

(2008) 07 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 91 of 2008

Nand Lal Sachdeva

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 40, 41, 41(1)(h)

Citation : (2009) 2 MPLJ 103

Hon'ble Judges : Abhay M. Naik, J

Bench : Single Bench

Advocate : Shobha Menon, with Rahul Choubey, for the Appellant; Vinod Mehta, Government Advocate For respondent Nos. 1 and 2 and Rakesh Jain, for the Respondent

Final Decision : Allowed

Judgement

Abhay M. Naik, J.

Facts involved herein are in very narrow compass. The State Government while constituting the M.P. State Agricultural Marketing Board (hereinafter referred to "the Board" for brevity) nominated respondents No. 3 and 4 in the capacity of representative of Traders as Board's members. Petitioner who happens to be an elected representative of licensed traders has objected on the ground that respondent Nos. 3 and 4 are not elected representatives of traders and action of the State Government of M.P. , in nominating them as representatives, is without powers and jurisdiction.

Per contra, it has been contended by the respondents that the State Government has power to nominate from amongst the traders, any trader as their representative and it is not necessary that nomination must be made from amongst the elected representatives of traders.

Learned counsel for the parties argued at length.

By virtue of section 40 of M.P. Krishi Upaj Mandi Adhiniyam 1972 (hereinafter referred to "the Mandi Adhiniyam" for short), a Board called as Madhya Pradesh State Agricultural Marketing Board is established for the State of M.P. Constitution of Board has been provided in section 41 of the Mandi Adhiniyam. Relevant portion of this section reads as under :-

Constitution of Board. (1) The State Government shall constitute the Board which shall consist of the President and the following members, namely :-

A. - Ex-Officio Members

(a)

(b)

(c)

(d)

(e)

B. - Members Nominated by the State Government

(f)

(g)

(h) Two representatives of traders holding licence in any market committee within the State.

(i).

(2).

Though "representatives of traders" has not been defined in the Act, the term trader has been defined in section 2(1)(p) as follows :-

2(1)(p) "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 of Mandi Adhiniyam provides for constitution of market committee which shall consist of one representative of traders possessing such qualifications as may be prescribed, elected by and from amongst the persons holding licence from the market committee for a period of two successive years as traders or owners or occupiers of processing factories under the Mandi Adhiniyam.

In exercise of the powers conferred by sub-sections (1) and (2) of section 79 read with sections 11(a) and 12 of the Mandi Adhiniyam, the State Government has made M.P. Krishi Upaj Mandi (Mandi Samiti Ka Nirvachan) Niyam, 1997. The term "representative of traders" has not been defined in the aforesaid rules. However, Rule 82 provides for election of trader"s representative which runs as

under :-

Election of trader's representative. - (1) No person shall be qualified to be elected as representative of the traders unless, -

(a) his name is included in the list of voters prepared under the provisions of clause (c) of sub-section (1) of section 11 of the Act:

(b) he is a trader;

(c) he is otherwise so disqualified for being so elected:

(d) he has completed the age of 21 year.

(2) No person shall be eligible for election of the representative of the traders from more than one Market Committee.

(3) The provisions of Rules 43 to 82 of these Rules shall apply for the election of the representative of traders of the Market Committee.

Although section 41(1)(h) of the Mandi Adhiniyam empowers the State Government to nominate two representatives of traders as members of the Board the question pertinently would be whether the nomination is to be made from amongst the elected representatives of traders or may be made independent of it. Under the Mandi Adhiniyam and Rules made thereunder there are market committees at different places and for every market committee a representative of traders is to be elected. Sub-rule (2) of Rule 82 clearly stipulates that no person shall be eligible for election of the representative of the traders from more than one market committee. It has been seen that section 41(1)(h) of the Mandi Adhiniyam does not empower the State Government to appoint its nominee among the traders but empowers the State Government to nominate two representatives of the traders holding licence in any market committee within the State as members of the Board. u/s 2(1)(p) of Mandi Adhiniyam although "trader" has been defined as person who in his normal course of business buys or sells any notified agricultural produces, sections 31 and 32 oblige a person operating in market area to obtain licence for a particular market area in which he desires to operate from the market committee concerned. This being so, every trader is under a legal obligation to obtain licence from the market committee in whose area he wishes to operate.

Preamble of Rule 82 makes it clear that no person shall be qualified to be elected as representative of traders unless he fulfils the conditions mentioned thereunder. Obviously, no one can be trusted upon the traders as their representative unless such traders concur on his nomination as their representative. It is not a case of the petitioner that traders gave consent for appointment of respondent Nos. 3 and 4 for being nominated as their representatives. In the absence of such consent, State Government cannot legally nominate any person as representative of traders except from amongst the elected representatives. Thus, from amongst the elected representatives of

the traders of various market committees, the State Government may nominate any two as its nominees in the capacity of members of the Board but cannot nominate a trader as traders' representative unless he is duly elected in accordance with Rule 82 of Nirvachan Niyam, 1997.

Sub-section (2) of section 42 lays down that the term of the office of a member of the Board shall come to an end as soon as he ceases to hold the office by virtue of which he was nominated. Thus, a representative of traders nominated as members of the Board shall no more remain a member of the Board on expiry of his period of representation.

On the basis of aforesaid discussions, it is crystal clear that the State Government is merely empowered u/s 41(1)(h) of the Mandi Adhiniyam to nominate two representatives of traders as members of the Board. They will be the nominee of the State Government, however, the power of nomination is to be exercised by the State Government from amongst the representatives of traders who are duly elected in accordance with Rule 32 (supra). If the State Government is permitted to appoint by way of nomination any unelected trader as representative of traders that would, firstly, open a device of making representatives of traders other than by way of election and, secondly, it would be in contradistinction to the appointment of the representatives of trader by way of election which is the only mode provided under the Mandi Adhiniyam and Rules made thereunder. Act and Rules made thereunder are always to be given harmonious construction. Power of nomination available to the State Government by virtue of section 41(1)(h) is to be exercised within the framework of Mandi Adhiniyam and Rules made thereunder and by no stretch of imagination can be construed so as to confer empowerment on the State Government to make its nominee in the Board in the class of representative of traders from amongst the persons/traders other than the elected representatives of traders. In order to seek nomination from the State Government, a person shall first of all fall within the definition of representative of traders and thereafter may seek nomination from the State Government in the said category. Allowing the State Government to nominate any person other than from amongst the elected representatives of traders would obviously create an additional class of representative of traders other than an elected one which cannot be the intention of law. Thus, it is held that the State Government is empowered by virtue of clause (h) of section (41) (1) of Mandi Adhiniyam to nominate two persons as representatives of traders who fall within the category of representatives of traders and none else.

In the result, this Court in view of the aforesaid discussion holds that the State Government is not empowered to nominate the respondents Mo. 3 and 4 as members of the Board because they were not elected representatives of the traders. Accordingly, Notification No. D-15-24-2004-XIV-3 dated 30th of December, 2005 published in M.P. Gazette 13th of January, 2006 (Annexure P/I) is hereby quashed to the extent of nomination of respondents No. 3 and 4 as members of the Board. Respondents No. 3 and 4 are further declared disqualified

for being nominated as members of the Board in the capacity of representatives of traders for want of having been elected in accordance with Rule 43 to Rule 82 of the Nirvachan Niyam, 1997. A writ of quo warranto is further issued restraining them from functioning as members of Board on the basis of aforesaid nomination.

Writ petition, accordingly, stands allowed. There shall be no order as to costs.