

(2012) 07 JH CK 0143
In the Jharkhand High Court
Case No : C.W.J.C. No. 6191 of 1999

Machhali-Patha-Anda-Ewam-Sag-Sabji Bikreta Sangh, APPELLANT
Deoghar and Others

Vs

The Bihar State Agriculture Produce Markerting Board and RESPONDENT
Others

Date of Decision : 30-07-2012

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27

Citation : AIR 2013 Jhar 1 : (2012) 3 JCR 648 : (2012) 4 JLJR 277

Hon'ble Judges : Rakesh Ranjan Prasad, J;Prakash Tatia, J;Aparesh Kumar Singh, J

Bench : Full Bench

Advocate : Arvind Kumar Choudhary, for the Appellant; V.P. Singh and Mr. Mrinal Kr. Roy, for the Res.-Marketing Board, for the Respondent

Final Decision : Dismissed

Judgement

C.W.J.C. No. 2594 of 1999

1. By the order of learned Single Judge dated 10th May, 1999, following question was referred to the Larger Bench:

Whether the Market Committee can collect market fee through agent or not?

It appears that above question was referred in view of the order passed in C.W.J.C No. 4654 of 1995. It was also noticed in order dated 10th May, 1999 that in Writ Petition, being C.W.J.C. No. 9377 of 1998, the Division Bench has assigned the reason for passing the order for consideration of the Larger Bench, in view of the provision of Section 31 (C) of the Bihar Agriculture Produce Market Act.

2. This writ petition has been filed by four traders seeking a mandamus restraining the respondent no. 1 to 3 from collecting market fee upon the item "Khowa" through its collecting agent or otherwise from the petitioners and further for declaration that under the scheme of the Bihar Agricultural Produce

Market Act, 1960 and the Rules framed thereunder, the Deoghar Market Committee is not entitled to realize market fee on item "khowa", which the petitioners purchase for the preparation of "Pera" as one of the raw material along with the other materials. However, the question referred for consideration is only as above mentioned. Therefore, argument heard on that above question.

3. According to Learned Counsel for the petitioner the Marketing Committee has no jurisdiction or any authority to appoint any person to collect the market fee levied u/s 27 of the Bihar Agricultural Produce Market Act, 1960. However, validity of sub-rule (v) of Rule 82 of the Bihar Agricultural Produce Market Act, 1960 is not under challenge which specifically provides that the Market Committee may authorize any of its Officers or Staff or any collecting agent to collect the market fee directly from the buyer or his agent. According to Learned Counsel for the petitioners, in fact, the persons to whom the contract has been awarded by the Market Committee are abusing their authority and power and started extortion of money from them apart from collecting the levy at the prescribed rate of 1%. Learned Counsel for the petitioners also submitted that in view of Section 31-C of the Act, only the officers or servant of the Market Committee has power u/s 31-C of the Act of 1960 to stop the vessel and other vehicles, by which the commodities on which the market fee is to be levied, is being transported. It is submitted that in view of such contract of collection of levy to a private person, the statutory power given u/s 31-C cannot vest in the person to such contract to collect levy has been given by purported exercise of power of the market committee under Sub-clause 5 of Rule 82 of the Rules of 1975 and, therefore, the authorization will amount to vesting statutory power in a person who is not the officer or servant of the market committee.

4. At this juncture, we would like to mention one of the issues raised in connected writ petition; being C.W.J.C No. 6191 of 1999, wherein the learned Single Judge while sending this matter to the Larger Bench, in order dated 7th December, 1999 observed and questioned that "whether the power under Rule 82(c) can be exercised differently by different Market Committees all over the State or any uniform policy is required by the authorities in this matter." It appears that, that question was formulated because of the reason that some of the committees started collecting market fee through agent or some of the committees continued with the procedure of collecting the market fee through their own officer or staff.

5. Learned Counsel for the Market Committee submitted that the charging Section is Section 27 of the Act of 1960 and procedure for collection has been given in Rule 82 and the relevant provision under 82 for the purpose of deciding that the petition is Sub-rule (v) of Rule 82 of the Rules of 1975. It is submitted that validity of the Rule 82(v) is not under challenge. The Rule 82(v) clearly provides for giving permission to any person to collect market fee under the authority of the resolution of the market committee and, therefore, merely on this ground alone the question can be answered that the market committee has

authority and power to appoint any person to collect the market fee directly from the buyer or his agent.

6. So far as allegation of abuse of power by the contractor while collecting the market fee, is concerned for that there is no fact foundation in the writ petition nor any complaint was submitted by the writ petitioner before any competent authority of the Marketing Committee or Board. It is also submitted that any abuse and unauthorized act of any individual person, who has been given contract to collect the market fee cannot render the statutory provision unlawful or illegal.

7. We considered the submission of Learned Counsel for the parties and perused the facts of the case and also the relevant clauses. At the outset, we may state that Section 27 is the charging Section and empowers the Market Committee to levy the market fee @ 1%. The State Government has power to frame the Rules and so has been done by the State Government in exercise of power conferred u/s 52 of the Bihar Agricultural Produce Markets Act, 1960 and these Rules have been duly published. It is not the case of Learned Counsel for the writ petitioners that the State had no power to frame the Rules. Not only this even it is not the case of the writ petitioners that State exceeded its power by framing the Rule 82(v) whereunder it has been provided that Market Committee may authorize any of its Officers or Staff or any other person to collect market fee directly from the buyer or his agent. Therefore, in view of the valid Rule framed by the State Government, we are of the considered opinion Market Committee has authority to appoint any person to collect market fee directly from the buyer or his agent.

8. At this juncture, it would be relevant to mention here the same issue came up before the Division Bench of Patna High Court (whereunder the entire area of Jharkhand State was there within the jurisdiction of Patna High Court at relevant time). The Division Bench in its judgment delivered in the case of Saryug Prasad Sah & Ors. Vs. The State of Bihar and others reported in 1994 (2) PLJR 779, after distinguishing the case of Ishwar Singh Bagga and Others Vs. State of Rajasthan, , held that the Market Committee is empowered to authorize any of the officers of staff or any other person to collect the market fee directly from the buyer or its agent and that has nothing to do in connection with other affairs of the committee as contained in various provisions of the Act, such as establishment of check post, power of entry, inspection and seizure, power to stop vehicles etc. We are also of the considered opinion that the Division Bench of Patna High Court has rightly reached to the conclusion that the word "any other persons" used in Rule 82(v) of Rules of 1975 clearly empowers the market committee to empower and authorize any person to collect the levy of the market fee.

9. In view of the above reasons, the question is answered that the market committee can collect the market fee through it's authorized person.

10. Another question, whether there can be different mode for collection of

market fees? There appears from the Rule 82 of the Rule of 1960 that such decision can be taken by the Market Committee, whether such fee collection should be by it's officer or staff or through any person authorized by the Committee, which depends upon the need of committee, and, therefore, it depends upon the decision of the committee which is taken after considering various facts and working condition of the marketing area under the Market Committee. If there is any State policy then it can be according to State policy but there is no bar against the committee to decide on this issue, rather each Marketing committee has been given discretion to decide according to it's need, how market fee be collected.

11. Learned Counsel for the petitioners submitted that in view of this answer nothing will survive in the writ petition.

12. Hence, after answering this question and in view of the submission made by Learned Counsel for the petitioners, no useful purpose would be served by sending back it to the learned Single Judge for passing any appropriate order, which can only be the order of dismissal of the writ petition. Hence, writ petition, being C.W.J.C. No. 2594 of 1999 is dismissed.

C.W.J.C. No. 6191 of 1999

In view of the decision given in C.W.J.C No. 2594 of 1999, this writ petition is also dismissed.