

(2001) 11 JH CK 0013

In the Jharkhand High Court

Case No : CWJC No's. 3190 of 1998 (R) , 1212 of 1999 (R) and 20 of 2001

Raj Store and Others

APPELLANT

Vs

Bihar State Agricultural Marketing Board and Others

Shankar Lal Agarwal and Others Vs Bihar State Agricultural
Marketing Board and Others
 Tilakraj Chhabra and
Others Vs State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 15, 18, 27, 29, 30
Bihar Agricultural Produce Markets Rules, 1975 — Rule 61, 67, 98

Citation : AIR 2002 Jhar 68

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : R.K. Agrawal and S.L. Agarwal, for the Appellant; Ram Janam Ojha
V.P. Singh, Sat Prakash and Shalini Jha, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these cases as common question of law is involved, they have been heard together and are being disposed of by this common judgment.

2. The sole question, raised by the petitioners, is whether the Marketing Board constituted under the Bihar Agricultural Produce Markets Act, 1960 has jurisdiction to charge rent of the shops, situated within the market area or not.

3. To determine the issue, it is necessary to look into the relevant facts, as pleaded by one or other petitioner(s). The Bihar Agricultural Produce Markets Act, 1960 (Act XVI of 1960) came into effect when published in the Bihar Gazette Extra- ordinary of the 10th September, 1960 to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar (now it covers the State of Jharkhand also) and for matters connected therewith.

4. Notifications u/s 5(2) of the Act were issued for different Principal Market Yards. For example notification u/s 5(2) of the Act was issued on 22nd February, 1960 in respect to Jugsalai market, which is declared as Principal Market Yard. Some other notifications were issued u/s 5(2) of the Act on 5th December, 1985. Similar notification u/s 5(2) of the Act was issued in respect to Hazaribagh Market, which was declared as Principal Market Yard.

5. Petitioners of CWJC No. 3190 of 1998 (R) and CWJC No. 20 of 2001 are shopkeepers of Jugsalai Market, who shifted to the shops as were constructed in the Principal Market Yard of Parshudih/Jugsalai. Petitioners of CWJC No. 1212 of 1999 (R) shifted their business in the shops/godowns of Principal Market Yard, Hazaribagh. The respondents charged rent from them for the shops/godowns allotted in favour of the petitioners, which they were paying since their shifting to the allotted shops/godowns.

6. By circular dated 2nd September, 1989 the rate of rent of shops/godowns was enhanced with respect to the shops/godowns, situated in the Principal Market Yard, Parshudih. Demand notices to traders/shop-keepers were also issued on 21st January, 1992, asking them to pay rent at the enhanced rate in respect to the shops/godowns situated in the Principal Market Yard. Earlier the Marketing Board fixed rent at the rate of Rs. 1/- per sq. ft. on 15th February, 1990 but even after the enhancement, they accepted the rent at the old rate. The Secretary. Market Committee of Principal Market Yard. Parshudih issued letter on 8th October. 1996 asking the shop-keepers/ occupants to deposit rent at the rate of Rs. 1.25 paise per sq. ft., which was subsequently enhanced to Rs. 4/- per sq. ft. on 5th February, 1996. Earlier fixation was withdrawn on 29th January, 1999 and a new rate of Rs. 2/- per sq. ft. was fixed by the Marketing Board.

Similar enhancements of rent of shops/ godowns were made by the Marketing Board in respect to the shops/godowns, situated in the Principal Market Yard. Hazaribagh.

7. The petitioners of CWJC Nos. 3190 of 1998 (R) and 20 of 2001 challenged the decision contained in Letter No. 5918 dated 2nd September, 1988, issued by the Managing Director of Marketing Board. Patna whereby, the rent of shops and godowns in the Market Yard were enhanced as also the letter No. 917 dated 15th February, 1990, issued by the Managing Director of Marketing Board, Patna. letter No. 597 dated 5th February, 1998 issued by the Market Committee. Parshudih, fixing rent at higher rate with further prayer to restrain the respondents from realising the rent from the occupants of shops and to refund the same to the petitioner, which had already been collected. Additional prayer has been made by the petitioners of CWJC No. 20 of 2001 to set aside letter No. 606 dated 1st February, 1999, issued by the Managing Director, Marketing Board, Patna.

8. Petitioners of CWJC No. 1212 of 1999 (R) while challenged the aforesaid letter No.917dated 15th February, 1990 and letter No. 606 dated 1st February, 1999,

both issued by the Marketing Board, Patna, have also challenged the letters all dated 1st March, 1999 and letter dated 27th February, 1999. Issued by the Market Secretary. Principal Market Yard. Hazaribagh, whereby they have been asked to pay rent for the shops/ godowns occupied by those petitioners at the enhanced rate.

9. The main plea taken by the petitioners is that the Marketing Board, Patna, or the Market Committee have no jurisdiction to charge any rent for the shops/ godowns allotted in their favour, the petitioners being licensees and being entitled for basic facilities including facility to retain shops/godowns.

10. According to the petitioners, u/s 27 of the Act, the Market Committee has to levy and collect market fees on the agricultural produce bought or sold in the market area at a given rate. Section 29 while provides creation of fund of market committee, u/s 30 it stipulates the purposes for which market committee fund may be applied. The case of the petitioners is that the fund of the market committee being generated for acquisition of site, maintenance and improvement of market and construction and repair of building, check posts, market gates, the respondents have no jurisdiction to charge any amount towards rent for such shops/godowns. situated with the market yard. Those being the basic facilities, are required to be given counsel for the petitioners also placed relevant rules known as Bihar Agricultural Produce Markets Rules, 1975 including Rules 61 and 67 of the said Rules.

Reliance was also placed on Supreme Court's decision in *The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,* .

11. Mr. V.P. Singh learned counsel appearing for the Marketing Board, on the other hand, opposed the prayer, justified and the demand of rent including arrears in respect of shops/godowns occupied by the petitioners and relied on Patna High Court's decisions in *Maliram Puranchand v. Bihar Agricultural Produce Markets Committee*, reported in 1996 All PLR 199 (Pat); *Durga Anna Bhandar v. The Agricultural Produce Market Committee*, reported in 1996 All PLR 510 (Pat); *Ganesh Trad-Ing Company v. Bihar State Agricultural Marketing Board*, reported in 1999 (2) PLJR 405 and unreported decision of this Court in *Narayan Ranjan Sapan Kumar v. State of Bihar and Ors.* CWJC Nos. 3695 of 1996 and 3696 of 1997--Disposed of on 4th April, 1999.

12. To appreciate the arguments, advanced by the parties, it is relevant to refer the relevant provisions like Section 18 i.e., powers and duties of Market Committee. Section 30 i.e. application of Market Committee Fund, Section 33-J i.e. powers and function of the Board as also Rule 61 and Rule 67 the facility to be provided by the Market Committee and the power and duties of the Market committee Respectively. The powers and duties of Market Committee includes duty of Market Committee to provide facilities for marketing of agricultural produce as per the direction of the Marketing Board as may be issued from time to time, apart from other powers and duties. It reads as follows :

"18. Powers and duties of the Market Committee.--(1) It shall be the duty of the Market Committee to implement the provisions of this Act, the rules and bye-laws made thereunder in the, market area to provide such facilities for marketing of agricultural produce therein as the Board may from time to time direct, and so such other acts as may be required in relation to the superintendence, direction and control of the market, or for regulating the marketing of agricultural produce in any place in the market area, and the purposes connected with the matters, and for that purpose the Market Committee may exercise such powers and perform such functions and discharge such duties as may be provided by or under this Act.

(2) Without prejudice to the generality of the foregoing provision, a Market Committee may :--

(i) when so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned;

(ii) where a market is established under Sub-clause (i) to issue licences in accordance with the rules to traders, brokers, weighmen, measurers, surveyors, were housemen and other persons including persons or firms engaged in the processing, storing or pressing of agricultural produce concerned operating in the market area;

(iii) to main and manage the principal market yard and to control, regulate and run the market in the interest of the agriculturists and licences in accordance with the provisions of this Act and the rules and the bye-laws made thereunder;

(iv) to act in the prescribed manner as mediator arbitrator or surveyor in all matters of differences, disputes, claims etc. between licensees inter se or between them and persons making use of the market as sellers of agricultural produce;

(v) to control and regulate the admission of persons and vehicular traf" to the principal market yard or sub-market yards to determine the conditions for the use of market and to check and prosecute persons trading without a valid licence in the market area;

(vi) to bring, prosecute or defend, or aid in bringing proceeding application or arbitration in regard to any matter on behalf of the committee, or otherwise when directed by the Board;

(vii) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws."

13. On the other hand,. Section 30 stipulates the purposes for which the fund generated by Market Committee is to be applied which includes maintenance and

improvement of market, construction and repair of buildings etc. as is evident from Section 30 quoted below :

"30. Application of Market Committee Fund--Subject to the provisions of Section 29, the Market Committee Fund may be applied to the following purposes only, namely :

- (i) the acquisition of a site or site for the market;
- (ii) the maintenance and improvement of the markets;
- (iii) the provision and maintenance of standard weight;
- (iv) the construction and repair of buildings, check-posts, market gates and other fixtures necessary for the purpose of such market and for the health, convenience and safety of the persons using it;
- (v) the pay, pensions, leave allowances, gratuities compensations for injuries resulting from accidents, compassionate allowances and contributions towards leave allowances, pensions or provident fund of the officers and servants employed by it;
- (vi) the payment of interest on the loans that may be raised for the purposes of the market and the provisions of a sinking fund in respect of such loans.
- (vii) the expense of and incidental to elections;
- (viii) the construction, repair and maintenance of means of communication which are useful for the purposes of regulation, control and development of a market or for the convenience and safety of the persons using it;
- (viii-A) facilities to farmers, for link roads, connecting the main road, from villages in a market area shall be provided on a priority basis from the development fund of the concerned Market Committee:
- (ix) the planting and rearing of trees and making arrangement for providing water to the persons and cattle coming to a market and like purposes;
- (x) with the previous sanction of the Director or any other officer specially empowered in this behalf by the Board, and other purposes whereon the expenditures of the market fund is in the public interest:
- (xi) such travelling and other allowances of the members of the Market Committee as may be prescribed; and
- (xii) any other purpose which the State Government may notify by a special order."

14. It is not necessary to quote Section 33-J i.e. powers and functions of the Board, which has superintendence and control over the working of the Market Committee and other affairs thereof for development of market and market areas and to give direction to the Market Committee in general or in particular,

including the power to select new sites to supervise and guide a Market Committee for preparation of plans, estimate of construction programme and to execute all works chargeable to Board's fund. The matters to be provided by the Market Committee including maintenance and improvement of any enclosure or building, its construction and repair has also been stipulated under Rule 61 as quoted hereunder :

"61. Market Committee to provide for certain matters.--(i) After paying all sums due to Government and/or the Board, the Market Committee shall so far as the funds at its disposal permit but subject to the provisions of the Act and these rules provide-

(a) for the maintenance and improvement of any enclosure or building which may constitute the market;

(b) for construction and repair of buildings, yards and other erections necessary for the purposes of the Market: and

(c) for the health, convenience and safety of the persons using or visiting the market;

(ii) The payment and expenditure under Sub-rule (i) shall be subject to any special contract made in this behalf."

15. Rule 67 prescribes powers and duties of Market Committee including its power to authorise persons to collect fees arranging for temporary storage or stocking of notified agricultural produce, erecting check-posts, gates and other fixtures to prevent evasion of market fee, apart from the power to take other measures.

16. From the relevant sections and Rules while it is apparent that the respondents can levy market fee and are liable to provide certain basic facilities to the traders of market yard out of funds generated by Market Committee, no specific stipulation is made therein to enlarge a rent for shops/ godowns allotted in favour of one or other dealer/licencee.

17. It is not in dispute that the market fee levied under the Market Act is a "fee" and not a "tax". In the case of *Kewal Krishan Puri v. State of Punjab*, reported in (1989) 1 SCC 416, the Supreme Court while upholding the levy of market fee under the Punjab Agricultural Produce Markets Act, 1961. held 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 such purpose. While rendering services in the market area for the purposes of facilitating the transactions of purchase and sale with a view to achieve the objects of the market legislation, it is not necessary to confer the whole of the benefit on the licensee but special benefits must be conferred on them which have a direct, close and reasonable co-relation between the licensee and the transactions. The element of quid pro quo may not be possible or even necessary to be established earthmetical exactitude but even broadly and

reasonably it must be established by the authorities who charge the fees that the amount is being spent in rendering services to those on whom falls the burden of fee.

18. The relevant provisions of the Bihar Agricultural Produce Markets Act, 1960 including Section 30 fell for consideration before the Supreme Court in the case of Belsand Sugar Company Ltd. (supra), wherein, the Apex Court held that once the transaction of sale or purchase of any agricultural produce is governed by the Act and once Section 15 of the Act applied to such transaction, the entire machinery of the Act would get attracted to regulate such transaction and the complete infrastructures for which provisions are made by the Market Committee including the facilities available at such markets would become available to the purchasers and sellers of such commodities in the market. For providing those infrastructure facilities, the Market Committee has to spend from its fund which would apply adequate quid pro quo for levy sugar fee on the buyers of commodities sold at its market yard or sub-market yard.

19. Though the decision relating to facilities to be granted by the Market Committee has been given by the Apex Court, no specific finding has been given on the issue as to whether rent can be charged for the shops/godowns as allotted to one or other trader/licensee by the Market Committee, as is the case of the petitioners.

20. The aforesaid issue as to whether the Market Committee is justified in demanding rent or arrears of rent of shops and godowns fell for consideration before Patna High Court in the case of M/s. Maliram Puran Chand. (supra). The Division Bench of Patna High Court, taking into consideration Section 27 of the Bihar Agricultural Produce Markets Act, 1960 and Rule 98 of the Bihar Agricultural Produce Markets Rules, 1975 held that the power of Market Committee to levy funds from the licensees/traders is altogether different from the provisions to realise occupation charges or rental by the Market Committee from the traders, who are allotted shops/godowns in a Principal Market Yard. Such traders/licensees allotted godowns/shops can not be allowed to question the jurisdiction of the Market Committee to enhance the rate of rent in appropriate cases.

21. Similar view was taken by the Patna High Court in the case of M/s. Durga Anna Bhandar, (supra) wherein, the Court held that the Market Committee is justified in demanding the rent or arrears of rent of shops and godowns from the occupier licensees/traders. Such view was also affirmed by Patna High Court in the case of M/s. Ganesh Trading Company, (supra).

22. This very issue recently fell for consideration before a Bench of this Jharkhand High Court in the case of Jagdish Singh v. Bihar State Agricultural Marketing Board 2001 (2) JLJR 197 : 2001 (3) J C R 238 (Jhr). The Court held that the market fee is levied whenever a notified agricultural produce is sold or bought in the market area and it has nothing to do with the enjoyment of the

constructed shops/godowns, situated in the market area by the dealer. The Market Committee which already provides essential facilities in the market area, the dealers can not dispute their liability to pay rent for the shops/godowns or arrears, occupied by them. In the aforesaid case of M/s. Jagdish Singh, (supra) the Court further held that the authorities empowered to act should act judiciously within the statutory frame-work and judicial orders must be supported by reasons following the principles of natural justice.

23. In the present cases there is no allegation made by one or other petitioner(s) that the enhancement of rent was made without any notice to them. On the other hand, it appears that the circular for enhancement of rent was initially issued in the year, 1989 and the petitioners continued to pay rent as per the rate as was fixed.

24. In view of the decisions aforesaid, as it is to be held that the respondents have Jurisdiction to charge rent/occupational charge from the traders/licensees in occupation of shopa/godowns or area, none of the impugned orders requires any interference, there being no allegation of violation of the rules of natural justice, made by the petitioners.

25. In the facts of circumstance and there being no merit, all the writ petitions are hereby dismissed. However, there will be no order as to costs.

26. Petition dismissed.