
(1971) 10 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2155 of 1970

Hotilal Parasar

APPELLANT

Vs

Director of Agriculture and Others

RESPONDENT

Date of Decision : 29-10-1971

Acts Referred:

Rajasthan Agricultural Produce Markets Act, 1961 — Section 7
Rajasthan Agricultural Produce Markets Rules, 1963 — Rule 32(11)

Citation : (1972) RLW 73 : (1971) WLN 639

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.P. Tyagi, J.—Petitioner Hotilal, who was elected as a Chairman of the Krishi Upaj Mandi Samiti, Nadbai, has challenged the order of the Director of Agriculture, Rajasthan, dated 21st October, 1970, setting aside the petitioner's election as Chairman of the Krishi Upaj Mandi Samiti, Nadbai.

2. The main ground taken by the petitioner to impugn the order of the Director of Agriculture is that he had no jurisdiction under Rule 32(11) of the Rajasthan Agricultural Produce Markets Rules, 1963 (hereinafter called the Rules) to entertain and decide the election petition filed by respondent No.2 Shri Ghan Shyam Sharma who was a contesting candidate for the office of the Chairman.

3. The facts giving rise to this dispute, briefly stated, are as follows After the election of the members of the Krishi Upaj Mandi Samiti, Nadbai u/s 7 of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter called the Act) the election of the Chairman was ordered to be held. There were in all 13 members of the said Samiti out of which two seats belonging to the traders constituency were declared as vacant. The Municipal Board of Nadbai was superseded and an Administrator was appointed by the State Government u/s 293-A of the Rajasthan Municipalities Act, 1959. The Administrator, in order to fill in the seat u/s 7(1)(iv)(b) on the Samiti to represent the Municipal Board, Nadbai nominated

one Shri Mitthanlal Mishra who was Secretary of Municipal Board, Nadbai and the name of that person was communicated to the Collector under Rule 25 of the Rules, but before the election of the Chairman could take place, Shri Mitthanlal Mishra was transferred and as such the Municipal Board thought that he should be replaced by another nominee of the Board. Consequently, the Administrator, Municipal Board, Nadbai nominated Shri Buddha Ram, Executive Officer of the Municipal Board, Nadbai and the name of Shri Buddha Ram was duly communicated to the Collector under Rule 25 of the Rules.

4. The Collector appointed the City Magistrate, Bharatpur to conduct the proceedings of the election of Chairman. The election was held on 27th of February, 1971, and in that election only 10 voters out of 11 exercised their right of vote. There were only two candidates, one the petitioner and the other respondent No. 2 Shri Ghanshyam Sharma, and it so happened that both of them obtained equal number of votes. A lot was then drawn with the consent of the parties and the petitioner, as a result of that draw, was declared as a duly elected Chairman of the Samiti. The City Magistrate then drew up the minutes of the proceedings of the meeting held for conducting the election and it is Ex. 1 on the file. It may be noted here that neither the petitioner nor did Shri Ghanshyam Sharma raise any objection before the City Magistrate about the competence or Shri Buddha Ram to take part in the election of the Chairman and he was, therefore, permitted to cast his vote without any interruption as is clear from document Ex. 1

5. After about a month, a petition was filed before the Director of Agriculture purported to be a petition under Rule 32(11) of the Rules challenging the validity of the election of the petitioner, inter alia, on the grounds that Buddha Ram was not elected as a member of the Samiti in accordance with the provisions of Section 7(1)(iv)(b) of the Act and, therefore, he could not cast his vote at the election and since he was permitted to exercise the right of franchise in an unauthorised manner the election has been vitiated. Along with this objection it was also urged that Buddha Ram's name was not published in the official Gazette in accordance with the Rules and, therefore, even if his election to the membership of the Samiti was valid, he could not exercise his right of vote till his name was duly published in the official Gazette.

6. That petition was, it appears, vehemently opposed by the petitions before the Director of Agriculture. A preliminary objection was taken that under Rule 32(11) of the Rules the election could not be challenged by filing an application of that type before the Director of Agriculture. It was also contended that filing of such a petition cannot be covered by the word "reference" as used in Rule 32(11) of the Rules because reference can be made only in respect of that dispute which was raised before the Collector or his nominee during the election proceedings and decided by him. It is only the question about the validity of an order passed by the Collector or his authorised nominee that can be referred under Rule 32(11) to the Director.

7. Learned Director of Agriculture rejected this preliminary objection of the petitioner and came to the conclusion that Shri Buddha Ram could not exercise his right of vote as his name was not duly published in accordance with Rule 27 of the Rules and therefore declared the election of the petitioner as illegal.

8. The grounds taken by Hotilal in this writ petition are two-fold: (1) That the Director of Agriculture had no jurisdiction to entertain an election petition of the nature filed by respondent No 2 before him, and (2) that Shri Buddha Ram was not a duly elected member representing the local authority (Municipal Board, Nadbai) as his election was not held in accordance with the mandate of Section 7(1)(iv)(b) of the Act.

9. The writ petition has been opposed both by Shri Ghanshyam Sharma and the Director of Agriculture, Rajasthan. Buddha Ram and the Collector Bharatpur, who were the respondents, have not filed any reply to the writ petition.

10. On the both counts the issues have been joined by the answering respondents, and learned Counsel appearing on behalf of these respondents have strenuously urged that justice having been done by the order of the Director of Agriculture this Court should be slow to interfere in the exercise of its writ jurisdiction with the order of the Director.

11. This question whether Shri Buddha Ram was elected to the Samiti strictly in accordance with the provisions of Section 7 of the Act or not, need not be decided in this case because the writ petition can be disposed of on the objections relating to jurisdiction of the Director of Agriculture which was summarily rejected by the Director of Agriculture while disposing of the application of Shri Ghanshyam Sharma pending before him.

12. This objection of jurisdiction, which goes to the root of the matter, rests on the interpretation of Sub-rule (11) of Rule 32 of the Rules, which reads as follows:

(11) If during the course of election of a Chairman or Vice-Chairman any dispute arises as to the correctness or otherwise of the decision given or procedure followed by the Collector or the person authorised by him it shall be referred to the Director and the decision of Director in respect of such dispute shall be final.

13. From the perusal of this Sub-rule (11) it becomes clear that the matters relating to, the correctness or otherwise of the decision given or procedure followed by the Collector or the person authorised by him, if such a decision is given on a dispute which has arisen during the course of election, shall be referred to the Director. I need not decide this question whether who can refer the matter to the Director because that aspect of the question was simply touched by Mr. Lodha but not pressed before me. However the question that has been raised by Mr. Gumar. Mai is that if the objection has not been raised during the course of election before the Collector or the person authorised by him, and if the order has not been obtained by the parties who raised the objection before

the Collector or his authorised nominee, then the matter cannot be referred unless the matter relates to the procedure followed which has not been prescribed by the law. It is not the case of the parties that a wrong procedure was adopted by the City Magistrate while conducting the election for the Chairman and, therefore, that contingency for making a reference to the Director does not at all arise.

14. Now, the question that has been left to be decided by the Court is whether Shri Buddha Rim's right to cast his vote at the election could be challenged for the first time before the Director, and that could be made the basis for challenging the petitioner's election. It is admitted by the parties that right of Shri Buddha Ram to participate in the proceedings of the election was never questioned by any one of the contesting candidates at the election. If correctly viewed, the objection raised by Shri Ghanshyam before the Director of Agriculture by filing the petition under Rule 32(11) substantially raised the dispute regarding the election of Shri Buddha Ram to the Samiti that conferred the status of a voter on Buddha Ram at the Chairman's election, and in substance the Director of Agriculture was called upon to decide the question about the validity of Buddha Ram's election u/s 7(1)(iv)(b) of the Act which was never disputed before the City Magistrate. If such a dispute had been raised before the City Magistrate, then he would have decided that dispute by passing an order and the validity of that order could certainly be challenged before the Director of Agriculture by making a reference under Rule 32 (11) of the Rules.

15. On proper construction of Sub-rule (11) of Rule 32 of the Rules, it is evident that before making a reference to the Director a dispute must be raised before the Collector or his authorised nominee during the course of the election itself and that dispute must be decided by a specific order and it is only then that the correctness or otherwise of that order could be referred to the Director. In the present case, it is evident from document Ex.1 that no such dispute was even raised by anyone of the contesting candidates that Buddha Ram could not lawfully cast his vote at the election and probably this objection was deliberately avoided by both the candidates lest it might antagonise Buddha Ram. When the dispute was never raised, the question of its decision by the Collector or his authorised nominee does not arise; and as such the question of determining the validity of such a decision cannot be referred to the Director. In such circumstances, the provisions of sub-rule (11) of Rule 32 of the Rules are not all attracted. In my opinion, the Director has erroneously rejected the preliminary objection raised before him by petitioner Hotilal.

16. In view of the above discussions, I am left with no alternative but to hold that the matters relating to the election of a Chairman or Vice-Chairman can be referred to the Director of Agriculture only when a dispute has been raised during the course of election relating to a question connected with the election and that dispute was decided by the Collector or his authorised nominee and it is only then that the matter can be referred under Rule 32(H) of the Rules to judge the

correctness or otherwise of such a decision. The reference can also be made when the dispute relates to procedure adopted at the election which was provided by the law. In no other circumstance can the matter be referred to the Director of Agriculture.

17. It may also be noted here that the legislature in its wisdom did not provide for an election to challenge the election of the Chairman or Vice-Chairman. The provision of Sub-rule (11) of Rule 32 of the Rules cannot, therefore, be allowed to be so construed so as to permit an Aggrieved party to challenge the election by filing this kind of election petition on the grounds which were never raised before the Collector or his authorised nominee.

18. A feeble attempt was also made by learned Deputy Government Advocate and Mr. Soral to persuade this Court to give a wider meaning to Sub-rule (11) by holding that the dispute though not raised during the course of election, if it relates about the election, it must be allowed to be referred to the Director of Agriculture. I regret, I cannot agree to this interpretation of Sub-rule (11). This interpretation would go against the legislative policy of not providing any election petition to challenge the election of a Chairman or Vice-Chairman.

19. For the reasons mentioned above, the writ petition is allowed and the order passed by the Director of Agriculture dated 21st October, 1970, is hereby quashed. The petitioner shall get his cost from respondent No. 2.