
(2015) 09 MP CK 0059

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12829 of 2015

Aruna Kailash Patel

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 11, 12, 14

Citation : (2016) 1 MPLJ 176

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : A.M. Trivedi, Senior Advocate assisted by Rahul Rawat, for the Appellant; Swapnil Ganguli, Govt. Advocate, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K.K. Trivedi, J—This writ petition under Article 226 of the Constitution of India takes exception to the action of respondents of initiating motion of no confidence against the petitioner, President of Krishi Upaj Mandi Samiti, Banapura, Tehsil Seoni Malwa, District Hoshangabad. It is contended in the writ petition that the petitioner was elected as President of Krishi Upaj Mandi Samiti, Banapura on 7.1.2013. The constitution of Krishi Upaj Mandi Samiti is by 17 members. On 21.7.2015, eight members have moved notice of no confidence against the petitioner and have approached the respondent No. 4 for fixing the date for meeting to consider the said no confidence motion.

2. It is the specific plea raised in the writ petition that no confidence motion is short of the required number of members to initiate such proceedings against the petitioner in terms of Section 14 of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (hereinafter referred to as "the Act") and, therefore, no such date of hearing was to be fixed. The petitioner moved a representation challenging such an aspect, but, since the same is not being considered, the present writ petition is required to be filed.

3. This court, while entertaining the writ petition, has granted an interim stay vide order dated 6.8.2015. As a result, no proceedings of no confidence motion have taken place against the petitioner. Upon service of notice of the writ petition, the respondents have filed their return contending inter-alia that no confidence motion was rightly moved against the petitioner in terms of the amended provisions of Section 14 of the Act and since the constitution of Market Committee is as prescribed by amended provisions of Section 11, and such number of members were included in the said Committee. Since half of the number of members presently constituting the Committee have moved no confidence motion against the petitioner, the same is legal and valid. The same cannot be said to be violative of any provision of law and as such the stand taken by the petitioner is not acceptable. The writ petition is thus liable to be dismissed.

4. One Rameshwar Patel and Mahesh Goyal said to be the Member and Vice-president of the Krishi Upaj Mandi Samiti have filed the applications for intervention in the present writ petition to oppose the same and have also prayed for vacating interim stay.

5. Upon hearing learned counsel for the parties to some extent this Court vide order dated 20th August, 2015 has directed the Collector, Hoshangabad to file his affidavit to show the actual number of members constituting the Krishi Upaj Mandi Samiti, Banapura. Such an affidavit is filed. The petitioner has filed a rejoinder bringing on record certain facts. No additional return whatsoever has been filed by the respondents. However, they have made submission on the basis of documents available on record.

6. Heard learned counsel for the parties at length and perused the record.

7. The crux of the challenge to the action of bringing a no confidence motion against the petitioner is that sufficient number of members have not signed the said notice of no confidence motion and, therefore, it is not moved in accordance to law. To understand as to what would be the actual number of members to validly move a no confidence motion against the petitioner, it is required to examine the nature and strength of constitution of Marketing Committee, Section 11 of the Act prescribes that a Market Committee shall consist of a Chairman elected under Section 12 of the Act, ten representatives of agriculturists possessing such qualification as may be prescribed chosen by direct election from the constituencies of a market area in accordance with the provisions of the Act and the rules made thereunder, one representative of traders possessing such qualifications as may be prescribed, elected by and from amongst the persons holding license from the Market Committee for a period of two successive years as traders or owners or occupiers of processing or manufacturing factories under the Act. Such member of the State Legislative Assembly and House of the People in whose constituency at least fifty percent of population resides in rural area that is outside the local limits of a Municipal Corporation, Municipal Council or Nagar Panchayat and one representative of the Cooperative Marketing Society functioning in the market area who shall be elected by the Managing Committee

of such society. Apart from the aforesaid persons to be elected from the aforesaid categories, the other nominated members of the committee are an officer of the Agriculture Department of the State Government to be nominated by the Collector, one representative of the Weighmen and Hammals operating in the marketing area elected in the manner as may be prescribed, by and from amongst the Weighmen and Hammals, one representative of the District Central Cooperative Bank, one representative of District Land Development Bank and one representative of Gram Panchayat or Janpad Panchayat or Zila Panchayat which falls within the jurisdiction of market area nominated by the Chairperson of the Zila Panchayat. Sub-section (2) of Section 11 makes it clear that all members under sub-section (1) shall have a right to vote except the member nominated under clause (f) and the special invitees under the second proviso to clause (d) of sub-section (1). Every election and nomination of a member shall be notified by the Collector in the official gazette. This provision makes it clear that the Constitution of the Krishi Upaj Mandi Samiti is only by election and nomination which is to be notified in the gazette by the Collector of the District.

8. Section 14 of the Act as added by amendment made by Act No. 29 of 2012 prescribes action to be taken on motion of no confidence moved against the Chairman or Vice-chairman of the Market Committee. This provisions reads thus:--

"14. (1) A motion of no confidence may be moved against the Chairman or the Vice-Chairman at a meeting specifically convened for the purpose under sub-section (2) and if the motion is carried by a majority of not less than two third of the members present and voting and if such majority is more than one half of the total number of members constituting the Market Committee for the time being, the Chairman or Vice-Chairman, as the case may be, against whom such motion is passed, shall cease to hold his office with effect from the date immediately after the date on which such motion is passed.

(2) For the purpose of sub-section (1), a meeting of the Market Committee shall be held in the following manner, namely:--

(i) The meeting shall be convened by the Secretary, on a notice signed by not less than fifty percent of the total number of members constituting the Market Committee for the time being within thirty days from the date of the receipt of the notice of motion of no confidence;

(ii) The notice mentioned in clause (i) shall also be addressed and simultaneously delivered to the Collector and on failure of the Secretary to convene the meeting as provided in clause (i) the meeting shall be convened by the Collector within fifteen days from the date of expiration of the period of thirty days specified in clause (i) and the provisions of this sub-section shall apply to meeting convened by the Collector as they apply to meeting convened by the Secretary;

(iii) The notice of such a meeting shall specify the date, time and place thereof and shall be dispatched by the Secretary to every member at least ten clear days

in advance of the date of meeting. A copy of the notice shall be sent to Collector for appointment of an officer as required in clause (iv) and a copy shall also be sent to the Managing Director;"

9. A perusal of this provision will make it clear that the notice is required to be signed by not less than 50 percent of the total number of the members constituting the Market Committee for the time being. This provision does not qualify anything except that the notice of no confidence must be signed by 50 percent or more of the total number of members. It does not restrict that the same is to be signed only by those who are elected or those who are presently constituting the Committee.

10. Admittedly the constitution of the Krishi Upaj Mandi Samiti is by notification issued by the Collector and in all 12 members are elected from amongst the categories of the members of the agriculturist group, weighmen and hammals group and traders group. That notification was issued on 24th December, 2012, as has been indicated in the document IA-1 filed alongwith the application IA No. 8497/2015 filed by one Mahesh Goyal. Nobody has disputed this document. For Krishi Upaj Mandi Samiti, Banapura, on 7th February, 2014, six members were nominated from amongst various categories as prescribed in Section 11 of the Act by the Collector and included as members of the Krishi Upaj Mandi Samiti, Banapura. This notification is also not disputed. Only one more notification was issued and instead of one Kailash Patel, the Member of Legislative Assembly himself was notified as a member of the Krishi Upaj Mandi Samiti, Banapura. Likewise, instead of one Shri Virendra Kumar, Shri Balram Patel was included as member representative of the Cooperative Marketing Society. The other change was in respect of member representative of Panchayat and in place of one Ajit Singh, Smt. Pushpabai was included as member of the Krishi Upaj Mandi Samiti, Banapura. This notification is also not in challenged. The total number of the members constituting Krishi Upaj Mandi Samiti, Banapura was thus 18. In terms of the aforesaid notification, even if one member was not working or had been transferred from his place of posting on account of which she ceased to be the member of Krishi Upaj Mandi Samiti, Banapura, at the relevant time, at least 9 members were required to sign the notice of no confidence motion, which was required to be moved against the petitioner in terms of the provisions of Section 14 of the Act. Admittedly, only 8 members have signed the said notice and, therefore, the same was not in consonance with the provisions of law. These aspects were not considered by the respondent No. 4 while forwarding the said notice of no confidence motion to the authorities for taking steps. It is the case of the petitioner that these facts were brought to the notice of the Collector of the district by making a representation, but the same was not being looked into. Therefore, the present writ petition was required to be filed. Though the learned counsel for the petitioner has placed his reliance in a Constitution Bench decision of the Apex Court in the case of Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, AIR 1963 SC 1019 : (1963) 1 SCR 912 Supp , but in view of the law, as clearly made under the Act, since the action of making the no

confidence motion against the petitioner has been found in contravention of the said law, further discussion in that respect is not necessary. Suffice it to say that notice of no confidence motion moved against the petitioner was not signed by the requisite number of members and, therefore, the same was not to be acted upon. The said notice and any action initiated on that notice has to be set aside.

11. This being a technical issue, since the notice of no confidence motion was moved by insufficient number of the members, it would be open to the said members to consider afresh and to move a fresh notice of no confidence motion against the petitioner in accordance to law, if necessary. The quashment of earlier notice of no confidence motion under this order will not come in the way of that proceedings. The authorities would be free to examine the validity of fresh notice of no confidence in accordance to law as stated hereinabove and to proceed accordingly.

12. The writ petition is allowed to the extent indicated hereinabove with the aforesaid liberty. There shall be no order as to costs.