

(1997) 03 PAT CK 0047
In the Patna High Court
Case No : C.W.J.C. No. 7435 of 1996

Ashok Kumar Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-03-1997

Acts Referred:

Bihar Agricultural Produce Markets Rules, 1962 — Rule 129
Bihar Land Reforms Act, 1950 — Section 33

Citation : AIR 1998 Patna 45 : (1997) 45 BLJR 799 : (1997) 1 PLJR 603

Hon'ble Judges : A. Alam, J

Bench : Single Bench

Advocate : K.N. Choubey, Shiv Kirti Singh, for the Appellant; R.B. Mahto, Senior Advocate, S. Kumar, K.P. Yadav and S.N. Mishra, for the Respondent

Final Decision : Allowed

Judgement

A. Alam, J.—This writ petition has been filed challenging an order dated 8-4-1996 (Annexure 1) passed by the Chairman, Bihar Agricultural Marketing Board in Appeal Case No. 1/1996. By the impugned order, the Chairman cancelled the licence granted by the Agricultural Produce Market Committee, Buxar to the petitioner to hold Mela on certain lands claimed by him. The impugned order was passed on a memorandum filed by one Surendra Mohan Singh (not a party respondent to this writ petition); from the cause title and the operative portion of the impugned order, it appears that the memorandum was registered in the office as an appeal under Rule 129 of the Bihar Agricultural Produce Market Rules and it was dealt with by the Chairman as such. It may also be appropriately, observed here that though arguments were advanced at some length on the merits of the impugned order, that is, regarding the validity of the reasons assigned for cancelling the licence, it later turned out that the order may not be able to pass the jurisdictional test and may have to be struck down on the ground that no appeal lay before the Chairman and he did not have the competence or the authority to cancel the licence granted by the Market Committee. In the later stages of the hearing of this case, learned Counsel

focussed their submissions on this aspect of the matter, I accordingly propose to briefly touch upon the submissions made on the merits of the order and then to examine in some detail the question whether the Chairman had the necessary legal authority to pass the impugned order.

2. The controversy in this writ petition relates to the petitioner's right to hold Mela on some plots of land of Khata No. 1405 situated in village Barhampur in the district of Buxar and to obtain a licence from the Market Committee in terms of Rule 129 of the Rules. The petitioner's title over the lands in question is not in dispute. What, however, is in dispute is whether the bundle of rights, which are collectively expressed by the word "title", include the right to hold Mela on the lands or whether that right, in respect of the lands in question, vested in the State at the time of abolition of Zamindari in terms of Section 7B of the Bihar Land Reforms Act, 1950?

3. Earlier when the petitioner was denied licence to hold Mela on the lands of different khatas including Khata No. 1405, of village Barhampur, he came to this Court in CWJC No. 8344/1989. That writ petition was disposed of by a Bench of this Court by order dated 5-12-1989 (Annexure 3). Insofar as the present controversy is concerned, the relevant portion of the order is as follows:

"..... The only reasons given in Annexure V, the order of the Chairman dt. 26-4-89 is that there was no specific order of the High Court to allow the petitioner to hold hat or Bazar on Khata No. 1405 that may be so but the Court had said that the case of the petitioner in respect to this Khata should be considered and in case the petitioner fulfils the requirement under the Act and the Rules then his case may be considered. That has not been done. The prayer with respect to Khata No. 1405 has to be allowed. A direction is accordingly given to the respondents to consider the case of the petitioner with respect to this Khata."

4. It appears that no action was taken by the authorities of the Board and the Market Committee within two months from the date of that order as directed by this Court and that give the petitioner the cause to file a contempt petition being MJC No. 189/1990. During the pendency of the contempt petition the Court was informed that the petitioner was granted the licence for holding Mela on the lands in question, and the contempt petition was accordingly disposed of recording the statement made on behalf of the Market Committee.

5. According to the petitioner's case the licence which is renewable on a year to year basis has since been renewed in his favour without any interruption. In terms of the licence, the petitioner holds cattle fair on some plots of land of Khata No. 1405 twice in a year, one in the month of Baisakh and the other in the month of Phalgun. It is further the case of the petitioner that one Surendra Mohan Singh who was on enmity terms with him constantly tried to get the licence cancelled with a view to cause harm and injury to the petitioner. He first filed a petition before the Secretary of the Market Committee, Buxar for

cancelling the petitioner's licence on the ground that the lands of Khata No. 1405 were Baksht lands over which the petitioner had no right to hold Mela. The Secretary of the Market Committee by his letter dated 15-2-1996 (Annexure 7) replied that it was not possible to cancel the licence granted to the petitioner. The said Surendra Mohan Singh then filed a memorandum on 23-6-96 before the Chairman, Bihar State Agricultural Produce Marketing Board. In the memorandum it was alleged that plots of Khata No. 1405 in respect of which the petitioner was granted licence were Bakasht lands. It was further alleged that the petitioner's predecessor-in-interest had also received compensation from the State Government for keeping the lands vacant at the time of holding of Mela and the petitioner had obtained a licence by suppression of these facts. It was also alleged that the petitioner had made defalcation of a large amount of market fee collected by him as an agent of the Committee and for this Barhampur P.S. Case No. 13/1993 was instituted against him. It was also alleged that the grant of licence to the petitioner was causing huge loss of revenue both to the State and the Market Committee. On those grounds, the Chairman of the Board was requested to take appropriate actions.

6. As noted above, the memorandum was registered in the office of the Chairman as an appeal preferred under Rule 129 of the Rules. The petitioner appeared there and filed his rejoinder. After hearing the parties the Chairman passed the impugned order cancelling the licence granted to the petitioner.

7. In the impugned order the Chairman observed that according to the petitioner's case his ancestors had purchased the lands of Khata No. 1405 from the former landlord. It, therefore, followed that what was conveyed to the petitioner's ancestors, the purchasers from the landlord, was the raiyati interests in the land and not the right to hold Mela on the land as that right of the landlord had vested in the State of Bihar u/s 7B of the Bihar Land Reforms Act, 1950. He further observed that in connection with the Mela held earlier on the basis of the licence granted to the petitioner, the Secretary of the Market Committee had instituted Barhampur P.S. Case No. 13/1993 in which the petitioner was an accused of misappropriation, forgery and making defalcation of lacs of rupees. It was, therefore, clear that the petitioner was not a "desirable person" for the grant of licence within the meaning of Rule 129(iii)(c) of the Rules. For the aforesaid two reasons, he passed the order for cancelling the licence granted to the petitioner both in respect of the lands of Khata No. 1405 and 120.

8. Mr. Shiv Krint Singh, learned Senior Counsel for the petitioner submitted that the Chairman erred in invoking the provisions of Section 7B of the Bihar Land Reforms Act, 1950 for cancelling the licence granted to the petitioner. Learned Counsel submitted that Section 7B of the Act would have any application only if it could be shown that a Mela was being held on the land in question by the intermediary at any time within three years of the date of vesting of the intermediary rights; the Section would have no application in a case where the holding of the mela on a raiyali land commenced after the vesting of the

Zamindari. He further submitted that in the impugned order there was no finding, much less any materials on which such a finding could be based, that Mela was being held on the lands of Khata No. 1405 at any time within three years of the date of vesting of Zamindari. According to the learned Counsel, there were enough material in the form of entries in the cadestral survey khatian and the recent khatian to suggest otherwise. He also submitted that a simple proceeding for the grant of licence for holding Mela was hardly appropriate for deciding such complicated questions as vesting of rights under the Bihar Land Reforms Act, 1950.

9. Mr. R. B. Mahto, learned Senior Counsel appearing on behalf of the Marketing Board submitted that admittedly a criminal case was pending against the petitioner in which he was accused of having defalcated a large sum collected as market fee in Mela held on the same lands in the previous years. On that basis, the Chairman had found that the petitioner was not a desirable person for the grant of licence. This finding of the Chairman could be hardly called into question. Then making a reference to Clause (c) of Sub-rule (iii) of Rule 129, Mr. Mahto submitted that this finding alone was sufficient to justify the order cancelling the licence granted to the petitioner.

10. As I propose to dispose of this application on a different question, I am not required to make any conclusive pronouncement on the submissions made by the counsel on the aforesaid two issues relating to the merits of the orders passed by the Chairman. I may, however, indicate that on the question of Section 7B of the Bihar Land Reforms Act, I was prima facie inclined to accept the submissions made by Mr. Singh, counsel for the petitioner; on the other hand, I find myself in agreement with Mr. Mahto that the finding recorded by the Chairman that the petitioner was not a "desirable person" for the grant of licence was beyond any interference by this Court and that would have provided a sufficient ground for cancelling the licence granted to him. Thus, the position that emerged after hearing the parties on the merits of the impugned order rendered the petitioner not entitled to any relief from this Court.

11. In that position Mr. Singh completely altered the line of his attack and questioned the very jurisdiction and competence of the Chairman to pass an order cancelling the licence granted by the Market Committee. Mr. Singh submitted that the impugned order was passed in purported exercise of power under Rule 129(v) of the Rules, Learned Counsel submitted that Sub-rule (v) of Rule 129 provided an appeal to the Chairman only against an order passed by the Secretary of the Chairman of a Market Committee under Sub-rule (iv) and no appeal would lie against an order passed by the Market Committee granting a licence or refusing to grant a licence (under Sub-rule (iii)) or against an order passed by the Market Committee cancelling a licence earlier granted by it. For a proper appreciation of the submission it would be useful to reproduce Rule 129 in full:

"129. Licence for selling up Hat/Bazar/ Mela.-- (i) No person or authority shall,

within the Market area, or within the distance notified under Sub-section (2) of Section 4, set up, establish, or continue any place for the purchase, sale, storage or processing of notified agricultural produce except under and in accordance with the terms and conditions of the licence in Form XX issued in this behalf by the Market Committee.

(ii) Every person or authority desiring to hold licence shall make an application in writing to the Market Committee and shall pay the licence fee of Rs. 50 annually. Every licence issued under this rule shall be valid for the financial year ending on 31st of March.

(iii) On receipt of such application together with the amount of fee prescribed under Sub-rule (ii), the Market Committee may grant him the licence applied for if-

(a) it is satisfied that the applicant is solvent;

(b) Cash security of Bank's guarantee if so required is given;

(c) it is satisfied that the applicant is a desirable person to whom a licence may be granted; and

(d) it is satisfied that there is need to establish or set up a Hat/Bazar/Mela for agricultural produce and the person or the authority had in the past ever set up or established such Hat or Bazar or Mela, for sale, purchase, storage, processing of agricultural produce;

(iv) The Secretary may suspend the licence for a period of one month and with the approval of the Chairman for three months for breach of any of the terms and conditions of the licence. If such breach is repeated twice, the licence may be cancelled by the Market Committee provided before passing such order, a reasonable opportunity, of being heard shall be given to the licensee;

(v) Any person or the authority aggrieved or dissatisfied by the order of the Secretary or the Chairman, may appeal to the Chairman of the Board within seven days of the order and the order passed by him shall be final."

12. From the above, it is clear that Sub-rule (iii) and (iv) envisage passing of different types of orders by different authorities, under Sub-rule (iii) the Market Committee on an application made to it, can pass an order granting licence to hold a Mela or refusing to grant the licence. Under Sub-rule (iv), for the breach of the terms and conditions of the licence, the Secretary/Chairman of the Committee may pass an order suspending the licence for one month/three months; if the breach is repeated twice, the Market Committee may pass an order cancelling the licence altogether. Under Sub-rule (v), appeal is provided against the orders passed by the Secretary or the Chairman and the provision for any appeal against an order passed by the Market Committee is conspicuous by its omission. In view of this analysis of the various sub-rules of Rule 129, the submissions made by Mr. Singh appear to be well founded.

13. Mr. Mahto submitted that although the Chairman might appear to have acted under Rule 129(v) of the Rules, the order passed by him cannot be said to be lacking in competence or jurisdiction in case a legitimate statutory source can be found to sustain the order. In this regard, learned Counsel submitted that the provisions of Section 33J of the Act clothed the Chairman with ample jurisdiction to pass the impugned order. In support of his submission Mr. Mahto also relied upon a decision in the case of *Dhirendra Kumar Akela v. The Bihar State Agriculture Marketing Board*, 1984 PLJB 974.

14. I find it difficult to accept the submissions advanced by Mr. Mahto and I fail to see how the provisions of Section 33J of the Act can be of any help for defending the impugned order passed by the Board. In the first place, it is to be noted that Section 33J lays down the powers and functions of the Board: in terms of that section the Board has the power of superintendence and control over the working of Market Committees and the provisions of the section empower the Board, inter alia, to give directions etc. to Market Committees in general or to a Market Committee in particular with a view to ensure their efficiency. It is well-established that the power of superintendence and control is not the same as the right to interfere in the day to day administration of the authority put under superintendence and control. It is also well-established that the power of superintendence and control is not the same as sitting in appeal overall and sundry orders passed by the authority under control; more so when a provision for appeal has been specially provided for in the Act or the Rules. The reliance placed by Mr. Mahto on the decision in *Dhirendra Kumar Akela's* case (supra) also appears to me of not much help to him. In that decision this Court upheld the Board's exercise of control over the employees of the Market Committee. But the exercise of control over the employees as an administrative function is one thing and that cannot be equated with sitting in appeal over the orders passed by the Market Committee and thus undertaking quasi-judicial adjudications on matters affecting rights of third parties.

15. However, all this is not to say that in no case of grant of a licence or refusal to grant a licence the Board can interfere in exercise of its powers u/s 33J. In the facts and circumstances of a given case the order passed by a Market Committee granting or refusing to grant a licence may pertain to issues of general policy and in such a case the Board may legitimately exercise its power of general superintendence and control. It is needless to say that such cases would be few and far between and the power u/s 33J cannot be used by the Board to entertain appeals against orders passed by the Market Committee on a regular and routine basis.

16. Coming back to this case, it is to be noted that the question whether in the facts and circumstances of this case, it would have been legitimate for the Board to examine the grant of licence to the petitioner by the Market Committee is not quite relevant and need not be gone into. This is for the reason that the impugned order has been passed by the Chairman of the Board and Section 33J

of the Act deals not with the powers and functions of the Chairman but with the powers and functions of the Marketing Board which is an independent and distinct statutory body. For this simple reason, the impugned order cannot be defended on the basis of the provisions contained in Section 33J of the Act.

17. For the reasons stated above, I find that the submissions made by Mr. Shiv Kriti Singh are well-founded and the impugned order has to be struck down on the ground that it was passed by the Chairman without any statutory competence or authority. The impugned order is accordingly quashed and the writ petition is allowed. In the facts and circumstances of the case, however, there shall be no order as to costs.