

---

**(1987) 08 OHC CK 0011**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No's. 918 of 1986 and 553 of 1987

Bahadajhola Regulated Market Committee

APPELLANT

Vs

Balugaon Gram Panchayat and Others <BR> Jaladhar  
Dalbehera and Others Vs Bahadajhola Regulated Market  
Committee and Others

RESPONDENT

---

**Date of Decision :** 13-08-1987

**Acts Referred:**

**Citation :** (1987) 64 CLT 769

**Hon'ble Judges :** L. Rath, J;G.B. Patnaik, J

**Bench :** Division Bench

**Advocate :** R. Mohanty, in O.J.C. 918/86, B.M. Patnaik and K.N. Jena, in O.J.C. 553/87, for the Appellant; B.M. Patnaik, K.N. Jena, in O.J.C. 918/86 and D.P. Sahu, Standing Counsel in O.J.C. 918/86 and 553/87, for the Respondent

---

## Judgement

L. Rath, J.—These are two writ petitions by the contesting parties claiming for opposite reliefs. The Petitioner is O. J. C No. 918 of 1986 is a Regulated Marketing Committee constituted under the Orissa Agricultural Produce Markets Act. 1956 (for short the Act?) and seeks the reliefs of implementation of Annexure-1 and 2 the notifications declaring the market area and specifying the agricultural produces, as also the declaration that the continuance of holding of market by the opposite parties 1 and 2 i.e., Balugaon Gram Panchayat and its Sarpanch is illegal. In O.J.C. No. 553 of 1987, the opposite party No. 1 of O.J.C. 918 of 1986 is the Petitioner No. 3 and the Petitioner of that case is the opposite party No. 1 in the latter case. The Petitioner No. 1 and 2 of O.J.C. 553 of 1987 are two voters, the ward member and Sarpanch of the Balugaon Gram Panchayat. The opposite parties 3 and 4 of O.J.C. 918 of 1986 respectively are the Block Development Officer of Nayagarh Block and the Sub-Divisional Officer, Nayagarh, whereas the opposite parties 2 and 3 of O.J.C. 553 of 1987 are the State of Orissa represented through the Secretary. Agriculture and Co-operative Department and the Sub-Divisional Officer, Nayagarh respectively. Since both the cases essentially relate to the dispute between the Regulated Market Committee

and the Gram Panchayat over the declaration of the market area, the agricultural produces and the transfer of the market by the Gram Panchayat to the market committee, they have been heard successively and are disposed at by this common judgment.

2. The short facts common to both the- cases are that a notification was published by the State of Orissa O.J.C. No. 918 of 1986 is a Regulated Marketing Committee constituted under the Orissa Agricultural Produce Market Act, 1956 (for short ?the Act?) and seeks the reliefs of implementation Annexures-I and 2 the notifications declaring the market area and specifying the agricultural produces, as also the declaration that the continuance of holding of market by the opposite parties 1 and 2 i.e. Balugaon Gram Panchayat and its Sarpanch is illegal. In O.J.C. No. 553 of 1987, the opposite party No. 1 of O.J.C. 918 of 1986 is the Petitioner No. 3 and the Petitioner of that case is the opposite party No. 1 in the latter case. The Petitioner Nos. 1 and 2 of O.J.C. 553 of 1987 are two voters, the Ward member and sarpanch of the Balugaon Gram Panchayat. The opposite parties 3 and 4 of O. J C. 918 of 1986 respectively are the Block? Development Officer of Nayagarh Block and the Sub-Divisional Officer, Nayagarh, whereas the opposite parties 2 and 3 of O.J.C. 553 of 1987 are the State of Orissa represented through the Secretary, Agriculture and Co-operative Department and the Sub-Divisional Officer, Nayagarh respectively. Since both the cases essentially relate to the dispute between the Regulated Market Committee and the Gram Panchayat over the declaration of the market area the agricultural produces and the transfer of the market by the Gram Panchayat to the market committee, they have been heard successively and are disposed of by this common judgment.

3. The short facts common to both the cases are that a notification was published by the State of Orissa (Annexure-I) as also of 17-1-1977 are further had since they have not been published in the regional language of the area in any news paper circulated in the area which according to him is a precondition. Besides, Serial No. 9 of schedule-A of Annexure-1 is also attached on the basis that a direction has been issued by the State Government in Annexure-4 directing transfer of the Gram Panchayat market to the management of the Regulated Market Committee except the cattle market and hence cattle could not have been notified as an agricultural produce in the notification annexure-I. On the premises of such submissions, Mr. Jena impugns the direction from the Regulated Market Committee to the Gram Panchayat in letter No. 94/86 dated 14-3-1986 (Annexure-5 of O.J.C. 553/87) directing the Gram Panchayat u/s 4 (4) of the Act to take necessary steps for transfer of the land and building of the weekly hat to the Regulated Market Committee on or before 25-3-1986 as being not one authorised u/s 4 (4) of the Act.

4. So far as the first contention raised by Mr. Jena is concerned there does not appear to be any factual foundation for the same and indeed the facts are to the contrary. Section 3 (1) of the Act vests power in the State Government to declare

by notification its intention of regulating purchase and sale of agricultural produces in any area as specified in the notification. Section 3 (2) of the Act directs that any objections or suggestions that may be received within a period not less than one month may be considered by the Government. Section 4 (1) provides that after the expiry of the period specified in the notification issued u/s 3 and after considering the objections and suggestions as might have been received before the expiry of the period, and after holding such enquiry as may be deemed necessary the State Government may by notification declare areas specified in the notification u/s 3 or any portion thereof to be the market area for the purpose of the Act in respect of all or any of the kinds of agricultural produce specified in that notification. Both Sections 3 (1) and 4 (1) provide that the respective notifications may also be published in the regional language of the area in a news paper circulated in the area or in such other manner as the State Government may deem fit, but Section 4 (2) declares that a notification either u/s 3 or u/s 4 (1) if published in the gazette, shall have full force notwithstanding the fact that the notifications have not been further published in any other manner or of any irregularity or defect in such further publication in pursuance of the provisions of Section 3 (1) or Section 4 (1). Section 4 (5) as it stood at the relevant time, authorised the Government to either exclude, by notification, any area from the market area or include any other area therein at any time subject to the provisions of Section 3, which means that before such exclusion or inclusion is made the procedure u/s 3 has to be gone through. Subsequently by virtue of the Amendment Act 27 of 1984 Section 4 (5) has been renumbered as Section 4 (7).

5. There is no dispute that prior to the issue of notification of 16th October, 1973 it had been preceded by a notification u/s 3 (1) of the Act previously published. The notification itself states facts. The opposite party No. 1 in its counter affidavit has annexed two notification as annexures All and B/1 both of 28th. July, 1976, one in English and the other in Oriya, of the State Government u/s 4 (5) read with Section 3 (1) of the act declaring their intention of excluding Sarankur Block from the market area and including the Nayagarh Block therein and inviting objections or suggestions in respect of such intention within one month from the date of publication of the notification in the orissa Gazette. The notification in Annexure-2 of the 17th January, 1977 excluding Sarankur Block from, and including Nayagarh Block within, the market area was only published thereafter and thus it is not correct to state that the procedure that is envisaged u/s 3 (1) of the Act had not been undergone before the notification was published. The notification in annexures A/I and B/1 were in terms of Section 4 (5) of the Act and hence the objection taken by Mr. Jena on such score is liable to be rejected. The next submission of Mr. Jena that the notifications under Sections 3 (1) and 4 (1) are bad because of not having been published in any news paper in the regional language circulated in the area also does not sustain for long. As has been noticed earlier. Section 4 (2) of the Act aims at dismissing such very objections providing that if the notifications have been published in the gazette,

then they shall have full force and shall not be defeated merely because they have not been published in any other manner or there has been any irregularity and defect in the further publication. The statute thus itself contemplates the sealing of all such objections and a finality attached to the notifications on their publication in the gazette. It appears from the counter affidavit filed by the State the opposite party No. 2 in O.J.C. No. 553 of 1987 that the notification of 28th. July. 1976 was published in the Orissa gazette on 13-8-1976. Even though a similar statement regarding the impugned notification of 17th January, 1977 has not been made in the counter affidavit, yet the Orissa gazette of 28th January. 1977" has been produced before us showing the publication of that notification in the Orissa Gazette both in English, and in Oriya. Thus since the notification were admittedly published in the Orissa gazette, any lack of publication of the same in any news paper in the regional language, circulated in the area would in no manner be fatal to their operation. The specific stand taken by the State Government in its counter affidavit is that publication of the notification in such news papers are not mandatory and that the publication in the gazette is sufficient for the purpose. As the provision of the statute stands the submissions are unexceptionable. But, however, we would like to observe that the provision for publication of the notification in the regional language in a news paper circulated in the area has the wholesome purpose of reaching the notification to the public at large to whom the gazette may not be readily accessible. The requirement of the publication in the news papers should rather be complied with rather than its breach and that violations of the provision should be far and few depending upon any compelling reason for the same. The further submission made by Mr. Jena that the State Government in S.D. & S.W. (G.P.) Department having instructed in the letter of 27-4-1979 permitting transfer of the Gram Panchayat market to the opposite party No. 1 except the cattle market, the notification in Annexure-1 specifying cattle as an agricultural produce in respect of the market area is illegal is also without substance. The Act is a self contained one with powers vested in the State Government, to declare the Market area and the market yard and also specify the agricultural produces whose sale and purchase is to be regulated by the Regulated Market Committee. In exercise of the statutory power so vested, the notification in Annexure-1 has been made specifying cattle as one of the agricultural produce whose sale is to be regulated under the provisions of the Act., Section 2 (i) defines agriculture produce as such produce (whether processed or not) of agriculture, forest, animal husbandry agriculture, horticulture and pisciculture as are specified in the schedule of the Act. The schedule in item No. 9 enumerates animal husbandry products i.e., poultry, cattle, sheep and goat as agricultural produce. The State Government thus was fully competent to declare in Annexure-1 cattle as an agricultural produce. Section 5 (4) of the Act has been brought in by way of? the Amendment Act of 1984 (supra) authorising the market committee, in this case the opposite party No. 1, to require any Municipality or Gram Panchayat by requisition, after publication of Section 4 (1) notification, to transfer to it any land or building in possession of the Municipality or the Gram Panchayat either

wholly or partly situated within market area which was being used immediately before the establishment of the market for similar purposes by the Municipality or the Gram Panchayat and an obligation has been cast on the Municipality or the Gram Panchayat as the case may be, for transfer of the land or building as specified in the requisition to the market committee within one month from the date of receipt of the requisition. The opposite party No. 1 has issued such a requisition to the Gram Panchayat on 14th March, 1986 (Annexure-5). The letter of the Gram Panchayat Department in Annexure-4 had been issued on 27th April, 1979 prior to the engrafting of Sub-section (4) to Section 4, after coming into force of Section 4 (4) and service of the requisition on the Gram Panchayat -to transfer the land and building, no objection is available to be taken, contesting the transfer on the basis of a letter issued prior to the enactment of the statutory provision. The right of the market committee to require such transfer is absolute and there is nothing in law which empowers the Gram Panchayat to resist it. Provision has been made in the Act that the income made by the market committee u/s 11 of the Act derived from the transfer is to be shared equally by the market committee and the Municipality or the Gram Panchayat as the case may be, every year, with a further right that the share of the income so allotted to the Municipality or the Gram Panchayat shall not be less than 8% of the average of the net income received by them, from either the land or the building or both so transferred, during the three immediate preceding years of the transfer. The interest of the Gram Panchayat has been amply protected under the statute but the responsibility of the continuance of the market and the management thereof has been entrusted to the market committee.

6. All the contentions raised on behalf of the Petitioners in O.J.C. No. 5523 of 1987 having failed, it is next to be examined as to what relief the Petitioner in O.J.C. No. 918 of 1986 is entitled. The petition has been filed, as noticed earlier, with two prayers i.e., issue of a direction to the opposite parties 1 and 2 for implementation of the notifications of 16th October, 1973 and 23rd January, 1986 i.e. the notification constituting the market area specifying the agricultural produces, and the notification constituting the market yard as also the market and for further relief of declaration that the continuance of holding the market by the opposite parties 1 and 2, i.e. the Balugaon Gram Panchayat and its Sarpanch are illegal. So far as the first relief is concerned, it appears to be redundant because annexures 1 and 2 are already in force and it is the Petitioner itself who is the authority to implement it. If there is any obstruction to their implementation, then, the market committee is itself authorised u/s 22 to launch prosecution therefor. There is however no grievance in the writ petition that annexures 1 and 2 have not been implemented except the fact that the opposite party No. 1 is continuing the market. The continuance of the market by a local authority on and from the date of notification issued u/s 4 (1) ii, prohibited u/s 4 (3) which runs as follows:

On and from the date of notification issued under Sub-section (1) or such later date as may be specified therein, no local authority or person shall,

notwithstanding anything contained in any other law for the time being in force, set up establish or continue or allow to be set up established or continued any place for the purpose of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the Gazette in this behalf in each case by the State Government.

Provided that the State Government may subject to such terms and conditions as they may impose, permit the continuation of any place in the market area for the marketing of any agricultural produce as aforesaid for such period not being later than the date of declaration of market yard within the market area as they may specify.

Thus once the notification is published u/s 4 (1) the opposite party No. 1 would have a statutory liability to discontinue the market. The liability is absolute and being a statutory one, can be enforced against the opposite party No. 1 Gram Panchayat which is itself a statutory body. Both the statutory bodies i.e. Regulated Market Committee and the Gram Panchayat are expected to function within their respective spheres without clash of authorities. Since it is clear that the Gram Panchayat can no longer either continue the market or hold on to it and must under the law transfer the land and building to the Regulated Market Committee but is entitled to share of the income as stipulated u/s 4 (4), it follows that the Petitioner is entitled to the relief of direction to be issued to the opposite party No. 1 not to continue to hold the market.

7. In the result, the writ filed by the Gram Panchayat ( O.J.C. No. 553/87) fails and the petition filed by the Regulated Market Committee ( O.J.C. No. 918/86) is allowed to the extent as discussed above. A writ be issued directing the Balugaon Gram Panchayat and its Sarpanch not to continue holding of the market any further. In the circumstances of the case, there shall be no order as to costs.

G.B. Patnaik, J.

8. I agree.