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**(2003) 07 JH CK 0131**  
**In the Jharkhand High Court**  
**Case No : L.P.A. No. 2 of 2002**

Harihar Rajhans

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

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**Date of Decision :** 25-07-2003

**Acts Referred:**

Bihar Agricultural Produce Markets Rules, 1975 — Rule 64  
Jharkhand Agricultural Produce Markets Act, 2000 — Section 33A, 33EE, 33F, 33H

**Citation :** (2004) 1 JCR 276

**Hon'ble Judges :** Vikramaditya Prasad, J; Gurusharan Sharma, J

**Bench :** Division Bench

**Advocate :** R. Krishna and Saurav Arun, for the Appellant; B.S. Lal, A.A.G. and D.K. Malityar, JC to AAG, for respondents 1 and 2, V.P. Singh and M.K. Roy, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. The appellant is employed as Store keeper-cum- Clerk in the Jharkhand State Agricultural Marketing Board. He was posted at Agricultural Marketing Committee, Bokaro. By order dated 12.6.2001 of the Managing Director of the Board, he was transferred to the Board's Head Office at Ranchi.

2. He challenged the said order of transfer passed by the Managing Director on the ground of administrative exigency, in this Court vide W.P. (S) No. 5612 of 2001, which was disposed of by learned Single Judge on 26.11.2001 with a liberty to him to approach the Secretary of the Department by filing a representation. Against the said order he has preferred the present appeal.

3. Mr. R. Krishna, counsel for the appellant submitted, that u/s 33A of the Jharkhand Agricultural Produce Markets Act, 2000 read with Rule 64(ii)(c) of the Bihar Agricultural Produce Markets, Rules, 1975, it was the Jharkhand Agricultural Marketing Board alone, who had the authority to transfer the appellant from one market committee to the other and, therefore, the impugned order of transfer of the appellant passed by the Managing Director was illegal and

without jurisdiction.

4. Mr. V.P. Singh, Senior Counsel for the Marketing Board submitted that u/s 33F of the Act the Managing Director having been vested with power and general control and direction over all the officers and servants of the Board was authorized to pass order of appellant's transfer.

5. Mr. Singh further submitted that at the relevant time although u/s 33 of the Act, Jharkhand Agricultural Produce Market Board was already established, but the constitution of the Board, in absence of nomination of some of its members by the State Government, had not been complied and for this reason also it was the Managing Director of the Board, who had the authority to transfer the appellant from marketing committee, Bokaro to the Headquarters of the Board.

6. In course of hearing it was pointed out that certain provisions of Rule 64 have been amended and thereby Clause (a) to (e) of Sub-rule (ii) thereof were deleted and the following were substituted :--

"The Board shall appoint officers and staff which are necessary for proper and sufficient working of the Committee."

7. By virtue of this amendment the power of appointment of the officers and staff of the Board, which was earlier with the market committees in respect of those shifted to the Board.

8. It is not in dispute that the Board is established for the purpose of exercising superintendence and control over the market committee. u/s 33-E-E the power of appointment of the officers and servants is vested with the Board and as such the power to transfer the employees is also with the Board. The Managing Director of the Board is its member Secretary as also the Chief Executive Officer.

9. Section 33-F provides independent power to the Managing Director for general control and direction over all the officers and servants of the Board subject to the superintendence of the Board. u/s 33-H by general or special order of the Board, the Managing Director and other officers of the Board may also, be delegated with certain powers and duties under the Act, as it may be deemed fit.

10. In the present case, as it appears that at the relevant time, when the question of transfer of the appellant on account of administrative exigency arose, the Constitution of the Board was not complete and, therefore, in exercise of its power of general control, which also included the power of transfer, the Managing Director transferred him from Marketing Board, Bokaro to the Headquarters of the Board.

11. For the proposition whether the word "control" used in Section 33-F of the Act includes the power of transfer, reference may be made to a Full Bench decision in *Dhirendra Kumar Akela v. The Bihar State Agriculture Marketing Board* and Ors. 1984 PLJR 974 wherein, while considering power of the Marketing Board to transfer its officers and servants it was observed "It is vain to say that

the power to transfer would not be within the wide-ranging terminology of the word "control" when used in the context of an employee. The word "control" in the context of service terminology, would be nothing, if it does not include within its ambit the somewhat innocuous power of shifting the situs of an employee from one place to another for administrative exigencies. On principle, therefore, one must hold that transfer would come well within the scope of the word "control" herein."

12. It is relevant to state that/under Section 33-A, the Board has to exercise superintendence and control over the market committees and u/s 33-F also the power of general control and direction over all the officers and servants of the Board has been vested with the Managing Director. As such though there is no power of transfer shown in the Act, either with the Board or with the Managing Director, on the ratio of the Full Bench decision in Dhirendra Kumar Akela (supra) the Board has authority while exercising control over the market committee to transfer its employees and likewise the Managing Director also has got such power in exercise of its power of general control over the employees of the Board and he can transfer them. However, since the aforesaid power of general control and direction over the employees of the Managing Director is subject to the Superintendence of the Board, such orders of transfer passed by the Managing Director has to be approved by the Board and it must be approved. Consequently, such transfer is effective immediately, subject to approval of the Board in future.

13. We are, therefore, of the view that impugned order of transfer of the appellant as also his second transfer order from Board's Headquarter to Agriculture Produce Market Committee, Garhwa on 6.3.2001, passed during pendency of the writ petition in this Court by the Managing Director were legal and justified.

14. We, therefore, find no reason to interfere with those transfer orders. This appeal is, therefore, dismissed.