

(2017) 01 GUJ CK 0157
In the Gujarat High Court
Case No : 7810 of 2016

GOVINDRAMBHAI RAJARAMBHAI GAMOT	APPELLANT
Vs	
STATE OF GUJARAT & ORS	RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

[Gujarat Agricultural Produce Markets Act, 1963](#), [Section 47](#), [Section 22](#), [Section 22\(1\)](#), [Section 5](#), [Section 52](#), [Section 48](#) - Power of Director to call for proceedings etc - Appointment of servants of market committee and conditions of service - Appointment of servants of market committee and conditions of service - Declaration of intention of regulating purchase and sale of agricultural produce in specified area - Power to de-notify or divide market area - Powers of State Government to call for proceedings of market committee and to pass orders thereon
[Gujarat Agricultural Produce Markets Rules, 1965](#), [Rule 41](#) — Rule 41

Citation : (2017) 01 GUJ CK 0157

Hon'ble Judges : N V Anjaria

Bench : Single Bench

Advocate : Ankit Y Bachani, Utkarsh Sharma, Dipen Desai

Judgement

1. Heard learned advocate Mr. Ankit Bachani for the petit ioner and learned advocate Mr. Dipen Desai for the second respondent. Learned Assistant Government Pleader Mr. Utkarsh Sharma appeared for the respondent state.
2. The petit ioner herein, presenting himself as a member of the Agricultural Produce Market Committee, Vav and a social worker, by means of this petit ion, has sought to challenge the appointment of the Secretary, Market Committee, Vav. The petit ioner has further prayed in that connection, to set aside Resolution No. 8 dated 28.02.2016 passed by the Market Committee and also to carry out the select ion procedure afresh.
3. As per the facts available from the record of the petit ion, the post of

Secretary, APMC. Vav was advertised in the newspaper on 15.10.2015, marking initiation of the recruitment process. In response, 33 applications were received. The interviews of the candidates were kept on 26.12.2015, but were postponed as the District Registrar was not present. Thereafter, the General Body met and passed the Resolution authorising the Chairman and District Registrar and the interviews were scheduled on 16.02.2016. The candidates were interviewed and at the end of the process, one Chaudhary Laljibhai Muljibhai was considered fit and meritorious for being appointed. 3.1 Taking into account and recording all the aforesaid facts, the impugned Resolution was passed after due deliberations. It was recorded that all the 10 members favoured the resolution to appoint said Mr. Chaudhary as a Secretary, while one member Gamot Govindrambhai Rajarambhai objected saying that interviews were not conducted as per the Rules. It appears that the new Secretary was handed over the charge also. It further appears that the objection related to nonproduction of degree certificate corresponding to mark-sheet and non-production of mark-sheet of fourth semester, to contend that the appointee did not possess the eligibility. It was objected also as to whether Chairman and another member, both took the interview.

4. The second respondent through its Chairman filed reply affidavit and contested the petition.

5. Having noticed the basic facts, the relevant provisions in the Gujarat Agricultural Produce Market Act, 1963, relating to the appointment of the Secretary may be looked into. Section 22 which deals with appointment of Secretary of the Market Committee and conditions of services apply. 5.1 Section 22 reads under. "22. Appointment of servants of market committee and conditions of service:-

(1) There shall be a Secretary for every market committee, who shall be appointed by the market committee with the approval of the Director and subject to the terms and conditions prescribed. The Secretary shall exercise such powers and perform such duties as the market committee may from time to time direct.

(2) The market committee may employ such other officers and servants as may be necessary for the management of the market. The market committee shall, in the case of any officer or servant of Government whom it employs pay such pension, contribution, gratuity or leave allowance as may be required by the conditions of his service under Government for the time being in force.

(3) Subject to any rules made in this behalf, the market committee may provide for the payment to its officer and servants of such salaries, leave, allowances, pensions or gratuities as it deems proper, and may contribute to any provident fund which may be established for their benefit."

5.2 The aforesaid section inter alia provides that a Secretary for every market committee shall be appointed and the appointment shall be with approval of the Director. In the Gujarat Agricultural Produce Market Rules, 1965, Rule 41 deals

with the appointment of the Secretary.

5.3 Rule 41 is reproduced hereinbelow, "41. Appointment of Secretary. (1) Save as otherwise provided in sub- rule(2) the person to be appointed as a Secretary of a market committee shall be a Commerce graduate or Arts graduate with economics or Science graduate with agriculture of a recognised University. (2) A person not possessing any of the qualifications specified in sub- rule(1) may be appointed as Secretary, if : - (a) such appointment is temporary, or (b) the annual income of the market committee is less than fifteen thousand rupees, or (c) such appointment is by promotion from amongst the officers or servants of the market committee, or (d) in deserving cases the condition prescribed in subrule(I) is relaxed by the Director. (3) No secretary shall be removed from office, reduced in rank or suspended unless by the assent of at least two thirds of the total number of the members of the market committee and with the previous approval of the Director. (4) Any revision in pay or terms of service of a Secretary shall be subject to the previous approval of the Director."

5.4 At the outset, an aspect factually uncontroverted from the pleadings in the affidavit - in- reply, may be stated with relevance. The Agricultural Produce Market Committee, Vav for appointment of whose secretary, the dispute is raised, came to be bifurcated in exercise of powers under section 52 read with Section 5 of the Act. Two APMCs, APMC, Vav and APMC, Suigam were created. The petitioner herein has been nominated by state government notification dated 25.05.2016, as a member of APMC Suigam. It was contended that having become member of different Market committee, the petitioner could be said to be no longer connected with APMC, Vav. It was stated that the petitioner is a trader in the Suigam market area, which is not part of the Vav Market area.

5.5 The case of the respondent is that proper procedure in accordance with law has been followed in appointing the Secretary. It deserves a notice that even though, the appointment is challenged, the likely affected appointee is not impleaded as a party. Be as it may. These are clearer aspects which would dissuade the court from exercising writ jurisdiction and passing any order of relief to the petitioner.

6. As noticed from the provisions of section 22(1) of the Act above, the appointment of the Secretary, APMC, is required to be approved by the Director. The approval is sought for and the matter is pending before the Director for his decision and under consideration. It could be therefore said that the petition filed at such juncture is quite premature and not liable to be entertained. There is no gainsaying that the Director would consider the matter in accordance with law and on merits.

6. 1 Furthermore, a remedy of Appeal under section 47 of the Act and even the further remedy of preferring a Revision Application before the state government, under section 48 of the Act are available. The petitioner could avail the said remedies.

7. For the foregoing reasons, the petition is not entertained. The same is hereby dismissed. Notice stands discharged.