
(1989) 05 MP CK 0004
In the Madhya Pradesh High Court
Case No : M.P. No. 1664 of 1987

Devendra Kumar Kesharvani	Vs	APPELLANT
Satyanarayan Singh Thakur and Others		RESPONDENT

Date of Decision : 02-05-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 11(1)

Citation : (1990) ILR (MP) 89 : (1990) JLJ 574 : (1990) 35 MPLJ 168 : (1990) MPLJ 168

Hon'ble Judges : Y.B. Suryavanshi, J;B.C. Varma, J

Bench : Division Bench

Advocate : K.N. Agrawal, for the Appellant; Anoop Choudhary, Deputy Advocate-General for respondent Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Y.B. Suryavanshi, J.

The petitioner Devendra Kumar in this petition under Articles 226/227 of the Constitution of India is challenging the legality of the impugned orders, dated 7-5-1989 (Annexure-I), passed by the Addl. Collector, Sagar in appeal No. 19-B/128-year 1985-86 holding, that on scrutiny of the nomination paper of Devendra Kumar on 17-10-1985 it was found that he was not holding licences from the Market Committee for a period of two successive years as required u/s 11 (i)(b) of the M. P. Krishi Upaj Mandi Adhiniyam, 1973 (hereinafter, called the Adhiniyam), Act No. 24/73, because he held licences only for the year 1984-85, and not for the year 1983-84, though he had subsequently obtained a licence for the year 1985-86. He was ineligible for election and accordingly, his election to the Market Committee of the said Mandi has been declared illegal and void.

Chapter III of the Adhiniyam relates to constitution of Market Committees. Section 7 of the Adhiniyam relates to "Establishment of Market Committee". u/s 2(i)(p) a "trader" means " a person who in his normal course of business buys or

sells any notified agricultural produce and includes a person engaged in processing of agricultural produce, but does not include an agriculturist as defined in clause (b) of this sub-section." Section 11 relates to "constitution of Market Committee." It lays down, that "subject to the provisions of sections 10 and 11 -A market committee shall consist of not less than" eight and not more than twenty members as the State Government may, by Notification, specify..... (a)" not less than such number of the elected members as may be fixed by the State Government in the said Notification shall be representatives of the traders possessing such qualifications as may be prescribed and elected in the prescribed manner from amongst the persons continuously holding licence from the market committee for a period of two successive years as traders or owners or occupiers of processing factories under this Act: Provided, that in the case of a market established for the first time u/s 10 the qualifying period of continuously holding cause from such committee shall be six months. Rule 6 of the Niyam, 1974 reads:

"6. Qualification which the representative of traders shall possess under clause (a) of sub-section (1) of section 11. A person, for being elected as a representative of traders shall, unless disqualified under the provisions of the Act and these rules, be qualified to be elected as a member of the market committee under clause (b) of sub-section (1) of section 11, if he is a trader as defined in clause (p) of sub-section (1) of section 2 and his name is in the voters' list."

Rule 7 enumerates various disqualifications for membership; and Chapter XI deals with election petitions, declaration of elections as void.

(a) According to the petitioner, he was a "trader" as defined in the Adhiniyam, and held licences Nos. 26, 98 and 37 (Annexures A, B and C), respectively, issued on 15-10-1983, 15-10-1984 and 24-9-1985 which were valid upto respectively, 30-9-1984, 30-9-1985 and 30-9-1986. Annexures D, E and F are the relevant applications, whereas Annexures-DI, EI and FI are relevant declaration forms and the certificate (Annexure-G) dated 12-6-1987 has been issued by the Krishi Upaj Mandi Samiti certifying that the petitioner traded in the name and style of "Devendra Kumar Kesharwani" and " Vishwas Kirana Bhandar"". The elections to the Krishi Upaj Mandi Samiti, Sagar were scheduled on 29-10-1985. The petitioner filed his nomination paper for being elected a member of the Krishi Upaj Mandi Samiti from the "traders" constituency." The Returning Officer rejected his nomination form on 14-10-1985 and the ground for rejection was, that the petitioner did not hold licences for two successive years as prescribed by section 11(1)(b). Aggrieved by that order, he filed an appeal before the S.D.O., Sagar (respondent No. 5) under the provisions of Rule 17(4) of the M. P. Krishi Upaj Mandi Samiti (Adhisuchana Prakashan Riti, Bharsadhak Samiti Tatha Mandi Samiti Gathan) Niyam, 1974. The S.D.O. (respondent No. 5) allowed the appeal holding, that the petitioner was holding a licence for two successive years i.e. 1984-85 and 1985-86, as prescribed by section 11 of the Adhiniyam (Annexure-H). The petitioner's nomination was, therefore, accepted by the Returning Officer on 17-10-1985. The petitioner contested the election,

and was declared elected on 19-10-1985.

(b) The respondent No. 1 Satyanarayan Singh Thakur filed an Election Petition before the respondent No. 4, Addl. Collector, Sagar under Rule 43 of the Rules framed under the Adhiniyam. The respondent No. 4 took the view that though the petitioner was holding licences for the years 1984-85 and 1985-86. but on interpretation of section 11(1)(b) of the Adhiniyam found that as the petitioner was contesting the election from the "traders" constituency" he should have possessed licences for two successive years for the period commencing two years before the date of nomination i.e. 14-10-1985. and therefore the licence for the period 1984-85 could be considered for the purposes of section 11(1)(b) of the Adhiniyam, and accordingly he found that he was not holding licences from the market committee for two successive years as trader and therefore election of the petitioner is void.

(c) According to the petitioner he held licences as trader for three years, 1983-84. 1984-85 and 1985-86 and therefore, on a correct interpretation he was not disqualified to contest the election.

On 18-6-1987. an ad interim order was passed staying the operation of the impugned order dated 7-5-1987, and on 7-7-1988 the Court ordered that notices be issued to the respondents to show cause why the petition be not admitted. We make it clear that the election petition was filed by the present respondent No. 1 Satyanarayan Singh Thakur, and the other respondents were Devendra Kumar (present petitioner) and two others, namely Lakhanlal Sahu and Jeewanlal. All the respondents were served. Only Krishi Upaj Mandi Samiti. Sagar, through its Secretary (respondent No. 6) filed return virtually admitting all the averments in the petition. The learned Government Advocate appeared on behalf of respondents 4 and 5. With the consent of the learned counsel, this petition was heard on merits.

The short question for interpretation is, whether the petitioner Devendra Kumar was qualified to contest from the traders" constituency in view of section 11(1) (b) of the Adhiniyam, and the interpretation put in the election petition, namely, that on the date of scrutiny of the nomination paper dated 14-10-1985 the petitioner did not continuously hold licences from the market committee for two successive years as a trader, and was therefore disqualified for election, is correct?

According to the learned counsel for the petitioner Shri K. N. Agrawal. the petitioner admittedly held licences for the years 1984 -1 985 and 1985-86 and therefore he had fulfilled the requirements of section 11(1)(b) of the Adhiniyam. On a perusal of the orders passed by the Returning Officer on 14-10-1985 rejecting the nomination paper it is apparent that the nomination paper was rejected on scrutiny on the ground that information was sought from the Secretary of the Mandi Samiti who disclosed that this petitioner did not hold a licence for the year 1983 84. The petitioner was specifically asked by the

Returning Officer to produce evidence. But the petitioner, as recorded in the orders was unable to furnish any evidence and therefore his nomination paper was rejected by the Returning Officer u/s 11(1 Mb).

In the appeal filed against the rejection of nomination paper before the S.D.O. (respondent No. 5), the petitioner furnished two receipts and the learned S.D.O. gave a finding that in these circumstances the petitioner was continuously holding licences for two successive years as provided and therefore the orders passed by the Returning Officer (Tahsildar) rejecting the nomination papers were set aside. Accordingly the orders were communicated to the Tahsildar for information and further action.

To reiterate before the Returning Officer at the time of scrutiny of the nomination paper there is a specific finding that licence for 1983-84 was not obtained and only licence for the year 1984-85 was obtained. Therefore at that stage a finding that he held licence only for one year was recorded.

During appeal against rejection of nomination paper preferred before the S.D.O. the licence not only for 1984-85 was produced but on basis of the receipts it was found that he had paid the fees for the year 1985-86. At that stage no licence for the crucial year 1983-84 was produced.

In the election petition the only licences produced were for the year 1984-85 and for the subsequent year 1985-86. To emphasise the licence for the year 1983-84 was not produced for the purpose of election petition. The learned counsel for the petitioner was specifically asked this question and all that was said is, "that it was not considered necessary" and therefore, admittedly, the licence for the year 1983-84 is being produced for the first time for consideration in this writ petition.

Turning to the question of interpretation, the learned counsel for the petitioner strenuously urged, that the condition of continuously holding licence for a period of two successive years is fulfilled, even on the basis of licences for the years 1984-85 and 1985-86. We find ourselves unable to accept this submission. The crucial date for scrutiny of nomination paper was 14-10-1984, and to be elected as a representative of traders, the petitioner had to possess the mandatory qualification, namely, that he had to be a "continuously holding licence from the market committee for a period of two successive years as trader." The period of licence for 1985-86 is subsequent period to the crucial date 14-10-1984. The period of two years has to be counted prior to that date. It had to be continuous for two successive years. It is a trite proposition in the interpretation of statutes that every word in the provision has its own significance. The expressions "continuously holding licence for a period of two successive years as trader" are not superfluous. At the time of election the person must fulfil that requirement of law which as the impugned orders indicate, the petitioner did not fulfil. In our view, the condition of continuously holding licence for a period of two successive years has to be prior to the date of nomination/election and therefore, the interpretation of the provision by the learned Addl. Collector (respondent No. 4)

is correct. The petitioner at the time of scrutiny of nomination paper held two licences. But the licence for the year 1985-86 was subsequent to the crucial date, whereas, it has to be prior to that date. The interpretation which we accept is further reinforced by the proviso to section 11(1)(b) (supra) wherein, in certain eventualities the period continuously holding licence for two successive years as trader is dispensed with, and the qualifying period of continuously holding licence for six months has been provided.

The legislative intent and the object behind section 11(1)(b) seems to be. that to be a true representative from the class of traders, the person to be eligible for election should have put in a term of two successive years, as holder of licence, and there has to be continuity. This provision does not permit a holder of licence for one year at the time of election, to obtain another licence for a year so as to show that he has qualified for two successive years.

For the aforesaid reasons, we do not find any illegality in the impugned orders interpreting section 11(1)(b) of the Adhiniyam. Apropos the contention that the petitioner at this stage has produced Annexure-A. licence for the year 1983-84 which entitled him to contest the election, all that we can say is. that the petitioner is trying to close the gate of stable when the horse has already left. To repeat, all that the learned counsel said is that it was not considered useful or necessary to produce the licence for the year 1983-84 even at the stage when the election petition was contested. True, election tribunal is an inferior tribunal subject to the supervisory jurisdiction of this Court under Articles 226/227 of the Constitution of India. The Adhiniyam and the Rules made thereunder provide a special forum for settling election disputes. In the exercise of discretionary powers in a writ petition the High Court cannot assume to act as a Court of appeal or revision to disturb the findings of fact arrived at by such tribunal, particularly when there is no allegation that the petitioner has been prejudiced because the tribunal did not permit him to lead evidence. This Court has its own limitations in interfering with the findings of fact arrived on basis of evidence led before it. which have become final. There are no allegations of any bias or violation of principles of natural justice or any jurisdictional error on the face of the record to invoke the extraordinary and discretionary powers of this Court under Articles 226/227 of the Constitution of India. But the petitioner now desires that there should be on basis of additional evidence at this stage reappraisal of evidence on facts since at this stage he has filed certain annexures in support of his contention. We are afraid, in the circumstances of this case, such reappraisal is not permissible. The Supreme Court in Mohd. Yunus Vs. Mohd. Mustaqim and Others, has held:

"The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227. the High Court does not act as an Appellate Court or Tribunal.

It will not review or re weigh the evidence upon which the determination of the inferior Court or Tribunal purports to be based or to correct errors of law in the decision."

For the aforesaid reasons, this petition is dismissed. The ad interim writ issued on 18-6-1987 is also accordingly vacated. Parties shall bear their own costs.