

The Market Committee, Karnal, etc. v. The State of Haryana, etc.  
(Dhillon, J.)

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(14) In the view we have taken of the first contention of the learned counsel for the petitioners, it is not necessary to deal with his other contentions.

(15) For the reasons recorded above, we allow this petition with costs and quash the impugned orders dated 25th November, 1969 (copies Annexures 'B' and 'C' to the petition). The result would be that all proceedings taken subsequent to the passing of the impugned orders are also set aside. Counsel fee Rs. 250.

(16) It was conceded by the learned counsel for the parties that our decision in this petition would also govern Civil Writ No. 271 of 1970 (*M/s. Didar Singh-Khazan Chand & Co. v. The State of Punjab and others*). Accordingly in view of our decision in Civil Writ No. 118 of 1970, we allow Civil Writ No. 271 of 1970 with costs and quash the impugned orders of the appropriate authority by which the licences of the petitioners were cancelled. The result would be that the proceedings taken in pursuance of the impugned orders of cancellation are also set aside. Counsel fee Rs. 250.

R. S. NARULA, J.—I agree.

K. S. K.

#### LETTERS PATENT APPEAL

Before D. K. Mahajan and Bhopinder Singh Dhillon, JJ.

THE MARKET COMMITTEE, KARNAL AND OTHERS,—Appellants.

versus.

THE STATE OF HARYANA AND ANOTHER,—Respondents.

Letters Patent Appeal No. 90 of 1970.

April 23, 1970.

*Punjab Agricultural Produce Markets Act (XXIII of 1961)—Sections 14, 17 and 36—Member to a Market Committee appointed under section 17—Election of the Committee not held after the expiry of three years—Tenure of such appointed members—Whether to continue till new elections are held—Resort to section 36—Whether can be had in such situation.*

*Held*, that the term of office of the members of the Market Committee is provided in section 14 of Punjab Agricultural Produce Markets Act, 1961, and the members are entitled to hold office for a period of three years from the date of their appointment. Section 17 of the Act visualises the occurrence of a vacancy because of an elected member having died, resigned, ceased to reside permanently in the notified market area or becoming incapable of acting as a member of the Committee or any vacancy having occurred through transfer or removal in accordance with the provisions of section 15, or otherwise. Under the proviso to this section, if a member of a Market Committee resigns or ceases to reside permanently in the notified area of the Market Committee, he will be deemed to be continuing in office till his successor is appointed by the State Government. This does not mean that if the term of three years of a Market Committee has expired and no fresh elections are held, the member appointed under section 17 will continue till fresh elections are held. If this construction is put on the proviso to section 17 of the Act it would mean that the election to the Market Committee from various constituencies cannot take place even though a period of three years has expired. This construction will be going against the specific and mandatory provisions of section 12 as well as section 14 of the Act. (Paras 4, 6 and 7).

*Held*, that where the Government fails in its duty to hold the elections before the expiry of the period of the term of the office of the previously elected members of the Committee, the situation arises wherein the purposes of the Act cannot be carried out in accordance with the provisions thereof and alternative arrangements have to be made by the Government. In such a situation the Government can act under section 36 of the Act by appointing an Administrator of the Market Committee. (Para 8).

*Letters Patent Appeal under Clause X of the Letters Patent against the judgment of Hon'ble Mr. Justice Bal Raj Tuli, dated 12th February, 1970 passed in Civil Writ No. 1813 of 1969.*

ANAND SWAROOP AND R. S. MITTAL, ADVOCATES, for the appellants.  
J. N. KAUSHAL, ADVOCATE-GENERAL, HARYANA WITH ASHOK BHAN,  
ADVOCATE, for Respondent No. 1.  
HARBHAGAWAN SINGH, ADVOCATE, for Respondent No. 2.

#### JUDGMENT.

B. S. DHILLON. J.—This is an appeal under Clause X of the Letters Patent against the judgment of Tuli J. dated 12th February, 1970. In order to appreciate the contention of the learned counsel for the appellants, a few facts may be stated.

(2) Election to the Market Committee, Karnal, from various constituencies under the Punjab Agricultural Produce Markets Act,

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1961 (hereinafter called the Act) were held on 4th March, 1965, but the names of the members were notified on 20th July 1966. One Kishan Chand, who was elected as a member of the Market Committee, Karnal, died on the 8th of January, 1967, and against the vacancy caused by his death, Ishwar Singh was appointed as a member of the Market Committee under section 17 of the Act. The Additional Administrative Officer of the State Agricultural Marketing Board, Haryana, wrote to the Deputy Secretary to Government, Haryana, that the life of the Market Committee, Karnal, was coming to an end on 20th July, 1969, and Sub Divisional Officer (Civil) be appointed as Administrator. It is alleged that the Haryana Government started preparing a notification to be issued under section 36 of the Act and before the said notification could be issued, the appellants approached this Court by way of a petition under Articles 226 and 227 of the Constitution of India and obtained stay order. The learned Single Judge accepted the writ petition 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 4 months and in all other respects the writ petition was dismissed.

(3) The main contention of the learned counsel for the appellants, Mr. Anand Sarup, is that Haryana Government is not competent to invoke the provisions of section 36 of the Act because under the provisions of the Act, it was the duty of the Haryana Government to have arranged for the holding of the elections before the expiry of the term of the elected Market Committee, that is, before 20th July, 1969, and the Haryana Government having failed to do so, it cannot take advantage of its own misdeeds and have a recourse to the provisions of section 36 of the Act by appointing another person as Administrator of the Market Committee, Karnal. His contention is that the term of office of Shri Ishwar Singh, who was appointed under section 17 of the Act, will not expire till the new elections have taken place and, therefore, the present Committee shall continue till the new elections are held by the Government in accordance with law. In support of his contention, the learned counsel submitted that the provisions of section 17 of the Act are a pointer towards this conclusion and therefore, the learned counsel submitted that the notification under section 36 of the Act be quashed and the

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Committee elected on 4th April, 1965, whose election was notified on 20th July, 1966, should be continued till the new elections are held.

(4) We have given careful consideration to this contention of the learned counsel for the appellants and we are unable to agree with this contention. The term of office of the members of the Market Committee is clearly provided in section 14 of the Act and the members are entitled to hold office for a period of three years from the date of their appointment. In this case, a period of three years expired on 20th July, 1969, and after that the members, whose election was notified on 20th July, 1966, ceased to be the members of the Market Committee, Karnal. No doubt, it is true that it is the duty of the State Government to arrange the holding of the elections before the expiry of the period of office of the previous elected members, but if the Government failed to perform its duty, only a *mandamus* can be issued by this Court which has been issued by the learned Single Judge. Keeping in view the circumstances and facts of this case, a direction has been issued that the State Government should arrange the holding of the elections within a period of 4 months from the date of the order of the learned Single Judge.

(5) The provisions of section 17 of the Act are reproduced below for facility of reference :—

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.

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17(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.

The learned counsel construed the proviso to section 17 to mean that if there is a delay in appointing a new member to succeed the member first mentioned, that is, the out-going member, in that case the tenure of the appointed member shall expire on the date on which his successor is appointed by the State Government. His contention is that till the new elections have been held Ishwar Singh, who was appointed as member under section 17 of the Act in the vacancy caused by the death of Kishan Chand, would continue to be the member and since piecemeal elections cannot be held, therefore, the other members of the Market Committee would also continue to be in office till the new elections are held. We are unable to give this construction to the proviso to section 17 of the Act for the simple reason that the term of office of the members of the Market Committee is clearly specified under section 14 of the Act, which is a period of three years. Moreover, the Market Committee is constituted under section 12 of the Act wherein a certain number of members are elected from amongst the constituencies of the producer members; members licensed under section 10 of the Act, from amongst the licensees under section 13 of the Act and some members representing the Cooperative Societies. A new Market Committee will only be duly constituted if the election is held to the Market Committee from all these constituencies. If the construction, as is suggested by the learned counsel for the appellant is put to the proviso to section 17 of the Act, it would mean that the election to the Market Committee from various constituencies cannot take place even though a period of three years expired. This construction will be going against the specific and mandatory provisions of section 12 as well as section 14 of the Act.

(7) Section 17 of the Act visualises the occurrence of a vacancy because of an elected member having died, resigned, ceased to reside permanently in the notified market area or becoming incapable of acting as a member of the Committee or any vacancy having occurred through transfer or removal in accordance with the provision

of section 15, or otherwise. The proviso to section 17, when it talks of the term of the newly appointed member, can be construed in the manner that if a member of Market Committee resigns or ceases to reside permanently in the notified area of the Market Committee, he will be deemed to be continuing in office till his successor is appointed by the State Government.

(8) Adverting to the provisions of section 36 of the Act under which the notification appointing the Administrator has been issued by the State Government, after the decision of the learned Single Judge, we have no doubt in our mind that in a situation like this the provisions of section 36 of the Act can be brought into play. No doubt, the Government failed in its duty to hold the election before the expiry of the period of the term of the office of the previously elected members of the Committee, but certainly a situation had arisen wherein the purpose of the Act cannot be carried out in accordance with the provisions thereof and alternative arrangements had to be made by the State Government. Therefore, we see no reason to come to finding that the State Government cannot exercise its powers under section 36 of the Act in a situation like this.

(9) No other point has been pressed.

(10) For the reasons recorded above, there is no merit in this appeal and the same is dismissed. However, there will be no order as to costs.

D. K. MAHAJAN, J.—I agree.

**K.S.K.**

**LETTERS PATENT APPEAL**

*Before Mehar Singh, C.J. and Bal Raj Tuli, J.*

**JAGAN NATH CHICHRA,—Appellant.**

*versus.*

**STATE OF PUNJAB AND ANOTHER,—Respondents.**

**Letters Patent Appeal No. 149 of 1967.**

April 27, 1970.

Code of Civil Procedure (V of 1908)—Section 96 and Order 11 Rule 21—Defence in a suit struck off under Order 11 Rule 21—Decree passed—Appeal against such decree—Whether competent.