

(1991) 03 MP CK 0023

Madhya Pradesh High Court (Indore Bench)

Case No: M.P. No. 1423 of 1988

Ram Singh Chouhan

APPELLANT

Vs

State of Madhya Pradesh and
Others

RESPONDENT

Date of Decision: March 4, 1991

Acts Referred:

- Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 - Section 55(1)

Citation: (1991) 36 MPLJ 835 : (1991) MPLJ 835

Hon'ble Judges: S.D. Jha, J; R.K. Verma, J

Bench: Division Bench

Advocate: J.W. Mahajan, for the Appellant; A.S. Kutumbale, for Respondent Nos. 1 and 2 and Kulshreshtha, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.K. Verma, J.

This is a petition under Articles 226/227 of the Constitution of India by the petitioner challenging the order of the respondent No. 2, Director, Mandi dated 31-10-1988 whereby the petitioner has been removed from the membership of Krishi Upaj Mandi Samiti, Indore in exercise of powers u/s 55(1) of the M. P. Krishi Upaj Mandi Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam").

The facts giving rise to this petition, briefly stated, are as follows :-

The petitioner was elected as an agriculturist member of the Krishi Upaj Mandi Samiti (Market Committee), Indore, respondent No. 3 in September, 1985 and was also elected as Chairman of the said Marketing Committee in November, 1985. The Market Committee, respondent No. 3 by resolution dated 10-2-1986, resolved to buy submersible pump for being installed in the tube well bore within the premises of

the Sabji Mandi. In pursuance of the resolution Tenders of price quotations for purchase of the pump and fitting were invited through advertisement in daily newspaper "Swadesh". A sub-committee was formed comprising of the petitioner Chairman of the Mandi, and three other members of the Market Committee namely Radheshyam Thakur, Atmaram Paliya and Laxminarayan for consideration of the price quotations tendered in response to the advertisement. When the tenders were placed before the said sub-committee in its meeting held on 7-5-1986, one of the members Radheshyam Thakur expressed lack of faith in tender system and suggested that the market be explored for purchase of pump of ISI mark or of some standard quality and the sub-committee approved that suggestion and authorised two members Atmaram Paliya and Laxminarayan to purchase the pump. Atmaram Paliya brought three quotations for purchase of pump from different sale agencies and on a comparison of quotations the price-rate of pump and fittings offered by the sale agency of M/s. Kumar Engineers was approved and accordingly work order dated 21-3-1986 (Annexure P/5) of the value of Rs. 22,076/- was issued by the petitioner Chairman Krishi Upaj Mandi Samiti.

After the resolution dated 10-2-1986 to buy submersible pump had been passed by the Market Committee, a letter dated 21-2-1986 (Annexure P/I) had been sent by the Market Committee to the Director, Mandi seeking necessary sanction for purchase of submersible pump. The Director, Mandi in response to letter Annexure P/I asked the market committee by letter dated 12-3-1986, Annexure R/I that quotation for the required submersible pump be sent to him and that the estimate be obtained from the P.H.E. Department. It appears that the market committee accordingly addressed a letter to the Executive Engineer, P.H.E. Department, Indore and the Executive Engineer sent a reply dated 18-3-1986 Annexure R-2 giving an estimate of Rs. 25,000/- for a submersible pump of 7.5 H.P. together with all accessories, panel board etc., and advising purchase of the pump through the agency of Laghu Udyog Nigam. The Director, Mandi by letter dated 27-3-1986, Annexure P/5 accorded sanction of Rs. 21,000/- for purchase of the required submersible pump from out of the current fund of the Mandi and directed purchase of the pump through the Marketing Federation, Agro Industries or the P.H.E. Department.

But without waiting for the sanction and contrary to the instructions, the petitioner-Chairman of the committee proceeded to purchase a submersible pump from the supplier M/s. Kumar Engineers on a quoted rate of Rs. 22,076/- and the Pump was installed. The working of the said pump was not found satisfactory and as such, the said pump was removed and replaced by another pump of different make and of lesser price by the said supplier. It appears that the Director, Mandi received complaints alleging corrupt and irregular dealing in the matter of purchase of the pump.

In the aforesaid circumstances the Director, Mandi, respondent No. 2 initiated action u/s 55 of the Adhiniyam for removing the petitioner and three other members of the

Market Committee viz. Radheshyam, Laxminarayan and Atmaram, who were involved in the purchase of the pump aforesaid, from the membership of the Market Committee and accordingly, issued a show cause notice Under Sections 55(1) and 58 of the Adhiniyam. One such notice dated 12-11-1987 (Annexure P/10) was addressed to the petitioner addressing him as a member of the Market Committee pointing out the irregularities committed by the petitioner and alleging that by purchase of a sub-standard submersible pump the petitioner has put the Market Committee to a financial loss of Rs. 22,076/-.

It appears that the petitioner had prior to the issue of notice ceased to be the Chairman of Market Committee as a consequence of no-confidence motion passed by the Committee against him. The notice dated 12-11-1987 (Annexure P/10) alleged that the 4 members of the Market Committee (Mandi) including the petitioner had, in neglect of duty, made purchase of a sub-standard pump in an arbitrary manner and by such misconduct put the Market Committee to a financial loss of Rs. 22,076/- and required the petitioner to show cause within a period of 15 days as to why he be not removed from the membership of the market committee u/s 55(1) of the Adhiniyam and why recovery of the financial loss of Rs. 22,076/- to the Market Committee, be not recovered in equal shares from all the four members including the petitioner.

The petitioner Ramsingh Chohan who is only a member presently, and was at the material time of purchase of the pump, the Chairman of the Market Committee as well submitted his reply to the said show cause notice on 14-12-1987 and the other three members submitted their reply on 9-12-1987. All the four members including the petitioner were afforded personal hearing and the petitioner also submitted the written arguments on 11-10-1988.

After affording opportunity to show cause and considering the material on record and the reply to the show cause, the Director, Mandi held the petitioner guilty of misconduct and neglect in performing his duty and ordered his removal from membership of the Market Committee u/s 55(1) of the Adhiniyam by order dated 31-10-1988 (Annexure P/15).

The Director, Mandi inter alia found that the petitioner, member of the Market Committee, Indore was at the time of the purchase of the pump in question, the Chairman of the said committee and as such, was the controlling authority in respect of the Market Committee fund and could have withheld payment of the bill but the petitioner in spite of objections and complaints, made purchase of the sub-standard pump and did not follow the directions with regard to the purchase of pump as issued by the Director, Mandi and also released full payment of price in respect thereof even after knowing that the performance of the pump was not proper.

Against the order of removal of the petitioner from membership of the Market Committee the petitioner did not prefer a revision to the State Government u/s 59 of the Adhiniyam but has instead filed this writ petition.

Learned counsel for the petitioner has submitted that the remedy of revision u/s 59 was not an alternative and efficacious remedy. He has also submitted that the neglect of duty or misconduct alleged against the petitioner in the matter of purchase of pump is qua his capacity as a Chairman of the Market Committee since the alleged neglect of duty is referable to Rule 14 of the Madhya Pradesh Krishi Upaj Mandi (Mandi Nidhi Lekha Tatha Rajya Vipnan Sewa Ki Gathan Ki Riti Tatha Anya Vishaya) Niyam, 1980 under which the Chairman of the Mandi Committee is the controlling Authority in respect of the Market Committee fund and it is the duty of the Chairman to see that expenditure is made properly. It has been submitted that since the petitioner had ceased to be the Chairman prior to action initiated against the petitioner for his removal and the charges of misconduct and neglect of duty are referable to the petitioner functioning as a Chairman the impugned order dated 31-10-1988 (Annexure P/15) passed by the Director, Mandi removing the petitioner from the membership of the Market Committee cannot be sustained in law. Learned counsel in support of his submission has cited a decision of this Court in [Biharilal Tikaram Vs. Government of Madhya Pradesh](#), . In paragraph 10 of the said decision it has been observed thus : -

"Section 55 of the Adhiniyam mentions different procedures for removing a member and removing a Chairman. For removing a member, u/s 55 of the Adhiniyam it should be proved that as a member, he is guilty of misconduct or neglect or incapable to perform his duty. If this is proved, then an action u/s 55 of the Act can be said to be valid. Looked from this angle, it should be first proved that the petitioner was under the provisions of the Adhiniyam or rules framed thereunder under an obligation to do an act and that he has failed to do, or has done it negligently. Unless it is proved the petitioner cannot be held responsible for any misconduct or neglect or incapable to perform his duty as member."

Section 55(1) of the Adhiniyam provides for removal of any member of the Market Committee by order of the Director for misconduct or neglect or incapacity to perform his duty after giving reasonable opportunity of showing cause to such member and also for the consequence that on such removal of the member he shall not be re-elected or re-nominated as a member of the Market Committee for a period of 6 years. Section 55(2) of the Adhiniyam provides for removal of Chairman or Vice-Chairman of a Market Committee from his office by order of the Director for misconduct or neglect of duty or in capacity to perform his duty or for being persistently remiss in the discharge of his duties after giving a reasonable opportunity of showing cause to such Chairman or Vice-Chairman and also for the consequence that on such removal the Chairman or Vice-Chairman as the case may be, shall not be eligible for re-election as Chairman or Vice-Chairman during the

remainder of his term of office as member of Market Committee.

The instant case is distinguishable on facts from the case of Biharilal (supra). In the instant case the petitioner had ceased to be the Chairman of the Market Committee at the time the Director, Mandi initiated action u/s 55(1) for removing the petitioner from membership of the Market Committee whereas in the case cited, the petitioner Biharilal was the Chairman of Market Committee when the Director initiated action u/s 55 of the Adhiniyam and the petitioner alleged that the non-petitioner in that case without giving the opportunity of hearing dismissed the petitioner from the post of Chairman and also from the membership of the Market Committee. It appears that the neglect of duty and misconduct alleged pertained to the office of the petitioner Biharilal as a Chairman and it was held that he could not continue as a Chairman but the restriction imposed on him that he will not be re-elected or re-nominated as a member of the Market Committee, was held not maintainable and as such, that condition was set aside.

Learned counsel for the respondent No. 3 Market Committee, has submitted that the notice (Annexure P/10) dated 12-11-1987 clearly states as to in what capacity and in what manner the petitioner acted in negligence of his duty and committed misconduct in causing loss of money to the Market Committee. Since the petitioner had ceased to be the Chairman of the Committee w.e.f. 13-2-1987, there could not have been any occasion or question for taking action against him in accordance with Section 55(2) of the Adhiniyam which is for removal of the Chairman and Vice-Chairman only. Since the action was proposed u/s 55(1) and Section 58 of the Adhiniyam for removal of the petitioner from membership of the Market Committee the notice was issued under these provisions. The learned counsel has further submitted that a perusal of Section 55(1) would show that for any misconduct a member can be removed. The petitioner would not have become the Chairman had he not been a member of the committee. The petitioner as office bearer had no separate entity than that of a member invested with certain functions and duties. This a part on the date of the notice the petitioner had ceased to be the Chairman as a consequence of the no-confidence motion passed by the Committee against him.

In the instant case the substandard submersible pump in question was purchased by a sub-committee of four members including the petitioner, constituted in the meeting of the Market Committee dated 10-2-1986. The pump was purchased and fitted prior to sanction dated 27-3-1986 (Annexure P/6) by the Director in contravention of his instructions regarding purchase through the authorised agencies. The petitioner who was at the material time purchaser of the substandard pump, was invested with the power of financial control as chairman of the Market Committee but instead of withholding payment of bill of price of Ra. 22,076/- in respect of the sub-standard pump unauthorisedly purchased, the petitioner allowed full price to be paid causing undeserved loss to the Market Committee, although he could have withheld payment being in control of Mandi funds as a Chairman of the

Market Committee at that time.

The petitioner's conduct as a member is involved in his participation in deciding to purchase the pump and purchasing the same even before getting the sanction of the Director, Mandi and without complying with the instructions permitting purchase through approved sale agencies only as named in the letter of the Director, Mandi (Annexure P/6). The fact that the petitioner happened to hold the office of the Chairman of the Market Committee at the time of purchase cannot provide a shield against the action taken u/s 55(1) of the Adhiniyam for removing him from the membership of the Market Committee. The case of Biharilal (supra) cannot be pressed into service to say that for any misconduct on the part of a member holding the office of Chairman at the time of his committing misconduct or neglect of duty, he cannot be made liable to an action u/s 55(1) for his removal from membership. In our opinion, the case of Biharilal (supra) does not lay down such a wide proposition as to protect a member completely against an action u/s 55(1) for his removal from membership for misconduct on the ground that he happened to hold the office of Chairman when the misconduct was committed. The Director, Mandi, initiated action in this case for removal of the petitioner from membership of the Market Committee u/s 55(1) specifically when the petitioner was merely a member and not the Chairman of the Committee. In the facts and circumstances of the case we are of the opinion that it cannot be said that the alleged misconduct does not pertain to the petitioner's capacity as a Member of the Market Committee. The learned counsel for the petitioner also submitted that the action taken against the petitioner for his removal from membership u/s 55(1) of the Adhiniyam was mala fide, having been motivated on political consideration. We find no material to sustain this argument which has therefore no substance.

Having heard learned counsel for the parties and having considered the documents filed, we find that this is not a fit case for interference under Article 226 of the Constitution of India. The petition is, therefore, dismissed with no order as to cost. The security deposit, if any outstanding, be refunded to the petitioner after due verification.