

Hargian Singh etc. v. The State of Haryana etc. (Gopal Singh, J.)

Supreme Court in *Cochin Company v. Commissioner of Income-tax, Kerala* (2), and their Lordships took the view that in certain circumstances reconditioned machinery can be new machinery. In the present case material facts have not been determined and noticed in the statement of the case so as to enable us to determine the question satisfactorily. We, therefore, remit this part of the case to the Tribunal to find proper facts in the light of the Supreme Court decision in *Cochin Company's case* (2) and submit a supplementary statement of facts to us. This is necessary to enable us to justly determine the second question.

(6) We will deal with the matter of costs when the matter is finally disposed of, after the receipt of the supplementary statement of facts.

**K. S. K.**

CIVIL MISCELLANEOUS.

*Before D. K. Mahajan and Gopal Singh, JJ.*

**HARGIAN SINGH ETC.,—Petitioners**

*versus*

**THE STATE OF HARYANA ETC.—Respondents.**

**Civil Writ No. 2756 of 1970.**

May 4, 1971.

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—Section 12, as substituted by Punjab Agricultural Produce Markets (Haryana Amendment) Act (XXV of 1970), and section 16—Constitution of India (1950)—Article 14—Substituted section 12 taking away the right of election to the Market Committee—Whether undemocratic and violates Article 14 of the Constitution—Nominated Market Committee after the coming into force of section 12—Whether has the right to elect a Chairman and Vice-Chairman.*

*Held*, that there does not inhere in any person the right of election to the office of a member of a Market Committee. It is entirely for the legislature to provide for constitution of market committees either by process of election of its members or by their nomination. The legislature by

Punjab Agricultural Produce Markets (Haryana Amendment) Act, 1970, substituting section 12 in the principal Act has chosen to constitute the market committee by nomination and not by election. As the State Legislature does not lack legislative power to make provision for nomination of the members of the market committees instead of their members being elected the substituted section 12 is not undemocratic. (Para 9)

*Held*, that by virtue of the Amendment Act, section 12 of the principal Act has been amended for the entire State of Haryana. All market committees in that State, in so far as the introduction of the element of nomination of members of market committees in place of their election is concerned, stand at par. No discretionary power, much less one of unfettered character has been conferred, the substituted section 12 on the State Government entitling it to arbitrarily pick and choose notified market areas for constitution of market committees either by election or by nomination. After amendment, the only rule in force uniformly for all market committees in the State is the rule of nomination. Hence section 12 is not violative of Article 14 of the Constitution of India. (Para 10)

*Held*, that section 16 of Punjab Agricultural Produce Act, 1961, conferring power upon a market committee to elect from amongst its members a Chairman and a Vice-Chairman has remained untouched and intact in the principal Act in spite of the other provisions of the principal Act having been altered or amended. Section 16(1) of the Act leaves no doubt that a market committee, whether it was elected before the Amendment Act came into force or is nominated under section 12 as amended by the Amendment Act is entitled to elect a Chairman and a Vice-Chairman of the Committee. (Para 11)

*Writ Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the Punjab Agricultural Produce, Markets (Haryana Amendment) Act No. 25 of 1970 and further praying that the election of office bearers held on 29th August, 1970, be quashed.*

J. K. SHARMA, ADVOCATE, for the petitioners.

C. D. DEWAN, ADDITIONAL ADVOCATE-GENERAL, HARYANA, G. C. GARG,  
AND J. V. GUPTA, ADVOCATES, for respondents Nos. 2 to 4, 6 to 17.

#### JUDGMENT

The judgment of this Court was delivered by :—

GOPAL SINGH, J.—(1) This is writ petition by Hargian Singh as a producer of agricultural produce, Lakshmi Chand as a licensee under section 10 of the Punjab Agricultural Produce Markets Act, 1961 as extended to the State of Haryana, hereinafter called 'the Act' and Mansa Ram, a weighman. The petition has been filed against the State of Haryana and others.

(2) The facts and the provisions of the Act relevant to the points raised in the petition are as follows :—

(3) The object of the Act is better regulation of purchase, sale, storage and processing of agricultural produce and the establishment of markets for agricultural produce in the State of Punjab. The definition of the word, 'Committee' is given in Section 2(d). It means a market committee established and constituted under sections 11 and 12. Under section 6, the State Government has, by notification to declare certain areas to be notified market areas for the purpose of this Act. Under section 11, the State Government has by notification, to establish a market committee for every notified market area. Section 12 runs as follows :—

“(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 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 licenses 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.”

(4) The following two clauses of sub-section (2) of Section 43 conferring powers upon the State Government to make rules for carrying out the purposes of the Act run as follows :—

“(i) the appointment or election and mode of election, as the case may be, of members of the Board, Advisory Committees and Committees and their removal;

(ii) the election of the Chairman and Vice-Chairman of Committees, their powers and terms of office.”

(5) Under Section 11 of the Act, the State Government notified for establishment of market committee for the notified market area of Samalkha. In 1965, election of the members of the Market Committee of Samalkha was held and the Market Committee constituted as provided in Section 12 of the Act. As the members were elected for a period of three years, the term of office of the elected members was to come to end in 1968. No elections were held in and after 1968 and consequently no market committee could be constituted. In 1968, an Administrator was appointed under section 35 of the Act superseding the Market Committee to perform the duties imposed on it by or under the Act.

(6) The Governor of Haryana promulgated the Punjab Agricultural Produce Markets (Haryana Amendment) Ordinance, No. VI of 1970 on May 7, 1970, hereinafter called ‘the Amendment Ordinance’ amending the principle Act, namely, Punjab Agricultural

Produce Markets Act, 1961. By Section 2 of the Ordinance, the following Section 12 pertaining to the Constitution of the markets committees was substituted for Section 12 of the principle Act:—

“(1) A committee shall consist of nine or sixteen members as the State Government may in each case determine, out of whom one shall be an official appointed by the State Government :

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 nominated by the State Government by notification as follows:—

(a) if the Committee is to consist of nine members, there shall be nominated—

(i) five members from amongst the producers of the notified market area ;

(ii) two members from amongst the persons licensed under Section 10 ; and

(iii) one member from amongst the persons licensed under Section 13 ;

(b) if the Committee is to consist of ten members, there shall be nominated, in addition to the members specified in sub-clauses (i), (ii) and (iii) of clause (a), one member representing the Co-operative Societies ;

(c) if the Committee is to consist of sixteen members, there shall be nominated—

(i) nine members from amongst the producers of the notified market area ;

(ii) four members from amongst the persons licensed under Section 10; and

(iii) two members from amongst the persons licensed under Section 13 ;—”

(7) By that amendment, the element of election of members of the Market Committees has been dispensed with and instead it has been provided that the members of those Committees shall be nominated. After the State Government notified the names of the nominated members of the Market Committee of Samalkha, Chairman

and Vice-Chairman of the Market Committee were elected on August 29, 1970 by those nominated members of the Committee. The above Ordinance was replaced on September 18, 1970, by the Punjab Agricultural Produce Markets (Haryana Amendment) Act No. XXV of 1970, hereinafter called, 'the Amendment Act'. It repeated Section 2 of the Amendment Ordinance and substituted Section 12 of the principal Act as recast by the Ordinance for Section 12 of the principal Act. Under Section 5 of the Amendment Act, clauses (i) and (iii) in sub-section (2) of Section 43 of the principal Act have been substituted by the following clauses :—

- (i) the appointment or nomination of members of the Board and Committees and their removal.
- (ii) the powers and term of office of the Chairman and the Vice-Chairman of the Committees.

(8) Shri J. K. Sharma, appearing on behalf of the petitioners has raised the following two points:—

- (1) That Section 12 of the Amendment Act is undemocratic and violative of article 14 of the Constitution.
- (2) That there being no provision for election to the offices of the Chairman and the Vice-Chairman of a Market Committee, the election of the office-holders to those offices is illegal.

(9) The first point raised on behalf of the petitioners is that by Section 2 of the Amendment Ordinance and the Amendment Act, the provision for election of members of a Market Committee as originally given in Section 12 of the principal Act has been substituted by the new provision of Section 12 abolishing the right of the petitioners to be elected as members of the Market Committee. It is argued that the provision for nomination of the members of the Market Committee as given both in the Amendment Ordinance and the Amendment Act is undemocratic and has deprived the petitioners of their right to be elected as members of the Market Committee. There does not inhere in the petitioners any right of election to the office of a member of a Market Committee. It is entirely for the legislature to provide for constitution of market committees either

by process of election of its members or by their nomination. The legislature has by Amendment Ordinance and the Amendment Act chosen to constitute the market committee by nomination and not by election. It is not the case of the petitioners that the State legislative authority, whether promulgating the Amendment Ordinance or enacting the Amendment Act, has no power to provide in the enactment for members of the Committee being nominated. Undoubtedly, the State legislative authority, in order to constitute market committees, has as much power to constitute them by making a provision for election of its members as by making a provision for their nomination by the State Government or such other authority as may be designated by it. If the elected market committees are found to be incompetent and make default in carrying into effect the provisions of the Act and discharge their functions inefficiently the State legislative authority will be fully warranted to make a provision of law substituting the elected market committees by the nominated ones. As the legislative authority, both of the Governor and the State legislature does not lack legislative power to make provision for nomination of the members of the market committees instead of their members being elected, the point that the market committees are undemocratic is without substance.

(10) It was further argued that Section 12 as amended contravenes article 14 of the Constitution. This point also has no force. By virtue of the Amendment Ordinance as well as the Amendment Act, Section 12 of the principal Act has been amended for the entire State of Haryana. All market committees in that State, in so far as the introduction of the element of nomination of members of market committees in place of their election is concerned, stand at par. No discretionary power, much less one of unfettered character has been conferred by Section 12 as now introduced on the State Government entitling it to arbitrarily pick and choose notified market areas for constitution of market committees either by election or by nomination. After amendment, the only rule in force uniformly for all market committees in the State is the rule of nomination. The plea of discrimination between one market committee and another is not open to the petitioners to urge. No reasons for discrimination have been made out. The contention that section 12 of the Act as amended is violative of article 14 of the Constitution is without any basis.

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(11) Now, we deal with the second point. The election to the offices of the Chairman and the Vice-Chairman was held by the members of the Market Committee nominated under section 12 of the Amendment Ordinance on August 29, 1970. It is submitted on behalf of the petitioners that there being no provision in the Act, the members of the Market Committee as nominated under section 12 of the Amendment Ordinance could not elect any person to these offices. Election to these offices having been held on August 29, 1970, reference to the provisions of the Amendment Act, which came into force on September 18, 1970 is of no materiality and hence reference to the new clauses (i) and (iii) in sub-section (2) of section 43 of the principal Act substituted for the old clauses (i) and (iii) of the said sub-section is not relevant. Section 16 of the principal Act runs as follows:—

“(1) Every Committee shall elect from among its members a Chairman and a Vice-Chairman.”

(12) This provision conferring power upon a market committee to elect from amongst its members a Chairman and a Vice-Chairman has remained untouched and intact in the principal Act in spite of the other provisions of the principal Act having been altered or amended. Section 16(1) of the Act leaves no doubt that a market committee, whether it was elected before the Amendment Ordinance came into force or is now nominated under section 12 as amended by the Amendment Ordinance is entitled to elect a Chairman and a Vice-Chairman of the committee. Thus, there is nothing wrong with the election of the Chairman and the Vice-Chairman by the members of the market committee constituted by their nomination by the State Government.

(13) For the reasons recorded above, the writ petition is dismissed. There will be no order as to costs.