

(1984) 07 CAL CK 0022
In the Calcutta High Court
Case No : C.R. No. 241 (W) of 1979

Kritipal Singh Kathari and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-07-1984

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : 90 CWN 536

Hon'ble Judges : Suhas Chandra Sen, J

Bench : Single Bench

Advocate : Debi Pal and Asoke Ganguly, for the Appellant; Kalyan Ganguly, Rabindra Nath Dutta, A.P. Sircar and K.N. Laha, for the Respondent

Final Decision : Dismissed

Judgement

Suhas Chandra Sen, J.—The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 seeks to provide for "the regulation of marketing for agricultural produce in West Bengal". The petitioners, who are traders in agricultural produce, have raised a number of questions about the constitutional validity of the Act. Similar Questions were raised about the validity of similar legislations passed by many other states. The Supreme Court in all those cases upheld the constitutional validity of the Acts that came up for consideration before it. Most of the questions raised in this writ petition are now concluded by the judgments of the Supreme Court. Mr. Pal, appearing on behalf of the petitioners, has drawn my attention to some special features of the West Bengal Act and I shall have to consider the implications on the special features in this case. The West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 hereinafter described as the Act, was passed for the purpose of providing "the regulation of marketing agricultural produce in West Bengal and for matters connected therewith". By this Act the State Government has been empowered to declare any area as a market area by a gazette notification. After the publication of the notification, no local authority or other person can set up, establish or

continue or allow to be set up, established or continued any place for the purpose or sale of the agricultural produce as has been specified in the notification (Section 3). The State Government has been authorised to set up a principal market yard and also one or more sub-market yard or yards for a market area (Section 4). There shall be a Market Committee for every market area. The Committee will consist of officers of the State Government, members, of the Co-operative Society, representatives of local authorities, small growers, licensed traders and some other persons. The Market Committee has been entrusted with the duty of providing facilities in connection with the marketing of agricultural produce (Section 12). It has to maintain and manage the principal market yard including sub-market yards and to regulate the marketing of the agricultural produce in the market area. It has to keep sets of standard weights and standard measures in the principal market yard and sub-market yards. It has to collect and furnish statistics and informations relating to the marketing of agricultural produce, publish and disseminate marketing information, settle disputes between buyers and sellers of agricultural produce, to promote grading and standardisation of agricultural produce. It has also to inspect and verify scale, weights and measures in use in a market area and also the books of accounts and other documents maintained by the market functionaries in such manner as may be prescribed.

2. It has also been laid down u/s 13 of the Act that after six months from the declaration of any area as a market area, no person shall within the market area carry on business or act as a trader or sale or purchase agricultural produce or engage in processing and preservation of agricultural produce without a licence. By section 17 of the Market Committee has also been authorised to levy fees on agricultural produce sold in the market area at a rate which shall not be more than Rs. 2/- per Rs. 100/- of the amount for which the agricultural produce is sold. There are provisions about how the Market Committee Fund is to be collected and the mode of application of the fund. It may be noted that the fund has to be used inter alia for maintenance and improvement of market and also providing many other facilities for marketing of goods, such as shelter and water, construction and repair of approach roads, culverts, bridges, fostering co-operative marketing and assisting co-operative marketing societies for profitable disposal of the produce belonging to small and marginal farmers. There are many other objects for which the Market Committee Fund can be utilised with which are set out in Section 36G(3).

3. The petitioners who are traders operating in the notified market area at Samsi in Malda District have raised a number of contentions in this case. The first contention is that the West Bengal Act unlike the other Act do not provide for making any enquiry about the feasibility of setting up of a regulated market. Therefore, the Act does not provide any guideline for exercise of discretion. The State Government is free to declare any area as a market area as it pleases. Therefore, unfettered and uncontrolled power has been given to the State Government which is on the face of it unconstitutional. It has further been

argued that the State Government in exercise of its unguided power has notified a vast area of Malda as a market area. The total area, it has been submitted, would be about 1000sq. Kms. covering three Police Stations. It has been contended that the wide and uncontrolled power has been exercised unreasonably and the traders have to come from far away places to do business in the market yard at great cost and inconvenience. As a result, people are not coming to the market area who are doing business in the huts instead of coming to the market.

4. It has further been contended that the facilities of marketing the products are practically non-existent. The godown facilities that have been created are all used by the Jute Corporation of India. It has also been contended that there is no quid pro quo for the fees that are being collected.

5. In my opinion, none of these points are of my substance. It is true that the West Bengal Act, unlike some of the other Acts which came up for consideration before the Supreme Court, does not provide for any enquiry before notifying an area as a market area. But that does not mean that the notification would be issued by the State Government arbitrarily. If the State Government is invested with the power to do something for public good, there is no reason to assume that the power will be used arbitrarily or the Act will become inherently unconstitutional. The object for which the Act was passed is clear. I have already referred to the various provisions of the Act. The Act tries to ensure satisfactory conditions for the growers of agricultural produce to sell their goods and get a fair price for the goods that are sold.

6. Shah, J. in the case of Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another, observed, after referring to the provisions of the Gujarat Agricultural Produce Market Act:

The ordinary cultivator in our country suffers from many handicaps; he is generally illiterate, and often ignorant of the prevailing prices in the market of agricultural produce. Establishment of regulated markets is a well known expedient for ameliorating the condition of the agricultural producers by eliminating the middlemen and bringing the consumers in direct contact with the producers and thereby securing an ordered plan of agricultural development. The Legislature has, by the Act, attempted, with this object in view, to set up machinery for declaring certain areas as market and for setting up market yards in which the business of selling and buying agricultural produce may be carried on. The Act provides for the constitution of market committees authorised to maintain and manage the markets and to effectuate supervision, prevent adulteration and promote grading and standardisation of the agricultural produce and to enforce in the market area the provisions of the Act and bye-laws. For that purpose the market committees are authorised to grant licences and levy fees within the maximum as may be prescribed by the rules framed under the Act.

The West Bengal Act is also trying to render the same facilities to the growers of agricultural produce. The object is to help them to get a fair return for the goods they produce. Power has been given to the State Government to set up Market Committee and to declare notified areas as market areas. I fail to see how this power can be described as arbitrary power. As was pointed out by the Supreme Court in the case of *Lakhan Lal & Ors. v. State of Bihar & Ors.* AIR 1968 SC at page 1412 :

The State Government is not bound to implement the Act and the rules in all parts of Bihar at the same time. It may establish markets regulating the sale and purchase of the agricultural produce in different parts of Bihar gradually and from time to time.

7. In the case, the Supreme Court repelled the argument, in construing a similar Act passed by the Bihar Legislature, that, the provisions were discriminatory and violative of Article 14. The Supreme Court held that the setting up of a market in Gaya was not discriminatory. As has been pointed out on behalf of the Respondents that the Act seeks to provide marketing facilities for growers of agricultural produce all over the State and a beginning must be made somewhere. In this case, in Malda District Samsi has been chosen as the first place for setting up of a regulated market.

8. The State Government has been invested with the power to issue notification to implement the policy laid down in the Act. The policy is quite clear. It is to provide marketing facilities to the producers as well as the traders. The object is to make available to the growers of agricultural produce a ready market within easy reach. Other marketing facilities like storage of goods, proper weights and measures and many other amenities are also to be provided in the market area. Merely because some discretion is given to the State Government in the matter of selecting the area for providing these marketing facilities, the Statute will not become void or discriminatory. It may not be possible to provide marketing facilities in the entire State all at once. These facilities will have to be built up slowly all over the State. It has been noted by the Supreme Court in the case of *Kewal Krishan Puri and Others Vs. State of Punjab and Another*, that the entire State of Punjab now enjoys the marketing facilities under the corresponding Punjab Act. The marketing facilities are being provided for the benefit of the people of the notified area. The project has to be started initially somewhere in the State. In the District of Malda, Samsi has been chosen as the first market area. The traders operating in that area cannot be heard to say that in choosing this area, discrimination has been practised against them. The facilities that are being created will enormously benefit the growers. The traders will also be able to take advantage of the facilities that will be provided. The system of licensing has been introduced to keep the unlicensed traders away from the marketing area. Even though the traders will have to pay fee for doing business, it cannot be said that any discrimination is being practised against them or that the fee that is being levied is arbitrary in any manner at all.

9. The object of the Act has been stated to be "to provide for the regulation of marketing of agricultural produce in West Bengal". The Statute has given the State Government the power to implement the scheme evolved by the Statute. There is no reason to assume that this power will be abused. Whether in a given case power has been properly exercised by the appropriate authority would have to be considered when the occasion arises. But a Statute cannot be struck down merely because power has been given to the State Government to implement the policy contained in the Statute. In implementing the policy, the State Government has to decide upon the area in which the scheme will be started. The Supreme Court in the case of *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, rejected the contention that the Gujarat Agricultural Produce Markets Act was ultra vires the Constitution. It was stated by the Supreme Court in that case that the object of the Act was to ameliorate the conditions of agriculturists and to do away with the middlemen, who made large and unconscionable profits out of the transactions carried out through them. The Supreme Court repelled the argument that the authority conferred upon the Director was wide and arbitrary in the following words:

The preamble to the Act and the scheme of the Act clearly indicate that the power conferred upon the Directors are to be exercised for the purpose of regulating, buying and selling of agricultural produce and for that purpose to establish markets for sale and purchase of agricultural produce.

10. The scheme of the West Bengal Act is basically the same as that, of the Gujarat Act. Unlike the West Bengal Act. The Gujarat Act requires hearing of objections before any area is declared to be "the market area". But that, in my opinion, does not make any difference to the question whether the power that is to be exercised by the State Government is uncanalised and without any guideline. The object of the Act is to regulate buying and selling of agricultural produce and establishment of markets for that purpose. The State Government has been given the power to select areas for setting up such markets to implement the object of the Act. I fail to see how any question of conferment of naked and arbitrary power upon the Executive arises in this case.

11. It was next contended that the area that was chosen is far too wide and spans over 100 Sq. Kms. and it will be very difficult for the agriculturists to travel to the market area from far off places. It was argued that in fact, the agriculturists were still using the already existing huts for selling their goods.

12. This argument again is of no substance. The Act envisaged not only setting up of a market area but also sub-markets. It was stated on behalf of the State Government that already six sub-markets have been built in that area. My attention was also drawn to the case of *Lakhan Lal & Ors. v. State of Bihar & Ors.*, AIR 1968, SC 1408. There the entire District Gaya was declared to be the market area. But the Supreme Court had no hesitation in upholding the validity of the Bihar Act.

13. Lastly, it was argued that the traders were not getting anything in return of the fees that had been levied. It was argued that all the godowns that were built in the market area had been leased out to the Jute Corporation of India and the traders could not store their goods in those godowns. As a matter of fact, there was no other facility offered to the traders in exchange of the fee that was levied upon the traders.

14. I am unable to uphold this contention. The fees that are being charged are to be utilised by the Market Committee and shall have to be paid into a fund called the Market Committee Fund. That fund can only be utilised for the specified purposes of the Act. The purposes have been set out in section 20 and Section 36G(3). I have already referred to some of the purposes of the Act earlier in the judgment and it cannot be said that the traders" will not stand to gain if these purposes are implemented. Maintenance and improvement of the market, maintenance of standard weights and measures, ensuring health, convenience and safety of the persons using the market, collection and dissemination of opinion regarding all matters relating to crop statistics and marketing in respect of the agricultural produce and to other services rendered by the Market Committee will be of advantage to all the areas of the market and it cannot be said that the traders will not get anything in return of the fees that they have to pay.

15. Strong reliance was placed on a judgment of the Supreme Court in the case of Kewal Krishan Puri and Others Vs. State of Punjab and Another, . That was a case under the Punjab Agricultural Produce Markets Act, 1961. The rate of fees that a trader had to pay had been increased by the Punjab Government and that was under challenge before- the Supreme Court. The Supreme Court held that, by and large, the purposes enumerated in the Punjab Act were relatable to the service to be rendered in the market in relation to the transactions of purchase and sale of the agricultural produce. The Supreme Court in that case enunciated the following principle for testing the validity of levy of market fees on agricultural produce in a notified market area :

1. That, the amount of fee realised must be earmarked for rendering services to the licensees" in the notified market area and a good and substantial portion of it must be shown to be expended for this purpose.
2. That the services rendered to the licensees must be in relation to the transaction of purchase or sale of the agricultural produce.
3. That while rendering, services in the market area for the purpose of facilitating the transactions of purchase and sale with a view to achieve the objects of the marketing legislation it is not necessary to confer the whole of the benefit on the licensees but some special benefits must be conferred on them which have a direct, close and reasonable connection between the licensees and the transactions.
4. That while conferring some special benefits on the licensees it is permissible to

render such service in the market which may be in the general interests of all concerned with the transactions taking place in the market.

5. That spending the amount of market fees for the purpose of arguments the agricultural produce, its facility of transport in village and to provide other facilities meant mainly or exclusively for the benefit of the agriculturists is not permissible on the ground that such services in the long run go to increase the volume of transactions in the market ultimately benefiting the traders also. Such an indirect and remote benefit to the traders is in no sense a special benefit to them.

6. That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to these on whom falls the burden of the fee.

7. At least a good and substantial portion of the amount collected on account of fees, may be in the neighbourhood of two-thirds or three-fourths, must be shown with reasonable certainty, as being spent for rendering services of the kind mentioned above.

16. The purposes for which the Market Committee Fund can be spent under the West Bengal Act are more or less similar to those of the Punjab Act. It cannot be said that there is no quid pro quo for the fees that have been levied. The traders will get the benefit of increased amenities and services in the market area and will have better facility for doing business. This writ petition, therefore, fails and is dismissed. All interim orders are vacated. The Rule is discharged.

There will be no order as to costs.