

(1995) 09 PAT CK 0028
In the Patna High Court
Case No : C.W.J.C. No. 4805 of 1995

Kalika Prasad Roy

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 1(3), 10, 17, 18, 20
Bihar Agricultural Produce Markets Rules, 1975 — Rule 6
Bihar and Orissa General Clauses Act, 1917 — Section 4(3)
Bihar Government Servants Conduct Rules, 1976 — Rule 16, 16(3), 6(3), 6(4)
Bihar Service Code, 1952 — Rule 29
Bihar Treasury Code — Rule 573

Citation : (1995) 2 PLJR 869

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : Ganga Prasad Roy, Ras Bihari Thakur, Prabhat Kr. Singh, for the Appellant; Standing Counsel No. IV, for the Respondent

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—Heard the parties.

2. The application is being disposed of at the stage of admission itself.

3. The Petitioner has filed the present application for quashing the orders of suspension as well as initiation of the departmental proceeding against him for breach of Rules 6(4) and 16(iii) of the Bihar Government Servant's Conduct Rules, 1976 (hereinafter referred to as the Rules). A copy of the suspension order and the memo of charge served upon the Petitioner have been annexed as Annexures 1 and 2 respectively.

4. The Petitioner at the relevant time was Assistant Teacher in Janta High School, Tenuaj, district Rohtas at Sasaram. According to the Petitioner he is an agriculturist and he has especial interest in the same. He filed nomination papers for election as member from the Agriculture Constituency of Natwar Agriculture

Produce Market Committee on 7th June, 1994 which was accepted as valid. According to him the market committee is not a political organisation and it is a committee constituted under the Bihar Agriculture Product Markets Act, 1960 (hereinafter referred to as the Act). Section 10 of the Act contains provision regarding disqualification of the member of the committee and similarly Rule 6 of the Bihar Agriculture Produce Markets Rules, 1975 (hereinafter referred to as the Market Rules) contains a provision with regard to bar to election or appointment of certain persons to market committee. Even under the Act and the rules nowhere it is stated that the Assistant Teacher of Nationalised High School is debarred from contesting the election. It is also stated that the Petitioner was twice elected from the Agriculture Constituency in 1983-89 and he was also elected as Vice Chairman of the said market committee. At no point of time it was stated that participation of the Petitioner in the election is violation of the provision of the Rules.

5. The only question for determination is as to whether the Petitioner's action in filing the nomination paper for being elected from the Agriculture Constituency of the Market Committee amounts to breach of the provision contained in Rules 6(4) and 16(3) of the Rules.

6. Section 10 of the Act provides disqualification of members which runs as follows;

No person shall be eligible for election or appointment as a member of the Market Committee -

- (a) who is less than 18 years of age;
- (b) who is of unsound mind;
- (c) who is an employee of the Market Committee;
- (d) who has applied for being adjudged an insolvent or is an undischarged insolvent;
- (e) who has been convicted for an offence -
 - (i) under this Act or the Essential Commodities Act, 1955 or
 - (ii) involving moral turpitude which in the opinion of the State Govt. makes him unfit to be elected or appointed as a member of the Market Committee; or
- (f) who has directly or indirectly any share or interest in any contract with, by or on behalf of the Market Committee.

7. Rule 6 of the Market Rules bars to election or appointment of certain persons to Market Committee. It is provided therein that a person shall not be elected or appointed as a member representing the agriculturists constituency, if he does not ordinarily reside in the market area or possesses a trader licence, or has interest in joint family firm or a firm which has a trader licence.

8. A bare perusal of the aforesaid provision shows that if the Government Servant is residing in an Agriculture Constituency and fulfils all other requirements to become member from the Agriculture Constituency of the Market Committee under the Act then he is not debarred from contesting the election on" the ground that he is a Government Servant because no where the said provision debar the Government Servants to participate in election. It debar only the employee of the market committee from contesting election or appointment as member of the market committee. Thus, the Act and the Market Rules do not debar the Petitioner from contesting the election.

9. The Petitioner is an Assistant Teacher in Nationalised School and from the date of Nationalisation he is a Government Servant and the provision of Rules apply to him in view of the provision contained in Section 1(3) which provides inter alia that Rules apply to every person appointed to Civil Services or post in connection with the affairs of the State of Bihar and who are subject" to the rule making powers of the Government. The Petitioner has been suspended for violation of the provision of Rules 6(4) and 16(3) of the Rules. It is necessary to quote the aforesaid rules;

Rule 6(4) No Government Servant shall canvass or otherwise interfere with, or use his influence in connection with or take part in, an election to any legislature or local authority:

Provided that -

(i) a Government Servant qualified to vote at such election may exercise his right to vote but where he does so he shall give no indication of the manner in which he proposes to vote or has voted;

(ii) a Government Servant shall not be deemed to have contravened the provision of this sub-rule by reason only that he assists in the conduct of an election in the due performance of a duty imposed on him by or under any law for the time being in force.

Explanation . The display by a Government Servant vehicle or residence symbol shall amount flunce in connection within the meaning of this sub-rule.

Rule 16(3) - No Government Servant shall, without the previous sanction of the Government or except in the discharge of his official duties take part in the registration, promotion or management of any Bank or other company registered under the Indian Companies Act, 1956 or any other law for the time being in force or any co-operative society, the primary object of which is a commercial purpose:

Provided that a Government servant may take part in the registration, promotion or management of a co-operative society substantially for the benefit of Government Servants registered under the Co-operative Societies Act, 1912 (II of 1912) or any other law for the time being in force, or of a literary, scientific or charitable society registered under the Societies Registration Act, 1860 (XXI of

1860) or any corresponding law in force subject to the following conditions, namely-

(i) he shall within a period of one month of his undertaking any such work, report to Government giving full details;

(ii) his official duties do not thereby suffer; and

(iii) he shall discontinue any such work if so directed by the Government:

Provided further that if the undertaking of any such work involves holding of an elective office, he shall not seek election to any such office without the previous sanction of the Government.

Explanation .-Canvassing for a candidate or candidates for an elective office referred to in the second proviso shall be deemed to be a breach of this sub-rule.

10. Rule 6(4) of the Rules requires inter alia that no Government Servant shall take part in the election to any legislature or local authority.

11. It is submitted by learned Counsel for the Petitioner that as the Market Committee is neither a legislature nor a local authority and as such even if the Petitioner has taken part in the election of the market committee, Rule 6(4) is not attracted. The Market Committee is admittedly not a legislature. Whether it is a local authority or not has to be considered. The local authority is not defined under the Rules. However, this word has been defined under the Bihar and Orissa General Clauses Act. Section 4(3) runs as follows;

Local authority means a Municipal Committee, District Board, or any other authority entrusted with or legally entitled to, the control or management of a Municipal or local fund;

12. It has to be seen as to whether the Agriculture Produce Market Committee constituted under the provision of the Act is an authority either entrusted with or legally entitled to the control or management of a Municipal or local fund.

13. The Act has been enacted for the better Regulation of buying and selling of agriculture produce and the establishment of markets for agriculture produce in the State of Bihar and for matters connected therewith. The Act empowers the Government to issue a notification u/s 3 disclosing its intention of exercising control over purchases, sale storage and processing of agricultural produce in specified area. Section 6 of the Act empowers the establishment of the market committee and Section 8 contains the provision with regard to the constitution of the first market committee and Section 9 contains the provision regarding the constitution of the second and subsequent market committees. The market committee shall consist of members elected and nominated from the different fields including the representative of the Agriculturists. The Subdivisional Magistrate of the Subdivision where the head office is located will be also member of the committee. Section 17 of the Act contains a provision that every market committee shall be a body corporate by such name as the State

Government may specify by notification in the official gazette, and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immovable, and to lease, sale or otherwise transfer any such property, subject to the prescribed conditions and restrictions, and may by the said name sue and be sued, and subject to rules, bye-laws and the provisions of the Act, it shall be competent to do all other things necessary for the purpose for which it is established.

14. Section 18 contains a provision with regard to powers and duties of the Market Committee. One of the functions is that Market Committee when so required by State Government establish a market in the market area providing such facilities as State Government may direct in this connection with the purchase and sale of the agricultural produce concerned. Section 20 contains a provision with regard to appointment or selection of the officers and servants of the Market Committee. Secretary has to be appointed by the State Government or the Board on such terms and conditions as may be prescribed. The State Government or the Board may appoint Engineers and other technical servants. Sub-section (3) of Section 20 says that the market committee shall contribute such sum not exceeding forty percent of its gross income as may be determined by the State Government towards the cost of maintenance of the services mentioned in Sub-sections (1) and (2) and of audit. u/s 27 of the Act it has also power to levy fee. Section 28 contains a provision for creation of market committee fund and Section 30 provides for application of market committee fund. The fund has to be utilised for several purposes mentioned therein. Section 32 contains a provision for supersession of market committee and Section 33 provides for the consequences of supervision. After supersession Government may constitute a fresh committee or appoint special officer to look after the affairs of the committee for one year.

15. According to the definition of the local authority as given in the General Clauses Act any authority entrusted with or legally entitled to the control or management of a Municipal or local fund is a local authority. Nothing has been brought on behalf of the State to show that the authority is engaged in collecting the municipal fund. So far collection of local fund is concerned, the local fund is not defined under the Act but it is defined under Rule 29 of the Bihar Service Code as well as under Rule 573 of the Bihar Treasury Code. The definitions given in the Bihar Service Code as well as under the Bihar Treasury Code are the same. The definition of local fund runs as follows-

(a) Revenues administered by bodies which by law, or rule having the force of law come under the control of Government, whether in regard to proceeding generally or in regard to specific matter, such as the sanctioning of their budget, sanction to the creation or filling up of particular posts or the enactment of leave, pension or similar rules; and

(b) the revenues of any body which may be specialty notified as such by the Government of India or the State Government, as the case may be.

16. Thus, from the reading of aforesaid definition it is clear that the revenues administered by bodies are local fund provided it is under the control of the Government either with regard to proceeding generally or in regard to specific matter. If the provision of the Act as mentioned above are scrutinised in the light of the definition of local fund then in my view there would be no difficulty in holding that the Market Committee is a local authority. It is a body corporate and it can sue or be sued by its name. It has power to establish market and to levy fees. It has its own fund to be utilised for construction of Market Road and other developmental activities within its area. It has power to grant license etc. The Government has also control over it. The Subdivisional Magistrate of the Subdivision where its head office is situated is the Government nominee in the market committee. The Government has power to determine the contribution made by the committee funds for payment of salary to the Secretary and Engineers appointed by State Government or the Board. In my view the committee is performing some of the Governmental functions which are usually performed by local authority like District Board.

17. In my considered view, the Agricultural Produce Market Committee is a local authority for the purposes of Rule 6(4) of the Rules. In that view of the matter, if Government Servant takes part in election of the Market Committee then that violates Rule 6(4) of the Rules. So far as Rule 16(3) of the Rules are concerned prima facie it is not attracted as the Petitioner is not alleged to have indulged in any of the activities as mentioned in the said Rules.

18. Accordingly, there is no force in the submission advanced on behalf of the Petitioner that departmental proceeding is not maintainable for violation of the provision of the Rules. As such there is no merit in this application.

19. Learned Counsel for the Petitioner, however, contended that other Assistant Teachers similarly situated have been elected as members of the market committee and no action has been taken against them. In this connection he has referred to the case of one Shiv Narayan Singh Yadav, who is Assistant Teacher in Multi-purpose High School, Sasaram and has been elected as a member of the market committee from the agriculturist constituency of Sasaram Agriculture Produce Market Committee. He has also been nominated as one of the members of the Board of Directors of the Bihar State Agriculture Produce Marketing Board (Annexure-3).

20. The fact that some of the Government Servants have been elected as members of the Market Committee from the Agriculturist Constituency does not mean that the Bihar Government Service Rules is not attracted and on that ground the Petitioner cannot take any benefit. However, it appears that the question as to whether the market committee is a local authority or not itself was in dispute and the matter was not free from controversy as a result of which even the Petitioner has been elected from the Agriculturist Constituency earlier and no objection was taken by the concerned departmental authority.

21. Keeping in view of the aforesaid fact I am of the view that if the Petitioner resigns from the membership of the market committee within two months from today then in that case the authority will consider the desirability of dropping the departmental proceeding. It is made clear that if the teachers of the schools or College are members of the market committee their they should be asked to resign and in case of failure the authorities may take action against them for the violation of the provision of the Rules.

22. In the result, the application is dismissed with the aforesaid observation.