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Asis Dutta and ors. Vs. State of West Bengal and ors.

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Court : Kolkata

Decided On : Feb-23-2006

Reported in : (2006)3CALLT41(HC),2006(4)CHN311

Judge : Jayanta Kumar Biswas, J.

Acts : West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 - Sectiones 4(1), 5(1), 5(2), 5(3) and 5(7); ;West Bengal Secieties Registration Act, 1961 - Sections 2, 4, 4(1), 4(2), 5(1), 5(2), 5(3), 5(7), 17 and 38

Appeal No. : W.P. No. 18232 (W) of 2005

Appellant : Asis Dutta and ors.

Respondent : State of West Bengal and ors.

Advocate for Def. : Keshab Bhattacharjee and; Hare Krishna Haldeder, Advs. for the State; Amalesh Roy and ; Abhisek Guha, Advs. for the Respondent No. 5

Advocate for Pet/Ap. : Bidyut Kumar Banerjee,; Shila Sarkar and; Arnab Roy, Advs.

Judgement :

Jayanta Kumar Biswas, J.

1.The six petitioners in this writ petition have raised the following issues: (i) whether the notification of the State Government No. 6715 dated December 21, 2000 issued under Section 5(2) of the W.B. Agricultural Produce Marketing (Regulation) Act, 1972 constituting the market committee for the area mentioned therein conforms to Section 5(1) of the Act; (ii) whether the notification of the State Government No. 6717 dated December 21, 2000 issued under Section 4(1) of the same Act declaring the localities specified therein as the principal market yard and the sub-market yards conforms to provisions in Section 2(m) of the Act, (iii) whether the notification of the State Government dated February 1, 2002 issued under Section 5(3) of the same Act constituting the market committee conforms to provisions in Section 5(3) of that Act, (iv) whether, assuming the market committee was duly constituted, it is empowered to function beyond the period of three years specified in Section 5(7) of that Act, and (v) whether without initiating any adjudication proceedings the market committee was empowered to levy fees from the petitioners who never admitted their liabilities.

2. I find that the first petitioner is the vice president of a society registered under the West Bengal Societies Registration Act, 1961. Question has arisen whether for the above-noted purposes the first petitioner has any right to approach the writ Court. Counsel says that the society intended to expouse the cause of its members some of whom are the remaining petitioners in the case.

3. In my view, not being a juristic person or a person aggrieved by any action taken by the responsents against it, the society is not entitled to approach the writ Court for the above-noted purposes. It would have been entitled to sue through its office bearer concerned, had the respondents in the writ petition or any one of them taken any action against the society. That is not. the case. Hence, I hold that the first petitioner, or for that matter the society, is not entitled to maintain the writ petition, though it is maintainable at the instance of the other petitioners.

4. As to constitution of the market committee, as was done by the State Government by issuing the notification No. 6715 dated December 21. 2000, counsel for the petitioners contends that it is apparent on the face of the notification that for several market areas one market committee was constituted.

He refers me to Section 5(1) of the Act and submits that according to mandate of the statute for every market area a market committee is to be constituted. According to him the notification contravenes provisions in Section 5(1) of the Act.

5. To this, counsel for the market committee submits that in the market area only several police stations were included, and that it is not correct to say that for more than one market area one market committee was constituted by the notification in question. He refers me to the notification No. 6718 dated December 21, 2000, and says that that was issued declaring the market area concerned containing a large area falling within the jurisdiction of as many as eight police stations. He cites to me the apex Court decision in Ram Chandra Kailash Kumar and Co. and Ors. v. State of U.P. and Anr., reported at 1980 supp. SCC 27,

6. I agree with counsel for the market committee that the notification No. 6715 constituting the market committee does not contravene provisions in Section 5(1) of the Act. It is true that there is some confusion about the expression 'the market area noted against each' used in the notification; but once the notification is read and considered in the context of the other notification (No. 6718) declaring the market area itself, in my view, it cannot be said that in contravention of Section 5(1) for more than one market area one market committee was constituted.

7. In the decision given to me it was held by their Lordships, '..Declaration of big areas as market areas does not offend any provision of law. Any area big or small including towns and villages can be declared as market area under Section 6 of the Act.' (from para 10 of the report). In my considered view, in this case the market committee was validly constituted for the market area in which, in fact, a large area was included. Inclusion of a large area in a market area is not prohibited by any provision of the Act.

8. With respect to the notification No. 6717 it is argued that the expression 'principal market yard' having been defined by Section 2(m) of the Act to mean, '..enclosure, building or locality within the market area declared to be a principal market yard under Section 4,' the State Government was not competent to issue the notification declaring the entire Balurghat Municipal area as the principal market yard. In reply, counsel for the market committee argues that since the

principal market yard can also be a locality, the notification declaring the entire Balurghat Municipal area as the principal market yard did not contravene provisions in Section 2(m) of the Act.

9. It seems to me that counsel for the petitioners is right in what he says. The word 'locality' used in Sections 2(m) and 4 of the Act is not to be read in isolation. For giving the meaning that it actually conveys it is to be-read in association with the other words preceding it in the same sentence. The other words are 'enclosure,' and 'building.' The provisions also empowered the State Government to declare other enclosures, buildings or localities of the principal market yard to be one or more sub-market yards.

10. The purposes of notifying the yards can be seen from the other provisions of the Act, and in particular from Section 4(2). It empowered the State Government to declare by notification that no one shall set up. establish or continue or allow to be continued any place for the purchase, sale, storage or processing of any agricultural produce within such distance of the market yard as may be specified in the notification. Therefore the object of notifying a market yard is to prevent various kinds of transactions, viz. purchase, sale, storage or processing of any agricultural produce, from taking place outside the notified yard.

11. There is no dispute that the entire Balurghat Municipal area is not a pure market area. All the people residing within the municipal area are not engaged in activities covered and governed by provisions of the Act. The notification gave rise to an absurd situation that any one within any part of the municipal area, admittedly a vast area, would be entitled to set up a place for purchase, sale, storage or processing of any agricultural produce. It may also be said that the entire Balurghat municipal area has been treated by the State Government like an enclosure or a building. The word 'locality' used by the legislature must be understood in the sense or senses analogous to the ones conveyed by the words 'enclosure' and 'building'. In my opinion, the notification No. 6717 contravenes the object, spirit, and mandate of Sections 2(m) and 4 of the Act, and hence it is liable to be quashed.

12. As to the constitution of the market committee, it is argued that it is apparent on the face of the notification No. 523 dated February 1, 2002 that two persons representing the licensed traders doing business in agricultural produce in the market were not included in it, and hence the committee cannot be said to be duly constituted. Counsel for the market committee points out that last proviso to Sub-section (3) of Section 5 of the Act empowered the State Government to constitute a market committee without appointing some categories of persons, including the category mentioned in Clause (f) of that Sub-section (3).

13. Counsel for the market committee is right in saying that the State Government possessed the power to constitute the committee without appointing the persons mentioned in Section 5(3) (f). But I think the State Government is empowered to act in such a manner only when it decides to appoint the excluded persons subsequently. The power cannot be used to exclude those persons for the entire term of the committee. Strictly speaking, exactly such a thing has happened in this case.

14. The market committee was constituted by the notification dated February 1, 2002. The term of office of the members of the committee was three years from February 9, 2002. The members appointed by the notification assumed office, and no one was ever appointed from the category mentioned in that Clause (f). It was never the intention of the legislature to confer a power on the State Government to constitute a committee totally excluding some categories of persons. The power was conferred only for taking care of an immediate need for a committee. The State Government was to exercise the power bonafide.

15. Its conduct shows that it did not exclude the category of persons in question because it felt any urgent need to constitute the committee, but it really wanted not to include those persons in the committee. In my opinion, the action has amounted to gross abuse of the statutory power. Counsel for the market committee has argued that the statute did not fix any time for appointing the initially excluded persons as members of the committee. That is no excuse for the State Government not to take the steps within a reasonable period, it took no steps for more than four years.

16. It is contented that the persons appointed as members of the committee were not entitled to remain in office after February 9, 2005 (when the three year term expired), and hence that committee, being functus officio, has no authority to act for any purpose. This contention has been countered by counsel for the market committee by saying that provisions in Section 5(7) of the Act permitted those members to remain in office till the date of the first meeting of the succeeding market committee at which a quorum is present.

17. I find that counsel for the market committee is right in his interpretation of the provisions in Section 5(7) of the Act. The members of the committee appointed by notification dated February 1, 2002 are to remain in office till the date of the first meeting of the succeeding market committee at which a quorum is present. I wonder whether the state government has taken improper advantage of this special provision made by the legislature to ensure that no vacuum is created in the functioning of the market committee. '

18. Conduct of the State Government, in my opinion, leads to the conclusion that it wanted to plant the members named in the notification dated February 1, 2002 as the permanent members of the market committee. It is not known what prevented it from appointing the succeeding market committee after February 9, 2005. If the argument that the committee appointed by notification dated February 1, 2002 can remain in office for an indefinite period, is to be accepted, then, in my view, one has to forget the purpose for which the legislature fixed the term of office. The State Government must take necessary steps in advance for appointing the succeeding committee, so that no committee ordinarily remains in office for more than three years.

19. I am, however, unable to agree with counsel for the petitioners that the committee appointed by the notification dated February 1, 2002 has lost power and right to function as such. It is necessary to put on record that he has referred me to a single bench decision of this Court in Saktipada Karmakar v. W.B. Board of Secondary Education and and Ors. reported at 1972 CLJ 148. That was a case regarding tenure of a managing committee constituted under provisions of the Management of Recognized Non-Government Institutions (Aided and Unaided)

Rules, 1969. That decision cannot be put into use in the present case for the simple reason that here the provisions in Section 5(7) of the Act permit a committee to remain in office even beyond the fixed tenure.

20. Regarding the last contention of the petitioners, it is argued that in exercise of power conferred by Section 17 of the Act the committee arbitrarily levied fees from the petitioners for the second time in that for the transactions they had paid fees to some other market committee, the market committee in question levied fees once again, though there were no transactions at any part of the market area falling within the jurisdiction of the committee.

21. There is no dispute that fees were levied by the committee. There is also no dispute that the petitioners paid the fees without raising any objection. There is also no dispute that they never called upon the market committee to initiate adjudication proceedings for determining the liability. It is pointed out that neither in the provisions of the Act nor of the rules made by the State Government in exercise of power conferred on it by Section 38 of the Act, any method or procedure has been mentioned or prescribed for initiating adjudication proceedings when a person called upon to pay fees disputes his such liability.

22. In my view, the market committee should not levy fees in disputed cases, without initiating adjudication proceedings in which the person concerned is to be given an opportunity to prove that claims on the basis whereof the' committee demanded fees are factually incorrect, Section 17 says the presumptions regarding sale and storage of agricultural produce within the market area are rebuttable. It means that if the market committee demands fee for a transaction describing it as a sale or a storage within the market area, the person concerned has a right to prove that no sale or storage having taken place he is not liable to pay any fee.

23. If this is the clear provision of law, as it is in Section 17, by no reasoning it can be said that the committee is not under any obligation to initiate any adjudication proceedings before levying and demanding fees from a persons who disputes his such liability. True it is that the provisions in the Act and the rules do not speak of any method or prescribed procedure for initiating and carrying into logical

conclusion any adjudication proceedings for the purpose. But in the face of provisions in Section 17 of the Act, to my mind, it cannot be said that for mere absence of provisions requiring initiating of adjudication proceedings, the committee is empowered to levy and demand fee simply because according to it the person concerned is liable to pay fee.

24. In my opinion, the State Government ought to have taken care of the situation while making the rules in exercise of power conferred on it by Section 38 of the Act. By that Section it was given power to make rules for carrying out the purposes of the Act. In exercise of such general rule making power, and in the context of clear provisions in Section 17 of the Act regarding the requirement of giving opportunity to the person disputing his liability, the State Government ought to have made necessary rules prescribing the procedure for initiating and deciding adjudication proceedings by the committee. Such rule having not been made, I think it is time that the State Government considers the situation and takes the appropriate step.

25. For these reasons I hold that the notification No. 6717 dated December 21, 2000 declaring the entire Balurghat municipal area as the principal market yard, and the other places mentioned therein as the sub-market yards is liable to be quashed. I find no reason to interfere with the notification No. 6715 dated December 21, 2000 regarding constitution of the market committee for the market area mentioned therein. I do not find any reason either to say that the committee constituted by the notification dated February 1, 2002 is not empowered to remain in office. I am not inclined to make any order directing the market committee to initiate adjudication proceedings regarding the transactions for which fee was levied from the petitioners in the past. Such an order is bound to create undersirable complications for all the parties. I accordingly make the following orders.

26. The Notification No. 6717 dated December 21, 2000 is hereby quashed. Within three weeks from the date of receipt of a copy of this order the respondents (including the State Government) shall take necessary steps for appointing the succeeding committee for the market area concerned. Within six weeks from the

date of receipt of a copy of this order they shall appoint the succeeding committee and direct the succeeding committee to assume office. If in the succeeding committee any category mentioned in the last proviso to Sub-section 3 of Section 5 of the Act is not appointed, then within eight weeks from the date of constitution of the succeeding committee, the respondents (including the State Government) shall take necessary steps for appointing those persons in the succeeding committee.

27. The State Government shall meaningfully consider the question of making the requisite rule prescribing the procedure for initiating and deciding adjudication proceedings for carrying out the purposes of provisions in Section 17 of the Act. and steps for this purpose shall be taken at once. Till rules are made by the State Government for the purpose, the market committee shall not levy, demand, and recover any fee from any person, if such person, when called upon to pay fee for transaction, disputes his such liability, unless the disputes are adjudicated. In such a case the committee shall initiate adjudication proceedings, and after giving the person concerned reasonable opportunity to present his case and also to defend himself, shall bring the proceedings to logical conclusion by making final order either levying fee or giving decision in favour of the person, as the case may be. Such procedure shall be followed by the committee from the moment this order is communicated to it.

I make it clear that the State Government will be at liberty to issue fresh notification declaring the principal market yard and the sub-market yards, if it finds the necessity. The writ petition is accordingly disposed of. There shall be no order for costs in it.

Urgent certified xerox copy of this order shall be supplied to the parties, if applied for.

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