
(1978) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1861 of 1972

Rikhab Chand Jain

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 07-10-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 226

Citation : (1978) WLN 310

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—In this writ petition, filed under Article 226 of the Constitution of India, the petitioner, Rikhab Chand Jain who is a trader in agricultural produce, has challenged the validity of certain provisions of the Rajasthan Agricultural Produce Market Act 1961 (hereinafter referred to as "the Act") and the validity of Rule 61 of the Rajasthan Agricultural Produce Market Rules, 1963, (hereinafter referred to as "the Rules").

2. The Act was enacted by the Rajasthan State Legislature with a view 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 Rajasthan. The Act provides for the declaration of an area to be a market area by the State Government, after issue of a notification inviting objections and after consideration of the said objections and for the declaration of a market proper as well the principal market yard as the sub market yard. After the declaration of the market area, the Act provides for the establishment of Market Committee which is the administrative organ created for the purpose of implementing the scheme operated by the Act. The Act assigns to the Market Committee, certain functions for managing the market proper, the principal Market yard and the sub-market yard within the market area and the Market Committee has been given the power to control and regulate the trading activities both in the interests of

the agriculturalists as well as the traders operating in the market.

3. In exercise of the power conferred on it u/s 3 of the Act, the State Government issued a notification in February 1970, declaring its intention to regulate the purchase & also of agricultural produce specified therein in the area of the Begun Panchayat Samiti and by the notification aforesaid, objections and suggestions were invited with regard to the said prop Mai, As no objection was received in response to the said notification. the State Government, by notification dated October 26, 1970, issued u/s 4 (1) of the Act, declared the area of the Begun Panchayat Samiti as a market area for the purposes of the Act By the notification aforesaid the State Government constituted the Agricultural Produce Market Committee, Begun, u/s 6 of the Act and u/s 9(a)(b) of the Act, the State Government required the said Market Committee to establish a market in the market area & thereupon the Market Committee established a market for the market area within the area of Begun Panchayat Samiti. The State Government, in exercise of its power u/s 5 (2) of the Act, declared that Park (Zando Ka Chowk) and "Bal Bar Phool Bai ka Chowk, in village Begun will be the principal market yard. By the notification aforesaid the State Government, in exercise of its power u/s 4 (3) of the Act restrained all persons from setting up establishing or continuing any place for the purchase and sale of agricultural produce, mentioned in the notification at any place in the market area except the principal market yard referred to above. After the aforesaid declaration, the market yard started functioning on May 29, 1971 and, thereafter, the petitioner, on August 21, 1972, obtained a licence from the Agricultural Produce Market Committee, Begun under the Rules, for the purpose of carrying on business in agricultural produce as a trader. After obtaining the licence, the petitioner, on November 18, 1972, has filed this writ petition to challenge the validity of certain provisions of the Act and Rule 64 of the Rules.

4. In his writ petition, the petitioner has challenged the validity of provisions contained in Clauses (vii), (x), (xiii) and (xvii) of Section 2 of the Act, which define the expressions "market", "market proper", "principal market yard" and "sub market yard", Section 5, which provides for declaration of principal market yard as sub market yards and Section 9 which defines the functions & duties of the Market Committee. In the course of the arguments, the learned Counsel for the petitioner gave up challenge to the validity of Section 9 of the Act and confined his attack to Clauses (vii), (x), (xiii) and (xvii) of Section 2 and Sub-section (1) of Section 5 of the Act. The said provisions read as under:

2 (vii) : "market" means a regulated market established under & for the purpose of this Act and includes a market proper as well as a principal market yard or a sub market yard.

2 (x) : market proper" means the area, including all lands with the buildings thereon, within such distance of a principal market yard or a sub-market yard as the State Government may declare to be a market proper."

2 (xiii) : "Principal market yard" means an agriculture building or locality declared to be a principal market yard u/s 5.

2 (xvii) : "Sub-market yard" means an enclosure, building or locality declared to be a sub-market yard under Section

Section 5 of the Act reads as under :

5. Division of market into yards:

(1) For each market area there shall be one principal market yard and one or more sub-market yards as may be necessary.

(2) The State Government may, by notification in the official Gazette, declare any enclosure, building or locality in any market area to be a principal market yard for the area and other enclosures, building or localities to be one or more sub-market yards.

5. The submission of the learned Counsel for the petitioner is that the aforesaid provisions contained Clauses (vii), (x), (xiii) and (xvii) of Section 2 do not lay down any criteria on the basis of which the State Government could act and it is submitted the powers conferred by the said provisions on the State Government are arbitrary and are therefore violative of the provisions of Articles 14 and 19(1) of the Constitution. Similarly, it has been submitted that Section 5 (1) of the Act empowers the State Government to declare the principal market yard and one or more sub-market yards on its sweet will and that there are no guidelines for the exercise of aforesaid power by the State Government.

6. In my view, the aforesaid contention, urged by the counsel for the petitioner, cannot be accepted. It is settled law that discretionary power is not necessarily a discriminatory power and abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official. The exercise of discretionary power conferred on the State Government under the impugned provisions, will always be guided by the policy of the Act, viz. better regulation of the trade or buying and selling of agricultural produce. In the case of *Jan Mod. v. State of Gujarat (I)*, the Supreme Court had to consider the challenge to the validity of Sections 5 & 6 of the Gujarat Agricultural Produce Markets Act, 1960 which empowered the Director to declare his intention to regulate the purchase and sale of agricultural produce in a specified area and to declare the area of the part thereof a market area for purchase or sale of all or any of the kinds of produce, specified in the notification on the ground that the said provisions conferred wide and arbitrary powers on the Director. The Supreme Court, while rejecting the aforesaid contention, has observed:

The argument that the authority conferred upon the Director is wide and arbitrary, because no principles are indicated for guidance has no force. The Director is appointed by the State Government to exercise such powers and perform such functions and duties under the Act, and the exercise of the powers and the performance of the duties is for the purpose of regulating the purchase

and sale of agricultural produce and there by doing away with malpractices in the trade. The preamble to the Act and the scheme of the Act clearly indicate that the powers conferred upon the Director are to be exercised for the purpose of regulating buying and selling of agricultural produce and for purpose to establish markets for sale and purchase of agricultural produce.

7. The said observations are applicable to the present case with a greater force in as much as the powers which have been conferred under the impugned provisions are conferred on the State Government itself.

8. In *Bhanwarlal Sohanlal v. State* ILR (1966) Raj. 341, the validity of Section 3 of Act was challenged on the ground that it gives uncontrolled discretion to the Government in the matter of specifying marketing areas or the agricultural commodities This Court, while rejecting the above contention has observed:

...it cannot be postulated that Section 3 of the Act gives uncontrolled discretion to the Government in the matter of specifying marketing areas or the agricultural commodities. The discretion will always be guided by the policies underlying the Act Section 3 of the Act, therefore does not suffer from the vice of delegation as the discretion of the Government is not unguided. In *Jan Mohammad's* case their Lordships were considering delegation of powers in favour of the Director and they upheld the validity of Section on the ground that the Director was to exercise his powers according to the scheme of the Act. In Rajasthan, the Government itself is the repository of the power. As observed by their Lordships of the Supreme Court in *Matajog Dobey Vs. H.C. Bhari*, a discretionary power is not necessarily a discriminatory power and abuse of power is not to be easily assumed where the discretion is vested in the Government and not in a minor official.

9. In my view, the considerations which weighed with this Court In upholding the validity of Section 3 of the Act are equally applicable for the purpose of judging the validity of the provisions impugned by the petitioner in the present petition. I, therefore, hold that there is no merit in the submissions urged on behalf of the petitioner with regard to the validity of the provisions of Clause (vii), (x), (xiii) and (xvii) of Section 2 and Section 5(1) of the Act. The other provision which has been challenged by the petitioner is Rule 64 of the Rules which reads as under:

Rule-64 Sale of agricultural Produce-

(1) All the notified agricultural produce brought in to the market or produced or processed in the market proper except such quantity for retail sale or consumption as may be prescribed in the byelaws, shall pass through the principal market yard or sub market yard or yards and shall not be sold at any other place within the market proper.

Explanation: For the purpose of this rule, processed agricultural produce shall include all the notified agricultural produce processed in the market but not a manufactured produce.

(2) Such details of all notified agricultural produce resold in the market area shall also be reported to the Market Committee in accordance with the provisions of the bye-laws.

(3) The price of agricultural produce brought into the market for sale shall be settled by open auction and not by secret signs and no deduction shall be made from the agreed price of the consignment except for any authorized trade allowance:

Provided that the Director, if he deems fit, may permit the system of sale by open agreement at the market yard:

Provided further that the open auction system will not apply to the resale of the notified agricultural produce which had already been brought in the market yard.

(4) Any person who contravenes the provisions of Sub-rule (2) or (3) shall on conviction be punishable under Sub-Section (3) of Section 36 with a fine which may extend to Rs. 200/-.

10. The validity of the aforesaid rule has been challenged by the petitioner on the following grounds : -

(i) By passing the said rule, prohibiting the sale of agricultural produce at any place other than principal market yard or sub market yard or yards in the market proper, the State Government has contravened the provisions contained in Section 9(1)(b)(ii) of the Act, which empowers the Market Committee alone to control and regulate the making of transactions in the market.

(ii) u/s 4(2) of the Act the only condition that has been laid down is that, after the date on which an area is declared to be market area u/s 4(1), any place in the said area shall be used for purchase or sales of any agricultural produce only a licence, issued by the Market Committee u/s 14, whereunder a trader is entitled to operate in the market area By confining the trading activities to the principal market yard only the impugned rule impinges on the aforesaid provision contained in the Act.

(iii) The power conferred on the State Government u/s 36 of the Act, to frame rules in respect of matters specified, therein, is in nature of a general power and a rule framed in exercise of the said power, cannot override the special power, conferred on the Market Committee u/s 9 of the Act to control and regulate the making of transactions in the market.

11. In my view, none of the aforesaid contentions urged by the learned Counsel for the petitioner merits acceptance.

12. Rule 64, by providing that all notified agricultural produce brought into the market or produced or processed in the market proper shall pass through the principal market yard or sub market yard or yards and shall not be sold at any other place within the market proper, seeks to enforce the regulatory portions of the Act with respect to market yards and sub-market yards. It was framed in

exercise of (he powers conferred u/s 36 of the Act, which enables the State Government to make rules for the purpose of carrying out the provisions of the Act.

13. As observed by the Supreme Court in *M.C.V.S. Arunachala Nadar etc. Vs. The State of Madras and Others*, , the Act is conceived and enacted to regulate the buying and selling of agriculture produce by providing suitable and regulated market by eliminating middleman and bringing face to face the producer and the buyer so that they may meet on equal terms, thereby eradicating or at any rate reducing the scope for exploitation in dealings. The Act and the rules framed there under are intended to provide a network of markets wherein facilities for correct weightment are ensured, storage accommodation is provided and equal powers of bargaining ensured, so that producers may bring their agricultural produce to the market and sell them at reasonable prices. The provisions regarding licensing of traders, brokers, weighmant, measurers, surveyors, warehouseman all at intended to achieve the same object.

14. Unless the sale of agricultural pr duce is confined to the principal market yard or sub-market yard or yards it will not be possible to effectively implement the provisions of the Act. In my view, the aforesaid provision contained in Rule 64 is essential for the proper and effective implementation of the provisions of the Act and is in accordance with the scheme of the Act. The said provision in Rule 64 merely carries out the direction contained in Sub-section (3) of Section 4 of the Act, which prohibits all persons to set up, establish or continue to allow to be set up, establish or continue any place for the purchase or sale of any agricultural produce within the market area. Without such a provision the whole scheme of the Act will fail.

15. Now let us see whether Rule 64 impinges on the powers conferred or the Market Committee u/s 9(1)(a) to manage the market and u/s 9(1)(b)(ii) to control and regulate the making of transactions in the market. In my view, there is no conflict between the power of the Market Committee to manage the market or to control and regulate the making of transactions in the market and the provisions contained in Rule 64, whereby the sales of agricultural produce are confined to principal market yard or sub-market yard or yards. The mere requirement in Rule 64 that the sale of agricultural produce shall be confined to the principal market yard or sub-market yard or yards does not in any way, curtail or restrict the power conferred on the Market Committee to manage the market or to control & regulate the marking of transaction in the market. On the other hand, the said provisions will assist the Market Committee in better managing the market and controlling & regulating the making of transactions in the market and will also assist the Market Committee in the discharge of the duties conferred on it under Clauses (c) and (d) of Sub-section (1) of Section 9, viz, taking steps for prevention of adulteration of agricultural produce and providing for the grading & standardization of agriculture produce. Similarly the impugned provisions in Rule 64 will assist the Market Committee in better

enforcing the terms and conditions of the licences issued by it u/s 14 of the Act and in collecting the market fees u/s 17 of the Act. It cannot, therefore, be held that in framing Rule 64, the rule making authority has contravened the provisions contained in Section 9 of the Act.

16. In my view, there is no force in the contention urged on behalf of the petitioner that Rule 64 has been framed in exercise of the power conferred u/s 36, which is in the nature of general provision, whereas the power of management and the power of control and regulation conferred on the Market Committee u/s 9 of the Act is in the nature of a special provision and that the special provision must prevail over the general provisions. There is no scope for the applicability of this principle of statutory construction in the present case in as much as there is no conflict between the provisions of Rule 64 and the power to control and management, conferred on the Market Committee u/s 9 of the Act.

17. I also do not find any merit in the submission that Rule 64 impinges on the rights conferred on licences u/s 14 read with Section 4(2) of the Act. Rule 64 does not put any impediment on the right of a licensee to operate in the market area and all that Rule 64 does is to restrict the sales of agricultural produce within the principal market yard or sub-market yard or yards. In my view, there is no conflict between the provisions of Rule 64 and the provisions contained in Section 14 read with Section 4 (2) of the Act.

18. Thus, I hold that Rule 64 cannot be held to be invalid for the reasons on the basis of which its validity has been challenged by the petitioner in this writ petition.

19. No other point was urged by the petitioner. The result is that the petition is dismissed. In the circumstances of the case, the parties are directed to bear their own costs of these proceedings.