

(1982) 07 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 72-A of 1982

Radhakishan Bhaggulal Jaiswal

APPELLANT

Vs

Assistant Collector and Returning Officer for Elections to the
Jalna Agricultural Produce Marketing Committee, Jalna and
others

RESPONDENT

Date of Decision : 29-07-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1983) MhLj 126

Hon'ble Judges : M.P. Kanade, J;D.B. Deshpande, J

Bench : Division Bench

Advocate : K.G. Nawandar, for the Appellant; S.S. Choudhari, Govt. Pleader for respondents Nos. 1 and 8, B.N. Deshpande and Ankush Bhalekar, for the Respondent

Final Decision : Allowed

Judgement

D.B. Deshpande, J.—The only question for our consideration in this writ petition, which is filed by the petitioner under Article 226 of the Constitution of India, is the meaning to be assigned to the words "doing business" appearing in section 13 (1) (c) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (Maharashtra Act No. XX of 1964) (hereinafter referred to as "the Market Committee Act"), and it arises in the following manner.

2. There is a body known as the Jalna Agricultural Produce Marketing Committee at Jalna (hereinafter referred to as "the said Market Committee"). As per section 11 of the Market Committee Act, for every market area, a Market Committee has got to be established and u/s 13 (1) of the Market Committee Act, the total membership of such market committee is of eighteen members divided into several categories mentioned in the said section 13 of the Market Committee Act. In this writ petition, we are concerned with section 13 (1) (c) of the Market Committee Act and this section runs as follows:

"13. Constitution of Market Committees:

(1) Subject to the provisions of sub-section (2), every Market Committee shall consist of the following eighteen members, namely:

(a)...

(b)...

(c) one shall be the Chairman of the co-operative society doing business of processing or marketing of agricultural produce in the market area; or in his absence a representative of the co-operative society elected by its managing committee:

Provided that, if there be more than one such co-operative societies in the market area, then the Chairman of any one of such co-operative societies, or in his absence a representative, elected by the managing committees of such societies;

3. Now, the present petitioner is a member of the body known as the Jalna Taluka Shetkary Sahakari Kharedi Vikri Sangh Ltd. Jalna. Elections were to be held for the constitution of the said Market Committee and rule 40 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 (hereinafter referred to as "the Market Committee Rules"), governs the election from the category mentioned in section 13 (1) (c) of the Market Committee Act. The said rule is as follows:

"40. Election of Chairman or representative of Co-operative Societies-

(1) If there are more than one co-operative societies doing business of processing or marketing of declared agricultural produce in any market area and election of a member has to be made under the proviso to clause (c) of sub-section (1) of section 13, the Collector shall call upon such societies to communicate the names of their Chairman who are willing to contest the election; or in the absence of their Chairman, a representative of each of such co-operative societies elected by its Managing Committee in this behalf, before a day specified in this behalf by the Collector.

(2) On receipt of the names of Chairman, or, as the case may be, of their representatives, the Collector shall, direct the Managing Committees of such societies to elect from the amongst such Chairman or representatives, a member on the Market Committee.

(3) The election may be held by ballot on a date, place and hour which the Collector may fix in this behalf. In case of equality of votes, their selection shall be made by drawing lots.

In pursuance of this rule, Respondent No. 1, who is the Returning Officer appointed for the purposes of holding this election, wrote by his letter dated 29-1-1982 to Respondent No. 7--the Jalna Taluka Shetkari Sahakari Kharedi Vikri

Sangh Ltd. to send name of its Chairman or its representative elected by its managing committee on or before 3rd February 1982. It is not disputed that Respondent No. 7 communicated the name of the present petitioner to Respondent No. 1 as its representative willing to contest the election of a member of the said Market Committee. It appears that Respondent No. 1 had written similar letters to the Jalna Sahakari Ginning, Pressing and Oil Mill Society Limited - Respondent No. 4 - and the Jalna Vibhag Sahakar Soot Girni Limited-- Respondent No. 5. It appears that the name of Respondent No. 2 was communicated as a representative of Respondent No. 5 and it further appears that the name of Respondent No. 3 was communicated by Respondent No. 4 as its representative for this election.

4. Thereafter, by his letter dated 18th February 1982, Respondent No. 1 informed Respondents Nos. 4, 5 and 7 about the names that were received from the three societies in this respect. Respondent No. 1 further informed that out of these three representatives, a member shall be elected for the membership of Respondent No. 6--the said Market Committee. The place of election, etc., were also communicated. We are not much concerned with this aspect of the matter.

5. Thereafter, the present petitioner submitted an objection petition to respondent No. 1 on 19-2-1982. In this petition, the petitioner contended that Respondent No. 7 alone was the only society which carried on the business of marketing the agricultural produce in the area of the Market Committee. The petitioner further contended that no other co-operative society, except Respondent No. 7, was doing business of processing or marketing the agricultural produce. The petitioner further contended that the co-operative Court at Aurangabad had set aside the election of the managing committee of Respondent No. 4 by its judgment dated 10th November 1981 and had declared that the members of the said managing committee were not duly elected as member of the said managing committee and the election was held to be illegal and void. It is not now in dispute before us that although an appeal was preferred before the co-operative Tribunal against this decision of the Co-operative Court, the appeal that was filed was dismissed by the Co-operative Tribunal and, thereby, the decision of the Co-operative Court declaring the election of the managing committee of Respondent No. 4 as void was confirmed. The petitioner, therefore, contended that in this background, Respondent No. 3 could not be the representative of Respondent No. 4 and, therefore, his name should not be considered for election to the post of a member of Respondent No. 6--the said Market Committee--as Respondent No. 4 does not qualify itself to fall within the meaning of section 13 (1) (c) of the Market Committee Act.

6. The petitioner further contended that so far as respondent No. 5 was concerned, although it was registered on 9-9-1976, it had not started doing business of processing or marketing of agricultural produce and, therefore, it was incompetent to send any representative for being considered for election of respondent No. 6. The petitioner alleged that the said Sut Girni was in its infancy

stage and even the plant for Sut Girni was not erected. It may be stated here itself that it is not disputed that although respondent No. 5 has taken some steps in the matter, the spinning mill has not yet started. What is actually done is the registration of the society; the obtaining of a licence in the name of the society; collection of capital to the tune of about Rs. 20,00,000; application to the Maharashtra Industrial Development Corporation for securing a plot for installing the machinery; and obtaining a report about the feasibility of the Sut Girni from an expert body known as the All India Federation of Co-operative Spinning Mills Ltd., Bombay and an application for industrial licence under the relevant Act. It appears to be an undisputed fact that the Sut Girni is yet to receive the plot and thereafter the work of erection of superstructure will start. Hence, it was the contention of the petitioner that respondent No. 5 was not doing business of processing or marketing of agricultural produce and, therefore, was not entitled to send its representative for the aforesaid election.

7. However, by virtue of his order dated 20th February 1982, respondent No. 1 rejected this objection; petitioner stating that similar objections were raised by two other persons by names Annasaheb Sheshrao Chavan and Sopanrao Limbaji Bhandarge and as they were disposed of, this application was also disposed of. Feeling aggrieved by this order, the petitioner has filed this writ petition under Article 226 of the Constitution of India.

8. It was contended on behalf of the petitioner that respondents Nos. 4 and 5 were not at all entitled to send the names of their representatives for being considered for the election to the post of the member of the said Market Committee. Now, so far as respondent No. 4 and its representative, namely, respondent No. 3, are concerned, we do not find any difficulty, because it is an undisputed fact that the election of the managing committee of respondent No. 4 is set aside by the Co-operative Court and it is declared as null and void and, as already stated, this decision of the Co-operative Court is confirmed by the Co-operative Tribunal. The decision of the Co-operative Court is dated 18th June 1982, It is further apparent that when an appeal was preferred, the Co-operative Tribunal had granted a limited stay, but in the said order, it had given a clear direction that no steps should be taken for sending the representative for being elected as a member of the said Market Committee. As the election of the managing committee of respondent No. 4 is declared as void, that body had no right whatsoever to send the name of any representative for being considered and, therefore, respondent No. 3 could not be considered as a representative of respondent No. 4 for being considered for election as the member of the said Market Committee.

9. The real difficulty is about respondent No. 2, who is supposed to be the representative of respondent No. 5, and for deciding this question, we have to interpret the words "doing business of processing or marketing of agricultural produce in the market area" occurring in section 13(I)(c) of the Market Committee Act. As stated earlier factual aspect about the position of respondent

No. 5 is not disputed. Respondent No. 5 is yet to receive a plot and thereafter the structure and erection will start. The question is whether in this state of affairs, can it be said that respondent No. 5 was "doing business of processing or marketing of agricultural produce in the market area"--Shri K. G. Nawandar, appearing on behalf of the petitioner, contended that in view of the admitted facts, it cannot be said that respondent No. 5 was "doing business of processing or marketing of agricultural produce." At one stage, Shri Nawandar wanted us to read the word "doing" as a verb, but we did not agree with this submission. The wording of the said section clearly goes to show that this word "doing" is not used as a verb in this section. In fact, this is connected with the word "business" and, therefore, what is required is that the society must be "doing business" of processing or marketing of agricultural produce as laid down in the said section. Shri B. N. Deshpande, appearing on behalf of respondent Nos. 2 and 5, contended that the society had taken several steps to see that ultimately a spinning mill will be established. At one stage Shri Nawandar tried to urge that what is used in a spinning mill was ginned cotton and, according to him, ginned cotton is not an agricultural produce. But he himself was later on fair enough to state that in view of the definition of agricultural produce given in the Schedule annexed to the Market Committee Act, cotton (ginned or unginned) is an agricultural produce and, therefore, he did not press this point any further.

10. Turning again to the submissions made by Shri Deshpande, it was contended by him that steps, as stated earlier, were taken by respondent No. 5 for ultimately doing business of processing of agricultural produce. It cannot be disputed that spinning of ginned cotton is "doing the business of processing of agricultural produce". According to Shri Deshpande, this was the prospective business of the society some time in the future and, therefore, even that position enabled respondent No. 5 to send its representative. We are not able to give such a wider meaning to the words used in this section.

11. At this stage, we questioned Shri Deshpande as to at what stage can it be said that the society is "doing business of processing or marketing, of agricultural produce." By way of illustration, a question was put to him: Suppose 100 steps are required for accomplishing the work of processing the agricultural produce, at what stage, can it be deemed that the society was "doing business of processing of agricultural produce"? Shri Deshpande was unable to answer this question. If we are to accept the interpretation put forth by Shri Deshpande, even the mere registration of the society in this category would suffice the purpose and would give that society a right to send its representative for being elected as a member of the said Market Committee. We are not able to accept such an interpretation. In our opinion, the Legislature clearly intended that the Co-operative Societies must be "doing business of processing or marketing of agricultural produce". If right were to be given to a Co-operative Society, which was merely doing something for ultimately doing the business of processing or marketing agricultural produce, the Legislature would have used different words. The Legislature would have said : One should be the Chairman of the Co-operative

Society, which is registered in the category of "doing business of processing or marketing of agricultural produce in the market area". It appears that the Legislature has purposely not used such words in this section and has deliberately used the words "doing business of processing or marketing of agricultural produce in the market area".

12. Now, can it be said, in the present state of facts, so far as Respondent No. 5 is concerned, that Respondent No. 5 was "doing business of processing of agricultural produce" ? And the simple answer to it must be in the negative. We therefore, find that Respondents Nos. 4 and 5 were not entitled to send the names of their representatives for being considered for election to the post of a member of the said market Committee and, therefore, Respondents Nos. 2 and 3 could not be considered as representatives of these co-operative societies for the purposes of this election.

13. We might have accepted the submission of Shri B. N. Deshpande in the following circumstance only. Assuming that the work of erection of the Spinning Mill would be completed in the near future, the society has started purchasing cotton and storing it. It can be very well said that the work of doing business of processing of agricultural produce has started, although actual spinning has not started. Here the process of purchasing agricultural produce can be said to have started. It is only in this limited sense we can accept the submission in this respect. The Sut girni as it stands today has nothing to do with agricultural produce.

14. Shri B. N. Deshpande then made a submission that the writ petition was not maintainable and, according to him, an appeal was provided for under rule 51 of the Market Committee Rules. Now, if we turn to rule 51, it will be seen that it clearly applies to the decision of the Returning Officer accepting or rejecting the nomination paper. Shri Nawandar was right when he contended that rule 51 is not applicable to the facts of this case. In this case, there was no question of accepting or rejecting any nomination paper. As required by rule 40 of the Market Committee Rules, the names were solicited from the co-operative societies and these representatives were sought to be considered as fit for contesting the election to the post of a member of the said Market Committee. The petitioner objected to the very entitlement of Respondents Nos. 2 and 3 to be representatives of Respondents Nos. 5 and 4 respectively contending that Respondents Nos. 4 and 5 had no right to send their representatives. Thus, this is a case, which is clearly outside the scope of rule 51 and, therefore, we are not in agreement with the submission made by Shri Deshpande.

15. Shri Deshpande then contended that the petitioner had liberty to challenge the validity of the election as per rule 88 of the Market Committee Rules, But we have presently pointed out that the very entitlement of Respondents Nos. 2 and 3 to be representatives of Respondents Nos. 5 and 4 respectively for being considered as fit for being elected is challenged. We are satisfied that this writ petition is maintainable and it was not necessary for the petitioner to undergo

the formality of completion of election and then to file an election petition challenging the said election.

16. We are, therefore, satisfied that the impugned order of the First Respondent, which is produced at page 17 of the paper book, as Annexure C to this petition, is clearly bad and has got to be quashed.

17. The result is that the writ petition is allowed and the rule is made absolute. The impugned order dated 20th February 1982 of the Returning Officer and Assistant Collector, Jalna, is hereby quashed. The Returning Officer will be at liberty to consider this question in the light of the observations made in this judgment. In the circumstances of this case, there will be no order as to the costs.