
(1990) 08 PAT CK 0010
In the Patna High Court
Case No : C.W. J.C. No. 2749 of 1990

Sayed Ajaj Ahmed

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 01-08-1990

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 31, 38, 38(1), 38(2)

Citation : (1992) 2 PLJR 369

Hon'ble Judges : S.N. Jha, J;N.P. Singh, J

Bench : Division Bench

Judgement

1. This writ application has been filed on behalf of the Petitioner for quashing an order dated 2.4.90 passed by the Assistant Director, Marketing Board, Purnea (Respondent No. 3), cancelling the settlement in favour of the Petitioner to collect market fee within the Bairgachhi Hat in the district of Araria.

2. It appears that initially 7.3.90 was fixed as the date for holding a public auction in respect of settlement of the aforesaid Hat for collection of market fee. That date was changed into 15.3.90, according to Petitioner, It is the case of the Petitioner that on that day an auction was held in which the Petitioner was the highest bidder in respect of the aforesaid Hat. It is the stand of the Petitioner that on that day five other Hats were also put on auction.

3. The Petitioner having made the requisite deposit an agreement was executed on 20.3.90. The Secretary, Agricultural Market Committee, Araria, executed the said Agreement in favour of the Petitioner. Later on application was filed by Respondent No. 6, Mohamad Khalid Nadim before the Assistant Director, Agriculture Marketing Board on 8.4.90 alleging that the auction was not properly held in respect of the Hat, in question. He also stated in the said petition that 17.3.90 had been fixed as the date for holding the auction but the auction was actually held on 15.3.90 without information to persons concerned including the said Respondent. On that very application, the Assistant Director passed an order saying that fresh auction be held for settlement of the Hat aforesaid.

4. We are informed that pursuant to the said order, public auction was held on 21.4.90 in which, Respondent No. 6 being the highest bidder. Order has been passed to make settlement in his favour on behalf of the Petitioner. It has been stated that the public auction was held in respect of the Hat on 21.4.90 in spite of the order of stay passed by the Chairman of the Bihar State Agriculture Marketing Board on 15.4.90.

5. At the stage of admission itself, notice was issued to the concerned Respondents including Respondent no. 6. We are informed that a counter affidavit has been served on the Counsel for the Petitioner on behalf of Respondent no 6. But neither any appearance is on the record of this case nor any such counter affidavit has been filed on behalf of Respondent No. 6. However, Mr. Manu Shankar Mishra has appeared for the Secretary, Marketing Committee.

6. After hearing the Counsel for the parties and perusing the records of the case it appears that initially a printed notice had been issued in the name of Shri Prem Kant Jha, Subdivisional Magistrate, who is the Chairman of the said Market Committee, fixing 7.3.90 as the date for holding auction. That date was changed to 15.3.90, 17.3.90 and 27.3.90. According to Petitioner, the auction in respect of the Hat in question was held on 15.3.90, whereas, according to Respondent No. 6, it was held on 17.3.90, as already stated above.

7. We also do not understand as to how an agreement in favour of the Petitioner was executed on 20.3.90 when the settlement in favour of the Petitioner was approved by the Assistant Director, Marketing Board, Purnea, on 26.3.90.

8. It has been rightly pointed out during hearing of this writ application that, in view of Section 31 of the Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as the Act), every contract required to be entered into by the Market Committee shall be in writing and signed on behalf of the Market Committee by the Chairman, Vice Chairman and Secretary of the Committee. Sub-section (2) of that Section says that no contract other than a contract executed as provided in Sub-section (1) shall be binding on the Market Committee. We do not understand as to how the agreement aforesaid was executed only by the Secretary which was approved by the Assistant Director, Bihar Agriculture Marketing Board.

9. Mr. Manu Shankar Mishra appearing for the Respondent Market Committee pointed out that the Petitioner instead of invoking the writ jurisdiction of this Court, should have approached the Managing Director of the Board, in view of Section 38 of the Act. Section 38 of the Act is as follows:

Section 38: Power to pass orders.- (1) The Managing Director of the Board may, at any time, call for and examine the proceedings of any Market Committee for the purposes of satisfying himself as to the legality of any decision or order passed by the Market Committee and he may after giving an opportunity to the Market Committee to be heard pass such order thereon as he think fit.

(2) The Managing Director of the Board may, pending the examination and disposal of the matter under Sub-section (1), direct that the execution of the decision or orders of the Market Committee be stayed.

10. Taking all facts and circumstances into consideration, especially in view of the disputed questions of fact which are involved in this case, we are of the opinion that it is a fit case which should be heard by the Managing Director of the Board.

11. Accordingly, we direct the Managing Director of the Board to examine the proceeding of the Market Committee aforesaid in respect of settlement of Bairgachhi Hat for the purpose of collection of the market fee. It need not be pointed out that it is in the interest of the Market Committee itself that the dispute whether the Petitioner is entitled to collect the market fee or Respondent No. 6 is entitled to collect the same should be decided as early as possible. As such it is expected that the Managing Director shall pass a reasoned order within one month from "the date of production of this order after giving opportunity to the Petitioner and Respondent No. 6. In order to expedite a decision on the controversy aforesaid, we direct the Petitioner to appear before the Managing Director of the Board on or before 16th of August, 1990. As Respondent No. 6 has not entered appearance before this Court, a notice has to be given to him by the Managing Director of the Board before any final order is passed. In view of Sub-section (2) of Section 38 of the Act, it will be open to the Managing Director of the Board to pass any interim order in respect of collection of market fee.

12. This writ application is, accordingly, disposed of.