contained in Annexure-8.

3. A counter affidavit has been filed on behalf of Agriculture Produce Market Committee, Bhagalpur and its Secretary (Respondent Nos. 4 and 5) stating that the petitioner was neither a trader/holding a trader licence nor has ever applied or got licence either as a partner or as a proprietor of the firm- Respondent No. 6. It is further stated that the petitioner has never traded in the market area of Bhagalpur Market Committee and he is not a trader within the meaning of the Act, as such, he could not have been a member of the Market Committee from the traders constituency. It is contended that after joining Respondent No. 5

found that petitioner is representing the firm Respondent No. 6 without having traders licence and on enquiry the proprietor of the firm Ramdeo Prasad Saha informed that the petitioner is in no way connected or concern with the firm-Respondent No. 6. He further informed that after publication of the provisional voter list the petitioner approached him that since there will be disturbance in the election he can authorise him to caste vote on his behalf and he got obtained signature on certain papers from Ramdeo Prasad Saha, proprietor of the firm-respondent No. 6, and the petitioner on the basis of the authority to vote for and on behalf of the firm got his name included in the voter list and himself contested as a candidate. An affidavit sworn by said Ramdeo Prasad Saha in support of his statement has been annexed as Annexure- R4/F to the counter affidavit. Respondent No. 5. after getting this information that petitioner was never a trader nor he has ever traded on behalf of the firm-Respondent No. 6, thus, he could not had been a member of the Market Committee from the traders constituency, took steps for cessation of the membership of the petitioner either as a member or Chairman of the Market Committee and vide impugned letter dated 8.5.2004 (Annexure-6) informed the petitioner that he ceased to be a member of the Market Committee, Bhagalpur in terms of Section 9(2) of the Act and consequently also ceased to be the Chairman of the Market Committed, Bhagalpur. It is, thus, contended that any notification issued contrary to the statute is void, illegal and the petitioner cannot claim any right to continue as a Member/Chairman of the Market Committee, Bhagalpur.

4. it is submitted by the learned counsel for the petitioner that in terms of Rule 4(ii) Explanation i of the Rules every firm or corporation qualified to vote in a trader's constituency shall nominate a person to be vote on its behalf and such a person becomes eligible for contesting from Traders Constituency for membership of the Committee. In reply, learned counsel appearing for Respondent No's. 4 and 5 submitted that the proprietor of the firm-Respondent No. 6, who nominated the petitioner has sworn affidavit stating therein that besides the letter of nomination for the purpose of voting he has not issued any letter to the petitioner and the petitioner is in no way connected with the firm either as proprietor or as a partner. However, petitioner was authorised only to caste vote on behalf of the firm.

5. Rule 4 (ii) deals with Trader's Constituency and its Explanation (1) reads as follows :

"Explanation (1) - Every firm or corporation qualified to vote in a trader's constituency under this rule, shall nominate a person to vote on its behalf and intimate in writing the name of the person so nominated to the Market Committee, not later than, the date fixed in this behalf by the Election Officer." Bare perusal of Explanation (1) or Rule 4(ii) shows that every firm qualified to vote in a trader's constituency shall nominate a person to vote on its behalf. It is nowhere mentioned that it can nominate any person to be a voter on its behalf, who will be eligible for contesting election from Traders Constituency for

membership of the Committee. Moreover, from Annexure-R4/F it appears that Ramdeo Prasad Saha, proprietor of the firm-Respondent No. 6 has specifically stated on oath that in the year 2002 petitioner was nominated by him to cast vote in the election of APMC, Bhagalpur and the said nomination was only for the purpose of voting in the election and the petitioner was not nominated/authorised by him to become a voter in the voter list of Trader's Constituency No. 2 of APMC, Bhagalpur. It has been further stated on oath that the petitioner is neither a proprietor nor a partner of the firm and he is not even associated with the firm in any manner.

6. Under the facts and circumstances aforementioned, this Court fails to appreciate as to how the petitioner became voter and contested the election from Trader's Constituency for membership of the Committee, when he was neither a trader/holding a trader licence nor has even applied or got licence either as a partner or as a proprietor of the firm-Respondent No. 6 which is essential ingredients for a person to be elected or appointed as a member. Hence, it has rightly been submitted by the learned counsel appearing for Respondent-Agriculture Produce Market Committee, Bhagalpur that any notification issued contrary to the statute is void and illegal.

7. In the result, there is no merit in the writ application and the same is dismissed.