(1984) 01 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 217 of 1983

Ramautar Choudhary APPELLANT

Vs

The Managing Director, Bihar State Agricultural Marketing Board, Patna and Others RESPONDENT

Date of Decision : 10-01-1984

Acts Referred:
Bihar Agricultural Produce Markets Act, 1960 — Section 18, 9

Citation : AIR 1984 Patna 163 : (1985) 33 BLJR 551 : (1984) PLJR 412

Hon'ble Judges : Surendra Narain Jha, J;Hari Lal Agrawal, J

Bench : Division Bench

Advocate : G.C. Bharuka and Navaniti Prasad Singh, for the Appellant; Vishwambhar Sharma and R.N. Roy, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—The petitioner is a trader in foodgrains and is a licensee under the Bihar Agricultural Produce Markets Act, 1960, (hereinafter referred to as ''the Act''). He has challenged the order of assessment of market fee for the years 1979-80, 1980-81 and 1981-82 pass-ed by one composite order dated 3-7-1982 (Annexure ''1'') by the Sub-Divisional Officer, Sadar, Puroea, appointed as Administrator under the provisions of Sub-section (5) of Section 9 of the Act, of the Agricultural Produce Market Committee, Banmankhi, on the dissolution of the Market Committee on account of the expiry of its tenure as provided under the Act, as well as its Secretary. By this order an amount of Rs. 8065.90 waa assessed as market fee by way of best judgment assessment on taking the total turnover of the petitioner at Rs. 7,21, 590.00 for all the three years.

2. In the counter-affidavit filed on behalf of respondent No. 3, the position of the Assessment Sub-Committee has been admitted in paragraph 15 in these words :

"..... While superseding the Market Committee the Assessment Sub-Committee also was automatically superseded....."

After making this statement it has been asserted that thereafter all the powers of the Assessment Subcommittee were vested in the Chairman.

3. I have examined the scheme of the Act. After the decision in Mangalcband Ramchandra v. State of Bihar, 1971 BLJR 1038. where it was held that the remedy of the Market Committee, in case of dispute between the trader and the Market Committee, lies before the Civil Court for the purpose of assessment, the Legislature had come forward with an amendment to the Act and inserted the new Section 27-A, in the year 1973, by an Ordinance which was kept alive by subsequent Ordinances till Act No. 60 of 1982, was passed, in order to overcome this difficulty. Section 9 (5) was also similarly added whereby the life of the Market Committee was fixed for a firm period of three years.

4. The order of assessment was challenged by Mr. Bharuka firstly on the ground that during the period of dissolution of the Market Committee the specified person appointed by the State Government to discharge the functions of the Market Committee could not discharge the functions o? the Assessment Sub-Committee and make any order of assessment, and on going out of office of the two office bearers, namely, the Chairman and the Vice Chairman of the Market Committee, the Assessment Subcommittee was rendered non est, particularly when Section 9 (5) did not specifically authorise the specified person, to assume the powers of the Assessment Sub-Committee also. In this connection the main ground of Mr. Bharuka was that the Assessment Sub-Committee was not a Sub-Committee appointed by the Market Committee as such, but it was a statutory committee appointed by the Legislature and, therefore, must be held to be a body independent from the Market Committee. Mr. Bharuka re ferred to various provisions of Section 27-A to contend that the various powers of issuing notice, production of accounts or making of best judgment assessments were conferred upon the Sub-Committee. Mr. Bharuka, however, seems to have failed to appreciate that the provision of Section 27-A in its very nature mast refer only to the Assessment Sub-Committee in the matter of performance of the very functions starting from the issue of the notice up to the making of the assessment, just like the reference to the Market Commitlee in regard to the functions to be performed by the Market Committee. The position is analogous to the provisions contained in the Municipal Act, Whenever the body corporate is superseded or dissolved, then the authority appointed for discharging the functions of the body corporate, by dint of its appointment and the conferment of powers under the notification, becomes competent to assume and discharge all the powers and functions of the main body. The whole purpose of appointing an authority is to carry out the entire scheme of the statute. I do not find any merit in the contention that simply because the Assessment Sub-Committee has been constituted by the Legislature it will cease to be a Sub-Committee under the control and outside the pur-view of Section 19 of the Act. The three members of the Assessment Sub-Committee are none else but the Chairman, the Vice Chairman and the Secretary of the Market Committee. I am sorry to observe that Mr. Vishwambbar Sharma, Advocate for the respondent Market Committee could

not advance any satisfactory argument on this important question which is bound to affect a large number of Market Committees where such situation frequently occurs.

5. This at once takes us to the provisions contained to Sub-section (5) which reads as follows :

----?5? bl vf/kfu;e vU;Fkk milacfU/kr fLFkfr ds flok;] fuokZfpr cktkj lfefr ds v/;{k vkSj mik/;{k lfgr mlds lnL;ksa dh inkof/k /kkjk 13 ds v/khu lnL;ksa ds :i es muds uke izdkf"kr gksus dh rkfj[k ls 3 o"kZ dh gksxh vkSj 3 o"kZ dh vof/k lekIr gksus ij vkSj mlds ckn ;fn 6 efgus ds Hkhrj fuokZpu ugha gks ik;s rks lfefr lekIr gks tk;sxh vkSj bl vf/kfu;e rFkk blds v/khu cuk;s x;s fu;eks ds mica/kks ds v/khu lfefr dh lHkh "kfDr;ksa ,oa drZO; oSls O;fDr }kjk iz;qDr rFkk

fu"ikfnr fd;s tk;saxs ftls jkT; ljdkj uke funsZf"kr djs vkSj ,sls uke funsZ"ku dh rkjh[k ds N% efgus ds Hkhrj u;h cktkj lfefr dk xBu dj fy;k tk;sxk A

ijarq ;fn fdlh vko";drk ds dkj.k N% efgus ds Hkhrj fuokZpu ugh gks lds(rks jkT; ljdkj fuokZpu vof/k vkSj N% efgus ds fy, c<k ldsxh A**

The underlined provision contained in subsection (5) quoted above clearly indicates that the prescribed authority will exercise all the powers and perform all the duties of the Market Committee in regard to the provisions of the Act or the Rules framed thereunder. The powers and duties of the Market Committee are prescribed u/s 18 of the Act which, inter alia, lays down for implementation of the provisions of the Act, the Rules and Bye-laws thereunder, in the market area. Section 19 empowers the Market Committee to appoint from among its members a Sub-Committee or a Joint Committee, and to delegate to such Committee such of its powers or duties as it may think fit. Under Sub-section (2) of Section 19. Market Committee retains the power of revising any decision of a Sub-Committee or a Joint Committee.

6. u/s 27-A the Market Committee has to appoint an Assessment Subcommittee for the purpose of maintaining a register showing the total purchase and sales made by traders and the fees recovered from them and to levy fee payable u/s 27 on the basis of returns furnished under Sub-section (2), and to make assessment of the amount of market fee leviable on the traders. It may be mentioned that the 1982 Act has also inserted a new sub-section as Sub-section (1) and the old provisions have been put under Sub-section (2) thereof. The new Sub-section (1) of Section 18 reads as follows -

"18. Powers and Duties of the Market Committee. -- (1) It shall be the duty of a Market Committee to implement the provisions of this Act, the rules and bye-laws made thereunder in the market areas, to provide such facilities for marketing of agricultural produce therein as the Board may from time to lime direct, and do such other acts as may be required in relation to the superintendence, direction and control of market, or for regulating the marketing of agricultural produce in any place in the market area, and for purposes connected with the matters afore said, 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."

Section 27 of the Act gives power to the Market Committee "to levy and collect market fees on the agricultural produce brought or sold in the market area at the rate of Re. 1/- for sale of agricultural produce worth Rs. 100/-. These are all, the relevant provisions of the Act which have been noticed by us for understanding and answering the arguments advanced by Mr. Bharuka.

7. A volume of ca.se law has been generated on different questions raised by the traders, but we do not find any direct authority for the question with which we have been confronted. Though Sub-section (5) of Section 9 prima facie vests all the powers of the Market Committee in the Administrator, the further argument of Mr. Bharuka was that the Market Committee itself having no power of adjudicating a dispute between it and the traders, there is no question of appointment of any sub-committee of the nature of an assessment sub-committee inasmuch as u/s 19, a sub-committee can be appointed by a market committee delegating one or more of the powers and duties of the market committee itself as may be thought fit by it. In other words, as the market committee has got no statutory power to make an assessment of market fee in case of a dispute between the committee and the trader, the question of constituting an assessment sub-committee does not arise-Mr. Bharuka further contended that the assessment sub-committee constituted u/s 27-A was not a delegatee of the market committee within the meaning of Section 19, but was an-independent statutory body and, therefore, the power of this body could not be exercised by the Administrator, respondent No. 2. It is difficult to accept this argument of Mr. Bharuka. It is, no doubt, true that in the case of Mangalchand Ramchandra 1971 BLJR 1038 , Untwalia, J. as he then was in para 19 observed that-

"..... In absence of such a machinery learned Advocate-General had to admit that fee can be recovered by the Market Committee from a trader only if the Market Committee files a suit in a Civil Court and establishes the liability of the trader to pay the market fee claimed by the Market Committee. Until that is done, under the law, at it stands at the moment, it is not possible to take the view that the petitioners on their claim of the nature of their transaction are liable to pay any fee to the Market Committee or are committing any breach of the Act or of any Rule by not paying such a fee."

In this connection, I may refer to a Supreme Court decision in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, . This is a case arising out of Uttar Pradesh Krishi Utpadan Mandi Samitis Adhiniyam, where the judgment of the Court was again delivered by Untwalia, J. while his Lordship was in the Supreme Court. Some views observed in para 10 of the said judgment can be usefully quoted :

"..... A machinery for adjudication of disputes is necessary to be provided under the rules for the proper functioning of the market committees. We have already observed and expressed our hope for bringing into existence such machinery in one form or the other. But it is not correct to say that in absence of such a machinery no market fee can be levied of collected. If a dispute arises then in the first instance the market committee itself or any sub-committee appointed by it can give its finding which will be subject to challenge in any Court of law when steps are taken for enforcement of the provisions for realisation of the market fee."

I feel persuaded to observe that the above observation of his Lordship weakens the observations made while deciding the case of Mangalchand Ramchandra, 1971 BLJR 1038 in this Court.

8. Be that as it may, it cannot be disputed that the levy of fees and its realisation is the most essential element for. carrying out the purpose of the Act and achieving the ideals envisaged thereunder, because in the absence of revenue no object can be fulfilled. Therefore, if the market committee is superseded and the contention of Mr. Bharuka is to be accepted, then practically it will frustrate the aims and objects of this beneficial legislation. The Court, therefore, must try to avoid such situation by applying the accepted principles of interpretation of statutes. By incorporation of Sub-section (1) of Section 18 quoted earlier, large powers were conferred upon the Market Committees by the Legislature empowering it to do all connected acts and perform all such functions and discharge ait duties as provided by or under this Act. The power to levy fee and realise it is a matter related to establishment and regulating the markets. The powers and duties of the Market Committee are also enumerated in Rule 67 of the Rules and Rule 82 deals with levy and collection of market fee.

9. For the reasons discussed above, I feel no difficulty in holding that on the dissolution of the Market Committee, the powers and functions of the Assessment Sub-Committee, like any other Sub-Committee, absolutely vest in the specified person, namely, the Administrator appointed by the State Government in that behalf. The first point of Mr. Bharuka, therefore, must fail and it is hereby rejected.

10. Mr. Bharuka, however, raised another ground that in case the Court holds that on. the dissolution the powers of the Assessment Sub-Committee vested exclusively in the Administrator, then the order, of assessment having been passed not by the Administrator alone, but along with the. Secretary of the Market Committee, the participation of the Secretary would vitiate the order of assessment.

There appears to be substance in this argument. The tenor of the order (Annexure 1) indicates that respondent No. 2 had constituted a Sub-Committee for making tho best judgment assessment or.der along with the Secretary. No authority is needed for the proposition that participation of an unauthorised person in performance of a duty of a quasi-judicial nature would tender the order of the Authority invalid as his opinion has been influenced and observed by an outsider. On this short ground the order of assessment must be quashed and cancelled, with liberty to the proper authority to pass a fresh order of assessment iq accordance with law.

11. In the result, the application succeeds and is hereby allowed, the impugned order of assessment contained in Annexure 1 is quashed. In the circumstances, however, 1 do not feel inclined to award cost to the petitioner.

Surendra Narain Jha, J.

12. I agree.

