
(2008) 05 MP CK 0048
In the Madhya Pradesh High Court

Anil Vohra

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 41(1)B(h)

Citation : (2009) 4 MPHT 194 : (2009) 2 MPJR 257 : (2009) 2 MPLJ 68

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shantanu Kemkar, J.

This is a petition in the nature of quo warranto filed under Article 226 of the Constitution of India seeking quashment of the order dated 30-12-2005 (Annexure P-2) issued by the State Government Nominating the 4th respondent as "Member" of the Madhya Pradesh State Agricultural Marketing Board (for short, "the Board").

The petitioner claims to be a licenced trader of Mandi Committee Badnawar. He has filed a certificate (Annexure P-1) of his election as "representatives of traders" issued under Rule 80, Madhya Pradesh Krishi Upaj Mandi (Mandi Samiti Ka Nirvachan) Rules, 1997 (for short "the Rules").

The State Government exercising its powers conferred by Section 41(1)B of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (for short "the Adhiniyam") nominated various members to the Board in addition to the ex officio members. The 4th respondent has also been nominated as member to the Board under category of "representatives of traders holding licence" in any Market Committee within the State as provided u/s 41B(h) of the Adhiniyam vide impugned order dated 30-12-2005 notified in Madhya Pradesh Rajpatra dated 13-1-2006.

The case of the petitioner is that the State Government could not have

nominated the 4th respondent as Member of the Board as he was not qualified u/s 41 B (h) of the Adhiniyam to be so nominated. According to the petitioner the 4th respondent being not a representative of the traders of the Market Committee his nomination as Member of the Board deserves to be quashed.

The stand of the respondents in their return is that the 4th respondent though is not an elected representative of the licenced traders but he being licenced trader in Mandi Committee Badnawar, the State Government has rightly nominated him by invoking powers under Clause (h) of Section 41(B) of the Adhiniyam. The respondents further stated that in absence of word "elected" in Sub-clause (h) of Section 41(1)B of the Adhiniyam, contention of the petitioner that the 4th respondent could not have been nominated, is misconceived.

Heard learned Counsel for the parties and perused the annexures filed along with the petition and return.

Section 11 of the Adhiniyam deals with the constitution of Market Committee. Sub-clause (c) of Section 11 provides that in the Market Committee there shall be one representative of traders. For the election of traders representatives the mode of preparation of voters list is prescribed under Rule 14(b) of the Rules. Rule 82 of the Rules provides for election of traders representatives. After election, the certificate to that effect has to be issued to the elected representatives of traders under Rule 80 of the Rules. It is, thus, clear that in the Market Committee the representatives of traders are being elected and the petitioner is one such elected representatives of traders. It is also clear from Sections 31 and 32 of the Adhiniyam that a trader has to obtain licence from the Market Committee to operate in the Market area.

Section 40 of the Adhiniyam provides for establishment of the Board. Section 41(1)B describes as to who can be nominated by the State Government as "member" of the Board. Section 41(1)B(h) under which the 4th respondent has been nominated as Member reads as under:

Section 41. Constitution of Board.- (1) The State Government shall constitute the Board which shall consist of the President and the following members, namely:

B. - Members nominated by the State Government.

(f) *** ***(g) *** ***(h) Two representatives of traders holding licence in any Market Committee within the State.

(i) *** ***(j) *** ***

On bare reading of Clause (h) extracted above it is clear that the State Government can nominate two Members of the Board from amongst the representatives of traders holding license in any Market Committee within the State. Admittedly, the 4th respondent is a trader holding licence in Market Committee, Badnawar, but he is not a representative of traders holding licence. As already noticed the rules provide for the post of representative of traders by

election. Since the post of the "representatives of traders" can only be held on being elected as provided under rules, the contention of the respondent that in the absence of the word "elected" in Clause (h) it is not necessary that the nomination could be only from the representatives of traders is wholly misconceived. In view of the clear provision that the nomination is to be made of two representatives of the traders, there remain no room to say that the requirement for being nominated as Member of the Board is only of holding of licence by a trader. Such interpretation would run contrary to Clause (h) of Section 41(1)B of the Adhiniyam which clearly provides that the State Government shall nominate two representatives of traders holding licence in any Market Committee within the State.

In view of the aforesaid, when it is not in dispute that 4th respondent is not representative of traders I have no hesitation to hold that the nomination of the 4th respondent by the State Government in exercise of powers conferred on it u/s 41(1)B(h) of the Adhiniyam is illegal and without any authority of law. The 4th respondent being not a representative of traders was and is ineligible under Clause (h) of Section 41(1)B of the Adhiniyam for being nominated as Member of the Board by the State Government.

Accordingly, the petition is allowed, the impugned order dated 30-12-2005 (Annexure P-2) issued by the State Government so far as it relates to nomination of the 4th respondent in the Board deserves to be and is hereby quashed. However, no orders as to costs.