

(2022) 10 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15107 Of 2021

Sanjay Kumar Sah

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-10-2022

Acts Referred:

Bihar Agriculture Produce Market (Repealing) Act, 2006 — Section 4

Citation : (2022) 10 PAT CK 0046

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Chiranjiva Ranjan, Vijay Anand, Awanish Nandan Sinha

Final Decision : Dismissed

Judgement

This case was dismissed for default due to non-prosecution on 1.9.2022 and same was restored by order dated 27.09.2022, passed in M.J.C. No.1885 of 2022 and on that date, the writ petition was also heard on merit and judgment was reserved for its pronouncement today. However, learned counsel for the petitioner insisted that the writ petition be re-heard and accordingly, learned counsel for the petitioner and learned counsel for the State were heard today.

Petitioner has prayed for the following relief(s):-

"That the present writ application is being filed for challenging the order dated 07.02.2020 passed by Secretary, Agriculture Department, fully contained in Memo No. 180 whereby and whereunder the representation filed by the petitioner in response to order dated 09.01.2018 passed in C.W.J.C. No. 20317/2016 was dismissed on the ground that there is no policy with regard to settlement of weighbridge in Bihar Agriculture Produce Market (Repeal Act 2006) and presently no decision will be taken by the State Government on the individual proposal for settlement of the land."

Petitioner had earlier approached this Court for similar relief by filing C.W.J.C. No. 20317 of 2016 which was disposed of on 09.01.2018 with a direction to the

Agriculture Production Commissioner, Government of Bihar to consider and dispose of petitioner's representation in accordance with law preferably within eight weeks after granting opportunity of hearing and accordingly petitioner represented before the competent authority, however, as the post of Agriculture Production Commissioner was vacant, as such, order dated 07.02.2020 was passed by the Secretary, Department of Agriculture, Government of Bihar after granting reasonable opportunity of hearing, by which representation of petitioner was dismissed and against which present writ petition has been filed challenging the order dated 07.02.2020 passed by Secretary, Department of Agriculture, Government of Bihar.

Briefly stated, the facts of the case is that tender was invited for installation of computerized weighing bridge of 60 ton capacity by Marketing Secretary, Agriculture Produce, Marketing Committee, Gulab Bagh, Purnea, which was published on 28.09.2005 in local news paper, in which bidder had to submit certificate of matriculation, residential certificate issued by BDO/CO/SDO, character certificate issued by local police station, fitness certificate by a registered Medical Officer and passport size photographs. Sanjay Kumar Sah (petitioner) submitted his tender paper without character certificate and residential certificate, however, subsequently he submitted the required certificate.

Petitioner was the sole tenderer.

In a meeting held on 24.12.2005 by Agriculture Produce Marketing Committee, Gulab Bagh, Purnea, a resolution was adopted to install computerized weighing bridge of 60 ton capacity in the main market yard, for which 3 kathas of land was required, which was to be given on lease, on payment of rent and said proposal was sent for approval to Bihar State Agriculture Marketing Board, Patna vide letter dated 17.01.2006, however, said proposal was returned back and it was directed to initiate fresh process for awarding contract by re-publication of the tender notice, for allotment of land on lease on payment of rent for installation of computerized weighing bridge and few applications were also sent which were pending before the Bihar Agriculture Produce Marketing Board, Patna for considering such applications also for installation of computerized weighing bridge.

The learned Secretary in his order as impugned in this writ petition has held that the Bihar State Marketing Board, Patna had refused to accept the proposal of the Marketing Committee, Gulab Bagh, Purnea and had directed for initiation of fresh process for awarding contract by re-tendering for installation of computerized weighing bridge in the marketing yard for which 3 kathas of land was to be let out on lease on payment of rent.

It has been further held that Bihar Agriculture Produce Marketing Board has been dissolved by an act of state legislature and all the Marketing Boards and Marketing Committee stood dissolved with effect from 01.09.2006 and all

movable and immovable properties of dissolve marketing board vested in the State Government and an administrator was appointed by the State Government to look after the movable and immovable properties of the dissolved marketing board.

Petitioner in his writ petition has also submitted that first time notice inviting tender was published on 28.09.2005 and petitioner submitted his tender and a meeting was held in which petitioner was selected and his proposal was sent to Bihar State Agriculture Marketing Board, Patna for approval but for one or other reason, the Bihar State Agriculture Marketing Board, Patna has failed to give their approval.

It was also argued on behalf of petitioner that Dr. N. Sarwana Kumar, Secretary, Department of Agriculture, who passed the impugned order, was not a competent person to adjudicate the dispute, as he was recommending authority in the capacity of District Magistrate, Purnia for installation of computerized weighing machine, as such, the impugned order dated 7.2.2022 is hit by the principle of natural justice.

Having heard counsel for the petitioner as well as counsel for the State, it is apparent that dispute relates to installation of computerized weighing bridge in the marketing yard in Gulab Bagh, Purnea, process for which was initiated by issuance of tender on 28.09.2005 and said proposal was sent for approval to the Bihar Agriculture Produce Marketing Board, Patna but no approval was ever granted rather proposal was returned back to re-initiate fresh tender process by publication in the news paper and thereafter the Bihar Agriculture Produce Marketing Board itself was dissolved with effect from 01.09.2006 and all Marketing Committees and Marketing Boards stood dissolved and all the movable and immovable properties vested in the State Government and State Government appointed an administrator to look after the assets of dissolved marketing board and who has been authorized to deal with left over assets of Marketing Board to a limited extent and he cannot create fresh rights on such property.

Section 4 of the Bihar Agriculture Produce Market (Repealing Act, 2006) which deals with assets and liabilities of the Board reads as follows:-

"4. Assets and liabilities of the Board to vest in the State Government.- (1) On and from the date of coming into force of this Act, all assets, including moveable and immoveable owned, possessed or otherwise claimed to be4long to the Board or the committee or samiti shall vest in the State Government. All liabilities including statutory and non-statutory, secured or unsecured shall be the liability of the State Government.

(ii) Immediately after coming into force of this Act,' Administrator and Special Officer shall take possession of all the assets immovable including land, building and such other assets which is owned or possessed by the Board or the committee or over which Board or Committee has a legal claim.

'Administrator' or the 'Special Officer' as the case may be shall take custody of all moveable including liquid assets in Banks, Post Office, or wherever it is kept, cash in hand etc. They shall take possession of other movable assets including vehicles, equipments, plants, furnitures etc.

(iii) Immovable and moveable assets in possession of 'Administrator' or 'Special Officer' as the case may be shall remain in their possession for and on behalf of State Government.

(iv) Administrator shall be competent to issue such direction as is deemed necessary and expedient to secure safe possession of immovable and movable assets and such direction shall be binding on the special officer and all others.

(v) The State Government may issue such direction, order, instructions as is deemed necessary and expedient to maintain security and safety of assets or to prevent any kind of injury, damage or dissipation of assets and such direction, order or instruction shall be binding on all concerned including Administrator and Special Officer.

(vi) All immovable assets of the Board of the Committee shall be utilized only for agriculture and farmer relating activities including establishment of agro-processing industries, horticulture, agro-service, agricultural marketing, storage of agricultural produce."

Recommendation for installing weighing bridge was sent by Secretary, Marketing Committee, Gulab Bagh, Purnea on 17.01.2006 but Bihar Agriculture Produce Marketing Board, Patna did not approve said proposal and informed Secretary, Marketing Committee, Gulab Bagh, Purnea by letter dated 12.7.2006 that fresh process for installing weighing bridge was to be undertaken and thereafter Bihar Agriculture Produce Marketing Board, Patna was dissolved with effect from 1.9.2006, as such, this Court is not inclined to interfere in the order dated 07.02.2020 passed by Secretary, Department of Agriculture, Government of Bihar in its discretionary writ jurisdiction and accordingly writ petition is dismissed.