

(2009) 05 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case Nos. 11638 of 1993 and 10145 of 2001

Dharampal Satyapal Ltd.

APPELLANT

Vs

State of Bihar and Others
 Prabhat Zarda Factory
(India) Ltd. and Lalit Prasad Vs State of Bihar, Bihar
Agriculture Marketing Board established under Section 33A of
the Bihar agriculture Produce Market Act, Agriculture Produce
Market Committee and Union of India (UOI)

RESPONDENT

Date of Decision : 21-05-2009

Acts Referred:

Citation : (2010) 8 RCR(Civil) 2765

Judgement

Sudhir Kumar Katriar, J.—Common issues have been raised in this batch of writ petitions, have been heard together, and are being disposed of by a common judgment. The representative facts shall be drawn from C.W.J.C. No. 10145 of 2001 (Dharampal Satyapal Ltd. and Anr. v. the State of Bihar and Ors.).

2. A brief narration of facts essential for the disposal of the writ petitions may be indicated. The Petitioners call in question different notices contained in Annexure 6, 7 and 9, issued by respondent No. 4 (The Secretary, Agriculture Produce Market Committee, Musallahpur, Patna) (for short Market Committee), whereby the writ petitioners have been assessed to pay market fee on "Zafrani Zarda" under the provisions of the Bihar Agriculture Produce Market Act, 1960 (for short "the Act"). The petitioners have also called in question the notification dated 18th July, 1991, u/s 39 of the Act, and published in the official gazette on 31st July 1991, whereby the schedule appended to the Act has been amended and under head "11 (Narcotics)", two items, namely, Zarda and Zafrani Zarda etc., have been added.

3. Petitioner No. 1 is a company incorporated under the Companies Act 1956, and is engaged in the manufacture, inter alia, of Tulsi brand of Zafrani Zarda in its different factories located outside the State of Bihar and selling the same from its various depots situate throughout India including the State of Bihar at New Bye-pass Road, Anishabad, within Gardanibag Police Station, in the township of

Patna. The company is also engaged in marketing and sale of spices under the brand name "CATCH". The raw-material used for manufacture/production of Zafrani Zarda is tobacco which is already incorporated in the Schedule of the Act. The petitioners' case is that the process of manufacture of Zafrani Zarda is a sophisticated and cumbersome process. The manufacturers purchase tobacco grown by the agriculturist which is then sorted out and bundled. Plain water is then sprinkled on the bundles of tobacco, and then allowed to ferment for a few days which generate heat in order to cure it. The stalks of tobacco are then separated and removed. The impurities in the tobacco are then sifted out, and are then blended with permissible colours and chemicals, cut into strips sheared by machine, and allowed to dry. This product of tobacco is then called Sada Zarda. Manufacturers of Zafrani Zarda like the petitioners purchase Sada Zarda from various places, brought to the factory premises and thereafter various other ingredients are mixed in fixed proportion which is ultimately called Zafrani Zarda. It is thereafter packed in special pouches, or tin containers of various sizes, for marketing and sale in different brand names.

4. The petitioners applied for license under the provisions of the Act under mistaken impression of law and started filing returns.

5. The expression "Agricultural Produce", occurring in the Act, was amended by Act No. 60 of 1982, and the words "manufactured or not" was inserted therein with effect from 30.04.1982. By yet another notification dated 18.07.1991, published in the official gazette on 31.07.1991 (Annexure-2), in purported exercise of powers conferred by Section 39 of the Markets Act, products/items "Zarda" and "Zafrani Zarda" etc. were included in the schedule to the Act, (Annexure-2). Invoking powers u/s 3 of the Act, the State Government issued draft notification on 12.5.1992, inviting objections from affected parties for regulation of sale, purchase, storage and processing of all agriculture Produce included in the schedule of the Act (Annexure-3). The final notification u/s 4 of the Act in relation to all the market committees in the State of Bihar was issued on 31.8.1992 (Annexure-4), for regulation of sale, purchase, storage and processing of all agriculture produce included in the schedule of the Act.

6. This batch of writ petitions was dismissed by this Court by a common order dated 7 th of October, 2002. Aggrieved by the order, the writ petitioners preferred Civil Appeal No. 5779 of 2005 (Dharampal Satyapal Limited and Anr. v. The State of Bihar and Ors.), before the Supreme Court which was heard along with cognate appeals, and were disposed of by a common judgment dated 14.5.2008. The order of this Court was set aside, and the matters were remitted back for reconsideration and disposal afresh. That is how these matters have come up before us and are being disposed of. Paragraph Nos. 7 and 8 of the order of Supreme Court are reproduced hereinbelow:

7. The High Court by reason of the impugned judgment did not go into other contentions raised by the parties. It was held that the market fee would be leviable with effect from 31st August, 1992. It failed to take into consideration

the important question raised by the petitioners that the Notifications were ultra vires the Act and/or would have no application in relation to Zafrani Zarda. It also did not take into consideration the contention of Market Committee that having regard to the provisions of Section 4-A of the Act, Sections 3 and 4 thereof were not required to be complied with.

8. The questions raised by the parties are of significance. They should have been dealt with by the High Court.

7. Mr. Ramesh Kumar Agrawal, learned Advocate appearing on behalf of the petitioners submits that after insertion of any item in the schedule to the Act, notifications under Sections 3 and 4 are mandatory for application of regulatory provisions. By these notifications, the State Government have notionally notified the Market yards/places followed by no further orders, circular regulating the sale/purchase of those items. It is contended that the liability of charging fee u/s 27 of the Act on an item is subject to regulation of such item under the provisions of the Act and the Rules framed thereunder. Zafrani Zarda and spices are not being regulated under any provision of the Act and the Rules framed thereunder and, therefore, question of payment of fee u/s 27 of the Act does not arise. It is further pointed out that neither the State Government, nor the Bihar Agricultural Marketing Board (for short "the Board") have provided any infrastructural facility as mandated by the Act or the Rules, either to sellers or buyers. It is further highlighted that by reason of the notification issued u/s 4 of the Act, almost entire area of the Patna town has been declared as a sub-market yard with the sole purpose of collecting market fee without providing any mechanism to regulate them. Learned Counsel for the petitioner draws our attention to Rules 80 and 81 of the Rules, framed under the Market Act.

7.1 It is further contended while interpreting the provisions of an Act that the entire statute has to be read in its entirety including the purport and purpose of the case as reflected from the preamble of the Statute, as also the statement of objects and reasons. Counsel relied upon *Indian Handicrafts Emporium and Others Vs. Union of India (UOI) and Others*, and (2006) 12 SCC 573 paragraph Nos. 97 and 104.

7.2 Highlighting the provisions contained in Section 15(2), it is submitted that sale and purchase contemplated therein is to be made by means of open auction or tender system which is not the case in hand. The end product (Zafrani Zarda) is covered by different provisions of the Standards of weights and Measures Act, 1976, and Standards of Weights and Measures (Enforcement) Act, 1985, enacted by the Parliament. The said Act has been given effect to by the State of Bihar by means of a notification dated 1st July, 1998. Referring to different provisions of the said Act, it is contended that the same would relate to the commodities sold in packaged form and shall bear information regarding the unit, weight and sale price of the commodities. In order to support his contention that Section 15 is mandatory in nature and violation thereof will entail penal consequences, counsel relied on the judgment reported in *Keshoram Agarwala and Others Vs. State of*

Bihar and Others .

7.3 The sum and substance of the argument advanced on behalf of the petitioner is that Zafrani Zarda cannot be regulated under the Act and, in fact, is not being regulated at all and, as such, the authorities cannot justifiably impose and realize market fee from the petitioners u/s 27 of the Act. Referring to the notification dated 6.4.1999 (Annexure-12/A), it is contended that the entire length and breadth of Patna town has been declared Sub-market yard for the rest of the items including Zafrani Zarda without indicating the methods of regulation in respect of sale, purchase, and processing of "Zafrani Zarda". He submitted that the Act is confiscatory in nature in so far as the manufacturers like the present petitioners are concerned.

7.4 Learned Counsel for the petitioners further sought to contend that Zafrani Zarda is an industrial product and is incapable of being subjected to fee under the Market Act.

7.5 He also submits that the agriculturist in this country is not subjected to any tax at all, whereas the industrialist is subjected to diverse imposts like duties of excise, sales-tax, Income Tax, import duty etc., to which has been added the market fee with the help of fictional concept of "all agricultural produce", and manufactured or not, and declaration of the entire township of Patna as Market Yard/Sub-Market Yard.

8. Mr. Ramesh Kumar Agrawal, learned Counsel appearing in C.W.J.C. No. 12258 of 1993, submitted that he has no instructions in the matter.

9. Mr. K.N. Jain appearing for the petitioners in CWJC No. 11638 of 1993 (Prabhat Zarda Factory (India) Ltd. and Anr. v. State of Bihar and Ors.), submitted that it is evident on a plain reading of the aims and objects and the preamble of the Act, that the Act is meant to protect the agriculturist from the exploitation of the middle man, tobacco really being an agricultural produce is liable to market fee, but not Zarda and Jafrani Zarda. He relies on the judgment of the Supreme Court in I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others, which lays down to the effect that agricultural products, not industrial products, can be subjected to levy. In his submission, an industrial product to reach this stage has to cover three stages, namely, raw material, processing, and the end product. The end product is an industrial product and cannot be subjected to levy.

10. The learned Advocate General appearing for the respondent-Board (respondent No. 2) submitted that the petitioners have not challenged the validity of the Act. The definition of agricultural produce, as applicable during the period in question, includes all produces whether processed or non-processed, manufactured or not. The matter is now concluded by judgment of the Supreme Court in Kesarwani Zarda Bhandar Vs. State of U.P. and Others, . The definition of agricultural produce in the Bihar Act is wider than in the U.P. Act. A large number of items which are not apparently agricultural produce have been

declared by the Supreme Court to have been validly included in the Schedule to the Act and are, therefore, liable to market fee. He relies on the judgment of the Supreme Court in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others* Etc., . He next submits that in order that an item can be subjected to market fee, it must satisfy three conditions, namely, it must be an "agricultural products" within the meaning of Section 2(a) of the Act, it must be used as raw material, and must be included in the schedule to the Act. In his submission, Zarda and Zafrani Zarda satisfy the three conditions. The case of the petitioners is entirely based on the judgment of the Supreme Court in *I.T.C. Ltd. and Others Vs. State of Karnataka and Others*, (hereinafter referred to as "the first ITC case"), which has been overruled in the second I.T.C. case. It is also based on the judgment in *Prabhat Zarda (Supra)* which dealt with the unamended definition of agricultural produce inapplicable in the present case.

10.1 He next submitted that the issues raised on behalf of the petitioners relating to *Quid Pro Quo* is covered by the authoritative pronouncements of the Supreme Court, wherein it has been held that the services to be rendered in lieu of fees need not be made available on individual basis. Community service is enough.

10.2 He lastly submitted that all kinds of imposts, except income tax, is capable of being passed on to the buyer/ultimate consumer.

11. Mr. S.K. Mazumdar appearing for some of the respondents has adopted the arguments of the learned Advocate General.

12. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The unamended definition of agricultural produce is reproduced hereinbelow:

2. Definitions.- (1) in this Act, unless there is anything repugnant in the subject or context-

agricultural produce" includes all produce, whether processed or non-processed, of agriculture, horticulture, animal husbandry and forest, specified in the schedule.

The same was substituted by Bihar Act 60 of 1982, and was enforced with effect from 30.11.1982. The definition in Hindi, and its unauthorised English translation, is reproduced hereinbelow:

(a) d`f"k mit ls vfHkizsr gS d`f"k m|ku&d`f"k ?ckxokuh?] cxkuks] i"kq&ikyu] ou js"ke&mRiknu] EkRL;ikyu dh lHkh mit] pkgs og fo/kfr ?rS;kj? gks ;k vfo/kkf;r % fofufeZr gks ;k ugh] vkSj bls vUrxZr vuqlwph esa ;Fkk fofuZfn"V i"kq/ku ;k dqDdqV vkfn Hkh gSA

(a) "Agricultural produce" means all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture, and includes livestock or poultry as

specified in the Schedule.

(Emphasis added)

13. The change in the content and sweep of the definition after amendment is evident on a plain reading when read in juxtaposition. The petitioners have not challenged the validity of the Act, nor that of the amended definition. It is thus manifest that "agricultural produce" has a much wider sweep than the quondam definition, and now covers all produces whether processed or non-processed, manufactured or not, agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, and includes livestock or poultry as specified in the schedule. In that view of the matter, we do not find it possible to agree with the submission advanced on behalf of the petitioners that those of the agricultural produce which are used as raw material are alone included in the definition. In view of the position that the Act is covered by Entry No. 28, List No. 2, read with Entry Nos. 14 and 24, of the Constitution, it was open to the Legislature to define "agricultural produce" as has been done. The Court is always reluctant to interfere with the policy and wisdom of the Legislature. On the heels of Amending Act 3 of 1982, came the amendment in the schedule whereby Zarda and Zafrani Zarda have been included in the Schedule under the heading 11 entitled "Narcotics", vide Notification dated 18.7.1991, published in the Bihar Gazette (Extra-ordinary) on 31.7.1991 (Annexure-2). The amendment in the Schedule is reproduced hereinbelow:

la"kks/ku

mDr lwph esa&& "kh"kZd 11 eknd&rEckdw ds v/khu en 1 ds ckn dh fuEu ens
tkMh tk,A

tnkZ tkQjkuh tnkZ oxSjg bl la"kks/ku dk izHkko fcgkj d`f"k mit cktkj vf/kfu;e
1960 ds ykxw gksus dh frFFk ls izHkkoh ekuk tk;sxA

It is thus evident that the essential conditions for imposition of market fee on Zarda and Zafrani Zarda are satisfied in the present case. The tobacco produced in fields is covered by the definition of "agricultural produce", within the meaning of Section 2(a) of the Act, which is within the legislative competence of the Bihar Legislature and has been included in the Schedule to the Act. The petitioners are unmindful of the position that the content and sweep of an enactment has to be determined after taking into account the relevant definitions, the charging section, and the scheme of the Act. The policy and the wisdom of the Legislature in creating new definitions in the enactment may not often times meet the common sense view of the citizen, and generally described as artificial definition. We think that the more accurate way to describe it is by stating that such is the policy and the wisdom of the Legislature. We are thus convinced that the essential conditions for imposition of market fee on Zarda and Zafrani Zarda are satisfied in the present case. To conclude this part, we are of the view that Zarda and Zafrani Zarda are "agricultural produce" within the meaning of Section 2(a) of the Act and, therefore, liable to market fee.

14. Learned Counsel for the petitioners has strenuously contended that the definition of "agricultural produce" must be read in the background of its aims and objects, and the preamble. It appears to us that the petitioners are picking out one or two expressions here and there in the aims and the objects, and the preamble of the Act, which, if read in isolation, may afford narrow interpretation of "agricultural produce", canvassed by the petitioners. We are of the view that the aims and objects, and the Preamble of the Act, have a very limited role to play in interpreting an enactment, particularly if the provisions of the Act are sound and clear. In case of doubt or difficulty in interpreting the provisions of an enactment, help can be obtained from the objects and the preamble of the Act. It is, *inter alia*, for this reason that the same are not part of the substantive provisions of an enactment.

15. We must first of all notice the judgment in *Kesharwani Zarda Bhandar v. State of Uttar Pradesh* (Supra) relied on by the learned Counsel for the respondents wherein the Supreme Court considered the liability of market fee on *Zafrani Zarda* under the U.P. *Krishi Utpadan Mandi Adhiniyam*, 1964 (25 of 1964). The definition of "agricultural produce" under the U.P. Act is set out hereinbelow for the facility of quick reference:

2.(a) "agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form and further includes gur, rab, shakkar, khandsari and jaggery.

The definition in the U.P. Act does not include processed, non-processed, manufactured or not, of agriculture produce. Presence of these expressions in the definition in the Bihar Act makes the difference in the applicability of the Bihar Act. The Supreme Court also considered the definitions of "agricultural produce" in the U.P. Act, and the unamended as well as amended definitions in the Bihar Act, and came to the conclusion that *Zafrani Zarda* cannot be exigible to market fee under the U.P. Act. In view of the distinct and different definitions of "agricultural produce" in the Bihar Act, *Zarda* and *Zafrani Zarda* would be liable to market fee.

16. The judgment of the Constitution Bench of the Supreme Court in *Belsund Sugar Com. Ltd. v. State of Bihar* (Supra), may be also noticed. That was also a case under the Bihar Act, whereby market fee was sought to be imposed on Sugar. The Supreme Court came to the conclusion that sugarcane, sugar and molasses are covered. The field is, therefore, covered by the Special Legislation of the Central and the State and applicability of the Bihar Act being a general law, to sugarcane, sugar and molasses. Sugar is, therefore, completely ruled out. The Supreme Court further noticed that the Parliament and the State Legislation have enacted a number of legislations to govern and control sugarcane, sugar, and molasses, with respect to its sale, purchase etc. and is covered by a special set of legislations of the Parliament and the State Legislature. The learned

Advocate General rightly submits that the judgment has held that items like vegetable oil, rice mill industries, tea, wheat products, like Ata, Maida, Suji are within the sweep of the Act, though the same may not by a common man's perception be Per Se agricultural produce. In that view of the matter, manufactured products are also capable of being covered by the definition of "agricultural produce" in the Bihar Act, provided the aforesaid three conditions are satisfied.

17. Learned Counsel for both sides have placed heavy reliance on the second ITC. That was a case where the question for consideration was whether or not the field was occupied by Tobacco Board Act, 1975. The Supreme Court came to the conclusion that the field is partially occupied by the Act, and the unoccupied area is covered by the Bihar Act and, therefore, exigible to market fee. The Supreme Court substantially disagreed with the first ITC. The discussion in the second I.T.C. clearly supports the case of the respondents.

18. Learned Counsel for the petitioners has raised the contention that an agriculturist is not subject to any taxation, whereas a manufacturer is subjected to different imposts, for example, import duty, excise duty, sales-tax, Income Tax etc. The learned Advocate General rightly submits that all imposts other than Income Tax are capable of being passed on to the consumer. Indeed Income Tax is a tax, not on industry or manufacturing process, but on income which may be from other sources also. Furthermore, imposition of a tax or fee on a group or class of people, to the exclusion of the rest, is essentially a matter of legislative policy and wisdom with which we are normally not inclined to interfere. The contention advanced by the petitioners is rejected.

19. The petitioners have submitted that the manufactured and/or processed item is not being regulated, and there is no Quid Pro Quo within the meaning of Sections 3 and 4 of the Act. The Supreme Court had observed in Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., , that Section 15 is the heart and soul of the Act. Section 15 provides for sale of agricultural produce within the specified area. Section 27 provides for levy fee in the market area, and is reproduced hereinbelow:

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.- Paddy sold in the market area as well rice produced from such paddy, shall both be leviable.

Explanation.- All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been bought or sold in such area provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not processed or exported therefrom as the case may be, or any such produce processed in the market area is not exported therefrom within twenty one days from the date of its arrival therein it shall until

the contrary is proved, be presumed to have been bought or sold in the market area, and shall be liable for the levy of fees under this section, as if, it had been so bought or sold.

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

(3) The fee chargeable under Sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified Market Area.

20. Before we proceed further, we must notice Annexures-3 to 5. Paragraphs 41 and 42 of the writ petition are reproduced hereinbelow:

41. That the petitioner humbly state that neither any market either principal market yard or the sub market yard has been actually/factually constructed and established for "Zafrani Zarda", and "Spices" nor any infrastructural facility provided under the Market Act or the Rules are available to either seller or buyers.

42. That almost entire area of Patna town has been declared as a sub market yard with the sole motive to collect market fee because neither any infrastructure facility has been provided by the market committee nor the same can be provided and, therefore, it is clear that the sub market yard is not a regulated market but it is Patna town which is neither controlled nor managed nor maintained by the respondent market committee and, therefore, it is clear that sale, purchase, storage and processing of items in question can not be regulated by the respondents State or the committee under the provisions of the Markets Act.

21. Paragraphs 41 and 42 of the writ petition have been answered as follows in paragraphs 30 and 31 of the counter affidavit of respondent Nos. 2 to 4:

30. That in reply to paragraph Nos. 37 to 41 of the writ petition, it is stated that in view of the decision of the Hon"ble Supreme Court the petitioners are liable to pay market fee on transaction of "Zafrani Zarda".

31. That the statements made in paragraph Nos. 42 to 54 of the writ application are misconceived.

22. Paragraphs 17 and 18 of the counter affidavit may also be reproduced hereinbelow:

17. That in reply to paragraph No. 11 of the writ application it is stated that depot of the petitioner company is situated within the market area of the Market Committee, Musallahpur.

18. That in reply to paragraph No. 12 of the writ petition, it is stated that the products of the petitioner-Company are being sold in the market area of the Market Committee thus the petitioners are liable to pay market fee on their transaction as in the case of tea decided in the case of The Belsund Sugar Co.

Ltd. Vs. The State of Bihar and Others Etc., .

The counter affidavit(s) thus do not answer this question at all. It has nowhere been stated in the counter affidavit(s), as to what services are being rendered to the industry in general in the principal market yard, and sub-market yard. It is evident that no facility is being provided in the market yard/sub-market yard. We are, therefore, of the view that the respondents have not factually been able to establish that regulatory measures are in place, and facilities of general nature have been set up, for example, construction of market-sheds, places of rest, toilets etc. in the sub-market yards for this item.

23. Annexure-3 is gazette notification dated 23.5.1992, whereby Gardanibagh, Pirbahore, Kadamkuan, Kotwali, Digha and Sultanganj thana within the township of Patna are sought to be covered by the Agricultural Produce Market Committee, Musallahpur, and objections were invited within the meaning of Section 2(a) of the Act. This does not appear to be a final order. Annexure-4 is the Government notification dated 28.8.1992, published in the Bihar gazette on 31.8.1992, whereby the aforesaid areas of the Patna district have been declared to be within the jurisdiction of the Agricultural Produce Market Committee, Musallahpur. Annexure-5 is the Government Notification published in the Bihar Gazette (Extraordinary) on 23.8.1997, whereby the following areas have been declared to be within the Sub-market yard in the township of Patna:

pkSgnh % mRrj& xaxk unhA nf{k.k& U;w ckbZ ikl IM+dA iwjc& xka/kh lsrqA if"pe& dqrh ugj ls "ks[kiwjk eksM+ rFkk ogka ls HksVujh dksyst ,oa jktdh; dU;k e;/ fo|ky; vfulkckn ?xnZuhckx? gksrs gq, ckbZ ikl IM+dA

It is thus evident that the State Government has taken steps u/s 3 of the Act to declare the areas within the concerned Market Committee without specifying the requirement within the meaning of Rules 80 and 81 of the Bihar Agricultural Produce Markets Rules, 1975. The same are reproduced hereinebelow:

80. Establishment of markets.- (i) After the issue of notification u/s 4 and establishment of Market Committee u/s 6, the State Government shall direct the market committee to establish a market.

(ii) When directed to do so under Sub-rule (i) the Market Committee shall establish a market for the market area for which it is established.

(iii) After the establishment of market by the Market Committee, the State Government shall issue a notification under Section. 5.

81. Control and Conservancy of market yard.- (i) The Market Committee shall maintain one or more market yards and shall have absolute control over the market yards subject to these rules and to the general or special orders of the Government or the Board and to such control as is by these rules or by any other law vested in the Board. The Market Committee shall manage market yards in the interest of trade having regard to convenience of the trade of agriculture produce and the purpose for which the control is vested in the Market

Committee. The market yard shall remain open for trading at such hours as the Market Committee may, from time to time fix.

(ii) In the market areas the Market Committee shall exercise such rights as may be necessary for the convenient control of the market and for the convenience and comfort to the person using the market and for collection of the fees, in accordance with provisions of the Act, Rules and Bye-laws.

(iii) The Market Committee may require the owner or manager of any industrial concern located within the market areas to furnish such information in respect of agricultural produce for which the market is established and which is handled or used by the industrial concern, as the Market Committee may think necessary for the purpose of the market.

24. We have noticed hereinabove that the respondents have not provided any facility at all within the meaning of Section 18 read with Rules 80 and 81. They have not proceeded further beyond declaring the entire area of the township of Patna as sub-market yard. No market with attendant facilities has been established. This is undoubtedly confiscatory in nature and verges on fraud. The respondents have not made the slightest attempt to satisfy us that Quid Pro Quo exists in lieu of realisation of market fee.

25. In the Case of Sasa Musa Sugar Works and Ors. v. State of Bihar and Ors. (Supra) it has been held as follows in paragraph 33:

33. Mr. Sen, in our view, has rightly contended that when the field of control is circumscribed by the items in the Schedule, the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3(1) and Section 4(1) of the Markets Act. Once the notification under Sections 3 and 4 are issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards including the levy of fee u/s 27 of the Markets Act spring into action.

26. The observations of the Supreme Court in Belsand Sugar Co. Ltd. v. State of Bihar (Supra) are also relevant. Paragraphs 69 and 109 of which are reproduced hereinbelow for the facility of quick reference:

69 ...It is difficult to appreciate the contention of learned Senior Counsel that Section 15 of the Market Act is not the core of the Act. On a conjoint reading of Sections 3, 4, 15, 27 and 30 of the Act it has to be held that it is only because of the operation of Section 15 covering the sale and purchase transactions of agricultural produce that the Market Committee can effectively discharge its functions entrusted to it by the Act. But for Section 15 there would remain no occasion for the Market Committee to effectively regulate the sale and purchase transactions of the agricultural produce concerned. Section 15 mandates the sellers and producers of agricultural produce to operate in the notified market

yard or sub-market yards and only at these places the Market Committee through its officers and servants can discharge its functions effectively by regulating these transactions and for that purpose all the infrastructural facilities would be available. The entire machinery provisions enacted for the purpose would fulcrum round the vibrant operation of Section 15. "...Logically, therefore, there would remain no occasion for the Market Committee to justify levy of market fee u/s 27 of the Act read with Section 30 on these transactions. On a conjoint reading of Sections 27 and 30 of the Market Act, it becomes clear that a Market Committee which has to effectively control and regulate the sale and purchase of agricultural produce brought for sale and purchase in the market area as enjoined by Section 15 can effectively discharge its functions and spend its funds for supplying the necessary infrastructure for this purpose as laid down by Section 30."

109 ...Market Committees would not supply adequate quid pro quo for levying market fee as the charge itself does not settle on these transactions by the sugar factories. It may be, as submitted by learned Senior Counsel for the respondents that some sugar factories may have taken the benefit of electing lighting and preparation of approach roads by the market Committees which might have spent sufficient funds for giving these facilities....

27. We are thus of the view that the State Government has done the bare formality of issuing requisite notifications in terms of Sections 3, 4 and 5 of the Act declaring the whole area as market yard/sub-market yard without providing the requisite facilities at all in terms of Sections 17, 18 and 30 of the Act read with Rules 80 and 81. To our mind, this is a confiscatory act, unethical and unjustified act to earn revenue. The respondents have not made any attempt to satisfy us that the requisite facilities, inter alia, in terms of Section 30 of the Act have been provided. Open lands of the township of Patna cannot satisfy the legal requirements. Obviously there is no Quid Pro Quo. We can not permit such unethical impositions.

28. It is relevant to notice that the act has now been repealed by the Bihar Agricultural Produce Market (Repeal) Act, 206 (Bihar Act No. 23 of 2006), published in the Bihar Gazette on 1.9.2006. The aims and objects of the Bill is reproduced hereinbelow for the facility of quick reference:

AIMS & OBJECT

The Marketing Board and Marketing Committees were primarily constituted to provide a marketing system for agriculture produce to the farmers of Bihar. But this system has completely failed in its object. Besides it, the main object of this Bill is to encourage private and co-operative markets to bring reform in the area of agriculture marketing, to manage farming on the basis of contract and to promote purchasing system directly from the farmers and to enact, it is the main object of this Bill.

29. In the result, we hold as follows:

(i) In view of the amended definition of "Agriculture Produce" within the meaning of Section 2(a) of the Act, read with amendment of the Schedule, Zafrani Zarda is capable of being subjected to levy of market fee. We uphold the validity of the Gazette Notification dated 18.7.1991 (Annexure-2), published in the Bihar Gazette (Extraordinary) issue on 31.7.1991.

(ii) We uphold the validity of the Government Notification published in the Bihar Gazette on 31.8.1992 (Annexure-4).

(iii) In view of the position that the State Government and the Board have not discharged their responsibilities mandated by Section 15 read with Sections 3, 4 and 30 of the Act, as well as Rules 80 and 81, sale, purchase, storage and processing etc. of Zafrani Zarda is not being regulated. Market fee is sought to be levied without regulating them and providing the mandatory facilities. There is no Quid Pro Quo which in the facts and circumstances of the present case render imposition of market fee on Zafrani Zarda as illegal. Consequently the notice dated 8.6.2001 (Annexure-6), the notice dated 26.6.2001 (Annexure-7), and the notice dated 24.7.2001 (Annexure-9), issued by the respondent Secretary of the Market Committee, levying market fee on Zarda and Zafrani Zarda, are hereby quashed.

(iv) The petitioner shall be entitled to refund of the levy, if part or whole of it has already been paid, with interest at the rate of 9% (nine per cent) from the date(s) of deposit(s) till the date of refund. The bank guarantees are hereby discharged.

30. Identical reliefs are granted to the petitioners of C.W.J.C. No. 11638 of 1993. The demand notices are hereby quashed.

31. C.W.J.C. No. 12258 of 1993 is hereby dismissed as not pressed.

Kishore K. Mandal, J.

32. I agree.