(1983) 08 PAT CK 0028

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 407 of 1983 (R)

M/s Kailash Roller Flour Mills and Another — APPELLANT

Vs

State of Bihar Others — RESPONDENT

Date of Decision : 28-08-1983

Acts Referred:
Bihar Agricultural Produce Markets Act, 1960 — Section 19, 27A, 9(5)

Citation : (1987) PLJR 1118

Hon'ble Judges : S. B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—This writ petition is directed against an order of assessment dated 5.2.-1983 as contained in Annexure 4 to the writ petition which was made in terms of the provisions of section 27Aof the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as ''the Act''). By reason of the aforementioned order of the assessment the petitioners have been assessed for a sum of Rs. 2, 98, 674.85 by way of market fee in respect of Ata, Sujji and Maida, for the period 1.4.1981 to 30.2.1981. Although, in the writ petition, many points have been raised for the purpose of showing that the petitioners are not liable to pay the market fee on Ata, Sujji and Maida under the provisions of the aforementioned Act, at the time of hearing of this application Mr. G. C. Bharuka, the Learned Counsel appearing on behalf of the petitioners confined his submission only to the validity of the order of assessment on the ground that the same has been parsed by the Special Officer in his capacity as an administrator along with the Secretary of the Market Committee.

2. In this connection he drew my attention to the provisions of section 9 (5) of the Act. By reason of the provisions of the said Act, on the expiry of the term of three years of the Committee if an election is not held within the period of six months thereafter the Committee constituted shall be deemed to be dissolved and its duties and functions shall be performed by such person who is nominated as such by the State Government. On perusal of the order of assessment itself it

would appear that the order of assessment has been signed by the Special Officer who was appointed by the State Government in terms of the aforementioned provisions of section 9 (5)of the aforementioned Act along with the Secretary of the Market Committee.

3. From a perusal of the aforementioned provisions of section 9 (5) of the Act it would further evident be that the same clearly indicates that the authority nominated by the State of Bihar will exercise all the powers and perform all such duties of the Market Committee under the said Act and the rules framed there, under. The powers of the Market Committee, admittedly are prescribed u/s 18of the aforementioned Act. In terms of section 19of the Act, the Market Committee is empowered to appoint amongst its member a sub-committee and is further empowered to delegate such of its powers and duties as it may think fit in favour of such committee.

4. A sub-committee, in terms of section 27A of the Act, is constituted for the purpose of making an assessment with regard to the liablity of a trader relating to the payment of fee leviable in terms of section 27thereof on the basis of the return furnished by him or otherwise.

5. There is no doubt that in law when a statutory functionary is enjoined with the duties and functions to be performed by him under a statute, the same is required to be done in the manner laid down in the statute or not at all. It is also a well settled principle of law that statutory authority statutorily enjoined to discharge its function must act within the four corners of the said statute.

6. By reason of section 9 (5) of the Act, the duties and the functions of the market committee which includes the duties and functions of all such sub-committees which may be constituted in terms of the provisions of the Act and as referred to hereinbefore have to be performed by such authority who is appointed as such by the State Government in terms of the provisions of section 9 (5) of the said Act. Such functions of the Market Committee/or any of the sub-committees, therefore, have to be performed only by the person so appointed by the Mate Government and not by any other person. Even while discharging such a function a statutory authority is not, in my opinion, entitled to have the advice and/or to receive recommendations of any person who does not have such function to perform under the provisions of such statute.

7. In the instant case, evidently only the Special Officer who was nominated by the State of Bihar to perform the function of the Market Committee and other sub-committees which could be constituted by the Market Committee was to perform all its duties and functions. It was, therefore, not within the domain of the Special Officer to take advice or help from any person nor any other person could be associated with him for discharging such functions.

8. It is also a well settled principle of law that if a person who associates himself in deliberations with some persons while discharging some statutory functions, is incapable of doing so in terms of the provisions of statute or otherwise, the

decision of the entire body becomes vitiated inasmuch as such person who was not authorised by law to associate himself with the other members of the Committee may influence the mind of such other member while arriving at a decision.

9. In this view of the matter, I am of the opinion, that the entire order of assessment, as contained in Annexure-4, has become vitiated in law. Mr. G. C. Bharuka, Learned Counsel for the petitioners has also rightly placed reliance upon the decision of this Court in the case of M/s. Chhabi Rani Agra Industrial Enterprises. Ltd. v. The Agricultural Produce Market Committee, Mohania & others (1984 BBCJ 408 : 1984 PLJR 446) and Ramautar Choudhary v. The Managing Director, Bihar State Agri Marketing Board Patna & ors. (1984 BBCJ 441: 1984 PLJR 412). Reference in this connection may also be made to an unreported decision in CWJC No. 5215 of 1985 (M/s Deo Lal Singh and ors vs. The State of Bihar & others)

10. In the result this writ petition is allowed and the order of assessment as contained in Annexure-4 to the writ petition is hereby quashed. However, on the facts and in the circumstances of the case there will be no order as to costs.

11. Before parting with the case, however, it may be observed that there cannot be any doubt that in view of the express provisions of section 9 (5) of the Act, the Market Committee must have been reconstituted by now and the assessment sub-committee has also been constituted by the Market Committee in terms of the provisions of section 27 A of the Act. However, it goes without saying that as the order of assessment has been struck down by this Court on a mere technical ground the assessment sub-committee shall be entitled to reopen the order of assessment, if the same is permissible in law, subject, however, to the condition that the petitioners shall be entitled to raise all other objections in relation thereto to which they may be advised in that regard.

