

(2002) 01 PAT CK 0133
In the Patna High Court
Case No : L.P.A. No. 1486 of 2001

Raj Nandan Prasad Singh	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 13, 8, 9, 9(5)

Citation : (2002) 1 PLJR 515

Hon'ble Judges : Shashank Kumar Singh, J; S.N. Jha, J

Bench : Division Bench

Advocate : Pushkar Narain Shahi, for the Appellant; JC to AAGI for State, K.P. Yadav and Suresh Kumar for Respondents 4 to 7, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Jha, J.—This letters Patent Appeal is directed against an order of the learned Single Judge by which the writ petition of the Appellant has been dismissed.

2. The Appellant filed OWJC No. 4785 of 2001 (2002 (2) PLJR 513) for quashing the communication of the Bihar State Agriculture Marketing Board dated 15.3.2001 requesting the Deputy Secretary, Agriculture Department, Government of Bihar to nominate Respondent No. 8, namely Sri Rajendra Ram, Sub-divisional Officer, Samastipur, for carrying out the duties and functions of Samastipur Market Committee in terms of Section 9(5) of the Bihar Agriculture Produce Market Act, 1960 (in short, "the Act") for a period of six months from 1.3.2001 to 31.8.2001.

3. The case of the Appellant is that the election with respect to agricultural constituency No. 1 of the said Market committee was held on 1.12.96 at which he was declared elected on 2.12.96. The elections with respect to other constituencies were also held. The names of the elected members were published under notification in terms of Section 13 of the Act on 13.9.97. However, the names of some of the members were not correctly mentioned in the said

notification. Another notification was accordingly published on 15.7.98. According to the Appellant, as the Market Committee was not properly constituted until 15.7.98 its tenure prescribed u/s 9(5) of the Act, should be counted from that date and therefore the impugned communication purporting to authorise the Sub-divisional Officer to perform the duties and functions of the Market Committee is illegal and should be set aside. The learned Single Judge dismissed, the writ petition observing that the period has to be reckoned from 13.7.97 when notification in terms of Section 13 was published. What was published on 15.7.98 was a corrigendum to correct typographical errors regarding certain names.

4. Section 8 of the Act provides for constitution of the First Market Committee while Section 9 provides for constitution of the second and subsequent Market Committees. Having regard to the limited scope of dispute in the present case it is not necessary to notice the other provisions except Sub-section (5) thereof. Sub-section (5), as it originally stood, provided for a term of three years, which was to include "any further period which may elapse between the expiration of the said three years and the date of first meeting of the next succeeding Market Committee at which the quorum is present". The provision was amended by Act 60 of 1982 to provide for an outer limit of six months" further period where after expiry of the stipulated three years" period elections are not held within six months. The amended Sub-section (5) lays down in clear terms that on expiry of the extended period of six months i.e. three years and six months in all, the Committee shall come to an end. In view of the clear intendment underlying the amended provision there cannot be two opinions, in fact no argument was advanced to the contrary, that the term of the members including the Chairman and the Vice-Chairman would be three years and six months. The question is from which date this period of three years and six months is to be counted. According to the Appellant, it should be counted from 15.7.98 when the mistakes regarding names of the members were corrected.

5. The Appellant has referred to three mistakes-one regarding the name of Bisheshwar Rai who was elected from the agriculture constituency No. 6 but in the notification dated 13.9.97 his name was mentioned as Niteshwar Rai. Secondly, the name of one Kapildeo Narayan purportedly representing the Local Bodies constituency was mentioned at Serial No. 13 of the notification dated 13.9.97 but he had ceased to be Mukhiya of the concerned Grampanchayat. The third mistake was with respect to the description of the Branch Manager of the State Bank of India. The question is whether on account of the aforesaid mistakes and the correction thereof on 15.7.98 the period of three years and six months should be counted from that date.

6. In our opinion, it is not necessary to decide the controversy at the instance of the Appellant. The mistake regarding names/description relating to other members and not the Appellant herein. It was for them, if they so liked, to make a grievance that on account of mistakes/mis-description they could not effectively function as members of the Market Committee until 15.7.98 and

therefore period of three years and six months should be counted from that date- There being no mistake in the name/description of the Petitioner in the notification dated 13.9.97 he cannot be allowed to indulge in proxy litigation on their behalf. When this was pointed out to the counsel, he submitted that the period of three years and six months refers to the "Market Committee" and not the members and since the Market Committee did not hold any meeting during the period between 13.9.97 and 15.7.98 the fact that the description of the Petitioner did not suffer from any error in the notification/cannot prevent him from challenging the validity of the impugned communications which refers to the Market Committee as a whole and not the members.

7. The submission that Section 9(5) refers to the term of the Market Committee and not the members does not have substance, for, Sub-section (5) expressly refers to the term of the members including the Chairman and the Vice Chairman. As regards the second contention, even if it be true that the Market Committee did not hold any meeting until the issuance of the corrigendum, this can hardly be a relevant consideration. Perusal of the notification dated 13.9.97 shows that the Market Committee comprised of 18 members. Even if it be accepted that there were mistakes in the names/description of the three other members, nothing prevented the Committee from holding its sitting as necessary quorum would have been complete even without those members. From the notification it appears that two constituencies had remained vacant while one was shown as "dissolved". In any view, it was for said Bisheshwar Rai to make any grievance in that regard. Even if the right to make grievance is conceded to the Petitioner, there is no explanation why he did not raise the dispute until the impugned communication was made on 15.3.2001. He filed the writ petition only on 11.4.2001. All said and done, the period of three years and six months, even according to the Appellant's case, is going to expire on 15.1.2002 and in that view of the matter no useful purpose will be served by making any interference in the matter.

8. In the result, we do not find any merit in this appeal which is accordingly dismissed.