**(2003) 01 PAT CK 0124**

**In the Patna High Court**

**Case No :** C.W.J.C. No. 11755 of 2002

Bhagwanji Rice Mill — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

**Date of Decision :** 15-01-2003

**Acts Referred:**

**Citation :** (2003) 01 PAT CK 0124

**Final Decision :** Allowed

# Judgement

Aftab Alam, J.—The Petitioner, a partnership firm, is a trader engaged in the sale and purchase of rice (an agricultural produce) within the jurisdiction of the Agricultural Produce Market Committee, Hasan Bazar in the district of Bhojpur. The Petitioner seeks to challenge an assessment order passed by the Sub-divisional Officer-cum-Special Officer of the Market Committee on 25.4.2002. The order relates to the assessment period 1997-98 to 2000-2001 and for the aforesaid period the market fee payable by the Petitioner is assessed at Rs. 5,31,552/-; on the assessed market fee a penalty of Rs. 2,12,620/- has also been imposed against the Petitioner.

2. The assessment order is challenged on the ground that the Sub-divisional Officer had no jurisdiction or authority to make any assessment of market fee and to pass the impugned order fastening the liability of market fee and penalty against the Petitioner. In para 16 of the writ petition, it is stated as follows:

That to the best of the Petitioner''s knowledge the State Government has not appointed any person including the Respondent sub-divisional officer to exercise any powers during the periods from July 1999 to April 2002 in relation to any matter including assessment matter under the provisions of the Act and Rules made thereunder.

3. Bihar Agricultural Produce Market Committee, Hasan Bazar was constituted on 24.2.1993 and it ceased to function with effect from 24.8.1996 after the expiry of the period of three years and six months from the date of its constitution.

4. The statutory provisions relating to assessment of market fee are contained in various Sub-sections of Section 27A of the Bihar Agricultural Produce Market Committee (sic-Act), 1960. Under the provisions of the Act, the power to make assessment of market fee is vested in a special committee consisting of the Chairman, the Vice Chairman and the Secretary of the Market Committee. Section 9(5) provides that the life of the Market Committee shall be for a period of three years from the date of its constitution and in case a fresh election is not held within six months from the expiry of the three years'' period, the Market Committee shall cease to function.

5. In that eventuality the State Government can nominate a person for carrying out the functions and duties of the Market Committee. The nomination can remain valid for a period of six months and can be extended for a further period of six months, and no more. In case a committee is not constituted, during the initial period of nomination of six months, it must be constituted within the extended period of six months, failing which a void is likely to result.

6. In the case in hand, it is noted above that the committee constituted on 24.2.1993 ceased to function on 24.8.1996. The election for the new committee could only be completed in April, 2002 but the constitution of the new committee awaits a notification to be published by the State Government in the official gazette as provided u/s 13 of the Act.

7. The question is what would be the legal position in the matter of assessment of market fee for the interregnum between the date on which the previous committee ceased to function and the date on which the new committee would come into being. Whether or not the State Government nominated someone to discharge the functions and duties of the Market Committee (for the period of six months and the addition period of six months) as provided u/s 9(5) of the Act is not known? But in trie counter affidavit filed on behalf of the Respondents, reliance is placed on office order No. 249, dated 26 3.2002 issued by the Managing Director of the Bihar State Agriculture Marketing Board. A copy of the office order is at Annexure ''A'' from which it appears that it was issued in purported exercise of the power u/s 37 of the Act and by this order the Managing Director asked the Sub-divisional Officer, Piro to discharge the functions and powers of the Committee with regard to the recovery of market fee, treasury and bank affairs, payment of salary to employees and proper maintenance and security of the Committee''s property.

8. The question is whether the provision of Section 37 of the Act had any application to a situation where the previous Market Committee had ceased to exist and whether on the basis of that office order the Sub-divisional Officer was vested with the power to pass an order of assessment in terms of Section 27A of the Act.

9. The issue does not remain res-integra and it stands concluded by a bench decision of this Court in Ramji Prasad Vs. State of Bihar and Others, In Ramji

 

Prasad on materially similar facts, this Court held that Section 37 had no application to a situation where the previous Market Committee had ceased to exist; Section 37 applied to cases where the Market Committee though in subsistence was rendered incapable of functioning normally due to any court order or for any other similar reason. In a situation where the previous Market Committee ceased to exist, the powers and functions of the Market Committee could only be exercised by a person nominated by the State Government u/s 9(5) of the Act.

10. On the basis of the division bench decision in Ramji Prasad (supra), it must be held that the impugned order passed by the Sub-divisional Officer, Piro is without any lawful authority and jurisdiction. It must, therefore, be set aside.

11. As the constitution of the next committee has in fact been completed and for coming into being it only awaits publication of the names of the Chairman and the members by the State Government in the official gazette, there should be no reason for any more delay in complying with the legal formality. Once the committee comes into being, it will be open to it to make an assessment of the market fee payable by the Petitioner for the period 1997-98 to 2000-01 and the judgment passed in this writ petition shall not stand in the way of the market Market Committee in making the assessment in accordance with law.

12. In the result, this writ petition is allowed but with no order as to costs.

 