

(2003) 01 PAT CK 0059
In the Patna High Court
Case No : C.W.J.C. No. 12476 of 2002

Dhrub Narayan Prasad

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2003

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 13, 27A, 37, 9(5)
Bihar Agricultural Produce Markets Rules, 1975 — Rule 49

Citation : (2003) 51 BLJR 554 : (2003) 2 PLJR 94

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Agriculture Produce Market Committee, Musallahpur was last (for the fifth time) constituted when in terms of Section 13 of Bihar Agricultural Produce Markets Act, 1960 notification, dated 4-2-1999, containing the names of its Chairman and members were published in the official gazettee, dated 6-4-1999. The term of office of its members, including the Chairman, therefore, came to an end on expiry of three years (6-4-2002) from the date of publication in the official gazette and the extended period of six months, as provided u/s 9(5) of the Act, also came to an end on 6-10-2002. However, the petitioner who was elected as Vice-Chairman of the Committee insists that the Committee must be deemed to continue in existence till the expiry of the period of three years from the date of his election was Vice-Chairman of the Committee and this writ petition has been filed praying for a declaration by this Court accordingly.

2. The facts of this case are simple and without controversy. As noted above the Fifth Agricultural Produce Market Committee, Musallahpur was constituted on 6-4-1999 when notification containing the names of its Chairman and members was published in the official gazette. It, however, appears that the committee could hold its first meeting only on 23-7-2002 when the petitioner was elected uncontested as its Vice-Chairman. It is the case of the petitioner that the period

of three years during which he would hold the office must be reckoned from the date of the election and the Committee must, therefore, be deemed to be in existence till, the period of three years from 23-7-2002 is completed.

3. Section 13 of the Act provides for publication of the names of the Chairman and members of the Committee in the official Gazette. Other relevant provision is contained in Sub-section 5 of Section 9 which is reproduced below :

"The term of office of members, including the Chairman and the Vice-Chairman of the elected Market Committee, shall save as otherwise provided in this Act, be three years, from the date of publication of their names as members u/s 13, and on the expiry of three years term and thereafter, if within a period of 6 months election is not held, the committee shall cease to function and all powers and duties of the Committee under the provisions of Act and Rules made thereunder shall be exercised by such person as may be nominated by the State Government and new market committee shall be constituted within six months from the date of such nomination.

Provided, however, due to any exigencies, the election is not held within six months the State Government may extend the period of election for another six months."

4. A reading of Section 9(5) with Section 13 leaves no room for doubt that the period of three years during which the members of the Committee, including its Chairman and Vice-Chairman would hold office is to be reckoned from the date of publication of their names as members u/s 13 of the Act. Therefore, there can be no doubt that the three years period in this case came to an end on 6-4-2002 and the extended period of six months also came to an end on 6-10-2002 and on that date all the members of the Committee, including the petitioner ceased to hold office as members, Chairman or Vice-Chairman of the Committee.

5. However, Mr. Ram Balak Mahto, learned Senior Advocate appearing in support of the writ petitioner invited my attention to the provisions of Sections 9 (4)(ii) and 27(A) and Rule 49 of the Bihar Agricultural Produce Markets Rules, 1975. Section 9 (4)(ii) requires the Market Committee to elect one of its members, representing the agriculturists interests to be its Vice-Chairman.

6. Section 27-A constitutes the assessment sub-committee, consisting of the Chairman, the Vice-Chairman and the Secretary of the Market Committee, for the purpose of assessment and levy of market fee.

7. Rule 49 provides for the election of Vice-Chairman in the first meeting of the Market Committee.

8. Mr. Mahto submitted that levy and assessment of market fee realisable from the traders is one of the most important functions of the Committee and the Vice-Chairman is one of the members of the Assessment Sub-Committee which is assigned the responsibility of levy and assessment of market fee under the

Act. He further submitted that having regard to the importance of the office the election of Vice-Chairman is required to be held in the very first meeting of the Committee, but in this case the first meeting was held on 23-7-2002 i.e. when the three years period of the Committee was already over on 6-4-2002, He, therefore, submitted that the Committee was not allowed to become functional for its entire tenure and on that basis submitted that the three years period, as the tenure of the Committee, must be reckoned from the date of petitioner's election as Vice-Chairman of the Committee.

9. I am unable to accept the submission and it seems to me that Mr. Mahto's submission over looks the distinction between a non-existent Committee and a Committee which is rendered non-functional for any reason. It is undeniable that the fifth Agricultural Produce Market Committee, Musallahpur came into existence on 6-4-1999 when the notification containing names of its Chairman and members was published in the official gazette and the three years period of its tenure must, therefore, start from that date.

10. As to the Committee being non-functional in the matter of levy and assessment of market fee in the counter-affidavit filed on behalf of the respondents it is stated that the election of Vice-Chairman of the Market Committee could not be held in view of the stay order passed by this Court in CWJC No. 3025 of 2001 (Ram Jatan Rai v. State of Bihar and Ors.). This writ petition was finally disposed of on 15-7-2002 and thereafter, the meeting of the committee was held on 23-9-2002 in which the petitioner was elected as the Vice-Chairman. It is thus to be seen that the meeting of the Committee could not be held as a result of the interim order passed by this Court and for the reasons completely beyond the control of the respondent authorities. In other words, the Committee was rendered non-functional as a result of an order passed by this Court. At this stage Mr. K.P. Yadav submitted that the Act took care of such eventualities and Section 37 empowered the Board to make arrangement for the performance of duties and functions of the Market committee under such circumstances. Section 37 is as follows :

"Power of the Board to make arrangements for the performance of the duties and functions of the Market Committee and the Chairman in certain cases : Where a Market Committee is unable or not competent due to any order or decision of a Court or any other cause to perform the duties, imposed by or under this Act the Board shall make such arrangements as it deems fit for the performance of the duties and functions of such Market Committee and of the Chairman of the Committee."

Mr. Yadav submitted that having regard to the fact that the election of the Vice-Chairman could be held in view of the interim order passed by this Court and consequently no Assessment Sub-committee could be constituted u/s 27-A of the Act, the Board had appointed a Special Officer for Musallahpur Market Committee for discharge of its functions.

11. In the counter-affidavit it is also stated that after expiry of the term of the Committee on 6-10-2002 a Special Officer was appointed in terms of Section 9 (5) of the Act and steps were also taken for holding elections in order to constitute the next Committee.

12. In these facts and circumstances, I find no substance or merit in the petitioner's contention that the term of the Market Committee must be extended to a period of three years from the date of his election as its Vice-Chairman.

13. This writ petition is accordingly dismissed,