

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

THE MARKET COMMITTEE, KARNAL AND OTHERS,—*Petitioners.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 1813 of 1969

February 12, 1970.

Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 12, 14, 17 and 36—Punjab Agricultural Produce Markets (Election to Market Committees) Rules (1961)—Rule 34—State Government—Whether duty-bound to hold elections of Market Committees within the prescribed time—Neglect of the Government to hold such elections—Whether entitles the previous elected members of the Committee to continue after three years and till fresh election are held—Term of elected members of the Committee expiring and no one elected to replace them—Resort to section 36—Whether can be had in such situation.

Held, that it is evident from Rule 34 of Punjab Agricultural Markets (Election to Market Committees) Rules, 1961, that State Government is to call upon the Deputy Commissioner to hold elections to the Market Committee and the Deputy Commissioner is bound to hold them and communicate their result to the State Government within three months of the date on which the direction is issued by the Government. It follows that it is the duty of the Government to call upon the Deputy Commissioner to hold election within time so that the elected Market Committees continue to exist without a break in order to carry out the object of the Act in constituting elected Market Committees for the market areas. It is specifically provided in section 11 of Punjab Agricultural Produce Markets Act, 1961, that the State Government shall by notification establish a Market Committee for every notified market area and shall specify its headquarters. The object of the Act will be frustrated if the State Government ignores or neglects to establish Market Committees in accordance with the provisions of section 12 of the Act, particularly because various kinds of duties and powers have been entrusted to the Market Committees.

(Para 3).

Held, that the neglect of duty on the part of the Government to have the members of the Market Committee elected within time does not entitle the previous members of the Market Committee elected for three years under section 14 of the Act, to continue in office after the expiry of three years and till fresh elections are held. A part of proviso to section 17(1) of the Act is quite unintelligible but that part cannot be interpreted to mean that every member of the Market Committee elected under the provisions of section 12 of the Act shall continue to hold office till his successor is elected and thus the members of a Market Committee once elected will continue to hold office till a new Market Committee is established irrespective of the period of three years. Such an interpretation put

on the provisions of section 17 of the Act goes counter to the intention of the legislature expressed in section 14 and section 17(1) and (2) of the Act.
(Para 3).

Held, that section 36 of the Act does not use the expression "emergency" but states, "if at any time the State Government is satisfied that a situation has arisen in which the purposes of this Act cannot be carried out in accordance with the provisions thereof,.....". Only the marginal heading to the section speaks of "Emergency powers" but in view of the language used in the section itself, all that the State Government has to see is that a situation has arisen in which the purposes of the Act cannot be carried out in accordance with the provisions thereof. If the term of office of the elected members expires and no one is elected to replace them, the situation can be said to have arisen in which the purposes of the Act cannot be carried out in accordance with the provisions thereof and in such a situation resort to section 36 of the Act can be had.
(Para 5).

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing the recommendation of the Board, dated 11th June, 1969 and the decision of the Government to issue Notification under Section 36 of the Act and further directing Respondent No. 1 not to issue the proposed notification under section 36 of the Act; and direction issued to respondent No. 2 to withdraw their oral instructions given to the Secretary to the Market-Committee not to put up the papers before the Chairman of the Committee from 19th July, 1969 and to issue fresh instructions to the Secretary to recognise the existing elected Committee and allow it to function as usual till new elected members assume office; a direction be issued to hold and complete elections to the Market Committee, Karnal, before 5th of September, 1969 or as soon as thereafter as possible and to allow the existing elected Committee to function till then; an ad interim order be issued directing the respondent not to interfere with the functioning of the existing elected Committee pending the decision of this writ petition or till a new elected Committee assumes office, whichever is earlier.

ANAND SWAROOP, SENIOR ADVOCATE, WITH N. C. JAIN, R. S. MITTAL AND PARAMJIT SINGH, ADVOCATES, for the petitioners.

S. SARUP, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA), HARBHAGWAN SINGH, ADVOCATE, FOR RESPONDENT 2 (MRS. ADARSH, ADVOCATE, WITH HIM), for the Respondents.

JUDGMENT

TULI, J.—A Market Committee was established for the notified market area of Karnal under section 12(4) of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter called the Act), with its headquarters at Karnal. This Committee consisted of members nominated by the State Government. Thereafter, on April 4, 1965.

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elections to the Market Committee were held under section 12(2) of the Act and petitioners 2 to 9 were declared elected. The names of the elected members were gazetted in accordance with sub-rule (13) of rule 19 of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961 (hereinafter called the Rules). According to section 12 of the Act, one of the members of the Market Committee is to be nominated by the State Government from amongst its officials and the Agricultural Inspector was nominated as such. It is stated by the petitioners that actually they took office on September 5, 1966, on which date the first meeting of the Market Committee was held and a Chairman and Vice-Chairman were elected. The elected members entered upon their duty and assumed office on that date and it was also from that date that the Committee started functioning. One of the elected members, Shri Kishan Chand, died on January 8, 1967, and in the vacancy caused by his death, Shri Ishwar Singh was appointed as a member of the Committee under section 17 of the Act. No elections to the Market Committee have been held thereafter and the contention of the petitioners in the present writ petition is that they continue to be the members of the Market Committee which is deemed to continue, whereas the Marketing Board is of the view that the elected members of the Market Committee ceased to hold office after the expiry of three years from the date of their appointment, and, therefore, they are not entitled to continue as members of the Market Committee. It is the correctness of these contentions that requires adjudication.

(2) The relevant sections of the Act are sections 12, 14 and 17, which read as under:—

“12. (1). A Market Committee shall consist of nine or sixteen members as the State Government may in each case determine, out of whom one may be appointed by the State Government from amongst its officials :

Provided that where in a notified market area there is in existence a Co-operative Society, the Committee shall consist of ten or seventeen members as the case may be.

- (2) The remaining members shall be elected in the prescribed manner by the following persons as provided hereunder, that is to say,—
- (a) if the Committee is to consist of nine members, there shall be elected—
 - (i) five members from producers of the notified market area, by the Panches and Sarpanches of the Gram Panchayats situated within the notified market area ;
 - (ii) two members from persons licensed under section 10 for the notified market area concerned, by the persons holding licences under that section ; and
 - (iii) One member from persons licensed under section 13, by the persons licensed under that section ;
 - (b) if the Committee is to consist of ten members, there shall be elected, in addition to the members specified in sub-clauses (i), (ii) and (iii) of clause (a), one member representing the Co-operative Societies, by such Societies ;
 - (c) if the Committee is to consist of sixteen members, there shall be elected—
 - (i) nine members from producers of the notified market area by the Panches and Sarpanches of the Gram Panchayats situated within the notified market area ;
 - (ii) four members from persons licensed under section 10 for the notified market area concerned, by persons licensed under that section; and
 - (iii) two members from persons licensed under section 13, by persons licensed under that section ;
 - (d) if the Committee is to consist of seventeen members, there shall be elected, in addition to the members specified in sub-clauses (i), (ii) and (iii) of clause (c),

one member representing the Co-operative Societies,
by such Societies :

Provided that the producers elected under this sub-section shall be persons who are residents of the notified market area:

Provided further that where, in the case of sub-clause (iii) of clause (a), or sub-clause (iii) of clause (c), there are no persons licensed under section 13 or the number of such persons is less than four, the requisite number of such persons shall be elected jointly by persons licensed under section 10 and section 13.

- (3) The election of members referred to in sub-section (2), shall be made and communicated to the State Government within the period prescribed in this behalf which shall not be less than two months and thereupon the State Government shall notify such election in the official gazette :

Provided that if within the period aforesaid the election is not made and communicated to the State Government or the requisite number of persons are not elected and communicated, the State Government may appoint the requisite number of persons to the Committee on its own motion and notify the appointment so made.

- (4) Notwithstanding anything contained in the foregoing sub-sections and section 16, where a Committee is constituted for the first time all the members including the Chairman and Vice-Chairman thereof shall be nominated by the State Government and subject to the provisions of section 17, such members shall hold office for a period not exceeding three years as may be prescribed.

- (5) No act done by the Committee shall be called into question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

- (6) Subject to rules made under this Act, the disqualifications specified in sub-section (5) of section 3 shall also apply for purposes of becoming a member of a Committee.

(14) Subject to the provisions of section 17, every member of a Committee, other than a Committee constituted under sub-section (4) of section 12 shall hold office for a period of three years from the date of his appointment.

17. (1) Whenever any member dies, resigns, ceases to reside permanently in the notified market area or becomes incapable of acting as a member of a Committee or any vacancy occurs through transfer or removal in accordance with the provisions of section 15 or otherwise, the State Government may appoint a member to fill in such vacancy in accordance with the provisions of section 12:

Provided that the term of office of the member so appointed shall expire on the same date as the term of office of the vacating member would have expired had the latter held office for the full period allowed under section 14 unless there be delay in appointing a new member to succeed the member first mentioned above in which case it shall expire on the date on which his successor is appointed by the State Government.

(2) Should the State Government decide to raise the number of members of an existing Committee from 9 to 16, the additional vacancies shall be filled in accordance with the provisions of sub-section (1) and the term of office of the additional members appointed shall be the unexpired portion of the term of the existing members of the Committee."

(3) The State Government framed the Rules for the purposes of holding elections to the Market Committees. Rule 3 provides for the preparation and publication of electoral rolls and rules 5 to 19 provide for election programme and the holding of elections.

Rule 34 provides:—

"The election of members referred to in sub-section (2) of section 12 shall be made and communicated by the Deputy Commissioner within a period of three months of the date on which direction is issued by the Government to the Deputy Commissioner."

It is thus evident from this rule that State Government is to call upon the Deputy Commissioner to hold elections to the Market Committees and the Deputy Commissioner is bound to hold them and communicate their result to the State Government within three months of the date on which the direction is issued by the Government. It follows that it is the duty of the Government to call upon the Deputy Commissioner to hold elections within time so that the elected Market Committees continue to exist without a break in order to carry out the object of the Act in constituting elected Market Committees for the market areas. It is specifically provided in section 11 of the Act that the State Government shall by notification establish a Market Committee for every notified market area and shall specify its headquarters. The object of the Act will be frustrated if the State Government ignores or neglects to establish Market Committees in accordance with the provisions of section 12 of the Act, particularly because various kinds of duties and powers have been entrusted to the Market Committees. Resort to section 36 of the Act should be had in very rare and emergent cases and not because the Government has failed to carry out its statutory duty under the Act, but the neglect of duty on the part of the Government to have the members of the Market Committee elected within time does not, in my opinion, entitle the previous members of the Market Committee elected for three years under section 14 of the Act, to continue in office after the expiry of three years and till fresh elections are held, as has been strongly urged by the learned counsel for the petitioners. Section 14 specifically provides that every member of a Committee elected under section 12 shall hold office for a period of three years from the date of his appointment. The date of appointment of an elected member shall be the date on which his election is notified in the official gazette. This section is, however, subject to the provisions of section 17, which deals with the filling of vacancies. Section 17 enables the State Government to appoint a member, in accordance with the provisions of section 12, to fill a vacancy of a member who dies, resigns, or ceases to reside permanently in the notified market area or becomes incapable of acting as a member of a Committee or a vacancy occurs through transfer or removal in accordance with the provisions of section 15, or otherwise, and the person so appointed shall hold office till the time the vacating member would have continued to be a member of the Committee, which means that tenure of office of the member appointed to hold the vacancy shall not exceed the original term of three years for which the vacating member had been

electd. There is, however, a part of the proviso to section 17(1) of the Act which is quite unintelligible and that part of the proviso reads—

“unless there be delay in appointing a new member to succeed the member first mentioned above in which case, it shall expire on the date on which his successor is appointed by the State Government.”

The term of office of a member appointed under this part of the proviso shall be till his successor is appointed. It is, however, not understood how such member will continue to constitute the Market Committee when the period of office of other members of the Committee expires. This part of the proviso, however, does not persuade me to hold that every member of the Market Committee elected under the provisions of section 12 of the Act shall continue to hold office till his successor is elected and thus the members of a Market Committee once elected will continue to hold office till a new Market Committee is established irrespective of the period of three years. Such an interpretation put on the provisions of section 17 of the Act goes counter to the intention of the legislature expressed in section 14 and section 17(1) and (2) of the Act. It cannot be said that the legislature was not aware of the fact that cases may occur where it is not possible to hold elections to a Market Committee in time to succeed the previous Market Committee elected for three years. In section 13(2) of the Punjab Municipal Act, it has been provided that the term of office of elected members shall be fixed by the State Government by rules made under that Act, and may be fixed so to provide for the retirement of members by rotation: but shall not exceed three years. But, the very next subsection provides:—

“Notwithstanding anything contained in sub-section (2) or in any rules made by the State Government thereunder, an outgoing member shall, unless the State Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take the oath of allegiance.”

If the legislature had intended that the members of a Market Committee shall continue to hold office till their successors are elected or appointed, it would have made a provision like the one contained in

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section 13(3) of the Punjab Municipal Act. In the bye-laws of various Co-operative Societies registered under the Punjab Co-operative Societies Act, there existed a provision that each Director/member of the Committee shall hold office for three years, but it was found by the Registrar of Co-operative Societies in 1968, that many Directors/members of the Committees had continued to hold office even after the expiry of the period of three years without holding fresh elections. He then issued a circular letter to the Co-operative Societies bringing it to their notice that the Directors/Members of the Committees on completion of their tenure according to the provisions of the bye-law shall retire automatically from the date on which the tenure ends. The Punjab Government also promulgated an Ordinance called "Punjab Co-operative Societies (Amendment) Ordinance (2 of 1968)", whereby sub-section (3-A) was inserted after sub-section (3) in section 26 of the Punjab Co-operative Societies Act, 1961, reading as under:—

"Where for any reason the number of members of the Committee of a Co-operative Society falls short of the quorum prescribed in the bye-laws of the Society for a meeting of the Committee, then notwithstanding anything contained in sub-section (1), the Registrar may nominate such number of members of the Committee not exceeding the total number of vacancies, as he may deem fit. A member so nominated shall cease to hold office when the vacancy, against which he is nominated, is filled by election or a period of one year has expired from the date of his nomination whichever event occurs earlier."

The constitutional validity of new sub-section (3-A) was challenged in this Court by means of a writ petition *Ch. Bishan Dass and others, v. The Governor of the Punjab and others* (1), which came up for hearing before my Lord the Chief Justice and myself and it was held therein that the provision made by sub-section (3-A) was a valid piece of legislation as the continuance in office of the members of the Managing Committees of Co-operative Societies after the expiry of their full terms of office was illegal.

(4) A Division Bench of the Madras High Court, in *A. Ananthalakshmi Ammal and another v. The India Trades and Investments Ltd., and another* (2), held, in respect of the companies registered under

(1) I.L.R. (1969) 2 Pb. & Hr. 413.

(2) A.I.R. 1953 S.C. 467.

the Indian Companies Act, that the Directors who were due to retire at the annual meeting next to that held on previous occasion should be held to have vacated their office on the last date on which the annual meeting should have been held and in consequence they ceased to be Directors after such last date. This was irrespective of the fact whether the next annual meeting was held within time or not. The matter with regard to companies came up for decision before a Division Bench of the Bombay High Court, in *Krishnaprasad Jwaladutt Pileri v. Colaba Land and Mills Co. Ltd., and others* (3), and the learned Judges held :—

“A person who is to cease to be a Director by retirement at the expiry of a stated time cannot claim to have escaped—such retirement simply because an annual general meeting had not been called as required by law within that time. Section 256 does not include those, who vacated their office. It only applies to Directors who had not already vacated their office or ceased to be Directors by operation of any provision of law. It has nothing to do with the tenure of the office of a Director in the proper sense of that expression. The marginal note of section 256, which we may look at for the purpose of seeing the trend of the section, speaks of ascertainment of Directors retiring by rotation and filling of vacancies. It does not lay down any substantive rule as to the tenure of the office of a Director. It is not the only section which has to be considered. We have to ascertain the tenure of the office of an elected Director not merely from that section but from the language of sections 166, 255 and 256 read together.

In the context of the tenure of the office of an elected Director, the general meeting at which a Director liable to retire by rotation ‘shall’ retire from office’ must, in our judgment, be understood to be a general meeting called in accordance with the mandatory provisions of section 166. It is extremely difficult to see how that tenure of office can be extended simply by not calling the annual general meeting and taking shelter under the language of section 256 which, as we have already said, does not lay down any substantive provision relating to the tenure of the office of an elected

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Director. Mr. Bhabha, learned counsel for respondents 9 and 10, is, in our opinion, right when he says that persons who have committed a breach of their duty by not calling the required annual general meeting within the statutory time cannot be permitted to say that they have not vacated their office because in fact an annual general meeting has not been called. What we have to consider is the meaning and effect of the sections to which we have already made reference and reading those sections, we find little difficulty in reaching the conclusion that a Director vacates his office at the latest on the last day on which an annual meeting could have been called as required by section 166."

I am in respectful agreement with the view expressed by the learned Judges of the Bombay High Court in the case just referred to and on the same reasoning I hold that even if the Government fails in its duty to hold the elections for a Market Committee in time, the previously elected members who are holding office only for three years from the date of the appointment, cannot claim to continue in office after the expiry of that period on the ground that no members have been elected to succeed them. On this ground, the petition filed by the petitioners deserves to be dismissed.

(5) The learned counsel for the petitioners has then sought to argue that the Government can resort to the provisions of section 36 of the Act only in a case of emergency and it cannot be said that an emergency has arisen when the situation has been created by the negligent conduct of the Government itself in not holding the elections within time. The learned counsel refers to the meaning of the expression "emergency" as given in *Board of Foreign Mission of General Synod, v. Z. A. Samuel* (4), by their Lordships of the Supreme Court. According to their Lordships, the expression 'emergency' ordinarily means an unexpected occurrence or set of circumstances demanding immediate action, or sudden necessity. That is not the only meaning of the expression "emergency". Section 36 does not use the expression "emergency" but states, "if at any time the State Government is satisfied that a situation has arisen in which the purposes of this Act cannot be carried out in accordance with the provisions thereof,". Only the marginal heading to the section speaks of "Emergency powers" but in view of the language used in the section itself, all

(4) C.A. No. 1316 of 1967 decided on 7th August, 1969.

that the State Government has to see is that a situation has arisen in which the purposes of the Act cannot be carried out in accordance with the provisions thereof. If the term of office of the elected members expires and no one is elected to replace them, the situation can be said to have arisen in which the purposes of the Act cannot be carried out in accordance with the provisions thereof and in such a situation a provision has to be made to continue the working of the Market Committees. The situation may have come about in any manner even by the neglect of duty by the State Government. Such a neglect of duty on the part of the Government and its officers deserves to be deprecated as it frustrates the objects of the Act, but it does not give any right to the member, whose tenure of office has expired, to continue in office till their successors are elected.

(6) After giving the matter my careful thought, I am of the opinion that the petitioners have no right to claim that they continue in office as members of the Market Committee even when their period of office expired on July 20, 1969, because of the fact that the State Government has not chosen to hold fresh elections to the Market Committee. It is to be regretted that the Additional Administrative Officer, State Agricultural Marketing Board, in his memo. No. Dev./15243, dated June 11, 1969, written to the Deputy Secretary to Government, Haryana, Agriculture Department, only pointed out that the term of the members of the Market Committee, Karnal, would expire on July 20, 1969, on the completion of three years and it would be necessary to appoint an Administrator for that Market Committee from July 21, 1969. It should also have been suggested that steps should be taken expeditiously to hold fresh elections to the said Market Committee. The result is that no fresh elections have been held to date. It is thus a fit case in which a *mandamus* should be issued to the State Government to do its statutory duty of holding elections to the Market Committee in order to constitute it in accordance with section 12 of the Act.

(7) I accordingly accept this writ petition only to the extent of directing the State Government to hold fresh elections to the Market Committee, Karnal, in accordance with the provisions of section 12 of the Act, and the relevant rules on the subject, within a period of four months. In all other respects, the writ petition is dismissed. Since the matter was not free from difficulty, I leave the parties to bear their own costs.

N. K. S.