(2007) 11 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1791 of 2007

Balku Singh and Others APPELLANT

Vs

The State of Jharkhand and Others RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27, 27(1)
Constitution of India, 1950 — Article 14
Jharkhand Agricultural Produce Markets Rules, 2000 — Rule 129, 82

Citation : (2008) 56 BLJR 1426 : (2008) 2 JCR 193

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Amit Kr. Tiwari, for the Appellant; V.P. Singh, for Respondent Nos. 2 to 4 and Ashutosh Anand, for Respondent Nos. 7 to 18, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioners have prayed for quashing the advertisement notice issued by the Respondent- Marketing Board (Annexure-12), inviting open bid auction for settlement of various Hats/Bazars for collecting market fee, which included Bero Bazar. It has been claimed that the notice with respect to settlement of Bero Hat/Bazar is arbitrary and illegal in view of Letter No. 206 dated 8th March, 2007 (Annexure-8) as the petitioners are entitled for extension of their settlement for another two terms of the financial years 2007-08 and 2008-09, similarly, like Itki, Itki Station, Mander, Kurgi and Chutupalu hats. Petitioners have also prayed for direction on the respondents to consider and pass appropriate order on their representations for extension of period of settlement of Bero Bazar for further two financial years till 2008-09.

2. During the pendency of the writ petition, the settlement of the Market, in question, was made in favour of the private persons. The said fact was brought to the notice of this Court and prayer was made for impleading the settlees as

respondents and for quashing the settlement made in their favour, which was allowed.

3. According to the petitioners, their raiyati lands are being used for holding Bero Hat/Bazar by the Marketing Board. They are displaced raiyats and are entitled to get settlement for collection of market fees. The petitioners claimed themselves as displaced and without any livelihood and had represented before the Marketing Board, requesting them to make settlement and grant licence for collection of market fees of the said Hat.

4. A group of persons was allowed to collect market fees for the financial year 2004-05 at the minimum guarantee of Rs. 8,50,000/- (rupees eight lacs fifty thousand) and the period was extended up to 2005-06.

5. Secretary of the Agricultural Marketing Committee set the petitioner''s representation to the Circle Officer, Bero for enquiry as to whether the petitioners'' raiyati lands have been acquired for the purpose of holding Bero Hat/Bazar. The Circle Officer enquired into the matter and submitted his report dated 14th May, 2005 (Annexure-3) stating therein that the petitioners'' lands have been acquired and utilized for holding Bero Hat. On the basis of the said report, the Secretary, vide his letter dated 24th May, 2005, forwarded the petitioner''s claim to the Managing Director recommending for inclusion of the petitioners in the contractor''s group, whose period of settlement was extended up to year 2005-06.

6. It has been stated that the said contractor group, in whose favour the settlement was made and extended upto the financial year 2005-06, could deposit the amount for the financial year 2004-05. But, thereafter, began to default in payment of the minimum guarantee viz. for the year 2005-06 and for the period April and May, 2006, which was accumulated to Rs. 1,61,000/- (rupees one lac sixty one thousand).

7. The 15 members of contract group by its representation dated 24th June, 2006, represented to the Secretary, Managing Committee, Ranchi, have stated that they are not able to deposit the minimum guarantee of the market fee and they have fallen in huge debts. They are poor tribals and are not in position to continue with the settlement for the remaining period.

8. On the said representation, the settlement with the said group of contractors was cancelled. In the meantime, the Director, Vigilance, Marketing Board by letter dated 29th March, 2006 (Annexure-6) made his recommendation for settlement of Bero Hat in favour of the petitioners, considering the claim that they are displaced persons. The Hat was settled on the minimum guarantee amount.

9. Since the settlement in favour of the contractor''s group was cancelled, the fee payable for the period April June, 2006 of the said contractor''s group was made payable by the petitioners, though the settlement was made in their favour by

order dated 12th July, 2006 (Annexure-7). It has been further stated that as per the policy of the Marketing Board issued vide Letter No. 206 dated 8th March, 2007 (Annexure-8), the contract for settlement to collect market fees has been extended for the period of three years and only after expiry of three years, the contract is to be advertised for settlement by open bid.

10. That in view of the said policy decision, the petitioners had taken the settlement for the financial year 2006-07 even after delay and on payment of minimum guarantee for the period April-June, 2006 and they had legitimate expectation that their contract period will be extended for further two financial years.

11. According to the petitioners, they were surprised to see the notice published in the newspaper for fresh settlement of Bero Hat/Bazar by open bid, whereas the period for settlement of other Hats/Bazars, such as Itki, Itki Station, Mandar, Kurgi and Chutupalu was extended for further period, as three years'' period was not expired. The petitioners claimed that they were also entitled for extension of the period according to the policy decision and as such, they protested against the said attempt of making fresh settlement of the Hat/Bazar by the respondents and requested for extension of the period of settlement for next two financial years. They further claimed that after settlement in their favour, they have deposited 90% of the minimum guarantee amount and are entitled for extension of the period of settlement for another two financial years.

12. Petitioners'' further case is that during the pendency of the writ petition, a group of 11 persons has been appointed by Memo No. 726 dated 30th March, 2007 (Annexure-14) for the purpose of collecting market fees, which included the same seven persons, who had earlier resigned showing their inability to continue with the contract. The same was also challenged by way of amendment, impleading the said members of the group as respondents. The petitioners claimed that the denial of extension of their period and ignoring their claim for settlement as displaced persons without assigning any reason are contrary to the decision of the Patna High Court in Kesho Singh Vs. State of Bihar and Others, .

13. Two sets of counter affidavit have been filed contesting the petitioners'' claim. One on behalf of the Respondent-Marketing Board and another on behalf of the private respondents, in whose favour, the settlement has been made during the pendency of the writ petition.

14. In the counter affidavit filed on behalf of Respondent Nos. 2 to 4, it has been stated, inter alia, that a policy decision was taken for collection of market fee and ground rent for the Hat/Bazar held out of the urban area by settlement of the same in favour of a group of local unemployed persons whose names are to be recommended by the Aam Sabha of the village. In view of the said policy decision, Bero Hat/Bazar was settled for the year 2005-06 to a group of 15 persons. After the settlement of Bero Hat/Bazar, a representation was made by the petitioners and others, stating therein that the lands, on which the Hat/Bazar

is spread over, belong to them and they were entitled for settlement of the contract in their favour. Their claim was considered and after examining the same, four persons were included in the group, in whose favour settlement was made. Since one person of the group was already in the group, three persons were included in the group so as to form a group consisting of 18 persons.

15. For the financial year 2007-08, the Gram Sabha selected and recommended the names of 15 persons, including four persons, who have been claiming settlement as displaced persons. The settlement was, accordingly, made in favour of the group, consisting of 15 persons. Now the petitioners, who claim to be the displaced persons, want settlement exclusively in their favour.

16. It has been stated that on their representation and on the basis of the report of the Circle Officer, the petitioners were given the benefit of inclusion of their names in the group, in whose favour, the settlement has been made and as such, the petitioners'' demand for exclusive settlement in their favour is not justified. It has been further stated that the cases of Itki, Mandar and others were different. The extension has not been given to the petitioners, as they were settled the market after midway cancellation of the settlement of Bero Hat/Bazar.

17. Respondent Nos. 7 to 18, in whose favour settlement has been made during the pendency of the writ petition, have also filed a counter affidavit, stating, inter alia, that the writ petition is not maintainable for non-joinder of another displaced person, namely, Rakesh Bhagat, who is a necessary party and interested person in the proceeding of this case. The petitioners claim themselves as displaced persons on a certificate obtained by them fraudulently. According to the policy decision, a group of less than 10 persons cannot be appointed for collection of market fee. These respondents have been selected by Gram Sabha and the petitioners have no right to challenge the settlement made in favour of the private respondents. The settlement made by letter dated 12th July, 2006 was only for the period 2006-07. The appointment was made by way of an ad hoc measure. The petitioners cannot claim any benefit for extension of the period of settlement on the basis of the letter dated 8th March, 2007. It has been stated that the Petitioner No. 1 belongs to Karra Block and from the report of the Circle Officer, his status is not clear. The petitioners are not the members of the elected group and cannot seek the benefit of extension of the period of settlement. Their claim of legitimate expectation is wholly baseless.

18. It has been further stated that the advertisements made for settlement are correct and valid, as only elected groups can be authorized for collection of market fee and displaced persons can be nominated as members of the group. They cannot form a group on their own. The extension of the period of settlement was done in the case of elected group as per the decision of the Marketing Board vide letter dated 8th March, 2007. The three nominations of displaced persons can be mode in the group.

19. From the averments made in the writ petition and in the respective counter

affidavits of the respondents, the following points arise for consideration before this Court:

(i) Whether the petitioners are entitled for extension of the period of settlement for further two years, as has been done in the cases of Itki, Itki Station, Mandar, Kurgi and Chutupalu hats till the completion of three years?

(ii) Whether the petitioners car, derive the preferental right of settlement in view of their claim, as displaced persons, for the reason of using their raiyati lands for the purpose of holding Bero Hat/Bazar?

Re. Point No. (i):

20. The policy of the Marketing Board to make settlement of Hat/Bazar to the same group of contractor for three financial years is an admitted position. The respondents by Letter No. 206 dated 8th March, 2007 issued a direction that the persons of contractor''s group, who have been selected for collection of market fee, are not to be disturbed for three financial years. A fresh settlement can be resorted to only after completion of three financial years. In view of the said policy decision, the contract period of settlement with respect to Itki, Itki Station, Mandar, Kurgi and Chutupalu Hats has been extended as the period of three financial years has not expired.

21. The point of controversy for extension of the period of the petitioners'' settlement is of two folds; (i) the petitioners were allotted settlement after the resignation and abandonment of the members of the group to whom the settlement was made; and (ii) for settlement of such Hats, at least a group of ten persons is required, as per the guideline dated 8th March, 2007 (Annexure-9).

22. Mr. Rajiv Ranjan, learned Counsel, appearing on behalf of the petitioners, submitted that the said objection, raised by the respondents, is wholly frivolous and baseless. No distinction has been made in the policy decision for extension of the period of settlement, as claimed by the respondents. The petitioners were given settlement for the financial year 2006-07 by letter dated 12th July, 2006 in view of their representation and claimed as displaced persons and as per the decision communicated by the Director, Vigilance, Jharkhand State Marketing Board vide his Letter No. 339 dated 29th March, 2006 (Annexure-6). In the licence, for settlement also no additional condition was made for execution of any provision of policy decision in the cases of the petitioners, which is evident from Annexure-7. In the decision circulated by Letter No. 206 dated 8th March, 2007 (Annexure-8), guideline was issued for making fresh settlement of the Hats, which have completed the period of three years of settlement. The number of persons of a group has been fixed for a fresh settlement and is not made applicable in the case of settlement in favour of the group of displaced persons. The same is also clearly accepted and understood by the department, as further period has been extended to Itki station Hat, which was earlier settled to a group consisting of only five persons by letter dated 10th August, 2007 (Annexure-16).

Learned Counsel submitted that in the case of the petitioners, it is a group of displaced persons and the petitioners'' claim stands on much better footing. There is, thus, no ground of distinction or discrimination in the matter of extension of the period of petitioners'' settlement.

23. Mr. V.P. Singh, learned Senior Counsel, appearing on behalf of the Respondent-Marketing Board, has not deputed the said provision of the guideline and the decision of the Marketing Board. Learned Counsel, however, submitted that the same should not be made applicable in the case of the petitioners, as they were settled with the right after resignation of the earlier selected members.

24. Mr. Ashutosh Anand, learned Counsel, appearing on behalf of the private respondents, who are the setlee during the pendency of the writ petition, vehemently argued that the policy decision for extension of the period of settlement is not meant for the petitioners, as the petitioners'' appointment was by way of stopgap arrangement after resignation of the members of the earlier selected group. Learned Counsel referred to and relied on a decision of the Patna High Court in Vijay Sen Singh Vs. State of Bihar and Others, and submitted that if a person was granted licence for the previous year car be of no help to him, if he is not granted licence again. He further submitted that there is no provision of law in any policy decision which entitles the displaced persons to collect market fee exclusively and their claim being displaced persons has no legal basis. Even in the case where the markets are held on the raiyati land, such as Brambe and Balsokra Hats, right has not been given exclusively to the displaced persons and the group of contractors consisting of other persons also. Learned Counsel submitted that there is no exceptional circumstance giving any right to the petitioners to collect market fees as displaced persons exclusively.

25. For the proper appreciation of the contentions of the learned Counsel, it is useful to look at the relevant statutory provisions, providing for levy of fees. Section 27 of the Agricultural Produce Markets Act confers the power to levy fees. Section 27 of the Act in so far as relevant for the present is as follows:

27. Power to levy fees.-(1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs. 100 worth of agricultural produce

"Illustration- xxxxx

"Explanation- xxxxx

"(2) The market fee chargeable under Sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) xxxxx.

(emphasis supplied)

26. The manner of payment/collection is laid down in Rule 82 of the Agricultural Produce Market Rules. Sub-rule (v) of Rule 82 was earlier as follows:

The Market Committee may authorize any of its officers or staff or any other person to collect market fee directly from the buyer or his agent.

Subsequently, said Rule 82 was amended in the year 1996 and in place of Rule 82(v), as quoted above, the following rule was substituted:

The Market Committee may authorize any of its officers or staff or any collecting agent whose appointment has been approved by the Managing Director of the Board or an officer authorized by him in this behalf, to collect market fee directly from the buyer or his agent.

27. A bare perusal of Section 27 and Rule 82(v) makes it manifest and clear that the Market Committee is completely free to make the collection of fee either through its own agency i.e. by authorizing any of its officers or staff or by appointing a collecting agent for the purpose.

28. In the instant case, the decision was taken for appointing the members of displaced persons as collecting agent by the Respondent-Marketing Board vide its Letter No. 339 dated 29th March, 2006 (Annexure-6). According to the said decision, the letter dated 12th July, 2006 (Annexure-7) was issued by the Secretary on behalf of the Marketing Board, appointing the petitioners as collecting agent for Bero Hat for the financial year 2006-07. From perusal of Annexure-7, I do not find any clause excluding the application of the policy decision as applicable in the cases of other hats. It is evident from Annexure-8 that the decision was taken for fresh settlement only in the cases where the period of three financial years of the settlement to the concerned groups expired. Clause 7 of the said letter clearly provides then for new groups, the number of members will be at least ten. It is, thus, evident that the said clause is not applicable in the cases of old groups in whose favour earlier settlement has been made.

29. In the impugned notice (Annexure-9), it is clearly mentioned that the fresh settlement is to be mode to the Hats/Bazar for collecting market fees, in case, if such groups have already completed three years of their selection. However, in the note appended in the advertisement, Bero Hat has not been included for extension, though there was no just reason for discrimination of the said market and treating the same as an exception to the policy decision for extension of the period of settlement till completion of three years.

30. In view of the above discussions, it is clear that the petitioners'' settlement has been arbitrarily singled out and has been advertised for fresh bid, though the group, which was selected for the financial year 2006-07, is entitled for extension of the period until it completes three financial years from the date of settlement as per the policy decision. The notice and the process for fresh bid in the case of Bero Hat is, thus, wholly arbitrary, illegal and violative of Article 14 of the Constitution of India and the same is unsustainable. Since the policy decision for extension of the period of settlement has been taken up by the Marketing Board in view of the provisions of the Agricultural Marketing Act and Rules, the

decision in Vijay Sen Singh''s case (supra) has got no application to the facts of the instant case.

31. In view of the above finding, the Point No. (i) is decided in favour of the petitioners and it is held that the petitioners are entitled for extension of the period of settlement made in their favour for collecting market fees of Bero Hat til the completion of three years as per the policy decision of the Marketing Board.

Re. Point No. (ii):

32. In view of the decisions on Point No. (i), consideration and the decision on this point remains academic. It has been submitted by learned Counsel for the petitioners that the petitioners derived their right of settlement, as they are all displaced persons and Bero Hat is held over their raiyati lands. It has been held that the right to hold agriculture fair and for collecting market fees is an exclusive right of the proprietor of the land, as provided in Rules 82(v) and 129 read with Section 27(1). Learned Counsel referred to and relied on a decision of the Patna High Court in Kesho Singh Vs. State of Bihar and Others, .

33. The said contentions of the petitioners have been seriously contested by the learned Counsel appearing on behalf of the private respondents. Learned Counsel submitted that there is no such right given in any provision of the Bihar Agricultural Produce Market Act or Rules. Rule 82(v) and Rule 129(vi) of Jharkhand Agricultural Produce Market Rules provide for appointment of agent by the Market Committee to collect market fees. Thus, the Market Committee can authorize any person to collect market fees and that the displaced persons have got no preferential right. Learned Counsel referred to and relied on the following decisions of the Patna High Court:

I. Saryug Prasad Sah and Others Vs. The State of Bihar and Others

II. Md. Bashir and Others Vs. The State of Bihar and Others,

III. Suday Kumar and Others Vs. Bihar State Agricultural Marketing Board and Others

34. In Kesho Singh''s case (Supra) , the Division Bench of the Patna High Court has held that the right to hold cattle fair on raiyati lands is the exclusive right of the proprietor of the lands subject to obtain licence under Rule 129 of the Rules.

35. In the instant case, there is no dispute regarding holding of hat or fair on the raiyati lands. The controversy between the parties is as to who is to be appointed as agent to collect market fees, whether the petitioners, who are raiyats, claiming displaced persons and who claim that their raiyati lands are being used for holding market, have got exclusive right to get settlement in their favour or the same should be settled to a group of villagers selected by them.

36. From perusal of the provisions of Section 27 of the Act and Rules 82 and 129 of the Rules, I find that the Market Committee has got power to authorize any of its officers, staff or any other person to collect market fees. In view of the above

power, the Market Committee is free to frame its policy decision or take decision regarding the mode and manner and the persons to be appointed for collecting market fees.

37. In the instant case, the Market Committee has taken decision to settle Bero Hat/Bazar to the petitioners, who claim to be the displaced raiyats. The said decision is within the power conferred on the Market Committee by the provisions of law.

In view thereof, it is held that the Market Committee is empowered to give preference to the displaced persons or to frame any such policy decision for the purpose of appointing agent to collect market fees. Point No. (ii) is, thus, decided, accordingly.

38. In view of the aforesaid findings, this writ petition is allowed. The impugned notice as well as entire process of fresh settlement of Bero Hat is hereby quashed. As consequence, the settlement made in favour of Respondent Nos. 7 to 18 becomes redundant and is also hereby quashed.