(2001) 08 JH CK 0052

In the Jharkhand High Court

Case No : CWJC No. 3602 of 2000 (R)

Jagdish Singh and Sons and Others — APPELLANT

Vs

Bharat State Agricultural Marketing Board and Others — RESPONDENT

Date of Decision : 07-08-2001

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 17, 18, 27, 28, 29

Citation : (2001) 08 JH CK 0052

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : J.K. Pasari, for the Appellant; V.P. Singh and K.K. Jhunjhunwala, for the Respondent

Final Decision : Partly Allowed

Judgement

M.Y. Eqbal, J.—One of the interesting question raised by the petitioner in this writ application is as to whether Marketing Board constituted under the Bihar Agricultural Produce Market Act. 1962 or the rules made thereunder has Jurisdiction to unilaterally enhance and/or fix the rent of the shops situated in the market area and in occupation of the petitioner as lessee or licensee.

2. The relevant facts necessary to decide the question are summarised as under :

3. Petitioner''s case is that they were allotted shops in their occupation in Jharia Rajground Sabji Sub Market Yard at Jharia in the year 1986 being shop Nos. 1, 2, 3, 4, 7A, 8A, 9, 10C, 14, 15, 16, 17. It is stated that at the time of allotment of shops to the petitioner, no agreement to that effect was executed between the parties and the petitioners were paying rent to the concerned respondent according to the size of the respective shops which varied from Rs. 50/-to Rs. 185/-. In 1992, a resolution was passed on 26.2.92 by the respondents whereby they started realising rent from the petitioners. In the year 1999 by resolution dated 17.7.99. the respondents took a decision to impose rent at the rate of Rs. 1.25 paise per sq. ft. from 1.1.1990 per month and from 1.2.1997 at Rs. 2.00

per sq. ft. per month. The respondent-Marketing Board divided the different towns into four classes, namely, A class, B class, C class and D class for fixation of separate rent of the shops situated in the Market yard or sub-yard under the Market Board. So far shops in question are con- cerned it comes under "A" class and therefore rent was fixed are Rs. 1.25 paise per sq. ft. per month. In the year 1998 the Managing Director of the Marketing Committee by letter dated 5.2.98 enhanced the rent from Rs. 1.25 paise to Rs. 4.00 per sq. ft. per month. However, the respondents reconsidered the decision issued letter dated 29.1.99 reducing the rent from Rs. 4.00 to Rs. 2.00 per sq. ft. per month. It appears that again respondent-Marketing Board enhanced the rent at Rs. 1.25 paise per sq. ft. per month for ''B'' class shops. On the basis of that resolution and decision taken by the respondents including Marketing Board, the impugned demand letters were, issued calling upon the petitioners to deposit the arrears of rent as well as current rent at the rate of Rs. 2/- per sq. ft. per month.

4. Mr. J.K. Pasari, learned counsel for the petitioners assailed the action of the respondents Market Committee and the Market Board for realising rent, from the petitioners as being illegal and wholly without jurisdiction. Learned counsel mainly raised the following points :--

(i) Under the Agricultural Produce Market Act, 1962 (in short Market Act) and the Rules and Schemes framed thereunder, the respondents can not direct the licensee who are in occupation of shops for payment of rent as it is the basic facility which is to be provided by the respondents for which they collect market fee u/s 27 of the Act.

(ii) The respondent-Market Committee or the Board have no authority under the Act to take action for enhancement of rent as by providing shops they are rendering services to the persons from whom they collect market fee.

(iii) Enhancement of rent by the respondents is just to raise revenue which has no connection with the aims and objects of the Act and is an contravention of Bihar Building (Lease, Rent Eviction Control) Act 1982. It is submitted that the shops let out by Market Committee is not covered u/s 32 of the Act as the Market Committee is merely a statutory authority and it is not a local authority.

(iv) The Market Committee has no authority or jurisdiction to revoke the earlier resolution which has been taken in a meeting of the concerned traders and principal of the Market and the Market committee and to pass fresh resolution without giving opportunity of Hearing to the traders.

(v) There is no provision under the Act for demanding rent for the shop in question inasmuch as only licence fee can be taken by the respondents for the shops in question.

(vi) In any view of the, matter respondents-Board can take action only u/s 30(iv) of the Act.

5. On the other hand, Mr. V.P. Singh learned counsel for the Market Committee

drawn my attention to various provisions of Market Act and the Rules, made thereunder and submitted that the market Committee and the Board is empowered under the Act and the Rules to realise and enhance rent from the petitioners in occupation of shops belonging to Market Committee. Learned counsel submitted that principal of quid pro quo does not at all applicable in the instant case. Learned counsel submitted that Market fee is collected from the whole market area. It is the fee collected from the purchasers in respect of sale and purchase which took place in the market area. It has no concern with occupation of shops by the traders on payment of rent. Learned counsel submitted that about 12 years back the rent in respect of the shops in question was fixed at Rs. 1.25 paise per sq. ft. per month and therefore after 12 years enhancement of rent from Rs. 1.25 paise to Rs. 2/- per sq. ft. per month can not be said to be unreasonable or irrational.

6. After having heard learned counsels for the parties, the following questions falls for consideration by this Court :--

(i) Whether allotment of shops by the Market Committee to the traders in the market area is by way of providing facility and thereby rendering services in lieu of the market fee collected from them.

(ii) Whether the Market Committee can allot constructed shops in the market yard to the perspective traders on payment of rent or licence fee.

(iii) Whether the Market Committee or the Board have the jurisdiction to enhance the rent of the shops time to time by adopting resolution.

7. Before appreciating the contention made by the learned counsel for the parties and answering the questions it would be useful to look into the relevant provisions of the Market Act and the Rules made thereunder. Chapter 2 of the Act lays down provisions for constitution of markets and Market Committee including market area, market yard and sub market yard. Sections 17 and 18 of the Act lays down the objects, powers and duties of the Market Committee. For better appreciation Section 17 reads as under:--

"Incorporation of Market Committee.-Every Market Committee shall by a body corporate by such name as the State Government may specify the notification in the official Gazette, and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to lease, shall or otherwise transfer any such property subject to the prescribed conditions and restrictions and may be the said name sue and be sued, and subject to rules, bye-laws and the provisions of this Act, it shall be competent to do all other things necessary for the purpose for which it is established."

8. Section 27 is the relevant provisions which empowers the Market Committee to levy fees. Section 27 reads as under:--

"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.-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 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 levied more than once on a notified agricultural produce in the same notified Market Area."

9. Section 28 empowers the Market Committee to raise money required for carrying out the purpose of this Act on the security of any property vested in and belonging to such Committee and of any fee leviable by it under this Act, with the previous sanction of the Stage government. It further provides that a Market Committee may for the purpose of meeting Committee may for the purpose of meeting the initial expenditure on land and building for establishing a market obtain a loan from the State Government or the State Bank of India or any other nationalized bank. Section 29 and 30 of the Act says about Market Committee Fund and application of the said fund to such purpose mentioned therein. Section 33-A empowers the State Government to constitute a Board called the Bihar Agricultural Marketing Board for the purpose of exercising superintendence and control over the Market Committee and for exercising such other powers and performing such functions as are conferred or entrusted under the Act. Section 33-B provides that such Market Board Constituted as aforesaid shall be body corporate and with power to acquire and hold property and to lease, sell or otherwise transfer any such property, subject to the prescribed conditions and restrictions. Section 33-J lays down the powers and functions of the Board.

10. Now I shall discuss the points raised by the petitioners in this writ application. The contention of Mr. Pasari, learned counsel for the petitioners, is that the respondents have no right to collect rent or licence fee from the occupiers of the shops situated in the market area, as the respondents are bound provide that facilities to the petitioners for which they are collecting market fee. I do not find any force in the submission of the learned counsel.

11. As noticed above, Section 27 of the Act imposes a liability to pay market fee on the agricultural produce bought or sold within the area. Provisions of the Act

are attracted to transactions of buying and selling, even if sale or purchase of an agricultural commodity is not voluntary but under the statutory control. The market fee is payable whenever any of the ''notified article'' is bought or sold'' within the market area. The words ''bought or sold'' signified that market fee is leviable when a licensee for the first time purchases or sells the agricultural produce in the market area. Rule 82 prescribes the machinery for the realisation of market fee from buyer who is not a licensee but purchasing the agricultural produce from seller, who is a licensee. In other words, the realisation of market fee depends upon sale and purchase of agricultural produce in the market area and it has no connection with the enjoyment of the constructed shop situated in the market area by the dealer.

12. The Constitution Bench of the Supreme Court in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., , has considered in detail the entire provisions of the Market Act and settled the law on the question, inter alia, whether the market committees are under obligation to provide services before levying the market fee. In that case the Patna High Court had upheld the legality of imposition of market fee u/s 27 of the Act on purchase of sugar-cane by the sugar mill and also on sale of sugar and molasses manufactured out of the purchased sugarcane. The question canvassed before the Supreme Court was whether Market Act could apply to such transaction despite the fact that these transactions were already being regulated by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 and also under the provisions of Molasses Control Act, 1947. It was contended that the Market Act was not applicable and, alternatively, even if applicable, the market committees were not entitled to recover any market fee from the appellants as there was no return benefit or quid pro quo made available to the appellants by the Market Committees. Answering the question in negative, the Supreme Court held :--

"105. This takes us to the consideration of the alternative contention canvassed by the learned Senior Counsel for the appellants in support of the appeals. Strictly speaking, this alternative contention does not survive for our consideration, in view of our answer to the first contention. However, as we have heard learned counsel for the parties of this alternative contention, we may deal with the same on merits. It has to be kept in view that the market fee levied under the Market Act is a "fee" and not a "tax". The Market Act insofar as it enacts Section 27 levying market fee is referable to Entry 66 of the State List read with entry 47 of the Concurrent List. Both of them deal with topics of Legislation pertaining to fees in respect of the matters enumerated in the respective lists."

Their Lordships further held :--

"107. It becomes at once clear that before justifying levy of market fee on any transaction the services to be rendered by the Market Committee must be in connection with the sale and purchase transactions of agricultural produce falling for regulation under the Market Act, when the purchase and sale of agricultural produce like sugarcane, sugar or molasses are not governed by the Market Act, as we have seen while considering Contention I, there would remain no occasion for the Market Committee to be statutorily under any obligation to provide any services or infrastructural facilities for covering such transactions so as to be entitled to charge market fee on such transactions. It was vehemently contended by learned Senior Counsel for the respondents that various types of infrastructural facilities are being made available to sugar factories who are purchasing sugarcane in the market area and selling manufactured sugar and molasses in the very same market area."

13. The petitioners in the instant case have not made a grievance that the market committee has not provided the essential facilities in the market area nor is the case of the petitioners that the other licensees or sellers or buyers, who are in occupation of permanent shops, are not paying market fee on the ground that they have not been provided with such facilities. In that view of the matter, the contention of the petitioners that they are not liable to pay rent of the shops on the ground that they have occupied it in lieu of market fee paid by them, cannot be justified.

14. Section 17 of the Act, as quoted hereinabove, very categorically empowers the market committee to acquire and hold properly both movable and immovable and to lease or otherwise transfer any such property. It has been admitted by the petitioners in para 11 of the writ application that the shops in question were let out by the market committee to the petitioners on payment of rent as per the size of the shops and the petitioners have been paying rent since 1992. It has also been admitted by the petitioners that vide resolution dated 17.7.1999 the Market Committee took a decision to impose rent at the rate of Rs. 1.25 per square feet with effect from 1.9.1990 and at the rate of Rs. 2.00 per square feet with effect from 1.2.1997.

15. The next question, therefore, falls for consideration is as to whether the market committee or the Board, by resolution unilaterally enhanced or fixed the rent of the shops premises situated in the market yard. There is no specific provision under the Act or the Rules made thereunder whereby the market committee or the Marketing Board has been empowered to enhance the rent or the licence fee of the shops by passing a resolution. Of course, the Market Committee under Sections 17 and 18 of the Act and the Marketing Board under Chapter IV-A of the Act has been empowered to exercise power to regulate and control the market area and to give effect to the entire provisions of the Act. However, such power, in my opinion, cannot and shall not be exercised by the authorities under the Market Act unilaterally and ex parte without complying the requirement of the principle of natural justice.

16. It is well settled that when the authorities were entrusted to act Judicially, obligations to follow principle of natural justice, even if not imposed expressly, must be followed. The object of underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. Rules of natural justice are not embodied rules. The extent of their application depends upon the

particular statutory frame work whereunder jurisdiction has been conferred on administrative authority. Even quash judicial orders must be supported by reasons and this principle is a part of basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it, would riot satisfy the requirement of law. In this connection reference may be made to the decision of the Supreme Court in the case of The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, and S.N. Mukherjee Vs. Union of India, .

17. As noticed above the respondents-authorities, without complying the mandatory requirement of the principle of natural justice have fixed the rent of the shops at the rate of Rs. 1.25 per sq. ft., vide order dated 2.9.1998, It has been admitted by the respondents in para 11 of the counter affidavit that the places with biggest market potential were placed in category A which included places like Patna, Ranchi, Jamshedpur and Dhanbad etc. and instead of arbitrary fixing the rate of rent it was fixed at the rate of Rs. 1.25 per sq. ft. It is not the case of the respondents that before fixing the rent of the shops the Marketing Board or the competent authority gave show cause notice to all the occupiers of the shops and after hearing them took a decision to fix the rent rather it is a case where the rent was initially fixed by the authorities at the rate of Rs. 1.25 per sq. ft. When another officer joined as the competent authority, he or she enhanced the rent from Rs. 1.25 to Rs. 4.00 and again it was reconsidered by the successor in the office of the competent authority reduced it to Rs. 2.00. It is, therefore, clear that the authorities of the Marketing Committee are not following any rules or procedures in the matter of fixation of rent. It is well settled that even administrative order, which involves civil consequence has to be passed consistently with the rules of natural justice. The decision of the authorities fixing the rent of the shops cannot, therefore, be sustained in law.

18. For the reason aforesaid, this writ application is, therefore, allowed in part and the impugned orders issued by the respondents fixing rent so far the shops in occupation of the petitioners are concerned, are set aside. Consequently, the impugned demand notice issued by the respondents for recovery of arrears of rent is set aside. The respondents-competent authorities are directed to take a fresh decision in the matter of enhancement of rent of the shops premises in question after giving reasonable opportunity of hearing to the petitioners.

19. It appears that on the first date when this case was taken up for hearing, this Court, while directing the counsel for the Marketing Committee to seek instruction and file counter affidavit, passed interim order to the effect that no coercive step shall be taken against the petitioners for recovery of arrears of rent at the new rate subject to the conditions that the petitioners shall pay the entire arrears of rent, if any, and also the current rent as per the rate last paid. It is directed that the interim order shall continue till the respondents authorities take a fresh decision in the matter of fixation of rent of the shops premises in question.

20. W.P. partly allowed.

