

**(1979) 08 PAT CK 0009**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 5136 of 1978**

M/s. Bhagwan Das Gopal Prasad and Others APPELLANT  
Vs  
The State of Bihar and Others RESPONDENT

**Date of Decision :** 30-08-1979

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151  
Constitution of India, 1950 — Article 226, 227  
General Clauses Act, 1897 — Section 21

**Citation :** (1980) PLJR 130

**Hon'ble Judges :** S.K. Choudhuri, J;P.S. Sahay, J

**Bench :** Division Bench

**Advocate :** Balbhadra Prasad Singh, Rameshwar Prasad No. 2, O.P. Agarwal and S. Islam Ali, for the Appellant; Lal Narain Sinha, R.B. Mahton, H. Prasad and A.P. Singh, for the Respondent

**Final Decision :** Allowed

## Judgement

S.K. Choudhuri, J.—In this writ application under Articles 226 and 227 of the Constitution of India, the petitioners who carry on business in agricultural produce in their business premises in Purani Godown, Gaya; pray for quashing Annexures 1, 2, 3 and 4 to the writ application and Annexure 6 to the petition filed by the petitioners u/s 151 during the pendency of the application. Annexure 1 is a letter dated the 21st November, 1978 issued by the District Magistrate and Collector, Gaya (respondent no. 4) to petitioner no. 1 directing him to get his food grains dealers licence amended by 30.11.78 and conduct his business in the notified agricultural produce within the principal market yard at Chandouti, Gaya, with effect from 1.12.78. Annexure 2 is a letter of the same date issued by respondent no. 4 to petitioner no. 1 by which petitioner no. 1 was directed to commence business of sale, purchase and storage of food-grains in the newly constituted principal market yard at Chandouti, Gaya with effect from 1.12.78 and it was further stated in that annexure that the licence issued under the Bihar Food grains Dealer's Licensing Order 1967 would stand amended accordingly.

Annexure 3 is a letter dated 20.11.78 issued by the Agricultural Produce Market Committee, Gaya respondent no. 3 to petitioner no. 1 informing him that the process of allotment of land on lease on payment of Rs. 2,000/- as reserved" money and monthly rental of Rs. 250/- for the premises of the principal market yard at Chandouti, Gaya was going on. It may be stated here that letters like Annexures 1, 2 and 3 were issued to other petitioners also and these three annexures have been annexed to the writ application as specimen copies. By notification dated 28th February 1978. Annexure 4, a new principal market yard at Chandouti, Gaya has been constituted in place of the old one which was declared under the notification dated April 7, 1964 and the sub-market yard constituted under the notifications, dated April 7, 1964 and October, 19, 1973 have been cancelled. The effect of issuance of Annexure 4 was that except the new principal market yard established at Chandouti, Gaya there existed no other principal market yard or sub-market yards. It may be stated here that subsequent to the admission of the writ application the Secretary of the Bihar State Agricultural Market Board circulated a printed leaflet issued by the State Government under which the notification Annexure 4 dated 28.2.78 was amended to this effect that in addition to Chandouti market, the market yards established under notification dated 7.4.1964 and 19.10.1973 were restored. The learned counsel for the petitioners, therefore, was going to make a prayer for withdrawal of the writ application when the learned counsel for the respondents informed the court about a subsequent notification dated 27.6.79 under which the original position as it was under Annexure 4 was restored. Hence the learned counsel resiled from the prayer for withdrawal from the writ application and filed an application u/s 151 C.P.C. annexing copies of the aforesaid leaflet and the notification as annexures 5 and 6 respectively and have prayed for quashing Annexure 6 also.

2. It is not disputed that the State Government issued a notification u/s 5(2)(ii) of the Bihar Agricultural Produce Markets Act, 1960 (Bihar Act XVI of 1960) (hereinafter referred to as the Act) declaring the entire area under the jurisdiction of Gaya Municipality including several villages as market proper. It is also not disputed that the State Government issued another notification 7.4.64 u/s 5(2)(i) of the Act declaring the Mahalla Purani Godown within Gaya Police Station to be principal market yard and the locality known as Kedarnath Market within the same police station as sub-market yard. These two notifications have not been challenged in the present writ application and as such they have also not been made annexures. It must, therefore, be presumed that the aforesaid principal market yard and sub-market yard were established in accordance with law and there was infirmity in their establishment and declaration.

According to the petitioners they have their business premises situate within the principal market yard known as Mahalla Purani Godown and they are doing their business since last many years. They are all holders of Food grains licence and dealing in business of agricultural produce under the said licence. As letters like Annexures 1, 2 and 3 were issued to each of the petitioner, they have challenged

them to be illegal and issued without any authority of law. They have also challenged the notification Annexure 4 to have been issued by the State Government in violation of the law and procedure laid down in the Act and the Rules framed therein. According to the petitioners the District Magistrate, respondent no. 4 could not act under clause 10 of the licence under the Bihar Foodgrain Dealer's Licensing Order 1967 (hereinafter called Licensing Order), in issuing letter to the petitioners directing them to shift their place of business to the newly constructed principal market yard at Chandouti (vide Annexure 2). Cancellation of the notification declaring Purani Godown as the principal market yard and Kedar Nath Market as the sub-market yard by the State Government acting u/s 5(2) have been challenged. As aforesaid, by a petition u/s 151 C.P.C. the notification contained in Annexure 6 has also been challenged.

3. A supplementary affidavit has been filed by the petitioners. In paragraph 3 of the said affidavit it has been stated that after the establishment of Purani Godown, Gaya as the principal market yard no other instruction was issued by the State Government to the market committee Gaya to establish a market for the market area, Gaya, in connection with the produce and sale of agricultural produce as acquired under the provision of Section 18(2)(1) of the Act and rule 80(1) of the rules framed under the Act. It has however been stated therein that Chandouti market yard Gaya, as constituted under Annexure 4 was not established by the market committee as required under Rule 80(1). It has, therefore, been stated that the notification (Annexure 4) was without jurisdiction. The petitioners have further averred that the new Chandouti market would not accommodate all the dealers of Gaya.

4. A counter-affidavit in the form of show cause petition has been filed on behalf of the respondents in which they have supported the issuance of all the impugned annexures. It has been stated therein that having regard to the scheme of the Act, power is vested in the State Government to constitute a principal market yard or sub-market yard and is not exhausted by exercise of such power for the first time. According to the respondents such power can be exercised according to the necessity by virtue of power u/s 5 read with Bihar and Orissa General Clauses Act which states that the power to do a thing includes the power to modify or undo it. According to them a scattered market is difficult to control and provide facilities by the market committee. The suitability of the site according to the respondents was fully considered before the declaration of market area u/s 4(1) of the Act and bearing in mind the relevant objection and suggestion the market area was carved out. It has been stated further that the suitability of Chandouti, Gaya, included in the impugned notification for the location of the market yard was fully considered when the original market area was declared u/s 4(1) of the Act. According to them there has been no alteration of boundary of the market area and Chandouti market yard has been constructed within the market area after acquiring 57 acres of land in while buildings have been erected which are absolutely adequate for lodging all the petitioners and others. The letter, Annexure 3 from the Secretary of respondent no. 3 has been

stated to be purely informative and consequential and is not depended upon the constitution of the members of the managing committee old or new. It has further been stated that the provisions of Section 18(2)(1) and Rule 80(1) were required to be fulfilled when an establishment of market and market yard was to take place and the subsequent alteration or substitution in the matter of market yard is exercisable by virtue of powers of the State vested in it by Section 5 of the Act. According to the respondents there is no requirement of any fresh action to be taken u/s 18(2)(1) and Rule 80(1).

A reply to the show cause has been filed on behalf of the petitioners in which they have reiterated their stand taken in the original writ application. In it, it has been stated that absolute power is not vested with the State Government to declare any specific area acquired to be the principal market yard or sub-market yard restricting the business of the traders and offering them to take lease. It has further been stated that once power u/s 5(2) has been exercised and a market yard established the same cannot be whittled down at the whims of the authorities without following the procedure and principle of natural justice. The further reply is that it would be wrong to say that the suitability of the site for the creation of market yard was fully considered before declaration of market area u/s 4(1) of the Act. It is stated that acquisition of land at Chandouti, Gaya, was made long after the declaration of the market area and it would be incorrect to say that inclusion of Chandouti, Gaya within the market area under the previous notification would be deemed by implication to have been fully considered as suitable for a market yard. The other statements made in the reply are legal objections.

5. In order to appreciate the argument put forward on behalf of the petitioners for quashing Annexures 1 to 4 and 6 it will be necessary to briefly refer to some of the Sections and rules of the Act which were relied upon at the Bar.

Section 2(h) defines "Market" to mean the market established under the Act for the market area and includes a principal market yard and market yard or yards, if any. Clause (1) of that Section defines the market area as any area declared to be a market area u/s 4. Sections 3, 4 and 5 of the Act and Rule 80 of the Rules framed under the Act deal with the establishment of market area, market proper and market yards. The pre-ambule shows that the Act deals with the regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. Section 3 gives power to the State Government to issue notification declaring its intention of regulating the purchase, sale, storage and processing of agricultural produce in any area and inviting objections or suggestions within two months of the notification. Under Section 4(1) objections and suggestion are considered and after holding necessary enquiry the State Government will issue notification u/s 4(1) of the Act declaring the area or any portion of it to be the market area in respect of the notified agricultural produce. u/s 4(2) of the Act, no place can be set up, established or continued except in accordance with the Act, Rules and

bye laws for purchase or sale of agricultural produce other than the sales by growers or retail sales by the consumers after issue of notification u/s 4(1) of the Act. Section 5 gives powers to the State Government to declare by notification any enclosure, building or locality in any market area to be the principal market yard and similar area other than the principal market yard to be one or more sub-market yard or yards for the market area. u/s 6 the State Government establishes a market committee for the said market area. Rule 80 gives power to the State Government to direct the said market committee to establish a market thereafter the market committee establishes a market for the market area. The State Government thereafter issues notification establishing a market as required u/s 5(2) of the Act. Section 15 is also relevant to be referred to here. Under that action no agricultural produce specified in the notification u/s 4(1) shall be bought or sold by any person at any place within the market area other than the principal market yard or sub-market yard or yards established, therein, except such quantity as may in this behalf be prescribed for retail sale or personal consumption. Sub-section (2) of that section provides that the sale and purchase of such agricultural produce in such area shall notwithstanding anything contained in any law, be made by means of open auction or tender system except in case of such class or description of produce as may be exempted by the Board. Section 30 amongst others makes a provision for acquisition of site or sites for the market and construction and repair of buildings etc necessary for the purpose of such market and for the health, convenience and safety of persons using it. Section 29 states what is market committee found. During the course of argument that schedule annexed to the Act and made 2(1)(a) which defines agricultural produce was also referred. It was pointed out that there are various items which has been included in the schedules as agricultural produce though in fact they are not. All the vegetable oils have been included in Item no. IV of the schedule. Various kinds of fibres in Item no. VII and animal husbandry has been included in Item no. III. From the frame work of the provisions of the Act it cannot be said that the Act was made only for the benefit of producers and agriculturist but is actually meant for the benefit of dealers as also for the public in general.

6. It was contended in the first instance by Mr. Balbhadra Pd. Singh learned counsel appearing for the petitioners that bare and barren area could not have been declared as principal market yard or sub-market yard as there was no seller or buyer or that any transaction was required to be regulated there. On the other hand it was contended by Mr. Lal Narain Sinha learned counsel for the respondents that the principal market yard declared under the notification Annexure 4 known as Chandouti market fell within the market area declared by adopting the procedure laid down in Sections 3 and 4 and as such it was within the competence of the State Government to declare even a barren area for the establishment of a market. I have already referred to the relevant sections of the Act and the Rules. While declaring the market area u/s 4(1) of the Act the State Government has to consider the objections and suggestions that may be received

by it and after making such enquiry; which according to the State Government was necessary, it may, by notification, declare the area specified in the notification u/s 3 or any portion thereof to be the market area for the purpose of the Act in respect of all or any of the kinds of agricultural produce specified therein. I have already indicated above that the notification dated 6th October, 1964 declaring the market area u/s 4 of the Act has not been challenged in the writ application. Therefore it must be presumed that all possible objections and suggestions as were received by the State Government after issue of a notification u/s 3 of the Act were considered and thereafter the area covered by the aforesaid notification was declared as market area. It is from this market area that a specified area is chalked out for declaring the principal market yard and other specified areas as one or more sub-market yard or yards. This is done by the State Government under the notification issued u/s 5(2) after observing the procedure in rule 80. Once a market area is declared u/s 4 after complying with the formalities laid down in that section, any portion of that area may be considered to be suitable for establishing a market which was within the exclusive domain of the market committee, and it would fix such area in which the principal market yard and sub-market yard or yards should be established. It is not disputed that the principal market yard which had been established market falls within the market area declared u/s 4. As such it is difficult to accept the argument of the learned counsel for the petitioners that in a barren area no market could be established.

7. I shall deal with one move argument put forward at the Bar before I come to the main contention. It has been contended that the Secretary of the Market Committee had no authority to issue any direction to the petitioners for shifting their business to the principal market yard known as Chandouti market yard declared under Annexure 4. This letter of the Secretary is dated 20th November, 1978 and is Annexure 3 to the writ application. The contents of this Annexure show that by it, information was given by the Secretary to petitioner no. 1 that by notification dated the 28th February, 1978 Chandouti, Gaya, has been declared as principal market yard and therefore he should get his licence correct by 1.12.78 and positively start his business from that date. He was also informed that the shop rooms and lands were being given on lease on payment of Rs. 2000/- and a room was given for holding a shop on 250/- per month. It has been rightly pointed out by Mr. Sinha that this is merely an informative letter given to petitioner no. 1 similar letters to other petitioners, for their convenience and not issued under any provision of law. Therefore, the question as to the validity of issue of such letters do not arise. If, however, any action would have been taken in pursuance of the letters the petitioners could have made a grievance and challenged the authority of the Secretary.

8. The next argument which I deal here was the main argument put forward by Mr. Balbhadra Pd. Singh. He challenged the notification, Annexure 4, mainly on the ground that it was issued without following the procedure laid down in rule 80. Mr. Sinha on the other hand contended that rule 80 is not required to be

followed every time before declaring any area within the market area to be either a principal market yard or sub-market yard. He further contended that rule 80 was exhausted once by following the procedure laid down in that rule when declaration of principal market yard was made on the 7th April, 1964 under this notification Mahalla Purani Godown within Gaya police station was declared as principal market yard and Kedar Nath Market as sub-market yard. Therefore, his argument was that said rule 80 was exhausted and the procedure laid down therein could not be repeated before issuing Annexure 4 under which the principal market yard at Chandouti, Gaya, was established with effect from 1.12.78 in place of original principal market and sub-market yards. Learned counsel elaborated his argument by pointing out that under the General Clauses Act, the State Government had the power to undo previous notifications and therefore it had power to issue a fresh notification under Section 5(2) of the Act. According to the learned counsel in such a situation rule 80 is not attracted. Therefore, the question for determination is as to whether in the facts and circumstances of the case the procedure laid down in rule 80 was required to be followed before establishing the principal market yard at Chandouti, Gaya, after cancellation of previous principal market yard, and sub-market yards declared under the notification dated the 7th April, 1964 and the 19th October, 1973. Section 21 of the General Clauses Act is relevant in this regard it reads thus.

21. Power to make, to include power to add to amend, vary or rescind the orders, rules or bye laws.

Where any Central Act or Regulation, a power to issue notifications, orders, rules or bye laws is conferred then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any), to add to amend, vary or rescind any notifications, orders, rules or bye laws so issued.

The aforesaid section itself shows that the power to add to amend, vary or rescind any notifications etc is subject to the same limitations which are applicable to the original exercise of power. This provision was considered by the Supreme Court in (1) Gopi Chand Vs. The Delhi Administration, . Their Lordships were considering the four notifications issued from time to time u/s 20 the East Punjab Public Safety Act (Act 5 of 1949). By the first notification dated July 8, 1949 the Province of Delhi was declared to be a dangerously disturbed area by the competent authority. The said authority issued a second notification cancelling the first with effect from October 1, 1950. This notification was followed by third notification on October 6, 1950, which purported to modify it by inserting the words "except as respect things done or omitted to be done" after the words "with effect from October, 1, 1950", in other words, this notification purported to introduce an exception to the cancellation of the first notification caused by second, and in effect it purported to treat the province of Delhi as a dangerously disturbed area in respect of the things done or omitted to be done before the date of the said notification. The last notification was issued on April 7, 1951 by the Chief Commissioner of Delhi in exercise of the power u/s 36(1) of

the East Punjab Public Safety Act and by it he certified as being triable under the said Act in any area within the State of Delhi not bring a dangerously disturbed area the following offences, namely any offence under any law other than the aforesaid act of which cognizance had been taken by any Magistrate in Delhi before October, 1, 1950, and the trial of it according to the procedure prescribed in Chapter IV of the said Act was pending in any court immediately before the said date and had not concluded before the date of the certificate issued by the notification.

It may be stated here that in that case the trial was concluded in accordance with the procedure prescribed under Chapter XX of the Criminal Procedure Code which deals with the trial of summons cases and that trying magistrate pronounced his judgment in all the cases on the 22nd December, 1951. The question, inter alia, raised was the validity of the proceeding continued against the appellant pending against him under the summons procedure. While discussing the effect of this notification and the power of modification of the notice issued by a competent authority their Lordships had discussed the provision of Section 21 of the General Clauses Act. It is discussed on paragraph 20 of the judgment which reads thus:

Mr. Umrigar however argues that the competent authority was entitled to modify the notification issued by it because the power to issue a notification must also involve the power either to cancel, vary or modify the same; and in support of this argument Mr. Umrigar relies on the provision of Section 19 of the Punjab General Clauses Act 1898 (Punjab 1 of 1898) which in substance corresponds to Clause 21 of the General Clauses Act 1897 (10 of 1897). In our opinion this argument is not well founded. Section 19 of the Punjab General Clauses Act like Section 21 of the General Clauses Act embodies a rule of construction; the nature and extent of the application of which must inevitably be governed by the relevant provisions of the statute which confers the power to issue the notification. The power to cancel the notification can be easily conceded to the competent authority and so also the power to modify or vary it be likewise conceded, but the said power must inevitably be exercised within the limits prescribed by the provision conferring the said power. Now Section 20 empowers, the Provincial Government to declare the whole or any part of the province to be dangerously disturbed area, and if a notification is issued in respect of the whole or any part of the province it may be either cancelled wholly or may be modified restricting the declaration to a specified part of the province. The power to cancel or modify must be exercised in reference to the areas of the province which it is competent for the Provincial Government to specify as dangerously disturbed. The power to modify cannot obviously include the power to treat the same area as dangerously disturbed for persons accused of crimes committed in the past and not disturbed for other accused of the same or similar offences committed later. That clearly is a legislative function which is wholly outside the authority conferred on the delegate by Section 20 or 36(1). We must therefore, hold that the third and fourth notifications are invalid and as a result of the second

notification the whole of the Province of Delhi ceased to be dangerously disturbed area from October 1, 1950.

In the case of (2) The State of Bihar Vs. D.N. Ganguly and Others, it has been held that

Section 21 of the General Clauses Act embodies rule of construction and the question whether or not it applies to the provision of a particular statute would depend on the subject matter, context and the effect of the relevant provisions of the said statute in other words, it would be necessary to examine carefully the scheme of the Act, its object and all its relevant and material provisions before deciding whether by application of the rule of construction enunciated by Section 21, the appellant's contention is justified that the power to cancel the reference made u/s 10(1) can be said to vest in the appropriate Government by necessary implication.

9. Applying the aforesaid principle laid down in the Supreme Court decision in D.N. Ganguli's case it is manifest that the power u/s 21 of the General Clauses Act to vary or modify a notification must be exercised within the limits prescribed by the provision conferring the said power. By issue of Annexure 4 in the present case, the previous notification dated the 7th April, 1964, declaring the principal market yard was cancelled. It cannot be disputed that the State Government which had the power to issue a notification had also power to cancel it For establishing a principal market yard it was necessary to follow rule 80 because it is only after following the procedure of rule 80 that the State Government derives its power to notify u/s 5(2) of the Act. By cancellation of the previous notification establishing a principal market yard the effect was that such principal market yard was no longer in existence from the date of publication of the notification Annexure 4. I have already indicated above the provisions under which the principal market yard and sub-market yard are established. The relevant sections of the Act shows that it is market committee which have power to acquire and hold property both moveable and immoveable and have also power to lease, sale or otherwise transfer any such property subject however to the prescribed condition and restrictions. This power is given in Section 17 of the Act. Such acquisition for the Market Committee is however made by the State Government under the Land Acquisition Act as provided in Section 40. Section 18 enumerates powers and duties of the market committee. It is the duty of the market committee to implement the provision of the Act and rules and bye laws made thereunder in the market yard. All the assets also vest in the market committee. However the State Government has power to supersede and the consequences of such supersession has been enumerated in Section 33 of the Act. Sub-section (11) of that section gives the State Government power to constitute a new market committee within one year of the date of publication of notification supersession. After the new committee is constituted all the assets and liabilities vest in the committee on the date of its first meeting. Of course it is the exclusive power of the State Government to add to the schedule or amend

or cancel any of the items of the agricultural produce. Rule 80 has already been referred to. The object of incorporation of market committee, its power and duties have been enumerated in Chapter III. For the purpose of exercising superintendence and control over the market committees and for exercising such other powers and performing such functions as are conferred or entrusted under the Act, the State Government by notification in the official gazette establishes a Board called the Bihar State Agricultural Marketing Board and its powers and functions have been enumerated in Chapter IVA. Thus the provision under, the Act and the rules clearly indicates that the power to establish a principal market yard and sub-market yards exclusively rests within the domain of the market committee, which area however, must lie within the market area declared by the State Government u/s 4. Therefore, when the previous notifications of the years 1964 and 1973 were cancelled by the notification contained in Annexure 4 necessity arose for establishing a fresh principal market yard and sub-market yards with the market area declared u/s 4. This could be done only by following rule 80. It has been pointed out by the Supreme Court in (3) Lakhan Lal and Others etc. Vs. The State of Bihar and Others etc., which is a case dealing with the Bihar Agricultural Produce Market Act 1960 (Act 16 of 1960) as follows:--

Market as defined in Section 2(h) is established for a market area by following the procedure laid down in Section 5, 18(I) and rule 59. The State Government issues a direction u/s 18(1) read with Rule 59(1) to the Market Committee to establish a market for the market area. On receipt of this direction the market committee decides under rule 59(2) to establish a market by fixing the boundaries of the market proper and the principal market yard and sub-market yard; if any. Thereafter the Government issues the necessary notification u/s 5(2) declaring the market proper and market yards. These three steps form one integrated process and on the issue of the notification u/s 5(2) the market is finally established. The market so established consists of the market proper and the market yard or yards. There is no other separate market place.

10. Thus considering all aspects and the frame work of the Act and the rules it has to be held that the respondents cannot take advantage of Section 21 of the General Clauses Act for establishing a new principal market yard or sub-market yard in place of original principal market established in 1964 by issue of a notification u/s 5(2) of the Act completely ignoring rule 80 and thereby usurp the power of the market committee. I have already indicated above that the power u/s 5(2) has been given to the State Government to issue a notification after the stage of rule 80 is over. There are three steps indicated therein which according to the Supreme Court decision referred to above are the three steps which from one integrated process and on the issue of notification u/s 5 a market is finally established. It is that market which was established by the notifications of the years 1964 and 1973 which was cancelled by virtue of implied power the State Government derived from Section 21 of the General Clauses Act. This power of cancellation of the State Government by issue of a notification Annexure 4 may not be questioned, but the State Government should have stopped there; and

should not have established a new principal market yard under the said notification substituting in place of the old one. To this extent the said notification is bad in law and without jurisdiction. The State Government will be well advised, therefore; to proceed from the stage of cancellation of the previous notifications and treat Annexure 4 as merely notification cancelling the previous notifications dated the 7th April, 1964 and the 19th October, 1973. In the result, the application is allowed to the extent indicated above and the portion of Annexure 4 by which the principal market yard at Chandouti, Gaya, has been established is quashed. The consequence of this quashing would be that Annexure 1, 2 and 3 issued to petitioner 1 and similar letters issued to other petitioners become ineffective and inoperative. In the circumstances of the case there will be no order as to costs.

P.S. Sahay, J.

I agree.