
(1977) 12 CAL CK 0015

In the Calcutta High Court

Case No : First Miscellaneous Appeal No. 565 of 1977

State of West Bengal

APPELLANT

Vs

Manindra Nath Roy

RESPONDENT

Date of Decision : 12-12-1977

Acts Referred:

West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 — Section 10, 11, 13, 17, 2(1)

West Bengal Market Regulation Act, 1970 — Section 39, 39(2)

Citation : (1977) 2 ILR (Cal) 593

Hon'ble Judges : Sharma, J;M.M. Dutt, J

Bench : Division Bench

Advocate : A.P. Chatterjee, A.P. Sarkar and Kedar Nath Laha, for the Appellant;N.C. Chakraborti and R.N. Bhattacharya, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Dutt, J.—This appeal is directed against the judgment of A.K. Mookerji J. whereby the Rule nisi issued on the application of the Respondents under Article 226 of the Constitution was made absolute.

2. The Respondents are brokers, commission agents, measurers, wire-housemen and weighmen and they carry on the business in agricultural produce at Tarakeswar, Champadanga, Pursura, Amgao and Chiladangi, within the subdivisions of Arambagh and Chandernagore in the district of Hooghly. The West Bengal Legislature passed the West Bengal Agricultural Produce Marketing (Regulation) Act XXXV of 1972, hereinafter referred to as the Act, to provide for the regulation of marketing of agricultural produce in West Bengal and for matters connected therewith. By a notification dated December 16, 1975, the Act came into force in the subdivisions of Arambagh and Chandernagore where the Respondents carry on their businesses. By another notification of the same date, certain areas including the places of business of the Respondents were declared as market areas. By a third notification issued also on the same date, that is,

December 16, 1975 (annex. "E" to the writ petition), the State Government constituted a market committee consisting of 9 members under Sub-sections (1) and (3) of Section 5 of the Act. The market committee issued two sets of notices. By one set of notices, a copy of which is annex. "H" to the writ petition, it called upon the Respondents to take out licences from the committee for a period of one year on payment of licence fees as specified in the notices. By the other set of notices, a copy of which is annex. T to the writ petition, the market committee informed the Respondents that the committee would collect the market fees as per Section 17 of the Act from the buyers at the rate of rupee one per a hundred, rupee worth of transactions of jute, potato, onion, vegetables, paddy, rice, etc. with effect from June 1, 1976. The Respondents were, further, requested to maintain from June 1, 1976, registers and daily accounts in the pro forma as set out in the notices. The Respondents being aggrieved by the constitution of the said market committee and by the notices issued by the committee (annexes. "H" and T) moved the application under Article 226 of the Constitution, inter alia, challenging the validity of the constitution of the market committee and the impugned notices issued by it.

3. The learned Judge came to the findings that the market committee was not constituted in accordance with the provision of Sub-section (3) of Section 5 of the Act and as such, it was illegal and ultra vires that provision and the impugned notices issued by the market committee were consequently illegal and invalid. Upon the said findings, the learned Judge quashed the impugned notification (annex. "E") and the notices (annexes. H" and "I") issued by the market committee. A writ in the nature of mandamus was issued directing the Appellants not to give effect to the said notification and the notices. The Rule nisi was, accordingly, made absolute. Hence, this appeal.

4. The only question that is involved in this appeal relates to the validity of the notification constituting the market committee and the notices issued by such committee. Under Sub-section (1) of Section 5, for every market area, the State Government shall by notification constitute a market committee. Under Sub-section (2) every market committee shall be a body corporate by such name as the State Government may specify and may sue and be sued in its own name. Sub-section (3) provides as follows:

(3) A market committee shall consist of the following members--

(a) two officers of the State Government of whom at least one shall be an officer of the Directorate of Agriculture, West Bengal, having jurisdiction over the area for which the market committee is constituted;

(b) one person to represent the members of any co-operative marketing society carrying on business in the market area, or if there is no such co-operative marketing society, any other co-operative society carrying on business in such area;

(c) one person representing the bank financing the market committee:

Provided that in case where financing by bank is not done the State Government may nominate a representative of any other bank functioning in or near the market area;

(d) one person representing the focal authority having jurisdiction over the market area;

(e) five persons representing the agriculturists of the locality carrying on business in agricultural produce in the market area; and

(f) two persons representing the licensed traders doing business in agricultural produce in the market area.

Sub-section (3) was amended and persons from two other categories were included within the committee as follows:

(dd) two persons representing the small growers;

(ddd) member or members or member of the West Bengal Legislative Assembly elected thereto from constituency or constituencies comprising the market area or part thereof.

It is not disputed that there were four members of the West Bengal Legislative Assembly elected thereto from the constituencies comprising the market area to which the impugned notification (annex. "E") relates it thus appears that a market committee in the present case should consist of 18 persons from the categories mentioned in Clause (a) to (f) and the two newly added Clause (dd) and (ddd). By the notification, however, the State Government constituted the market committee with only 9 persons. The principal contention of the Respondents is that the State Government has no power to reduce the number of members of the market committee and the constitution of the market committee with 9 members is illegal and ultra vires Sub-section (3) of Section 5. Further, it is contended that Sub-section (3) is mandatory and does not confer any discretion on the State Government to constitute a market committee with a lesser number of members. On the other hand, it is contended by Mr. Chatterjee, learned Senior Standing Counsel appearing on behalf of the Appellants, that under Sub-section (3) it is not incumbent upon the State Government to constitute a market committee with the same number of members as mentioned therein from the respective categories and that accordingly, the committee which has been constituted by the impugned notification is not invalid.

5. It is clear from Sub-section (3) that the market committee required to be constituted should be a representative body. Sub-section (4) of Section 5 authorises the State Government to increase the representation of members mentioned in Clause (e) and (f) of Sub-section (3) to seven and three respectively. Prima facie Sub-section (3) is mandatory and there is nothing to suggest that the Legislature intended that the number of representations of such committee for different categories may be reduced by the State Government at its discretion. On the contrary, the statute provides that, such representation of

members mentioned in Clause (e) and (f) may be increased, if the State Government so thinks, to seven and three respectively. It is difficult to hold that the number of members of a body corporate can be reduced at the discretion of the executive Government in the absence of any provision in that regard in the statute by which such body corporate is created. Our attention has been drawn to Clause (f) of Sub-section (3) under which two persons representing the licensed traders doing business in agricultural produce in the market area shall be on the committee. Section 13, inter alia, provides for licences to traders by the market committee. It is contended that so long as the market committee is not constituted the licensed traders do not come into existence at all. Accordingly, it is contended that as the first market committee has to be constituted without the licensed traders, Sub-section (3) cannot be held as mandatory, for in that case no such market committee can be constituted. We are unable to accept this contention. It has been held by the learned Judge that the words "licensed traders" in Clause (f) include traders under any other enactment. Though the Act defines a "trader" in Clause (f) of Section 2(1), it has not defined "licensed traders". It appears that prior to the Act there was another Act named the West Bengal Market Regulation Act, 1970. The said Act has been repealed by Section 39 of the Act. Under the said Act of 1970, licences might have been granted to traders and in view of Sub-section (2) of Section 39 of the Act licences granted to traders by the market committee constituted under the said Act should be deemed to have been granted under the Act. In our view, therefore, by the words "licensed traders" in Clause (f), the Legislature has also included those traders, who were granted licences under the said Act of 1970 and two representatives of such licensed traders are required to be placed on the first market committee to be constituted under Sub-section (3) of Section 5 of the Act. Even assuming that "licensed traders" refer to only those traders who will be granted licences by the market committee u/s 13 of the Act still, in our opinion, the market committee has to be constituted with the same number of representatives from each category as provided for in Sub-section (3) except from the category of licensed traders" which shall be filled up subsequently after the traders are granted licences by the market committee so constituted. In our view, therefore, the contention that representatives under Clause (f) cannot be appointed in the first market committee is no ground for construing Sub-section (3) as conferring on the State Government a discretion to appoint a committee with any number of members other than in conformity with Sub-section (3). The contention made on behalf of the Appellants in this regard is overruled.

6. It is next contended on behalf of the Appellants that even though the market committee has not been legally constituted, the subsequent actions of such market committee, namely, the issuance of the impugned notices (annexes. H and I) are not invalidated in view of Section 11 of the Act. That section provides that no action of a market committee shall be called in question merely by reason of the existence of any vacancy in, or any defect in the constitution of the market committee at the time of taking such action. It is argued that at the most

the appointment of the market committee with 9 members was but a defect in the constitution of the market committee and in view of Section 11 such defect will not render the subsequent actions of the market committee illegal or invalid. The question that arises is whether the words "any defect in the constitution" comprise all kinds of defects. In other words, whether the actions of a defectively or illegally constituted market committee is protected by Section 11. Section 11 validates the actions of the market committee under two circumstances, namely, (i) the existence of any vacancy in the market committee and (ii) any defect in the constitution of the market committee at the time of taking such actions. In order to consider the scope and extent of the words "defect in the constitution of the market committee", it is necessary to refer to Sections 9 and 10 which are as follows:

9. (1) If, at any time, a vacancy occurs in the office of a member of a market committee by reason of the non-acceptance of office, or by the removal, death or resignation, the vacancy shall be filled by a fresh appointment of a person belonging to the class which such member represented.

(2) Every person appointed under Sub-section (1) shall hold office for the unexpired period of the term of office of member whose place he fills.

10. The State Government may, by notification in the Official Gazette, remove any member of a market committee from his office if such member has, in the opinion of the State Government, been guilty of misconduct or neglect of duty or has become disqualified within the meaning of Section 7:

Provided that the State Government shall, before passing any order under this section, give the person concerned an opportunity of being heard.

A market committee which is constituted in accordance with Sub-section (3) of Section 5 may be defective in its constitution as a result of the existence of a vacancy under any of the circumstances mentioned in Section 9(1) and if during the existence of such a vacancy any action is taken by the market committee such action is protected u/s 11. In our view, the words "any defect in the constitution" have not been used in a wider sense, but they comprehend only the circumstances under which vacancies may occur rendering the constitution of the market committee defective for the time being. In other words, the words "any defect in the constitution" should be read as ejusdem generis with the words "any vacancy". Section 11 does not contemplate to protect the actions of a market committee which was not constituted in accordance with Sub-section (3) of Section 5 but, as in the present case, in violation of it. Agreeing with the learned Judge we hold that the constitution of the market committee by the impugned notification (annex. "E") is illegal and ultra vires Sub-section (3) and the actions of such market committee by issuing impugned notices (annexes. "H" and I) are inoperative and void.

7. For the reasons aforesaid, the judgment of the learned Judge is affirmed and this appeal is dismissed, but there will be no order for costs.

Sharma, J.

8. I agree.