

(2014) 03 GAU CK 0038

In the Gauhati High Court

Case No : WP (C) No. 782, 785 and 820 of 2014

Wahedur Rahman

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Assam Agricultural Produce Market Act, 1972 — Section 11(2), 13, 3, 3(17), 3(9)

Citation : AIR 2014 Guw 152 : (2014) 2 GLT 412

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : S. Shyam, Mr. A.D. Choudhury and Mr. B.K. Das, Advocate for the Appellant; S. Chamaria, SC, Agriculture, Mr. S. Saikia, SC, Agricultural Marketing Board and Mr. M. Bhagabati, GA, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Biplab Kumar Sharma, J.—All the writ petitions raising the same issue and pertaining to District Regulated Market Committee have been heard together and are being disposed of by this common judgement and order. WP(C) 782/2014

The petitioner is an elected member (Agriculturist) of Dhuburi District Regulated Market Committee, Gauripur. The prayer in the writ petition is to allow the existing market committee to render its functions and duties till a new committee is constituted by holding election. WP(C) 785/2014

2. The petitioner is the Chairman of Lanka Regulated Market Committee. The prayer in the writ petition is to allow him to continue as the Chairman till declaration of the results of the election. However, because of the interim orders operating in WP(C) No. 6504/2013, the results could not be declared. The said writ petition has been disposed of today by vacating the interim order and directing the respondents to declare the results of the election. The petitioner has also challenged the notification dated 28.01.2014 by which the Government of Assam in the Agriculture Department invoked the power u/s 48 of the Assam

Agricultural Produce Market Act, 1972, has allowed the District Agriculture Officer, Nagaon to take over charge of the Lanka Regulated Market Committee temporarily in view of the term of the said committee expired on 06.12.2013. According to the petitioner till the declaration of the results of the election he should be allowed to continue as Chairman of the Marketing Committee on the basis of the earlier election irrespective of the expiry of the term of the Committee on 06.12.2013.

WP(C) No. 820/2014

3. The petitioner is the elected Chairman of the Darrang District Regulated Market Committee, Kharupetia, which was constituted on 03.11.2009. The term of the Committee expired on 06.12.2012. Since the election for re-constitution of the Market Committee could not be held on time, the Government had earlier extended the term of the office of the Committee for a period one year till the reconstitution of the Market Committee. The extended term also expired on 06.12.2013 but the election could not be held towards reconstitution of the Market Committee. The prayer in the writ petition is to allow the earlier Market Committee on the basis of the earlier election although its term, both stipulated and extended, has already expired.

4. From the above reading of the facts and the prayers made in the writ petitions, what has emerged is that according to the petitioners, even after expiry of the term of the Market Committee, the Government is not empowered to depute any Govt. Officer to perform the duties and functions of the Market Committee. According to the petitioners, if there was failure on the part of the Government to hold the election, it was incumbent to extend the term of the office of the respective Market Committee till such time the election is held.

5. The respondents have resisted the writ petitions by filing the counter affidavit. According to the respondents, upon expiry of the term of the Market Committee, the District Agriculture Officer has been appointed to takeover the charge of the Market Committee. As regards the prayer of the petitioners to extend the term of its office, it is the stand of the respondents that such term cannot be extended beyond one year as stipulated in the provisions of the aforesaid Act of 1972.

6. I have heard Mr. S. Shyam, learned counsel for the petitioner appearing in WP(C) No. 782/2014. I have also heard Mr. A.D. Choudhury, learned counsel appearing for the petitioner in WP(C) No. 785/2014. Mr. B.K. Das, learned counsel has argued on behalf of the petitioner in WP(C) No. 820/2014. I have also heard Mr. S. Chamaria, learned Standing Counsel, Agriculture Department and Mr. S. Saikia, learned Standing Counsel, Assam State Agricultural Marketing Board. Mr. M. Bhagabati, learned State Counsel has advanced arguments on behalf of the State respondents. I have also considered the entire materials on record.

7. On expiry of the term of the members of the respective Market Committee which is 3 (three) years, the State Respondents have appointed the District

Agriculture Officer to run the affairs of the respective Market Committee. Learned counsel for the petitioners referring to the provisions of Section 48 of the Act under which the State Government has appointed the District Agriculture Officer, have argued that the said provision does not empower the Government to entrust the affairs of the Market Committee to an Officer. They have also referred to the provisions of Section 9 of the Act which provides reconstitution of the Market Committee every three years before the expiry of the 3rd year and not earlier than 3 (three) months prior to such expiry. Section 9(2) provides that the term of 3 years referred to in Sub-section 1 shall include any period which may lapse between the expiry of the said 3 years and the date of the first meeting of the reconstituted Market Committee, on which a quorum is present.

8. Section 9(3) of the Act on which the learned counsel for the petitioners have much emphasized provides that the State Government may by notification for sufficient cause to be stated therein direct, from time to time that the term of office of the Members of the Market Committee be extended by such period not exceeding one year as may be specified in the notification.

9. It is on the basis of the aforesaid provisions, the learned counsel for the petitioners have contended that the extension of the term of office of the members of a Market Committee cannot be confined to only one year. In this connection, they have put emphasis on the expression "As may be specified in the notification".

10. Section 8(3) makes provision for constitution of the Market Committee for the first time. When a Market Committee is constituted for the first time, all the members of the Market Committee including the Chairman and Vice Ghirman thereof shall be nominated by the State Government and such members shall hold office for a period of 3 (three) years. Proviso to Section 8(3) provides that the State Government may extend the term of the Market Committee for a period not exceeding two years. As per Section 9(1), every member of the Market Committee shall hold office for a period of three years commencing from the date of first meeting of the reconstituted Market Committee at which a quorum is present. The Market Committee shall, thereafter, be constituted every three years before the expiry of the third year and not earlier than three months prior to such expiry.

11. On a total reading of the said provisions including the provisions contained in Section 9(3), it is seen that the State Government is empowered to extend the term of the office of the members of a Market Committee for sufficient cause. The extension shall be for such period not exceeding one year as may be specified in the notification. If the kind of interpretation sought to be given by the learned counsel for the petitioners on the basis of the expression "may be specified in the notification" is to be accepted, then in that case the term of office of the members of a Market Committee can be extended by notifications after notifications for indefinite period. On a total reading of the aforesaid provisions, there is no manner of doubt that the office of the member of the Market

Committee can only be extended for a specified period of one year and not beyond that.

12. In view of the above, the petitioners, irrespective of expiry of the term of their office cannot pray for any direction to the official respondents to extend their term of office beyond one year as a matter of course. As regards the extension of the term for the specified period of one year also, the petitioners attributing the fault on the part of the respondents for not holding the election, cannot as a matter of right, that their term of office may be temporarily extended at-least for one year.

13. In the instant case, the elections having not been held the Government in its wisdom thought it prudent to appoint a Government Officer to run the affairs of the respective Market Committee upon expiry of the term of office of the members of the Market Committee.

14. This now leads us to the other plea of the petitioners that the State Government is not empowered u/s 48 of the Act to entrust the affairs of the Market Committee. Section 48 empowers the Government to delegate by notification in the official gazette any of the powers conferred on it by or under the Act to any of its Officers or to the Board or to its Chairman or Chief Executive Officer. In the notification appointing the District Agriculture Officer to run the affairs of the respective Market Committee, this provision has been referred to.

15. Section 3 of the Act, the State Government may for exercising the powers conferred on and duties assigned to the Board (Agricultural Marketing Board) by or under this act, establish and constitute a State Agricultural Marketing Board consisting of a Chairman and 17 other members to be nominated by the State Government as indicated therein. The term of office of the Board shall be three years from the date of its first meeting or till its reconstitution, whichever is earlier. Section 3(9) provides that the State Government shall exercise superintendence and control over the Board and its employees and may call for such information as it may deem necessary. It also provides for making arrangement for the exercise of the functions of the Board in the event of arising necessity. u/s 3(17), the State Government may delegate, by notification in the official gazette any of the powers conferred on it by or under the Act to any of its Officers or to the Board or to the Chairman or its Chief Executive Officer.

16. Provision has been made u/s 7 of the Act for establishment of a Market Committee. The State Government shall establish a Market Committee for every area declared to be a market area. Under Sub-Section 1 of Section 5, provisions have been made for electing members of the Managing Committee or Board of Directors including nomination of members. Section 11(2) the State Government is empowered to remove the Chairman or Vice Chairman of a Market Committee after giving an opportunity of being heard. Section 13 of the Act provides for incorporation of Market Committee and that every Market Committee shall be a body corporate by such name as the State Government may specify by

notification in the official gazette. It shall have perpetual succession and a common seal. Section 32 provides that when the affairs of the Board or Committee are examined by the Director or any other Officer to whom the powers of the State Government have been delegated u/s 48, all Officer, Staff and Members of such Committee shall furnish such information in their possession in regard to the affairs or proceedings of the Board or Committee, as the Director or such officer may require.

17. Section 33 provides that the Director or any officer authorized by the State Government, by general or special order shall have the power to inspect or cause to be inspected the accounts of any Market Committee or to institute an enquiry into the affairs of the Committee. In case of emergency, the Director may suspend or cancel and/or any licence issued under the provisions of the Act and take such other step as may be deemed necessary in the interest of a market (Section 34). Section 34(2), where a Market Committee is not competent to perform the duties imposed by or under the Act, under orders or decision of a Court, the Director shall make arrangement for performing the duties and functions of such a Market Committee.

18. Section 37 and 38 of the act provides for supersession of Market Committee and consequence of supersession. If a Market Committee is superseded as a consequence thereof, all the members as well as the Chairman and Vice Chairman of the Market Committee shall vacate their office of powers and duties which under the Act may be exercised and performed by the Committee shall be performed by the State Government or by such person as the State Government may direct.

19. From the aforesaid provisions of the Act, there is absolutely no manner of doubt that in any case of supersession and/or expiry of the term of office of the members of the Market Committee, the State Government is empowered to manage the affairs of the Market Committee by appointing an Officer till such time the Market Committee is reconstituted by electing or nominating fresh members.

20. In the counter affidavit filed by the respondents, it has been stated that the process of holding the election has already been initiated and in fact by issuing the notification dated 16.11.2013, an Election authority has already been constituted. By yet another order dated 26.11.2013 followed by another order dated 24.01.2014, directions have been issued for taking necessary steps towards holding the election. The affidavit has also referred to the WT Message dated 01/03/2014 requiring the authority to furnish the reasons for non-holding of the election in time.

21. It will be pertinent to refer to the order dated 05.02.2014 passed in WP(C) No. 560/2014, by which a direction was issued directing the Deputy Commissioner, Dhuburi District to take appropriate action in the matter of holding of election to the Dhuburi District Regulated Market Committee without

any further delay. It was expected that the required exercise would be done in terms of the relevant rules as expeditiously as possible and within the time frame mentioned in the relevant rules.

22. Mr. S. Chamaria, learned Standing Counsel, Agriculture, has produced the copy of the letter dated 05.03.2014 addressed to the Government of Assam in the Agriculture Department by the District Agriculture Officer, who is also the Member Secretary, Election Authority, DDRMC, Dhuburi. In paragraph 6 of the said letter, it has been stated that though the process for holding the election is in progress but due to the probable declaration of Lok-sabha election, he is confused in the matter. As submitted by the learned counsel for the parties that the Lok-sabha election in the State will be over by 23.04.2014. If that be so, there should not be any delay in holding the elections of the Regulated Market Committees" beyond 30.05.2014.

23. While answering the issues raised in the writ petition in the above manner, it is hereby provided that the respondents, more particularly, the Deputy Commissioner of the District, shall ensure holding of the election of the Regulated Market Committees by 30.05.2014. In the mean time, the required follow up process shall be initiated and completed. Needless to say that once the election is held, there should be immediate publication of the results. All the writ petitions are disposed of in the above manner, without however, any order as to costs.