

(2007) 05 MP CK 0030  
Madhya Pradesh High Court  
Case No: None

Brajesh Pratap Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

**Date of Decision:** May 1, 2007

**Acts Referred:**

- Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 - Section 66A

**Citation:** (2007) 3 MPHT 230

**Hon'ble Judges:** S.S. Kemkar, J

**Bench:** Single Bench

**Final Decision:** Dismissed

**Judgement**

@JUDGMENTTAG-ORDER

Shantanu Kemkar, J.

Through this petition the petitioner is seeking writ of quo warranto against the third respondent Smt. Ramkali wife of Rajkumar Mishra who is holding the office of Chairman, Krishi Upaj Mandi Samiti, Satna (for short "Mandi Samiti") on the ground that she is not an "Agriculturist" within the meaning of Section 2(b) of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 (for short "Act of 1972") and was not qualified to vote and to be representative of Agriculturists and is not entitled to continue in the said office.

2. Briefly stated, the third respondent contested the election for the post of Chairman of Mandi Samiti claiming herself to be an Agriculturist. She was declared elected and was notified as returned candidate vide notification dated 17-6-2005. The petitioner placing reliance on the definition of the term "Agriculturist" given u/s 2 (b) of the Act of 1972, the qualifications to vote and to be representative of Agriculturists as required u/s 11-B and the provisions contained u/s 12 of the Act of 1972 for "election of Chairman" contended that the third respondent does not fulfill the statutory requirement to become the Chairman of the Mandi Samiti.

3. In order to contend that the third respondent is not an "Agriculturist" the petitioner stated that the third respondent is one of the partners of firm M/s. Mishra Construction Company, Khajuri Tola, Khermai Road, Satna engaged in doing construction works. She being partner of the said firm her source of livelihood is not wholly dependent upon Agricultural produce. In support of this contention the petitioner has filed various documents to show that the third respondent is one of the partners of the said firm.

4. In reply the third respondent denied the allegation with regard to her being partner of the partnership firm M/s. Mishra Construction Company. She stated that much prior to filing of nomination papers for contesting the said election she had resigned and retired from the said firm. Thus, on the date of filing of the nomination she was not partner of the said firm. In support of these averments she filed a copy of the communication sent to the Registrar of Firms intimating that she had already retired from the partnership firm and also the copy of the deed of partnership.

4. Before dealing with the merits of the petition it would be appropriate to quote provisions of Sections 2 (b), 11-B, 12 and 66-A of the Act of 1972.

Section 2 (b) of the Act of 1972 defines the term agriculturist which reads as under:

2. (b) "agriculturist" means a person whose source of livelihood is wholly dependent on agricultural produce and who cultivates land on one's own account--

(i) by one's own labour; or

(ii) by the labour of the either spouse; or

(iii) under the personal supervision of oneself or any member of one's family referred to in Sub-clause (ii) above by hired labour or by servants on wages payable in cash or kind but not as crop share,

but does not include a trader, commission agent, processor, broker, weighmen, or hammad or agricultural produce although such trader, commission agent, processor, broker weighmen or hammad may also be engaged in the production of agricultural produce.

Section 11-B deals with qualification to vote and to be a representative of agriculturists; it reads as under:

11-B. Qualification to vote and to be a representative of agriculturists.(1) Every person

(a) whose name is entered as Bhumiswami in the village land records;

(b) who ordinarily resides in the market area;

(c) who has completed the age of 18 years; and

(d) whose name is included in the voter's list prepared under the provisions of this Act and the rule made thereunder,

shall be qualified to vote at the election of a representative of agriculturists:

Provided that no person shall be eligible to vote in more than one constituency.

Explanation :-- The word "Bhumiswami" shall have the same meaning as assigned to it in the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959).

(2) No person shall be qualified to be elected as a representative of agriculturists unless:

(a) his name is included in the list of voters of the market area;

(b) he is an agriculturist;

(c) he is otherwise not disqualified for being so elected.

(cc) he has not more than two living children one of whom is born on or after 26th January, 2001:

Provided that any elected representative of agriculturist shall become disqualified to hold such office if on or after 26th January, 2001 a child is born which increases the number of his children to more than two.

(3) A person shall be disqualified for being a representative of agriculturist if he is disqualified for being an office bearer of a Panchayat u/s 36 of the Madhya Pradesh Panchayat Raj Adhiniyam 1993 (No. 1 of 1994).

(4) No person shall be eligible for election from more than one market committee or constituency as the case may be.

Section 12 reads thus:

12 Election of Chairman and Vice-Chairman.-- (1) The Chairman shall be chosen by direct election by the persons qualified to vote for the election of representatives of the agriculturists and traders in the prescribed manner:

Provided that no person shall be eligible for election as Chairman unless he is qualified to be elected under Sub-section (2) and (3) of Section 11-B. (2) to (9)...(not reproduced)

Section 66-A of the Act of 1972, which deals with election petition reads thus:

66-A. Election petition.-- (1) An election under this Act shall be called in question only by a petition presented in the prescribed manner to the Commissioner of the Division.

(2) No such petition shall be admitted unless it is presented within thirty days from the date on which the election in question was notified.

(3) Such petition shall be enquired into or disposed of according to such procedures as may be prescribed.

5. On going through the averments made in the petition, reply of the third respondent and the contentions raised during the course of arguments, I find that the case of the petitioner is that the third respondent is suffering from any disqualification u/s 11-B (3) of the Act of 1972. The only contention of the petitioner is not that the third respondent is not an "Agriculturist" as defined under the Act of 1972 as she is partner of a firm doing construction business and her source of livelihood is not wholly dependent on agricultural produce. The third respondent has categorically denied and disputed the contention of the petitioner that she is not an agriculturist within the meaning of Section 2 (b) of the Act of 1972. The authenticity of the contents of the documents filed by the petitioner as well as the third respondent regarding the status of the third respondent cannot be decided in a petition seeking writ of quo warranto. The petitioner could have challenged the election of the third respondent on the ground that she is not an agriculturist by filing an election petition u/s 66-A of the Act of 1972 which he has not. Having failed to do so the petitioner cannot be allowed to challenge the election of the third respondent in a writ petition on the ground that she is not an agriculturist.

6. In view of the aforesaid, in my considered view the petition is involving disputed questions of fact and the same cannot be gone into in this writ petition. Accordingly, the petition is dismissed. No order as to cost.