

(2003) 02 PAT CK 0042

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12556 of 2002

Nand Lal Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 14, 4, 9

Citation : (2003) 51 BLJR 501 : (2003) 1 PLJR 664

Hon'ble Judges : S.N. Jha, J; P.N. Yadav, J

Bench : Division Bench

Advocate : B.K. Singh "Chouhan" and Binod Kumar Singh, R.N. Mukhopadhyaya and Dhananjay Kumar, for the Appellant; S. Alamdar Hussain, SV VI and Navendu Kumar, JC to SC VI and Ram Balak Mahto, Ajay and Anil Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.N. Jha and P.M. Yadav, JJ.—This writ petition coming on reference by a learned Single Judge of this Court involves interpretation of Section 9 (4)(i) of the Bihar Agriculture Produce Market Committee Act, 1960 (in short "the Act"). Section 9 (4)(i) of the Act runs as under :

"An Officer, nominated by the State Government shall be the Chairman of the Market Committee for 2 terms or 6 years after the passing of this Act, thereafter, the State Government shall appoint the Chairman from amongst the members of the Market Committee."

2. The dispute relates to appointment of Chairman of the Agriculture Produce Market Committee, Motihari (hereinafter referred to as "the Market Committee") and the precise question for consideration is whether the Sub-Divisional Officer can be appointed as Chairman of the third or the subsequent Market Committees. The present Market Committee i.e. Motihari Market Committee is the sixth one. The facts giving rise to the dispute are as follows.

3. The constitution of the sixth Market Committee was notified with the Sub-Divisional Officer (SDO), Mothihari as its Chairman on 22-10-2001. The notification was published in the official Gazette on 16-3-2002. On 17-9-2002 respondent No. 5, Suresh Prasad Yadav, was appointed as the Chairman and to this extent the constitution of the Market Committee under notification dated 22-10-2002 was modified. The notification stated that the SDO, Motihari shall continue as ex-officio member of the Market Committee. The said notification, dated 17-9-2002, was published in the official gazette on 1-10-2002.

4. It may be mentioned outset that the impugned notification has been issued to purportedly rectify a so-called mistake. According to respondent-State, Section 9 (4)(i) of the Act, as-it now stands, bars appointment of Sub-Divisional Officer as Chairman of the third and the subsequent market committee. No sooner the mistake was realised than his appointment was cancelled and in his place Suresh Prasad Yadav, one of the members of the market committee, was appointed as the Chairman.

5. The case of the petitioner is that Section 9 (4)(i) read with Section 9(1)(iii) of the Act does not create any bar to the appointment of Sub-Divisional Officer as the Chairman of the third or the subsequent committees. In any view, effect of the impugned notification is removal of the Sub-Divisional Officer from the office of Chairman and therefore, the State Government should have taken recourse to Section 14 of the Act and only after giving opportunity of hearing passed the order. According to the petitioner the impugned notification has been issued in the garb of rectification with an ulterior motive and therefore, Government had no option but to take recourse to Section"14 of the Act.

6. The Bihar State Agriculture Marketing Board and the Market Committee support the stand of the petitioner. Shri B.K. Singh Chouhan, appearing for the Marketing Board and Market Committee in fact stated that he appears for the Sub-Divisional Officer too. He adopted the submissions made on behalf of the petitioner and further submitted that as there was no allegation of misconduct against the Sub-Divisional Officer, there was no occasion to remove him from the office of the Chairman. On behalf of the State objection was raised as to the locus standi of the petitioner. It was submitted that not being a member of the market committee he cannot question the validity of the impugned notification. Appearing on behalf of the respondent No. 5 Shri Ram Balak Mahto went into the history of relevant provisions and submitted that earlier the Sub-Divisional Officer was made ex-officio Chairman of the market committee but as his induction as ex-officio Chairman of the Market Committee was for "protecting the interest of the State Government", it was considered appropriate not to continue with the existing arrangement and appoint any other member than the Sub-Divisional Officer as the Chairman in the interest of independent functioning of the market committee. We shall again refer to the relevant submissions of the Counsel for the parties later in this judgment.

7. It may at this stage be mentioned that the stand of the State Government is

in accord with the decision of a learned Single Judge of this Court in the case of *Vijay Singh Vs. The State of Bihar and Others*, . It has been held therein that from a plain reading of the provisions of Section 9 (4)(i) it was clear that an officer nominated by the State Government would be Chairman of the market committee for two terms or six years after passing of the Act and thereafter the State Government would appoint Chairman from the members of the market committee and thus the State Government was under obligation to appoint the Chairman from amongst the members of the Market Committee and it acted illegally by nominating Sub-Divisional Officer as Chairman. The learned Single Judge before whom the present case came up doubted the correctness of the above view and referred the case to the Division Bench.

8. Before considering the rival contentions of the parties, it would be appropriate to notice the relevant provisions of the Act. Section 2 (j) of the Act defines "market committee" to mean a committee established u/s 6. Section 6 provides that for every market area the State Government shall, by notification, establish a market committee. u/s 17 the market committee has been given the status of a body corporate having perpetual succession and a common seal, with power to acquire and hold property or otherwise transfer any property etc. Section 8 provides for the constitution of the first market committee. Section 9 provides for constitution/composition of second and subsequent market committees. Sub-section (4) thereof provides for appointment of Chairman. The Act enacted in the year 1960 underwent large scale amendments in 1974 by Bihar Ordinance 124/74 and again in 1982 by Bihar Act 60 of 1982. It would be convenient to refer to the relevant provisions as they stood earlier and stand now at one place as follows. Section 8 dealing with the Constitution of the first market committee as it originally stood was as under :

(1) All the members of the first Market Committee shall be appointed by the State Government from among persons representing the same interest and in the same proportion as specified in Section 9.

(2) The State Government shall appoint one from amongst the members appointed u/s 8 (1) to be a Chairman and another member to be the Vice-Chairman of the first Market Committee.

Section 8 was amended in 1974. Sub-section (2) aforequoted was amended as under:

The State Government shall appoint the Sub-Divisional Officer of the Sub-Division where the principal Market yard is situated, to be the Chairman, and another member to be the Vice-Chairman of the first Market Committee. Sub-section (2) was amended again in 1982 as under :

"The State Government shall appoint the Sub-Divisional officers of the Sub-Division where the principal market yard is situated, to be the Chairman, and an agriculturist-representative of the Committee to be the Vice-Chairman of the first market committee.

Section 9 as it originally stood provided for 15 members including "a person appointed by the State Government" under Clause (v). In 1974 the Clause (v) was amended in the following manner.

"One shall be the Sub-Divisional Officer of the Sub-Division in which the principal market yard is situated who will represent the interest of the State Government.

By the 1982 amendment Clause (v) was re-numbered as Clause (iii), The amended clause was and continues to be as under :

"One shall be a Sub-Divisional Officer of the Sub-Division in which the Headquarters of the market committee is situated who will represent the interest of the State Government."

Sub-section 9 (4) was also subjected to amendments. The sub-section as it originally stood provided that :

"the second and every subsequent market committee shall elect one of its members to be its Chairman and another member to be its Vice-Chairman." The provision as amended in 1974 provided that :

"the person representing the interest under Clause (v) of Sub-section (1) of Section 9 shall be appointed to be the Chairman for the second and every subsequent market committee."

The provisions as it now stands, amended in 1982, provides that :

"an officer nominated by the State Government shall be the Chairman of the market committee for two terms or six years after passing of the Act. Thereafter the State Government shall appoint Chairman from amongst the members of the market committee." (already quoted at the outset).

9. From perusal of the above provisions it would appear that any one of the members of the market committee could "be appointed as the Chairman of the first Market Committee by the State Government For the second and subsequent market committees any one of the members could be elected as Chairman. By virtue of 1974 amendment the Sub-Divisional Officer of the Sub-Division where the principal Market yard was situated had to be appointed as the Chairman of the first Market Committee. For the second and subsequent market Committees u/s 9 (4)(i), the person representing the interest under Clause (v) of Section 9(1) could alone be appointed as the Chairman. It may be recalled that u/s (v) the Sub-Divisional Officer of the Sub-Division in which the principal market yard was situated was made the ex-officio member to represent the interest of the State Government. In other words, the Sub-Divisional Officer inducted as member of the market committee "to represent the interest of the State Government" was to be appointed ex-officio Chairman for the second and the subsequent market committees. Then came amendment in 1982 and with which we are concerned in this case.

10. Shri Ram Balak Mahto submitted that as per Section 9 (4)(i), as it stood

earlier, the State Government had no discretion but to appoint Sub-Divisional Officer of the Sub-Division where the principal market yard was situated as the Chairman of the market committee, but considering that the Sub-Divisional Officer combined in him a dual capacity one as Chairman of the market committee representing the interest of the Market Committee and the other as represent the interest of the State Government, it was considered appropriate to amend the existing provisions and with that end. In view Section 9 (4)(i) was amended which now provides for non-officer member as Chairman of the market committee. He referred to Section 16 of the Bihar and Orissa General Clauses Act which provides that where a Bihar and Orissa Act or Bihar Act confers a power or imposes duty then the powers may be exercised and the duty may be performed from time to time as occasion requires. Shri Mahto submitted that in such a case the Court should give a purposive interpretation of the provisions and keeping in view the legislative intent hold that the Sub-Divisional Officer could not be appointed as the Chairman of the market committee. Reference was made to a decision in *Mangalchand Ramchandra and Ors. v. The State of Bihar and Ors.* 1971 BLJR 1038.

11. A purposive interpretation of the Statute is required Where the material words are capable of two or more interpretations. The purposive interpretation rule better known as Heydon's rule, also sometimes as "mischief rule" enables consideration of four things in construing an Act : (a) What was the law before the making of the Act, (b) what was the mischief or defect which the law did not provide, (c) what is the remedy that the Act has provided and (d) what is the reason of the remedy. The rule then holds that the Court must adopt that construction which "shall suppress the mischief and advance the remedy". The rule has no application where the words of the Statute are plain, simple and unambiguous. In that case the words have to be given a literal interpretation.

12. Even if the submission of Shri Ram Balak Mahto is accepted that legislature wanted to restrict the tenure of the Sub-Divisional Officer as Chairman of the market committee for two term of six years the question would still arise as to whether in terms of Section 9 (4)(i) as it now stands, there is any bar to appointment of Sub-Divisional Officer as Chairman. In our opinion the words "the State Government shall appoint the Chairman from amongst the members of the market committee" are clear and unabiguous, and leave little room for doubt that while the Sub-Divisional Officer of the concerned Sub-Division was to be the ex-officio Chairman of the market committee for two terms or six years, after expiry of two terms or six years, the discretion is wide upon for appointment from amongst any of the members of the Market Committee. In other words, while with respect to first two Market Committees, the State Government has/had no option but to appoint the officer nominated by it i.e. the Sub-Divisional Officer concerned under Clause (iii) of Section 9 (1), as Chairman of the market committee, for the third or subsequent market committees it may appoint any of the members of the committee as the Chairman. The Sub-Divisional Officer continues to be ex-officio member u/s (1)(iii) and being one of the members,

cannot be treated as ineligible or persona non grata for such appointment. The fact that the Sub-Divisional Officer continues to be member of the Market Committee under Clause (iii) of Section 9 (1) and as such, could be appointed as the Chairman was not taken into consideration by the learned Single Judge in the case of Vijay Singh and the decision therefore, cannot be said to be in accordance with law.

13. Thus, in the instant case, it was open to the State Government to appoint respondent No. 5 Suresh Prasad Yadav as the Chairman at the time of constitution of the market committee, but having appointed the Sub-Divisional Officer as the Chairman, it could not cancel appointment save by taking recourse to the procedure laid down u/s 14 of the Act. It is an admitted position that the appointment of respondent No. 5 involves the removal of the Sub-Divisional Officer, Motihari from the office of Chairman and this was not on the ground of any misconduct which could warrant action u/s 14 of the Act. The specific case of the State is that the notification dated 22-10-2002 was cancelled to the extent of appointment of the Sub-Divisional Officer, Motihari in order to rectify the mistake since the Sub-Divisional Officer was not eligible for appointment as Chairman. In view of what has been stated above, the stand of the State Government cannot be said to be in accordance with law. We have, therefore, no hesitation in quashing the impugned notification dated 17-9-2002 published in the Official Gazette dated 1-10-2002 contained in Annexure-3 and 4 to the writ petition which are accordingly quashed.

14. In the result, the petition is allowed.