

Renubala Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : May-28-2015

Appellant : Renubala

Respondent : State and Ors

Judgement :

1/9 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER

: S.B.CIVIL WRIT PETITION NO.5048/2015 Renubala versus The State of Rajasthan & ORS.Date of Order :: 28th May, 2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.H.S.Sidhu, for the petitioner.

---- BY THE COURT: REPORTABLE This writ petition has been filed by the petitioner challenging the order/direction dated 29.04.2015 issued by Director, Agricultural Marketing, Directorate, Jaipur.

The petitioner claims herself to be eligible to be elected as a Member of the Market Committee from agriculturists under Section 7(1)(a)(i) of the Rajasthan Agricultural Produce Markets Act, 1961 ('the Act').it is further submitted that the office of Chairman of the Krishi Upaj Mandi Samiti, Hanumangarh ('Mandi Samiti') is reserved for SC woman category and petitioner belongs to said category; further submissions have been made that the Mandi Samiti is a super class Mandi and under the provisions of Section 7 of the Act, the Market Committee is constituted

consists of 17 Members which includes eight agriculturists, two traders and brokers, one from weighmen etc., one member of Legislative Assembly, one representative of Co-operative Marketing Societies, one representative of Central Co-operative Financing Agency, one from the Members of Municipal Board/Gram Panchayat and two persons nominated by the State Government.

2/9 It is submitted that the election of the Marketing Committee/Mandi Samiti took place in the year 2011; as per the provisions of the Act and the Rajasthan Agricultural Produce Markets Rules, 1963 ('the Rules') eight members from agriculturists were elected by the then Sarpanch of the Gram Panchayat, Members of the Panchayat Samiti and Members of the Zila Parishad; a list of the elected candidates has been produced as Annexure-P/4; from constituency No.7 one Smt.

Usha Devi was elected as Member.

The election of Chairman and Vice-Chairman was required to take place in the year 2011, but due to institution of S.B.Civil Writ Petition No.7698/2011 (Nagina Bai v.

State of Raj.

& Ors.) the said election could not take place; the writ petition pertained to election of Member of the Municipal Board, the writ petition was disposed of by order dated 09.08.2011 giving liberty to the State Government to pass a fresh order after giving an opportunity of hearing to said Smt.

Nagina Bai; again an order was passed on 19.10.2011, which was challenged by way of filing S.B.Civil Writ Petition No.10949/2011 and on account of pendency of the said writ petition, the election of Chairman and Vice-Chairman was not held; another writ petition being S.B.Civil Writ Petition No.10708/2011 was filed by one Birbal Ram praying for conducting election of the Chairman and Vice-Chairman; ultimately, both the writ petitions filed by Nagina Bai and Birbal Ram came to be disposed of by order dated 13.03.2015 on noticing that on account of fresh election of the Municipal Council, Hanumangarh, in terms of Section 7(5) of the

Act, the cause espoused by Nagina Bai had been rendered 3/9 infructuous and, consequently, it was directed that respondent would be at liberty to conduct the election of the Member of the Mandi Samiti from amongst the newly elected Members of Municipal Council, Hanumangarh in accordance with law.

In the writ petition filed by Birbal Ram, it was directed that election of Chairman and Vice-Chairman of the Mandi Samiti be held in accordance with law within a period of one month; the respondent No.4 Secretary of the Mandi Samiti sought direction to conduct the elections as per the directions of the Court and informed that one Smt.

Usha Devi elected as a Member from the agriculturists constituency has died on 23.03.2015; pursuant to the directions in the case of Birbal Ram, the Director, Agricultural Marketing directed the Authorized Officer (Election) SDM, Hanumangarh to conduct the election; whereafter, the authorized officer has sought the Commissioner, Municipal Council, Hanumangarh to elect the member from amongst the elected candidates and it is contended that as soon as the said election is conducted, the respondents would issue a notification for election of Chairman and Vice-Chairman of the Mandi Samiti.

A representation dated 20.04.2015 has been made by Members of the Mandi area seeking election of new Member in place of Smt.

Ushal Devi and another representation was made that as the electorate electing the agriculturists has since changed, the whole election of the agriculturists be conducted again and thereafter only the election of Chairman and Vice- Chairman be conducted.

On the representations sent to the Director, Market Produce, the impugned order Annexure-12 has been issued and 4/9 it has been clarified that under Rule 32 of the Rules, the election of the Chairman and Vice-Chairman has to be conducted from amongst the Members present and on account of death of a Member, the election of the Chairman or Vice-Chairman cannot be postponed and, therefore, the elections be held in terms of the directions issued by the Court.

It is submitted by learned counsel for the petitioner that once the fresh elections of Gram Panchayat, Panchayat Samiti and Zila Parishad have taken place in the month of February, 2015 and new voteRs.list has been issued containing the names of such MembeRs.in terms of provisions of Section 7(5) of the Act, the earlier Members would cease to be Members and, therefore, without holding election of new membeRs.the election of Chairman and Vice-Chairman cannot be held; it is further submitted that without filling up the vacancy created on account of death of Smt.

Usha Devi, the election of Chairman and Vice- Chairman cannot be held and, therefore, in view of the above two aspects, regarding which, representation was made to the Directorate, the direction Annexure-12 dated 24.04.2015 could not have been issued and the same being illegal deserves to be quashed and further directions deserve to be issued to conduct elections, after election of constituency No.7 in place of Smt.

Usha Devi and after holding fresh elections from the agriculturists.

It is submitted by learned counsel for the petitioner with reference to provisions of Sub-section 5 of Section 7 of the Act read with Rule 32 of the Rules that till such time that the quorum for election of Chairman and Vice-Chairman is complete, the 5/9 election cannot be held and the quorum would be of 17 Members as envisaged by Section 7 of the Act and in case there is any vacancy in the office of Member, the election cannot be validly held and admittedly one of the elected Members Smt.

Usha Devi has died, the election cannot be held; it is further submitted that Sub-section 5 of Section 7 provides that Member elected under Sub-section 1 shall cease to hold office as such Member, if he ceases to be a Member of the electorate, by which, or one of the persons by whom, he was elected; as the agriculturists have been elected by the Members of the Panchayati Raj Institutions, regarding which, fresh elections have been held in February, 2015, all the eight Members of the agriculturists constituency would cease to be Members and, therefore, the elections of Chairman and Vice-Chairman cannot take place by the said Members and on that count also the order impugned deserves to be set

aside.

I have considered the submissions made by learned counsel for the petitioner and have perused the material placed on record.

It would be appropriate to notice that under Section 7 of the Act, the Market Committee is constituted and it is provided that it would consist of 17 Members as the Mandi Samiti in the present case is a super class Market Committee.

The relevant provisions regarding the constitution of Market Committee read as under:- Section 7 7.

Constitution of Market Committees.

- (1) (a) Every super class and A class market committee shall be constituted as prescribed and shall consist of the following seventeen members.namely:- (i) Eight shall be agriculturists elected in the prescribed manner by such agriculturists or 6/9 institutions of the market area as the State Government may prescribe; (ii)(iii)(iv)(v)(vi)(vii) One shall be the person elected from amongst its own members by the Municipal Board or Municipal Council or Municipal Corporation or Gram Panchayat in which the principal market yard is situated; (viii)(5) A member elected under sub-sec.

(1) shall cease to hold office as such member, if he ceases to be a member of the electorate by which or one of the persons by whom he was elected.

(6)(7)(8) Every market committee shall elect one of its members to be its Chairman, and another member to be its Vice-Chairman: Provided that the Chairman shall be from amongst the members elected under sub-clause (i) of clause (a).or sub-clause (i) of clause (b).of sub-sec.

(1) of Sec.

7, as the case may be.

(9) No case of a market committee, or of any sub- committee thereof, or of any person acting as a member, Chairman, Vice-Chairman or Secretary shall be deemed to be invalid by reason only of some defect in the constitution or appointment of such market committee, sub-committee, member, Chairman, Vice-Chairman or Secretary, or on the ground that they, or any of them, were disqualified for such office, or that formal notice of the intention to hold the meeting of market committee or of the sub-committee was not duly given or by reason of such act having been done during the period of any vacancy in the office of the Chairman, Vice- Chairman, Secretary or member of such committee or sub-committee or for any other infirmity not affecting the merits of the case.

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Rule:- 2.

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Election of Chairman & Vice-Chairman of the Committee.

- (1) The Collector or any person authorised by him in this behalf shall call the fiRs.meeting of a newly constituted market committee to elect its Chairman and Vice-Chairman from amongst its members subject to Sec.

7(8) of the Act.

For the purpose of this election, the Collector or the person authorised by him in this behalf shall preside over the meeting but shall not vote.

(2)(3) If there is only one candidate for each of the offices of Chairman and Vice-Chairman he shall be declared to have been elected.

(4) If there are two or more such candidates, the votes of the members present at the meeting shall be taken.

(5) Every member wishing to vote shall be supplied with a voting paper on which the names of all the candidates for the office of Chairman or Vice- Chairman, as the case may be, shall be written legibly in English and in Hindi.

Every voting paper shall be initialled on the reverse by the President.

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A bare look at the provisions quoted hereinbefore would reveal that the eight agriculturists Members are to be elected by agriculturists or institutions of the market area as the State Government may prescribe.

Under Rule 6 of the Rules for the agriculturists constituency the Members of the institution are eligible including 8/9 the Sarpanch of the Gram Panchayat; the petitioner has produced the list of one of the constituency as Annexure-P/3, which consist of Members of Zila Parishad and Members of the Panchayat Samiti and Gram Panchayat; the elections were held in the year 2011 and vide Annexure-P/4 all the Members in terms of Section 7(1) were elected; however, for the reasons best know to the respondents, the election of Chairman and Vice-Chairman were not held.

A further look at the provisions of Sub-section 5 of Section 7 reveals that a Member elected under Sub-section 1 ceases to hold office as such Member if he ceases to be a Member of the electorate, by which, or one of the persons by whom he was elected.

The said provision essentially pertains to Members who get nominated/are represented on account of their holding a particular position i.e. Member of the Legislative Assembly, Member of Municipal Board/Gram Panchayat; the said stipulation under Sub-section 5 of Section 7 does not apply to the election of the agriculturists, inasmuch as, the agriculturists do not hold their position on account of their being Member of the electorate i.e. they are neither Members of the Zila Parishad, Panchayat Samiti or the Gram Panchayat; if the submission made by counsel for the petitioner is accepted then on account of any vacancy in the electorate i.e. the Gram Panchayat etc. on account of resignation, death or cessation of Membership from amongst the electorate, all the eight members would lose their membership, which submission cannot be countenanced in view of the express language of Sub-section 5 of Section 7.

So far as the submissions regarding the fact that one of 9/9 the elected members Smt.

Usha Devi has died and till such time that the vacancy created on account of her death is not filled, the election of Chairman & Vice-Chairman cannot be held is concerned, a look at the provisions of Sub-section 9 of Section 7 reveals that merely on account of vacancy in the office of the Member of the Market Committee, the Act of the Market Committee cannot be deemed to be invalid.

Further, from a look at the provisions of Rule 32 of the Rules, it is clear that the Rule which deals with election of Chairman and Vice-Chairman of the Committee, does not provide for any specific quorum and Sub-rules 4 and 5 of Rule 32 provide that the Members present at the meeting have to vote and even amongst the Members present only those who wish to vote are required to vote and, therefore, the submissions of counsel for the petitioner that till such time that all the 17 seats of Members are not filled, the elections cannot take place has apparently no warrant in law.

In view of the above discussion, the second submissions made by learned counsel for the petitioner also has apparently no basis and the same cannot be accepted.

In view of what has been discussed above, it cannot be said that the order Annexure-P/12 issued by the Director is invalid.

Consequently, there is no substance in the writ petition and the same is, therefore, dismissed.

The stay petition is also dismissed.

(ARUN BHANSALI).J.

A.K.Chouhan/- 43

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