

(1999) 05 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 2703 of 1999

Pradeep Kumar Rai

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-05-1999

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27, 27(2), 3, 3(1), 4(1)
Bihar Agricultural Produce Markets Rules, 1975 — Rule 129, 129(1), 82
Constitution of India, 1950 — Article 226, 243

Citation : (1999) 3 PLJR 372

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Advocate : Ram Suresh Roy, Abhoy Kr. Roy, in C.W.J.C. No. 2703 of 1999, Ram Janam Ojha, K.P. Yadav, in C.W.J.C. No. 3683 of 1999, P.K. Shahi and Prabhat Kr. Singh, in C.W.J.C. No. 3901 of 1999, for the Appellant; K.N. Choubey, N. Dubey for Respondent No. 5 in C.W.J.C. No. 2703 of 1999, P.K. Shahi, Prabhat Kumar Singh for Municipality in C.W.J.C. 2703 of 1999 and V.N. Sinha, for State, for the Respondent

Judgement

N. Pandey, J.—In these three petitions under Article 226 of the Constitution, disputes have been raised over settlement of Buxar Municipal Markets, known as Gandhi Bazar Nagarpalika Hat and Ambedkar Hat for the year, 1998-99. Since these cases have been heard together, they are being disposed of by a common order with consent of the parties at this stage itself.

2. C.W.J.C. No. 2703 of 1999 has been filed on behalf of Pradeep Kumar Roy challenging the notice dt. 5.3.1999 whereby, the Secretary, Agricultural Produce Market Committee, Buxar; in short the "Market Committee" notified the Bazar in question for appointment of collecting agent under Rule 82(v) of the Bihar Agricultural Produce Markets Rules, 1975, in short the "Rules", for collection of market fee on agricultural produce, brought and hold in the market areas and also for quashing the order of settlement which have been passed during pendency of this case.

3. C.W.J.C. No. 3683 of 1999 is on behalf of the Agricultural Produce Market Committee and others for an appropriate writ or direction to restrain the Buxar Municipality and the Special Officer from collecting tolls and rent within the area of Buxar Municipality, which was already notified u/s 3(1) of the Bihar Agricultural Produce Market Act, 1960, in short the "Act". Third writ petition (CWJC No. 3901 of 1999) is by the Buxar Municipality itself through the Special Officer for a declaration whether the Market Committee will have any jurisdiction to take steps under Rule 82(v) to appoint collecting agent for collection of market fee with respect to the markets in question unless the application for grant of licence under Rule 129 of the Rules was disposed of and whether the Market Committee has the authority to settle/appoint a collecting agent to regulate Bazar/Hat held on the land of the Municipality.

4. It appears not in dispute that after expiry of the period specified in the notification under Sec. 3, the State Government had declared the market area in question for the purposes of the Act, in respect of all kinds of agricultural produce. But no attempt was made earlier for appointment of collecting agent as required under Rule 82(v) nor market fee was ever collected. Therefore, undisputedly the Buxar Municipality, which had been settling the markets in question since last about 60 years, continued to settle even for the year, 1998-99. In fact, this is for the first time on 5.3.1999 notice was issued for appointment of collecting agent on auction basis.

5. In my view, before considering the rival contention of the parties, it appears necessary to notice certain events which gave rise to the present dispute. The Special Officer, Buxar Municipality, on the direction of the Sub Divisional Officer, Buxar, who is also the Chairman of the Market Committee, issued general notice on 6.10.1998 fixing 21.10.1998 for settlement of the Bazar in question on open auction basis, which would be evident from Annexures-6 and 3 respectively. Pradeep Kumar Roy (Petitioner in CWJC No. 2703/99), offered the highest bid of Rs. 2,75,000/- and accordingly, got settlement. He also deposited the entire money and thereafter, Parwana etc. were issued for the period from 21.10.1998 to 20.10.1999 and with respect to Ambedkar

Bazar, the settlement was made at Rs. 1,21,000/- for the period from 1.4.1999 to 31.3.2000. No objection was ever raised on behalf of the Market Committee, of which the Sub-Divisional Officer was himself the Chairman. On 5.3.1999 as stated above, for the first time a notice was issued inviting applications under Rule 82(v) of the Rules, fixing 24.3.1999 and 27.3.1999 for the bid and ultimately one Kamlesh Roy (Respondent No. 6 in C.W.J.C. No. 2703/99) got the settlement at Rs. 2,20,000/- with effect from 1.4.1999 to 31.3.2000, which is also under challenge in the above-mentioned writ petition.

6. Mr. Roy appearing on behalf of the Petitioner Pradeep Kumar Roy contended that in the facts and circumstances of the case, when the settlement was already made on 21.10.1998 after getting due approval of the District Magistrate and the Sub-Divisional Officer-cum-Chairman of the Market Committee, and necessary

formalities for issuance of Parwana and execution of agreement were also complete, it was not open to the Market Committee to take steps for a fresh settlement. Because it would certainly give rise to an anomalous situation for the traders of the Market in question. He contended since last several years, similar settlements were made by the Municipality from year to year, but no objection whatsoever was ever made. But for the first time when certain interested persons like Jitendra Choubey etc. could not succeed at the time of settlement, managed to get the impugned notice issued on 5.3.1999 for fresh auction under Rule 82(v) of the Rules.

7. Mr. Shahi representing the Buxar Municipality contended that a bare reference to the letter of the Special Officer, as contained in Annexure-F to the counter affidavit, it would appear that a request was already made before the Market

Committee for grant of licence under Rule 129(1) of the Rules, therefore, unless the said application is disposed of, any attempt of the Market Committee to hold auction for appointment of agent under Rule 82(v) would be illegal and without jurisdiction.

8. Mr. Ojha, Sr. Advocate, appearing for the Market Committee, on the other hand, contended that in view of a notification under Sec. 3(1) and the declaration of the Market area under Sec. 4(1) of the Act, the Respondent Municipality will have no jurisdiction to collect tolls in respect of all kinds of agricultural produce, specified in the notification. In support, of his contention, learned Counsel relied upon a decision of this Court in the case of Ramji Prasad v. State of Bihar 1979 PUR 185.

9. There can not be any dispute that mandate of Section 4(2) of the Act is to prohibit purchase, sale, storage or processing of notified agricultural produces by anybody else until and unless a licence is granted by the Market Committee under Rule 129 of the Rules or in the alternative the Market Committee authorises its officers or staff or any other persons to collect market fee directly from the buyer or his agent.

10. The second important aspect in such a circumstance is Sec. 27 read with Rule 82 of the Rules, which authorises the Market Committee to levy and collect Market fee at the rate of 1 per cent on the sale, purchase of the notified agricultural produce. Sub-sec. (2) of Sec. 27 provides that market fee shall be payable, by the purchasers in the manner prescribed under the Rules. The method of payment of such a fee has been prescribed under Rule 82 of the Rules, whereby, the Market Committee may authorise any of its officers or staff or any other person to collect market fee directly from the buyer or his agent.

11. As per Rule 129 no person or authority shall within the market area or within the distance notified under Sub-sec.(2) of Section 4, set up, establish or continue any place for sale, storage or processing of notified agricultural produce, except in accordance with the terms and conditions of the licence in Form- XX, issued by the Market Committee. Sub-rule (iii) further provides that on receipt of an

application, Market Committee may grant licence, provided the conditions enumerated therein, are fulfilled, Sub-rule (v) is enabling provision for any person or authority aggrieved by the order of the Market Committee to prefer appeal before the Chairman of the Board.

12. From a bare analysis of the legal position, as noticed above, there can not be any dispute that the moment the declaration under Sec. 4(1) and (3) is complete, nobody else can hold market or collect fee with respect to the notified agricultural produce brought or sold in the market area unless authorised by the Market Committee under Sub-rule (v) of Rule 82 or gets licence under Rule 129.

13. Now the question may be relevant whether in the case where an application is made under Rule 129 by a statutory authority like, Municipality, an instrumentality of the State, will it be proper for the Market Committee to take steps for settlement under Rule 82(v), particularly when all previous settlements were made by Municipality? I have already noticed that Rule 129(iii) provides that on receipt of an application under Sub-rule (1), Market Committee may, grant the licence, providing the conditions enumerated therein are fulfilled. Therefore, in my view, if an application is made by an authority like Municipality, District Board, etc. and all the conditions enumerated under Sub-rule (iii) of Rule 129 are fulfilled, unless such an application is disposed of, the attempt of the Market Committee to take steps under Sub-rule (v) of Rule 82 may not be justified. Because in case of grant of licence under the aforesaid provision, it may lead to an anomalous situation, putting the traders and buyers to unnecessary harassments by two independent agencies.

14. The other aspect also can not be overlooked that the Market was undisputedly established by the Municipality. Therefore, nobody can restrain the Municipal authority or a settlee under it from collecting ground rent or house rent from the traders. This is also not in dispute that under the Market Act and Rules Market Committee is only entitled to collect market fee of the agricultural produce brought or sold within the market area, notified u/s 3. Therefore, for smooth running of the market and to avoid conflicts of interest, the legislatures have prescribed solution under Rule 129 to grant licence. The right to establish market and to collect the ground rent of a building or taxes from the traders in such a market shall always be with the Municipality. But any revenue in the form of fee can only be realised with respect to agricultural produce after getting licence under Rule 129. Reference in this regard can usefully be made to a decision of this Court in the case of Kesho Singh Vs. State of Bihar and Others, , holding that the Market Committee has no authority either to set up any market or fair on a raiyati land nor it can authorise any other person. It has only right to collect fee on purchase or sale of agricultural produce, if no application is made under Rule 129(1) of the Rules.

15. True it is Sub-rule (iii) of Rule 129 says that the Market Committee may grant licence, if applied for, provided conditions enumerated therein are fulfilled. Therefore, on a bare reference to the conditions enumerated therein, one can

safely conclude that in case such conditions are fulfilled by the applicant, like a statutory authority, the Market Committee has to grant licence. Therefore, to my mind it was not proper for the Market Committee to issue the impugned notification or to take steps for settlement in favour of Respondent No. 6 of C.W.J.C. No. 2703 of 1999, without disposing of the application of the Municipality.

16. The other aspect equally relevant for consideration is whether in the facts and circumstances of the case, like the present one when the settlement having been made regularly by the Municipality including the current year, will it be proper for the Market Committee to take steps for fresh settlement unless the previous settlement which was made after getting approval of the Sub-Divisional Officer-cum-Chairman of the Market Committee, is cancelled. In the instant case, admittedly, all the necessary formalities for issuance of Parwana and execution of agreement etc. in favour of Petitioner Pradeep Kumar Roy were already complete much before the publication of notice dated 5.3.1999 by the Market Committee for settlement under Rule 82(v). It has also been noticed that the present settlement in question for Gandhi Nagarpalika Hat is only for a period from 1.10.98 to 30.10.1999. True it is that there is no estoppel against the statute, but in a case like the present one, when no attempt was ever made by the Market Committee to challenge the steps taken by the Municipality for settlement, and that too when an application under Rule 129 on behalf of the said Municipality was still pending, in my view, it will not be in the interest of justice to disturb the settlement; which had already taken place.

17. Apart from the legal interpretation of the requirements of Rule 129 of the Rules, it will not be out of place to mention that by virtue of the amendment brought by the Constitution 73rd Amendment Act, 1992, which came into force with effect from 20.4.1993, certain statutory responsibilities have been imposed on the Municipalities. Article 243 P(d) defines "Municipal area" to mean that territorial area of the Municipality as is notified by the Governor. Article 243 W(a) (i) envisages that subject to the provisions of the Constitution, the Legislature of State may by law endow the Municipality with such powers or authority as may be necessary to enable the Municipality to function as institutions of self-government. It further shows that a Municipality shall prepare plans for economic developments and to provide public amenities. Hence, in order to provide such amenity, it will be the prerogative of the Municipal authority to collect revenue to raise municipal fund. Therefore, while considering the claim of the Municipality under Rule 129, the Market Committee/Marketing Board will always bear in mind such requirements.

18. Under the aforesaid facts and the attending provisions, it is in the interest of justice not to disturb with the present settlement, which was already made by the Municipality. But the settlement made by the Market Committee with Respondents Nos. 5 and 6 Kamlesh Roy and Ramesh Roy is quashed.

19. I further hold that pending disposal of the application under Rule 129, the

Special Officer of the Municipality shall deposit with the Market Committee, the market fee at the rate of Re. 1/ - (one) per hundred on the amount of settlement, as undertaken by him vide letter dt. 22.3.1999 to the Secretary of the Market Committee.

20. With the above directions/observations the writ petitions as also I.A. No. 4763/99 are disposed of.