

(2016) 10 OHC CK 0002
In the Orissa High Court
Case No : W.P.(C) No. 20390 of 2011

Bijaya Gobinda Dash

APPELLANT

Vs

Director, Orissa State Agricultural Marketing Board

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) LIC 336

Hon'ble Judges : Dr. D.P. Choudhury, J.

Bench : Single Bench

Advocate : Mr. B. Ch. Sahu, Advocate, for the Petitioners; Miss S. Ratho, Additional Government Advocate, for the Opposite Party Nos. 1 and 2; M/s. S.K. Ray and S.P. Swain, Advocates, for the Opposite Party Nos. 3 and 4

Final Decision : Dismissed

Judgement

Dr. D.P. Choudhury, J. - Challenge has been made to the inaction of the opposite parties for not approving the appointment of the petitioners and to allow them to continue in the same post to which they are entitled to continue.

FACTS

2. The factual matrix leading to the case of the petitioners is that the petitioners were appointed as Market Guard/Junior Clerk after observing all formalities of appointment and they continued for five years. The appointment was made under Section 9 of the Odisha Agricultural Produce Markets Act, 1956 (hereinafter called "the Act"). The Market Committee has also received Rs.2,000/- from each of the petitioners as security deposit. While they were working as such a letter dated 27.11.2011 vide Annexure-7 was issued cancelling the appointment of 35 DLRs including the present petitioners and they were not allowed to work. So, the petitioners had to approach this Court.

3. Per contra, the opposite parties filed counter refuting the allegations made against the opposite parties. It is the case of the opposite parties that the

previous Secretary of the Regulated Marketing Committee (for short "the RMC"), Jajpur without approaching the opposite party Nos.1 and 3 issued the appointment letter without having jurisdiction and therefore, the said appointment has been cancelled by the letter dated 27.1.2011. The opposite parties also denied the receipt of Rs.2,000/- from each of the petitioners as security deposit and the resolution of the RMC dated 8.3.2011 in support of the appointment of the petitioners is totally fraud being not in accordance with the Act and the Rules. It is further averred inter alia that the opposite party No.1 has not approved the appointment of the petitioners for which such appointment cannot be considered legal. It is averred that for the illegalities committed by the previous Secretary of the RMC, a Departmental Proceeding has been initiated. As the appointments of the petitioners have not been made according to law and procedure, there is no cause of action for the petitioners to file this writ petition.

4. The petitioners filed the rejoinder stating that the petitioners while working as DLRs were receiving remuneration and accordingly receipts of such remuneration are filed. Be it stated that the appointment of the present petitioners by the then Secretary of RMC, Jajpur was rightly issued in accordance with the Act and the Rules because the Market Committee is the appointing authority under the Act and the Rules made thereunder. In the rejoinder the petitioners have also stated that the letter dated 19.6.2008 was issued by the opposite party No.1 to opposite party No.4 to make posting of staff from 1.7.2008 in all categories including Guards in Check posts. They also challenged the letter issued by the Chairman, RMC, Jajpur which is otherwise illegal and arbitrary.

SUBMISSIONS

5. Mr. B.C. Sahu, learned counsel for the petitioners submitted that Section 9 (1) of the Act has empowered the Market Committee to employ such officers and employees as may be necessary for the management of the market and may pay such officers and employees such salaries as the Market Committee thinks fit. As such the Market Committee passed a resolution on 8.3.2011 to engage 35 numbers of outsiders as DLRs including the petitioners and out of that 14 DLRs including the present petitioners were appointed as Market Guard/Junior Clerk and Market Supervisor on contractual basis and the Committee allowed the Secretary to issue appointment order maintaining all formalities. He further submitted that in pursuance of the resolution appointment orders have been issued vide Annexure-4 series to the petitioners on 16.3.2011 after which they have deposited Rs.2,000/- each as security deposit vide Annexure-3 series. Learned counsel for the petitioners further submitted that in view of the unambiguous provisions of the Act and the Rules made thereunder, the Market Committee has got all authority to appoint or engage the officers of the staff by the Committee and as per Rule 33 made under the Act the opposite party No.1 has got all power of superintendence and control over the RMC and with the previous approval of the Board vide Annexure-6 the present appointment has been made for which it cannot be said that without approval of the Board

engagement/appointment was made by the opposite party No.4. So, he submitted to allow the petitioners to continue in their respective posts by regularizing them against the posts they are engaged on contractual basis.

6. Learned counsel for the opposite parties submitted that proviso to Rule 33 of the Rules made under the Act read with Section 9 and 18-B of the Act made it mandatory to approve the appointment of the officers and employees of the RMC before they are appointed because it is clearly mentioned that superior officers of the Committee shall be appointed only with the previous approval of the Board. He also submitted that as per sub-rule (2) of Rule 33 made under the Act has clarified that superior Officers shall be Secretary, Clerks and such officers and servants of the Market Committee as the Board may determine from time to time. According to him since the appointment of the petitioners and others have been made without approval of the Chairman, RMC, Jajpur and the OSAM Board, the appointments have been cancelled by order dated 27.1.2011, the present petitioners have no cause of action to continue as DLRs and consequently to regularize their service as Market Guard/Junior Clerk or Market Supervisor. It is further submitted as the then Secretary, RMC, Jajpur has issued letter of engagement to 35 outsiders to function as Market Guard on daily wage basis without any approval of OSAM Board, he has also proceeded departmentally and accordingly charge has been framed against him. Learned counsel for the opposite parties drew the attention of the Court to letter dated 17.12.1999 to the effect that the opposite party No.1 has issued a general letter to all RMCs of the State stating that the appointment issued without approval of the Board should be cancelled and the future appointment should be made only with the prior approval of the Board. So, he submitted that the entire engagement of the petitioners as DLRs being illegal, the subsequent engagement of the petitioners along with other persons out of the said 35 DLRs being not approved by the Board is also illegal. So, he submitted to dismiss the writ petition.

7. The main points for consideration:-

- (i) Whether the appointment of the petitioners are legal and proper.
- (ii) What are the reliefs the petitioners are entitled to.

DISCUSSIONS

POINT NO.(i) :

8. It is relevant to spell out the law on the matter before going to discuss the facts of respective parties. Section 9 of the Act states as follows:-

"9. Employment of staff - (1) The Market Committee may employ such officers and employees as may be necessary for the management of the market and may pay such officers and employees such salaries as the Market Committee thinks fit.

(2) The Market Committee shall, in the case of any officer or employee of Government whom it employs, make such contributions towards his pension,

gratuity and leave allowances as may be required by the conditions of his service to be paid by him or on his behalf.

(3) The Chairman, Vice-Chairman, the Secretary and other officers and servants of the Board and Market Committee shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code".

It is also relevant to quote sub-Section (1) of Section 18-B of the Act which speaks as follows:-

"18-B. Powers and functions/ of the Board- (1) The Board shall, subject to the provisions of this Act, exercise the following powers, namely :

(i) superintendence and control over the working and other affairs of the Market Committees including programmes under taken by such committees for the development of markets and market areas ;

(ii) giving direction to Market Committees in general or any Market Committee in particular with a view to ensuring efficiency thereof ;

(iii) approval of proposals for selection of sites by a Market Committee for development of market".

9. From perusal of both the provisions, it is clear that the Market Committee as defined in the Act has got power to appoint such officers and employees as may be necessary for the management of the market and accordingly the Market Committee would make the payment of salaries. The Board has got power of superintendence and control over the working and other affairs of the Market Committees including programme etc. In order to enhance efficiency of the Market Committee necessary direction may be given by the Board. So, the Board can be taken as a policy decision maker of RMCs. But the Market Committee enjoys the power of engagement or deployment or appointment of the officers and the employees of the Market Committee.

10. Rule 33 being framed under the Act by virtue of Section 27 of the Act endowed on the State Government is as follows:-

"33. Servants of the Market Committee- (1) The Market Committee may appoint such officers and servants as may be necessary for the proper management of the market :

Provided that the superior officers of the Committee shall be appointed only with the previous approval of the Board.

(2) Superior Officers shall be the Secretary, Clerks and such officers and servants of the Market Committee as the Board may determine from time to time.

(3) The terms and conditions of service of superior officers shall be such as may be approved by the Board and those of others shall be such as the Market Committee may decide from time to time.

(4) The Market Committee shall be the Disciplinary Authority in respect of all officers and servants of the Committee :

Provided that the removal or dismissal of superior officers as a measure of punishment shall be subject to the approval of the Board."

Proviso to sub-Rule (1) of Rule 33 being a rider to the appointment of the officers and servants of the Market Committee has given power to the Board to approve the appointment of the superior officers of the Market Committee. Sub-Rule (2) of Rule 33 explains as to who are the superior officers and it includes the Secretary, Clerks and such officers and servants of the Market Committee as the Board may determine from time to time. Sub-Rule (3) read with sub-Rule (4) make it clear that the terms and conditions of service of superior officers may be approved by the Board and accordingly the Market Committee would decide from time to time and it is for the Market Committee to take disciplinary action against all officers and servants of the Committee but for dismissal or removal of such superior officers should be subject to the approval of the Board. From the conjoint reading of the aforesaid provisions of the Act and the Rule, it is made available that the Board can exercise the power of superintendence having framed the policy and the criteria for the appointment of officers and employees of the Market Committee and the Market Committee is bestowed with the obligations to follow the guidelines or the policy framed by the Board. At the same time, the Market Committee enjoys the power of appointment to the posts of officers and servants duly created by the Board. Necessary previous approval before appointment of the staff is mandatory for the reasons that the Market Committee would only appoint or employ the numbers of staff created by Board and pay the salaries by following principle of uniform procedure, but that does not mean that the Board will absolutely sit over the decision of the RMCs to point out as to whom the appointment or engagement should be made by the Market Committee. If at all there is any indiscipline or any violation of the policy or criteria made by the Board for appointment or engagement of the officers and staff of the Market Committee, then only the Board would interfere, otherwise not. If the Board is given the unbridled power to interfere with each appointment/engagement of the officers and the employees of the Market Committee then the provisions of Section 9 would be otiose.

11. It is also clear from the aforesaid provisions that they are intended to put a check on the indiscriminate decision of the Market Committee while removing one employee or the officer of the RMC because after engagement or appointment of the officers or the employees the Market Committee is supposed to follow the principles of natural justice and other necessary procedure as enshrined under law before dismissing or removing the superior officer for which before removal or dismissal of any superior officer, the previous approval of the Board is mandatory. But the order of dismissal or removal would only be passed by the Market Committee.

12. It is reported in 1997 (I) OLR 497; Govinda Chandra Panda v. State of Orissa

and others para-10 of which is quoted below:-

"10. In regard to the challenge to the Board's power of approval under amended Rule 33 of the Rules, it may be stated that no doubt Section 9 of the Act does not spell out any such approval by either the Director or the Board. The provisions of the section show that Market Committee is alone competent to appoint its own officers and servants. But Clause (i) of Section 18-B (1) of the Act prescribes that, subject to the provisions of this Act the Board shall exercise the powers of superintendence and control over the working and other affairs of the Market Committees so on and so forth.

(Emphasis supplied)

Therefore, vesting power of approval is not against the spirit of the main section of the Act and we make it clear that such power of approval with the Board is not meant to be exercised to create any huddle or impediment in the working of the Market Committee or with appointment of its officers and servants; and needless to point out that the Board under the amended rules will be competent to point out any illegality or irregularity in the matter of appointment or punishment pursuant to any disciplinary proceeding. The provision is not unreasonable nor is in conflict with the spirit of the Act, but rather is aimed at achieving an effective control over the management of the Committee".

13. With due regard to the aforesaid decision, it is clear that the role of the Board has been defined and categorically Their Lordships have clarified that the power of approval with the Board is not meant to create any huddle or impediment with the Market Committee for the appointment of officers and servants to manage the market. Keeping in view of the aforesaid legal provisions and the ratio of aforesaid decision, the facts of this case shall be discussed.

14. In the writ petition there is nothing mentioned as to why 35 DLRs including the petitioners were appointed as DLRs but Annexure-5 shows that these petitioners have received their remuneration as daily wagers from 2010 not continuously. Thus, the petitioners have not been able to prove that they were engaged as DLRs for five years by the time of filing the writ petition.

15. In the writ petition at para-9 (A) the petitioners have challenged Annexure-7 stating that on 27.11.2011 the Chairman cancelled the appointment of 35 outsiders engaged on daily wages but in the prayer portion he has prayed to quash said Annexure-7 issued on 27.1.2011. In fact Annexure-7 shows that the said document is issued on 27.1.2011 but not on 27.11.2011. Such document clearly shows that the Chairman of the RMC, Jajpur cancelled the engagement of 35 daily wagers vide letter No.224 dated 24.1.2011 as same has not been approved by the Board. Such document is also relied upon by the opposite parties in their counter. Thus, this Court is of the considered view that on 27.1.2011 the engagements of the petitioners as daily wagers have been cancelled.

16. It is the contention of the learned counsel for the petitioners that as per the letter of the Board the engagement of the petitioners have been made by the RMC, Jajpur. Such letter is also admitted by the opposite parties vide Annexure-B/4. The said letter is placed below:

"OFFICE OF THE ORISSA STATE AGRICULTURAL MARKETING BOARD:
BHUBANESWAR

No.2039 (57)/ Dated 17.12.99

To

The Chair Persons,

All R.M.Cs. in the State

Sub:- Appointment and appointment on promotion of staff in R.M.C.

Ref:- This Board Office letter No.1208 Dated 13.8.93 and letter No.905(57) Dated 28.6.99.

Sir,

With reference to above, I am to say that in spite of instructions and guidelines issued by the Board in the referred letters, there are instances that the R.M.Cs. are making appointments and appointing on promotions also in different posts without taking prior approval of Orissa State Agricultural Marketing Board. The proceedings of the sub-committee formed at the level of R.M.C. pursuant to the Board Letter No-1208 dated 13-8-1993 along with proposal of R.M.C would have been sent to the Board for considering approval and then only after receipt of approval of Board the R.M.C. was to issue appointment orders accordingly. Therefore proposals relating to appointments already made in violation of provisions and instructions shall be sent to the Board, after cancelling such appointments and reverting the staff appointed on promotion to their earlier posts, for approval at Board level. Further in future no appointments shall be made without obtaining prior approval of Board.

After following this due procedure, the proposals may please be sent to the Board by 25.12.99 for consideration at its level.

This may please be acknowledged.

Yours faithfully,

Sd/-

Member Secretary,

O.S.A.M. Board, Bhubaneswar"

After going through the above letter it can be only opined that the Board has cautioned the RMCs towards illegal and irregular appointment of the staff of the

Market Committee and also has advised to cancel such illegal appointment and revert the staff who were appointed on promotion to earlier post. The letter is nothing but a guideline issued by the Board. The letter has been issued purportedly on interpretation of Section 18-B of the Act as per decision stated above. But this Annexure-B/4 does not appear to have been issued directing the Secretary of the RMC, Jajpur to engage the petitioners as DLRs. So, Annexure-B/4 does not extend any benefit to the petitioners. Rather, their engagement as DLRs is not well proved by the petitioners.

17. The petitioners relied on the resolution of the general meeting of the Management of Opposite Party No.4 vide Annexure-2. On going through the same it appears that out of 35 DLRs engaged the petitioners along with 10 others have been appointed on contractual basis as employees of the Market Committee vide resolution dated 8.3.2011. In the same resolution it has been clearly mentioned that this appointment should be made subject to approval of the Board. When the petitioners as DLRs have not been approved by the Board vide Annexure-7 which is under challenge and the petitioners have not brought to the notice of the Court that such resolution has been approved by the Board, it cannot be said that the engagement of the petitioners is valid and legal.

18. The resolution does not disclose prior approval of the Board has been obtained to appoint the petitioners on contractual basis as employees of the Market Committee. In view of foregoing discussion, the prior approval is necessary for the appointment to be made but such approval need not be post facto approval. There is nothing brought out by the petitioners to show that the Annexure-7 is illegal and improper. It is the contention of the learned counsel for the petitioners that they should be allowed to be appointed on contractual basis because they were DLRs and their engagement have been duly approved by the Board. When their appointments as DLRs is illegal and their engagement as DLRs has been cancelled on 27.1.2011 being not approved, the subsequent engagement of petitioners on contractual basis as employee of the Market Committee on 8.3.2011 vide Annexure-2 is also illegal. Point No.(i) is answered accordingly.

POINT NO.(ii)

19. The petitioners have sought for relief to declare Annexure-7 as illegal and arbitrary and, consequently to direct the opposite parties to allow petitioners to continue in the post they were engaged on contractual basis. In the aforesaid paras it has been already observed that their appointments are not legal and proper. No document has been filed by the petitioners to show that in pursuance of Annexure-2 they have joined as Market Guard/Junior Clerk or Market Supervisor in the market. The petitioners only produced the receipts showing security deposit of Rs.2,000/- each, but same is disputed by the opposite parties in their counter. When the petitioners have been issued with the appointment orders on 16.3.2011 without the prior approval of the Board and their initial appointment has been also cancelled, it cannot be said that they continued in the

job they claim. Moreover, there is no any other material produced by the opposite parties to prove the Annexure-7 as illegal and improper. Thus, the petitioners are not entitled to any relief. Point No.(ii) is answered accordingly.

CONCLUSION

20. From the foregoing discussions, it is clear that the engagement of the petitioners as DLRs is illegal and subsequent engagement on contractual basis is also not legal being de hors to the provisions of the Act and the Rules made thereunder. Also it has been observed that the petitioners are not entitled to any relief as prayed for. Consequently the writ petition being devoid of merit stands dismissed.