
(1992) 04 PAT CK 0033
In the Patna High Court
Case No : C.W.J.C. No. 1802 of 1991 (R)

Keshoram Agarwala and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1992

Acts Referred:

Citation : (1992) 04 PAT CK 0033

Judgement

S.B. Sinha, J.—The petitioners in this application inter alia have prayed for quashing of a notification bearing S.O. No. 133, dated 1-2-1989 as contained in Annexure-2 to the writ application as also the notification No. 207, dated 5-4-1990 as contained in Annexure-3 thereto whereby and whereunder a Damkera-Barwa has been declared to be the Principal Market Yard for Food Grains, Edible Oils, Sugar and Kirana Articles, as also a notice dated 17-8-1991 whereby the petitioners have been directed to shift their places of business to Damkara-Barwa by 30-8-1991 and as contained in Annexure-4 to the writ application as also an office order dated 21-8-1991 issued by the respondent No. 4 whereby the petitioners were intimated that from 1-9-1991 the place of business of the petitioners would be entered in their licences as "Damkara Barwa". The petitioners have also prayed for a declaration to the effect that the provisions of the Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as the said Act) and the Bihar Agricultural Produce Market Rules, 1975 (for short "the Rules") are void and unenforceable in relation to the transactions of foodgrains, edible oils, sugar and groceries and consequently the aforementioned notifications and notices are wholly illegal and bad in law.

2. The petitioners have been carrying on business in foodgrains, edible oils, sugar and Kirana articles etc, in whole-sale in pursuance of the licences granted to them under the provisions of Bihar Trade Articles (Licences Unfication) Order, 1984. The "petitioners have been carrying on business at different places including the term of Jharia which was declared as a submarket yard by the respondent No. 2 Market Committee.

3. The petitioners have contended that in terms of Entry No. 52, List I of the VIIIth Schedule of the Constitution of India, the Parliament has enacted different acts, namely, Rice Milling Industries (Regulation) Act, 1958, Industries (Regulation and Development) Act, 1952, Sugar Development Fund Act, 1982, National (Development Board) Act, 1982 and further various orders have been made by the Central Government in exercise of the powers conferred upon it u/s 3 of the Essential Commodities Act, 1955. The contention of the petitioners is that as by reason of the aforementioned legislations and orders, the Central Government has occupied the entire legislative field relating to Sugar, Vanaspati and Edible Oils and Rice etc., the State Government is denuded from making any legislation in relation to the said commodities and thus the said Act does not fall either under Entry No. 28 or under Entry No. 66 of list 2 of the VIIth Schedule of the Constitution of India, and consequently the same must be held to be ultra vires the Constitution, insofar as thereby restriction with regard to carrying of business by the petitioners in relation to the aforementioned commodities is sought to be imposed.

4. It has further been contended that in any event as in the Schedule appended to the said Act, there does not exist any item as "Kirana Articles", the petitioners could not have been directed to shift their place of business in respect thereof.

5. The petitioners have further contended that as in terms of Sub-section (2) of Section 5 of the said Act, the State is empowered to declare that as trade in certain Agricultural Produce (s) ; can be carried on only the principal market yards or sub-market yards, the impugned notifications and notices whereby only the petitioners have been directed to shift their places of business is bad in law being discriminatory in nature, as other dealers dealing in the same commodities have not been so directed.

6. It has further been contended that prior to issuance of the impugned notifications, the provisions of Rule 80 of the said Rules have not been complied with. According to the petitioners despite the same, the State of Bihar has issued the impugned notification and notices as contained in Annexures 2,3,4 and 5 and whereby the Damkara-Barwa have been declared to be a principal market yard ; the petitioners have been directed to shift their places of business and it has been threatened that in their licences, the place of business would be entered as Damkara-Barwa,

7. In this case a counter affidavit has been filed on behalf of the respondent No. 2.

8. In the said counter affidavit, it has been contended that various writ applications had been filed before this Court earlier questioning the right of the State of Bihar to declare Damkara Barwa as Principal market yard being CWJC No. 725/80 (R) Swastik Bhandar and 53 Ors. v. The State of Bihar) and CWJC No. 768/80 (R) Sahu Bhandar and Ors. v. The State of Bihar but the said writ applications were dismissed by this Court by a judgment dated 7-3-1981 and

special leave application filed against the said judgments being Special Leave to Appeal (Civil) Nos. 3200 and 3201 of 1981 have also been dismissed as withdrawn by the Supreme Court by an order dated 29-4-1991.

It was further submitted that in the year 1982 some other traders have filed a similar writ application being CWJC No, 463 of 1981 (R) Kadia Trading Company v. State of Bihar and Ors. which was also dismissed by a judgment dated 22-9-1982 and a SLP filed before the Supreme Court of India by the petitioners aforementioned as against the said judgment being SLP (Civil) No. 14160 of 1983 has also been dismissed by an order dated 21-11-1983. It has also been contended that the petitioner Nos. 1 to 6 were petitioners in CWJC No. 1809 of 1991 (R) which fact has been suppressed by them.

9. In the said counter affidavit, it has been contended as follows:

Paragraphs-7 (b);- That it will further be relevant to state here that at that time sufficient numbers of shops were not completed, therefore shifting was not possible at a time. Moreover practically it is very difficult to get the whole market shifted at a time. Therefore, steps were taken are being taken for shifting in phases. Subsequently, the market committee has completed constructed several other shops in the Principal market yard. At present there are 231 shops having modern facilities in the principal market yard. Out of aforesaid 231 shops nearly 160 shops are at present lying vacant. The market complex has been constructed by the market committee after making huge investment of about 3.5 crores of rupees. It will further be relevant to state here that in addition to 231 shops there are 7 godowns of 1000 to 1500 M. T. capacity.

(c) That considering the availability of large numbers of shops in the principal market yard the committee decided to take steps for shifting another batch of traders operating in Bhaga, Bhowra, Baliapur, Kerkend (Kenduadih and Putiki), Govindpur, Dhanbad and Jharia and dealing in foodgrains, Sugar edible oils and Kirana.

(b) That the committee has enough accommodation shops and godwns available to accommodate the traders-petitioners in the market yard.

(e) That accordingly notices have been issued to the traders who are dealing in aforesaid agricultural produce in aforesaid area. It will further be relevant to state here that after shifting of petitioners or traders to whom notices have been issued, by the Committee only these traders/licences of the committee, licences granted to them under the provisions of the Bihar Agriculture Produce Market Act, 1960 (Act 16 of 1960) and the Rules framed thereunder being Bihar Agriculture and Produce Market Rules, 1975 (hereinafter to be referred as "the Act" and "The Rules" respectively) will be left in those areas, who either do not deal in aforesaid commodities, viz. Foodgrains, edible oils, sugar and Kirana or who directly sell to the persons for their personal consumption or to the consumers.

(f) That the notices of shifthing have been issued to those traders of the area who are dealing in aforesaid items and generally sale in huge quantity to the retailers.

10. It has further been contended that all facilities for carrying on business been provided in the Principal Market Yard by the Market Committee. It has also been asserted that the said Principal Market Yard is located only at a distance of 200 yards from the Grand Trunk Road and 5 K. Ms. from Dhanbad Railway Station and, thus, all the goods which are transported in the Dhanbad Area, have necessarily to pass through Grand Trunk Road and as 80% of the commodities are transported from the western directions which necessarily have to pass through the said Road. It has further been contended that 90% of the commodities in which the petitioners have been dealing are transported by road.

11. Before I proceed to deal with the contentions raised by the learned Counsel for the parties, it appears that the petitioner obtained an order of staying the writ application which was heard along with CWJC No. 1809 of 1991 (R) but the said order of stay was later on vacated. The petitioners had moved the Supreme Court of India against the said order vacating stay and by an order dated 29th November, 1991 the Supreme Court passed the following order:

The dispute herein is to the ambit of the word "Kirana". The word having not been defined in the Bihar Agricultural Produce Market Act, 1960, the interim order of the High Court needs to be modified so as to be in accord with the commonly understood meaning of the word "Kirana". The word is inclusive of many articles besides those which are agricultural produce as notified under the Act. The order, thus which commends to us is that the word "Kirana" used in the impugned notifications shall keep confined to the agricultural produce as notified under the Act and not to any other article or produce. This meaning shall remain operative ad-interim till the disposal of the writ petition in the High Court.

Since the appellants would have to be dislocated from their place of business and the High Court itself has ordered the case to be listed after the Winter Vacation, we request the High Court to dispose of the present matter expeditiously and if possible along with the concerned matters, within a period of two months.

12. However, it appears that on 28-1-1992 when the matter was placed under the heading "for Hearing, before a bench of this Court adjournment was sought for, on the ground of inconvenience of the senior counsel also on the ground that a similar matter has been heard by a Division Bench of the Patna High Court on the latter ground, the case was adjourned on 24-2-1992 and 10-2-1992. Before us, however when the hearing of the case commenced. Mr. Banerjee, learned Counsel appearing on behalf of the petitioners did not make any submission with regard to interpretation of the word "Kirana".

13. In view of the rival contentions of the parties, as noticed hereinbefore, the following questions for consideration in this writ application:

(i) Whether the State has the legislative competence to enact the said Act in respect of foodgrains, sugar, edible oils and other kirana articles which come within the purview of various statutes purported to have been enacted by the Parliament in terms of Entry No. 52, List-I of the VIIth Schedule of the Constitution, as a result whereof the entire field of legislation has allegedly been taken over by the Central Government ?

(ii) Whether in view of the provisions of Section 5(2) of the said Act, the petitioners can be directed to shift their places of business to be newly constituted Principal Market Yard in terms of the impugned notices although other persons dealing in the same commodities in question have not been so directed ?

(iii) Whether the impugned notifications as contained in Annexures-2 and 3 to the writ application are vitiated in law as the State prior to issuance thereof had not complied with the provisions contained in Rule 80 of the said Rules ?

14. Re-Question No. 1:

A Division Bench of this Court in *Delhi Cloth and General Mills Company Ltd. v. The Agricultural Produce Market Committee* and various other analogous cases CWJC No. 432 of 1982 and 27 other analogous cases, disposed of on 30th March, 1992 rejected the contention that the said Act is ultra vires the Constitution of India holding that whereas under Entry No. 52 List I of the VIIth Schedule of the Constitution of India, the matter relating to the processing or manufacture of the products has been taken over by the Central Government ; procurement of the raw-materials or distribution of the materials manufactured in the industries are not so covered which appropriately falls within List II of the 7th Schedule of the Constitution of India. In respect of Sugar, however, it has been held that levy of market fee thereupon is illegal. In view of the aforementioned recent Division Bench decision of this Court *Mr. Banerjee*, did not press his first contention. In view of the aforementioned decision of this Court, it must be held that the said Act is intra vires, the Constitution of India, but the said Act has presently no application in relation to Sugar unless an appropriate notification is issued by the State of Bihar. This point will thus be governed by the decision of this Court in *Delhi Cloth Mills case (Supra)*.

15. Re-Question No. 2:

Section 5(2) of the said Act reads as follows:

5-Delcaration of market yards:

(2) The State Government may, by notification declare-

(i) *Rajya Sarkar Adhisoochana dwara krishi Upaj ya kisi vishesh krishi upaj ke liye kisi ahaate, bhawan ya sthal ke mukhya bazar prangan aur aise kshetra ke anya ahaton, bhawanon, ya sthalong ko ek ya anya up-bazar-prangan ghoshit kar sakegi jo ukta baza kshetra ke liye avashyak ho.*

16. According to the petitioners, the authority of the State Government being only to direct carrying on business either in principal market yard or sub-market yards in respect of a particular agriculture produce or produces, the State cannot make any discrimination between whole-sale dealers and retailed dealers. According to Mr. Banerjee, it has been accepted by the respondent in paragraphs-7 (b) and 7 (c) of the counter affidavit, as referred to hereinbefore, that only the whole-sale dealers have been directed to shift their trade to the principal market yard, and thus the same must be held to be wholly discriminatory.

17. The learned Counsel in this connection has relied upon a decision of the Supreme Court of India in the case of AIR 1981 1127 (SC) .

18. The learned Advocate General, on the other hand, submitted that in view of the explanation appended to Sub-section (2) of Section 4 of the said Act, the retail dealers who sell their commodities directly to the consumers are excluded from the purview of the said Act and thus by necessary implications, it has to be held that the respondents have the jurisdiction to direct only the wholesale dealers to shift their places of business to the principal market yard.

19. My attention has also drawn to the statements made in paragraph 19 of the counter affidavit which reads as follows:

That in relation to the statements made in paragraph 35 of the writ application it is stated that practically it is not possible to shift all the traders operating within the market area in all agricultural produces at a time. The respondent committee has taken up the challenge to make shifting phase-wise. In first phase traders of foodgrains operating in Dhanbad and Jharia were directed to shift. Now after availability of more spaces of shops/godowns the traders who are dealing in foodgrains, edible oils, sugar and Kirana in the area referred in Annexure-2 are being shifted. This phase-wise shifting as admissible under the provisions of the Act.

It was submitted that as only those persons who sell their agricultural produce directly to the consumers do not come within the purview of the said Act, Forwal's case (supra) has no application in the facts and circumstances of the case.

20. Alternatively it was argued by the learned Advocate General that in any event as the carrying of business by any person after issuance of the notifications will be illegal, the petitioner cannot claim any privilege of carrying on their business at their old places by not shifting to the Principal Market Yard. According to the learned Advocate General, this case may only strike down the bad part of the notification but cannot issue a mandamus directing the respondents to forbear from giving effect to the said notification as thereby the petitioner would be permitted to commit an offence.

21. The learned Advocate General, further submitted that as 160 shops are still

vacant, other would also be directed to shift their place of business in accordance with law,

22. Section 2(h) of the said Act defines a "market" as including a principal market yard. Once, thus, a principal market yard is established, it being a "market" within the meaning of the provisions of the said act, in terms of Section 15 thereof only such person who come within the purview of the exceptions contained therein may not be required to carry on business at the Principal Market Yard.

23. Section 15(1) of the Act and Rule 94 of the said Rule read as follows:

Section 15(1)" Kale Bhi Baykti Ese Nirmat Kudra Bikri ya Bayktigat upbhog ke liye bihit matra ko chorkar dhara 4 ke updhara (i) ke adhin nirgat Adisuchna me Bindirist Krisi Upaz Bazar Chetra ke Bhitari Asthapiat sambadh mukhya bazar prangan athwa up bazar prangan ya prangono se bhim kisi ashthan par na lagyaga our na bechega."

"Rule 94 -.-Sale of Agricultural produce.-(i) All agricultural produce brought into or processed in the market area except such quantity for retail sale or consumption as per Schedule II of the rules or such description of agricultural produce exempted u/s 15 by the Board shall pass through the principal market yard or sub-market yard or yards, and shall not be bought or sold at any other place within the market area.

(ii) Such details of agricultural produce re-sold or re-bought in the market area shall also be reported to Market Committee in accordance with the provisions of bye-laws.

(iii) The price of agricultural produce intended for sale in the principal market yard or sub-market yard shall be settled by open auction or tender system and not otherwise and no deduction shall be made from the agreed price of the consignment except for any authorised trade allowance as prescribed in the bye-laws.

The Second Schedule appended to the said Act provides as follows:

Category	Description	Quantity	(in	Kg.	and	in	Rs.)
							1. All
	cereals ...	50 Kg. or Rs. 100,00	whichever is less				
	2. All pulses ...	40 kg. or Rs. 100.00	whichever is less				
	3. All oil seeds ...	20 kg. or Rs. 100.00	whichever is less				
	4. All vegetable oils ...	10 kg. or Rs. 100.00	whichever is less				
	5. All fruits ...	10 kg. or Rs. 100.00	whichever is less				
	6. All vegetables ...	30 kg. or Rs. 100,00	whichever is less				

7. All fibres ... 50 kg. or Rs. 100.00 whichever is less

8. Animals and Animal Husbandry products (i) Poultry ... 10 no. or Rs. 100.00 whichever is less (ii) Egg ... 12 doz, or Rs. 100.00 whichever is less (iii) Cattle ... 1 head of cattle or Rs. 500.00 which is less (iv) Sheep ... 1 or Rs. 100.00 whichever is less (v) Goat ... 1 or Rs. 100.00 whichever is less (vi) Wool ... 10 kg. or Rs. 100.00 whichever is less (vii) Butter ... 5 kg. or Rs. 100.00 whichever is less (viii) Ghee ... 5 kg. or Rs. 100.00 whichever is less (ix) Milk ... 20 Litres or Rs. 100.00 whichever is less (x) Hides and Skins ... 5 pieces of Rs. 100.00 whichever is less (xi) Bones ... 100 kg. or Rs. 100.00 whichever is less (xii) Fleece ... 10 kg. or Rs. 100.00 whichever is less (xiii) Goat, Meat and mutton ... 10 kg. or Rs. 100.00 whichever is less (xiv) Fish ... 10 kg. or Rs. 100.00 whichever is less (xv) Bristles ... 2 kg. or Rs. 100.00 whichever is less (xvi) Cream ... 8 kg. or Rs. 100.00 whichever is less (xvii) Chhena ... 10 kg. or Rs. 100.00 whichever is less (xviii) Pig Meat ... 10 kg. or Rs. 100.00 whichever is less

9. All condiments, spices and other ... 5 kg. or Rs. 100.00 whichever is less 10. All grass and fodder ... 400 kg. or Rs. 100.00 whichever is less

11. All narcotics ... 5 kg. or Rs. 100.00 whichever is less

12. Miscellaneous

(1) Sugar cane ... 100 kg. or Rs. 100.00 whichever is less (2) Gur ... 30 kg. or Rs. 100.00 whichever is less (3) Sugar ... 30 kg. or Rs. 100.00 whichever is less (4) Lac ... 20 kg. or Rs. 100.00 whichever is less (5) Oil cakes ... 20 kg. or Rs. 100.00 whichever is less (6) Jute seed ... 20 kg. or Rs. 100.00 whichever is less (7) Mesta seed ... 20 kg. or Rs. 100.00 whichever is less (8) Isafgots ... 20 kg. or Rs. 100.00 whichever is less (9) Makhana ... 10 kg. or Rs. 100.00 whichever is less (10) Mashua flower ... 20 kg. or Rs. 100.00 whichever is less (11) Myrcbolan ... 20 kg. or Rs. 100.00 whichever is less (12) Rab ... 20 kg. or Rs. 100.00 whichever is less (13) Bidi leaves ... 20 kg. or Rs. 100.00 whichever is less (14) Bamboo ... 20 kg. or Rs. 100.00 whichever is less (15) Wool ... 20 kg. or Rs. 100.00 whichever is less (16) Dhoop wood ... 5 kg. or Rs. 100.00 whichever is less (17) Sugar candy ... 10 kg. or Rs. 100.00 whichever is less (18) Mango Pickle ... 10 kg. or Rs. 100.00 whichever is less (19) Harre ... 20 kg. or Rs. 100.00 whichever is less (20) Bahera ... 20 kg. or Rs. 100.00 whichever is less (21) Honey ... 10 kg. or Rs. 100.00 whichever is less (22) Toddy ... 10 kg. or Rs. 100.00 whichever is less (23) Gond ... 10 kg. or Rs. 100.00 whichever is less (24) Kath ... 10 kg. or Rs. 100.00 whichever is less (25) Khandsari ... 10 kg. or Rs. 100.00 whichever is less (26) Molasses ... 10 kg. or Rs. 100.00 whichever is less

24. The contention of the learned Advocate General thus, has to be considered in the light of the aforementioned provisions.

25. Section 4(2) of the said Act and the explanation appended thereto reads as follows:

Section 4(2).-Declaration of market area:

(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 be set up, establish or continue 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.

Therefore, the aforementioned Explanation is an exception to the proviso.

26. From a perusal of the aforementioned provisions, it is thus evident that the Exception contained in the Explanation appended to Sub-section (2) of Section 4 has a limited application. Those sellers do not come within the purview of the said Exception who are covered by Rule 94 of the said Rules. It, thus, cannot be contended that the said Act itself has no application in relation to the retail traders.

27. As indicated hereinbefore, the respondents have not contended nor could it be contended that all those persons in whose favour licences to deal in retail trades in respect of the commodities in question have been granted under the provision of Bihar Trade Articles (Licence Unification (Order) 1984 are only those who carry on their trades of selling the agricultural produce only to the consumers to the extent mentioned thereon or the sum of Rs. 110/-(whichever is less) at a time as provided in Rule 94 of the said Rules read with the Second Schedule thereof.

28. The learned Advocate general, when questioned, as to whether if his submission to the effect that in terms of explanation appended to sub-section (2) of Section 4 of the said Act, the other provisions of the said Act will have application in relation to the retail traders or not and whether they would have to pay market fee or not submitted that although all those persons would come within the purview of the other provisions of the said Act and would have to pay market fee also, yet they cannot be asked to shift their place of business.

29. The submissions of the learned Advocate General are self-contradictory. As noticed hereinbefore, the said Act does not make any distinction between whole sale dealers and a retail dealers. All trades of agricultural produces thus come within the purview of the said Act.

30. Section 4 of the said Act provides for establishment of a market. Section 15 of the said Act read with Sub-section (2) of Section 5 thereof provides that whenever an agricultural produce is notified, traders have to carry on their business either at the principal market yard or sub-market yards, subject, of course, to the exceptions laid down therein.

31. This Court cannot legislate that although under the said Act traders have not been classified as wholesale dealers as retail dealers, the said concept may be brought in view of the provision of Bihar Trade Articles (Licences Unification (Order) 1984.

32. In *Union of India and another Vs. Deoki Nandan Aggarwal*, the Supreme Court stated the law thus:

The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. The court of course adopts a construction which will carry out the obvious intention of the Legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.

33. S.O. 133, dated 1st February, 1989) as contained in Annexure-2 to the writ application mandates all the traders situated in Dhanbad market area of Dhanbad Sub-Division namely Jharia, Dhanbad, Bhowra, Bahapur, Kirkend (Kenduadih and Putki) to shift their place of business in respect of food-grains edible oils, sugar and Kirana. Thus, no Exception has been made in the said notification in respect of whole sale dealers and retail dealers. On the other hand, in respect of all the traders, the Damkara-Borwa has been declared to be the principal market yard, in relation to the aforementioned commodities. By reason of S.O. No. 134, dated 1st February, 1989 the State of Bihar in exercise of its power conferred upon it under sub-section (2) of Section 5 of the said application had declared the Dhanbad Bazar as a sub-market yard in respect of all commodities other than foodgrains, Edible Oils, Kirana articles and Sugar.

34. It is, therefore, not permissible for the respondent now to contend that the retail dealers who although do not come within the purview of Rule 94 of the said Rules would not have to shift their place of business to the principal market yard aforementioned, in respect of the articles covered by S.O. No. 133, dated 1st February, 1989.

35. It is true that all the traders had not been directed by the State of Bihar to shift their place of business to the aforementioned principal market yard by reason of notice on a sample copies whereof are contained in Annexures-4 and 5 but to the writ application for this reasons alone this Court cannot hold the petitioners do not have to shift their place of business. Section 15 of the said Act, is mandatory in nature and violation thereof entails penal consequences.

36. In paragraph 4 (E) of the counter affidavit, as noticed hereinbefore, it has clearly been asserted that about 160 shops are still vacant, and in that view of the matter, the respondents must take necessary action so that all the traders who come within the purview of the aforementioned notification as contained in Annexure-2 to the writ application, to shift their place of business as early as possible. This direction is being passed, at this Court does not intend to allow the petitioners to commit illegality only because the market commodities has committed a mistake in not directing all the traders to shift their place of business to the principal market yard despite the notification dated 1-2-1989.

37. It is, however, for the State to take appropriate action within a short time to provide accommodation to all the traders whether dealing in whole sale or retail who come within the purview of the aforementioned notification.

38. However, we feel that in the interest of general public and particularly the consumers, it is desirable that the State should make necessary amendments in the Act and as also in the notifications, so that the retail dealers may be allowed to continue their place of business within the market area and not at the principal market yard. If it is so done, the same would not only facilitate the market committee to carry out their functions properly but also thereby consumers would be saved from being put in a disadvantageous position to go to the principal market yard which in some cases would require the consumers to cover more than 20 K.M. for purchasing the essential articles for their consumption. This purpose, in our opinion, may also be achieved by amending the second schedule of the Rules suitably for the present.

In the counter affidavit filed on behalf of the State it has been asserted which assertions have not been controverted by the petitioners, that the petitioners of other writ applications have since shifted their places of business to the aforementioned principal market yard. Admittedly petitioner Nos. 1 to 6 who were parties to the earlier writ applications questioned the validity of similar notifications but did not succeed up to the Supreme Court of India. In our opinion, if the petitioners are permitted to carry on their business at the same places, whether they had so far been carrying, it would defeat the purpose and object of the said Act and the same would also resulting discrimination.

39. For the aforementioned reasons, also, we are of the view that this Court should not exercise its discretion in favour of the petitioners,

40. Re : Question No. 3

This contention can be sub-divided into two, namely:

(i) there being no market committee as contemplated under Sub-section (3) of Section 9 of the said Act, at the relevant time, the notifications, dated 1-2-1989 is bad in law.

(ii) In view of a division Bench decision of this Court in M/s. Bhagwan Das Gopal Prasad and Others Vs. The State of Bihar and Others, each time a market area is declared, the requirement of Rule 80 has to be complied with.

The first contention raised on behalf of the petitioner has no substance.

From a perusal of the notifications bearing S.O. No. 128, dated 1st February, 1989 which is contained in Annexure-2 to the writ application, it appears that Shri Rabindra Pawar, Sub-Divisional Officer, Jharia was appointed as a person to perform all functions and duties of the Market Committee and sub-committees of the market committee for the period 12th September, 1988 to 13th March, 1989.

41. It is, therefore, clear that upon 12th September, 1989 an elected Market Committee functioned and thereafter in terms of Sub-section (3) of Section 9 of the said Act, the life of the said committee was extended for a period of 6 months i.e. upto 13th March, 1989. It is further clear that on 1st February, 1989 when the impugned notifications bearing S.O. No. 133 was issued, the committee was in existence. It is, therefore, not a case where as on 1st February, 1989 there was no Market Committee in existence at all as had been contended by Mr. Banerjee.

42. However, according to Mr. Banerjee, in view of the decision of this Court in Bhagwan Das Gopal Pd. (supra) Rule 80 has to be followed on each and every occasion, a market is established. The aforementioned decision of this Court supports the contention of Mr. Banerjee. However, in Porwal's case (supra) the Supreme Court held that the provisions of Section 5 of the said Act is a legislative power and thus as the said Act become operative, the State has the power to issue notification from time to time.

43. In Porwal's case (supra) the Supreme Court held:

We may now turn to the Bihar cases The Bihar Agricultural Produce Markets Act, 1960 follows roughly the same pattern as the other Acts. A market area has to be first declared within which the marketing of specified agricultural produce is proposed to be regulated. For every market area there is to be a principal market yard and one or more sub-market yards. In between the market area and the market yard there is to be a market but market does not seem to play any part in the scheme of the Act as it now stands after the 1974 amendments. However it should be mentioned here that Rule 80, which is still on the statute Book, provided that a market shall be established for a market area and that after the establishment of a market, a notification u/s 5 (declaring market yards) shall be issued. Section 15 of the Act provides that no specified agricultural produce shall be bought or sold at any place within the market area other than therein except

such quantity as may be prescribed for retail sale or personal consumption. The arguments advanced in the Maharashtra and Karnataka cases were advanced in the Bihar cases also. For the reasons already we reject the submissions.

(Underling minim)

44. In Porwal's case, the Supreme Court held:

We have seen that Section 5 authorises the establishment of a principal market and one or more subsidiary markets. Quite, obviously the power to establish a principal market or a subsidiary market carries with it the power to disestablish (if such an expression may be used) such market. Quite obviously again, the power given by Section 5 to establish a principal or subsidiary market may be exercised from time to time.

It was observed:

Any other construction may frustrate the very object of the legislation. Nothing may be expected to remain static in this changing world of ours. A market which is suitable and conveniently located today may be found to be unsuitable and inconvenient tomorrow on account of the development of the area in another direction or the congestion which may have reduced the market into an impossible, squalid place or for a variety of other reasons. To so interpret the provisions of the Agricultural Produce Marketing Regulation Act as prohibiting the abolition of a market once established and bar the transfer of the market to another place would, as we said, be to defeat the very object of the Act. Neither the text nor the context of the relevant provisions of the Act warrant such a prohibition and bar and there is no reason to imply any such. On the other hand Sections 14 and 21 of the Maharashtra General Clauses Act warrant our reading into Section 5 a power to close a market and establish it elsewhere.

45. In view of the aforementioned decision of the Supreme Court, it " as to be held that it was not necessary for the respondent, to comply with the provision of Rule 80 of the Rules prior to issuance of the notifications as contained in Annexures-2 and 3 of the writ application.

Further in this case Damakara-Barwa had already been declared to be a principal market yard. Only its area of operation has been extended by the impugned notification. It is not a case where the principal market yard has been notified and denotified and thereafter, another principal market yard was notified as was in the case of Bhagwan Das (supra).

46. For the reasons aforementioned, these applications are dismissed subject to the observations and directions aforementioned, but without any order as to costs.