(1977) 01 MP CK 0002

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 126 of 1972

Prabhudayal Ganpatram APPELLANT

Vs

Krishi Upaj Mandi Samiti and another RESPONDENT

Date of Decision : 12-01-1977

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1980) ILR (MP) 822 : (1977) JLJ 106

Hon'ble Judges : Shiv Dayal Shrivastava, C.J;C.M. Lodha, J

Bench : Division Bench

Advocate : A.B. Mishra, for the Appellant; J.M. Anand, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, J.—By this petition under Article 226 of the Constitution of India, the petitioner has prayed that the order of his dismissal by the Krishi Upaj Mandi Samiti Kolaras dated June 28, 1972 be quashed.

2. The petitioner was appointed as a Nakedar by Krishi Upaj Mandi Samiti Koteras on 4-11-1963. The President of the said Samiti found certain grave irregularities in the work of the petitioner and consequently called upon the petitioner to explain them and thereafter handed over a charge sheet to the petitioner. The matter was enquired into and the Samiti by its resolution dated 28-6-72 dismissed the petitioner.

3. The only point urged by the learned counsel for the petitioner is that the Samiti was not competent to dismiss the petitioner without obtaining approval of the Director. It is submitted that since Nakedar is a superior officer and servant, under Rule 38 of the M.P. Agricultural Produce Markets Rules, 1962, the petitioner could not have been dismissed without the approval of the Director. In this connection, it has been argued that even though Nakedar has not been included in the category of superior officers and servants under Rule 38, but there is a provision in the bye laws of the samiti bye-law No.48 under which

Nakedar have been included in the category of superior officers and since the byelaws have been approved by the Director, Nakedars shall be deemed to be superior officers. To fortify his submission, learned counsel for the petitioner has placed on, record a certified copy of the byelaws of the Samitu.

4. After having examined the relevant provisions of the M.P. Agricultural Produce Markets Act, 1960 and the Rules made thereunder, we have come to the conclusion that there is no substance in the petitioner''s contention. Section 38 of the Act confers power on the State Government to make Rules for carrying out the purposes of this Act and it is mentioned under sub-section (2) of this section that in particular and without prejudice to the generality of the foregoing provisions such rules may provide for or regulate certain specific matters enumerated in para. (2) (i) to (xxv). Section 39 of the Act and confers power on a Market Committee to make byelaws. We may here reproduce relevant portion of section 39:--

39. Power to make bye-laws.--(1) Subject to the rules made by the State Government u/s 38 a market committee may, in respect of a market area under its management, make bye-laws for--

(i) the regulation of its business;

(ii) the conditions of trading in a market;

(iii) appointment and punishment of its officers and servants;

(iv) delegation of powers, duties and functions to such officers and servants, payment of salaries, pensions, gratuities, and leave allowances to them and contributions by them to any provident fund which may be established for the benefit of such officers and servants;

(v) the delegation of powers, duties and functions of a sub-committee, if any, and (vi) class of persons who shall be required to take licence.

(2) All bye-laws made under sub-section (1) shall be subject to the condition of previous publication and no bye-law shall take effect until it has been confirmed by the Director.

5. At this stage we may also refer to Rule 38 which reads as under:--

Servants of the market committee.--(1) The market committee shall appoint a Secretary and may employ such other officers and servants as may be necessary and proper for the efficient execution of its duties.

(2) Such officers and servants shall be divided into two classes, viz:--

(i) Superior officers and servants.

(ii) Inferior servants.

Superior officers and servants shall include Secretary, Assistant Secretary, Accountant, Clerks and such other servants as the Director may direct to be included in this category. Inferior servants shall be peons, watchmen and other menial servants.

(3) The terms and conditions of service of superior officers and servants1 shall be such as are approved by the Director and those of the inferior servants shall be such as the market committee itself may decide.

(4) The appointment of superior officers and servants shall be made by the market committee subject to the approval of the Director. Any punishment, revision in pay or terms of service or dismissal of the superior officers and servants shall also be subject to the approval of the Director, All inferior servants shall be under the full control of the market committee, but the committee shall make an immediate report to the Director in regard to: their appointment, pay, punishment, dismissal and other matters relating to such servants.

General. Any punishment inflicted by the market committee is revisable by the State Government u/s 41.

6. Now, admittedly, the Director has issued do direction that Nakedars will be included in the category of superior officers and servants. If that had been so, undoubtedly, the petitioner could not have been dismissed by the Samiti without obtaining the approval of the Director. However, learned counsel for the petitioner has invited our attention to bye-law 38(2) which says that superior officers and servants will-include Secretary, Accountant, Clerk and Nakedar. It is alleged by the petitioner that the bye laws were confirmed by the Director as required by sub-section (2) of section 39 of the Act. It is thus argued that confirmation of the bye-Jaws by the Director must be deemed to be the approval of the Director to the inclusion of Nakedars in the category of superior officers and servants as required by Rule 38 of the Rules. We are, however, unable to accept this contention as it is beyond the scope of bye-laws to categorise the servants of a market committee. Learned counsel in this connection relied on item (iii) of section 39, which makes mention of "appointment and punishment of its officers and servants". The question of appointment and punishment of officers and servants has nothing to do with categorising of servants for which provision has been made under Rule 38 only. It may be pertinent to point out that the bye-laws must be subject to the Rules as mentioned in the opening sentence of section 39 and consequently the bye-laws cannot override the Rules. Rule 38 clearly mentions that the Director may issue a direction that servants other than those specifically mentioned in Rule 38 may be included in the category of superior officers As already stated above, admittedly no such direction has been issued by the Director, and hence anything contained in the bye laws which goes beyond Rule 38 cannot be held to be valid. We are, therefore, not prepared to accept the proposition submitted by learned counsel for the petitioner that the provision in the bye-laws that Nakedar will be included in the category of superior officers is valid and effective. In this view of the matter it was not necessary for the Samiti to obtain approval of the Director for

ordering dismissal of the petitioner and, therefore, the order of dismissal passed by the Samiti cannot be held to be ultra vires and void.

7. No other point was argued by the learned counsel for the petitioner. We may mention, here, that though the objection was taken in the petition that reasonable opportunity was not given to the petitioner to defend himself. However, we are satisfied that reasonable opportunity was given to the petitioner and since the.?oint was not pressed before us, we do not think it necessary to dialate upon this aspect of the case.

8. The petition, therefore, fails and is hereby dismissed. But in the circumstances of the case, we make no order as to costs.