

(1985) 01 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 144 of 1980

Bihar Khudra Vikreta Mahasangh and Another

APPELLANT

Vs

Bihar Krishi Utpadan Bazar Parishad and Another

RESPONDENT

Date of Decision : 10-01-1985

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 4(4)
Bihar Agricultural Produce Markets Rules, 1975 — Rule 98

Citation : AIR 1985 Patna 295 : (1985) 33 BLJR 615 : (1985) PLJR 349

Hon'ble Judges : Phani Bhushan Prasad, J;N.P. Singh, J

Bench : Division Bench

**Advocate : Tara Kant Jha and Rukmini Kant Choudhary, for the Appellant;
Alakhraj Pandey and Ramesh Jha, for the Respondent**

Final Decision : Dismissed

Judgement

N.P. Singh, J.—The writ application has been filed on behalf of the petitioners for a writ of mandamus directing the respondent-Bihar Agricultural Produce Market Board (hereinafter to be referred to as "the Board") not to insist petitioner No. 2 to take licence for carrying on business in the concerned Market Committee area. Petitioner No. 1 is the Bihar Khudra Vikreta Mahasangh, a representative body of the retail dealers.

2. It is the case of the petitioners that petitioner No. 2 (hereinafter to be referred to as "the petitioner") is a retail seller. The Market Committee issued notices to dealers, including the retail sellers, directing them to obtain licences, in default thereof they would be criminally prosecuted. According to the petitioners, the provisions of the Bihar Agricultural Produce Markets Act (hereinafter to be referred to as "the Act") and the Rules framed thereunder, i.e., Bihar Agricultural Produce Markets Rules (hereinafter to be referred to as "the Rules") are not applicable.

3. The stand of the respondent Board is that the provisions of the Act are applicable to retail dealers/traders whose daily or annual outturn exceeds the

amount and has been prescribed under the Rules. Section 2(p) defines "retail sale" as follows : --

" "retail sale" means a sale of any agricultural produce not exceeding such quantity as may, by bye-law or rule, be fixed in respect of such agricultural produce."

The expression "trader" has been defined as follows u/s 2(1)(w) : --

" "trader" means a person ordinarily engaged in the business of buying and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a commission agent or a person ordinarily engaged in the business of processing of agricultural produce."

Section 4 vests power in the State Government to declare the area specified in a notification as market area for the Act. Sub-section (2) and Sub-section (4) of Section 4, which are relevant, are as follows : --

"(2) On and after the date of publication of the notification under Sub-section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the Official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws."

"Explanation -- A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use."

"(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed."

In view of Sub-section (2) no person can set-up, establish or continue any place for purchase, sale, storage or processing of any agricultural produce within the market area except in accordance with the provisions of the Act, Rules and Bye-laws. Rule 98(i) provides that no person shall carry on business as trader in agricultural produce in the market area except under and in accordance with the terms and conditions of licence issued in this behalf by the Market Committee. In view of the aforesaid provision, if the petitioner is a trader and is carrying on business in the market area in question, then unless his case is covered by Sub-section (4) of Section 4, he cannot carry on the business in the market area as a

trader without licence.

4. On behalf of the petitioners it was urged that in view of the explanation to Sub-section (2) of Section 4, the provisions of the Act and the Rules shall not be applicable. It was pointed out that in view of the explanation aforesaid "if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use", such sale is not covered by the provision of Sub-section (2) of Section 4. On a plain reading, the explanation is applicable to retail sale of agricultural produce to a person who purchases such produce for his own use, but before that a quantity has to be prescribed which shall be exempted from the application of the provisions of the Act. The definition of "retail sale" u/s 2(p) also requires a quantity to be fixed in respect of such agricultural produce under the Rules or Bye-laws. The counsel for the petitioners admitted that for the present there is no order directly fixing the limit of the quantity below which it can be held to be a retail sale. He pointed out that reading the definition of "retail sale" along with Rule 94 and Schedule II to the Rules it can be ascertained as to what is the limit of the sale of agricultural produce which has been fixed to bring it within the definition of retail sale.

5. In the writ application petitioner No. 2 has been described as Proprietor of Ganga Kirana Stores and it has been claimed that he is a licensed retail dealer. In the counter-affidavit, which has been filed on behalf of the respondent-Board, it has been asserted that the petitioner is a leading trader of notified agricultural produce and other commodities. It has also been stated that the petitioner is purchasing notified agricultural produce from different traders and selling those agricultural produce to different persons. There is no denial of the aforesaid statements made in the counter-affidavit. In such a situation, it has to be held that the petitioner is a trader within the meaning of the Act. Once the petitioner is held to be a trader, whether he is exempted from the provisions of the Act and the Rules has to be determined in light of Sub-section (4) of Section 4 read with Rule 98(xi). Rule 98(xi) of the Rules is as follows :

"The provisions of the Act shall not apply to trader till his daily turnover does not exceed a sum of Rs. 400 (four hundred) or till the annual turnover exceeds a sum of Rs. 15,000/-(fifteen thousand), whichever is earlier i.e., if the daily turnover exceeds Rs. 400 (four hundred) or when total turnover during any of the year exceeds Rs. 15,000 (fifteen thousand) the provision of the Act shall apply."

If the daily turnover does not exceed Rs. 400/-or the annual turnover does not exceed Rs. 15,000/- as in Rule 98(xi), then only the petitioner can be exempted from the provision of Sub-section (2) of Section 4 of the Act. On basis of the materials on the record, it is not possible for this Court to record any categorical finding on that question. My considered opinion is that the case of the petitioner is not covered by Sub-section (4) of Section 4 of the Act. As such, it has to be held that the provision of the Act and the Rules are applicable to him.

6. This writ application accordingly fails and it is dismissed, but, in the circumstances of the case, there shall be no order as to costs.

Phani Bhushan Prasad, J.—I agree.