(1971) 04 MP CK 0034

In the Madhya Pradesh High Court

Case No : M.P. No. 22 of 1970

Bhagwandas APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 27-04-1971

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1971) JLJ 563 : (1971) MPLJ 717

Hon'ble Judges : R.J. Bhave, J;K.K. Dube, J

Bench : Division Bench

Advocate : Swami Saran, for the Appellant; P.L. Dubey, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.J. Bhave, J.

This petition under Article 226 of the Constitution of India is directed against the Notification dated 27-2-1970 of the Agriculture Department purporting to appoint, in exercise of powers u/s 7-A of the Madhya Pradesh Agricultural Produce Markets Act, 1960, a Managing Committee for Bhander Market in Tahsil Bhander of Gwalior District.

Section 7-A of the Act provides that "when a market is established for the first time the State Government shall have powers to appoint etc. etc." The contention is that the provisions of Section 7-A of the Act are applicable to markets established for the first time under the present Act and not to the markets which were already in existence and were continued under the present Act. The market in question, which was established under the Qawaid Mandi Hat Gwalior and further continued under the Madhya Bharat Agricultural Produce Markets Act, 1952 and under the present Act, could not be said to be the first market established under the present Act and the exercise of the power of appointing a Committee was, therefore, illegal and utra vires of the powers of the

State Government.

At the outset, it must be observed that the counsel for both the sides did not help us by producing the uptodate Jaw before us. The return filed by the State is also not complete. Under the circumstances, we were required to hunt out all the amendments of the Act from time to time and to consider the over-all effect.

The present Act repealed all the previous Acts operating in the various parts of the State on the same subject, including the Madhya Bharat Agricultural Produce Markets Act, 1952, under which a properly elected Committee was functioning with regard to the market in question. The first proviso to Section 43 of the present Act which repeals the various Acts reads thus:

Provided that the markets established or market areas declared under the said Acts or Qawaid shall be deemed to be markets established or market areas declared under this Act and the market committees or mandi committees constituted for such markets or market areas and holding office immediately prior to the date on which this Act comes into force shall be deemed to be the first market committees constituted under Sub-section (3) of Section 8 for the said markets or market areas.

Sub-section (3) of Section 8, to which reference is made in the first proviso, indicates that when a market committee is constituted for the first time all the members of the market committee shall be nominated by the State Government and that such members shall hold office for a period of two years. Thus, by operation of Section 43 of the Act and its first proviso, the elected market committee of the Bhander Market became a nominated committee. No new committee contemplated by Section 8(1) of the Act was, however, constituted and it appears that the ''deemed nominated committee'' of the market in question continued as provided for under Sub-section (5) of Section 8 of the Act till 1968.

In the year 1968 the Madhya Pradesh Agricultural Produce Markets (Amendment) Ordinance. 1968 was promulgated. By the said Ordinance Sub-section (3) of Section 8 of the Act was omitted and a new section, namely, Section 7-A was added. Section 7-A was to the following effect:

7-A. Appointment of Officer-in-charge pending constitution of first market committee.

(1) When a market is established for the first time under this Act, the State Government shall, by notification, appoint a person to be the officer-in-charge for a period not exceeding six months who shall, subject to the control of the State Government, exercise all the powers and perform all the duties of the market committee under this Act:

Provided that the State Government may, from time to time extend the period of appointment of the Officer-in-charge by such further period as it may think fit so however that the total period does not exceed one year:

Provided further that if the market committee is constituted before the expiration of the period aforesaid, the Officer-in-charge shall cease to hold office on the date appointed for the first general meeting of the newly constituted market committee:

(2) The Officer-in-charge shall take steps in connection with the preparation of Voters list and holding elections in accordance with the provisions of this Act or the rules or bye-laws made thereunder.

(3) Any person appointed Officer-in-charge under Sub-section (1) shall receive from the market committee fund, for his services such pay and allowances as may be fixed by the State Government.

Section 4 of the said Ordinance further provided that the market committees constituted under Sub-section (3) of Section 8 of the Act and in existence on the date of the repeal of Sub-section (3) of Section 8 of the Act shall cease to exist and all the members thereof shall vacate their office. It further provided that the administration of the market committee shall vest in the officer-in-charge to be appointed by the State Government and the provisions of Sub-section (1) so far as they related to the period of appointment of the officer-in-charge and Sub-sections (2) and (3) of Section 7-A of the principal Act shall apply to the officer-in-charge appointed u/s 4 of the Ordinance as they applied to the officer-in-charge appointed under that section. The effect of the Ordinance was that the nominated committee of the Bhander Market stood dissolved as the State Government was entitled to appoint an officer-in-charge u/s 4 of the Ordinance. The provisions of Section 7-A were made applicable only to the extent of the period for which such an officer could be appointed and other connected matters. The committee was, however, not one appointed u/s 7-A.

By the Madhya Pradesh Agricultural Produce Markets (Amendment and Validation) Ordinance, 1969 (Ordinance No. 13 of 1969) Section 7-A was substituted by a new Section 7-A and the amendment was given retrospective effect, that is to say, it was deemed to be on the statute from 7th of July 1968, the date on which Section 7-A was brought into force under the previous Ordinance. The new Section 7-A is to the following effect:

7-A. Appointment of Officer-in-charge or Committee-in-charge pending constitution of first Market Committee:

(1) When a market is established for the first time under this Act, the State Government shall, by notification, appoint:

(a) a person to be the officer-in-charge; or

(b) a Committee consisting of not exceeding seven persons to be constituted in the manner prescribed to be the Committee-in-charge;

for period not exceeding one year. The Officer-in-charge or the Committee-in-charge shall, subject to the control of the State Government, exercise all the powers and perform all the duties of the market committee under this Act:

Provided that the State Government may, from time to time, extend the period of appointment of the Officer-in-charge or the Committee-in-charge by such further period at it may think fit, so however, that the total period does not exceed two years:

Provided further that the State Government may at any time during the period aforesaid appoint Committee-in-charge in place of Officer-in-charge and Officer-in-charge in place of Committee-in-charge and the Officer-in-charge or Committee-in-charge, as the case may be, so appointed shall hold office or shall function for the remainder of the period available to his predecessor:

Provided also that if the Market Committee is constituted before the expiration of the period aforesaid, the Officer-in-charge shall cease to hold office or the Committee-in-charge shall cease to function on the date appointed for the first general meeting of the newly constituted market committee.

(2) Any person appointed Officer-in-charge under Sub-section (1) shall receive from the Market Committee fund for his services such pay and allowances as may be fixed by the State Government and every member of the Committee-in-charge shall receive allowances at such rate at which allowances are payable to members of the Market Committee.

Under this section the State Government could appoint, when a market was established for the first time, an officer-in charge or a nominated committee and could also replace an officer-in-charge by a committee or vice versa and the period during which the officer or the committee held the office was raised to two years. Section 4 of the said Ordinance validated the continuance of the officer-in charge appointed under the original Section 7-A even if he continued to remain in office beyond the period of one year prescribed under the original Act.

The Madhya Pradesh Agricultural Produce Markets (Amendment and Validation) Act, 1970 replaced the Ordinance of 1969 by incorporating the same provisions and giving them the same retrospective effect and validating the continuance in office of the officer-in-charge beyond one year. It appears that the State Government, taking advantage of the provisions of the substituted Section 7-A, appointed a nominated committee for the market in question in place of the officer-in-charge who was appointed in exercise of the powers u/s 4 of the Ordinance of 1968. It may also be noted at this stage that by Ordinance No. 9 of 1970 the period of two years prescribed under the first proviso to Section 7-A (1) is raised to three years.

The combined effect of the amendments of the Madhya Pradesh Agricultural Produce Markets Act, 1960 uptodate is that the ''deemed market committee'' stood dissolved and an officer-in-charge was appointed and by virtue of the amendment of Section 7-A from time to time the officer-in-charge continued to hold the office beyond the original period of six months till the new committee was appointed. The only question is as to whether the officer-in-charge could be replaced by a nominated committee. Under the first proviso to Section 43 of the Act the elected committee of the market in question was made a ''deemed appointed committee'' under Sub-section (3) of Section 8. When that Sub-section was omitted by the Ordinance of 1968, Section 4 thereof did not provide that on the nominated committee having ceased to function the State Government shall appoint an officer-in-charge in exercise of powers u/s 7-A. On the contrary, Section 4 itself conferred power of appointment of an officer-in-charge on the State Government. For the period during which such officer would hold office and the powers that he would exercise reference was made to Section 7-A. It cannot, therefore, be held that the officer-in-charge was appointed in exercise of the powers u/s The emendment of section 7-A so as to facilitate the replacement of the officer in-charge by a committee cannot, therefore, properly be made use of by the State Government so-far as the officer-in-charge in question is concerned. The State Government could of course take advantage of the period prescribed u/s 7-A by amendments as that part of Section 7-A was specifically made applicable by Section 4 of the Ordinance of 1968.

In the result, in our opinion, the State Government had no authority to replace the officer-in-charge by a nominated committee in the case of the Bhander Market. The Notification dated 27-2 1970 must, therefore, be quashed. The petition is allowed and the impugned notification is quashed. In the circumstances of the case, we make no order as to costs. The security amount be refunded to the Petitioner.

