
(2009) 05 OHC CK 0035
In the Orissa High Court

Somanath Mohapatra and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 21

Citation : (2009) 108 CLT 191 : (2009) 2 OLR 89

Hon'ble Judges : B.S. Chauhan, C.J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.N. Mahapatra, J.—This writ petition has been filed for quashing the notices dated 10.03.2003 issued under Annexure-10 (wrongly referred to as Annexure-9 in the writ petition) and 16.03.2003 (Annex,-12) by which the petitioners have been directed by the opposite parties-authorities under the provisions of Orissa Agricultural Produce Markets Act, 1956 (hereinafter called "the Act, 1956") not to run the Somanath Hat as it was in contravention of the provisions of Section 4(3) of the Act, 1956 and to pay the dues of market fees to the tune of Rs. 13,46,978/for the years 1994 to 2003.

2. The factual matrix giving rise to the present writ application is that petitioners claim that they along with others are the owners of an ancient Hat called "Somanath Hat" established in the year 1903 in village Chatra within Jagatsinghpur Municipal area. It mostly runs by the retailers who use to sell stationary articles, clothing, ornaments, iron goods, fertilizers, etc. The said Hat is held twice in a week on private lands belonging to the petitioners as well as on some lands belonging to the deity Somnath Mahadev. Petitioners also claim that they being the tenant of the said deity use to pay rent in shape of vegetables, grams, etc. for Bhoga and Prasad of the deity. The area of the said Hat had been recorded in the name of their forefathers and subsequently in the names of the petitioners in the successive Record of Right.

After constitution of Jagatsinghpur Notified Area Council (for short, "the NAC") in the year 1973, the said NAC vide its notice dated 19.1.1973 under Sections 297 and 298 of the Orissa Municipal Act, 1950 (hereinafter called, "the OM Act") called upon the petitioners to file an application for obtaining licence for running the said Hat. Petitioners challenged the said notice by filing a writ petition bearing O.J.C. No. 169 of 1975 and got an interim order in their favour. According to the petitioners, since they got the matter settled outside the Court, the said writ petition was withdrawn where after the NAC did not collect any licence fee. On 13.9.2002, petitioner No. 1 applied for licence as provided u/s 297 of the O.M. Act before the Collector & District Magistrate, Jagatsinghpur, for running the said Hat, which is still pending consideration. On 8.3.2003, the Regulated Market Committee (for short, "RMC"), Jagatsinghpur opened a Market Yard (Krusaka Bazar) and informed the public that Ac.2.00 of land had been notified as market yard pursuant to the Govt. Notification dated 5.6.1994 along with a list of agricultural produces for sale and purchase only at the said market yard and not in any other area within a radius of eight kilometers from the market yard. According to the petitioners, the said earmarked market yard being a pond cannot serve the purpose of the general public. The Chairman, RMC, Jagatsinghpur-opposite party No. 2, vide notice dated 10.3.2003 (Annexure-10) restrained the petitioners from running the said Somanath Hat illegally in contravention of the provisions of Section 4(3) of the Act, 1956 after Government Notification dated 18.1.1982 made u/s 4 of the Act, 1956 and Notification dated 5.6.1994. In response to the said notice, the petitioners on 13.3.2003 replied that they had not violated any provision of the Act, 1956 by running the said Hat. Immediately thereafter, opposite party No. 2 issued another notice dated 16.3.2003 (Annexure-12) fixing the market fee to the tune of Rs. 13,46,978/- and directed the petitioners to pay the same by 31.3.2003. Subsequent thereto, opposite party No. 2 asked the petitioners to refrain from allowing purchase and sale of notified agricultural produces in the said Somanath Hat and to take steps for prevention of such sale and purchase therein. Hence this petition.

3. Shri S.P. Mishra, learned Counsel for the petitioners has vehemently argued that no valid notification has ever been issued by the Government under the provisions of the Act, 1956 in pursuance of which the opposite parties could restrain the petitioners from holding the Hat in dispute in village Chatra or the impugned demand can be made. u/s 3 of the Act, 1956 the proposed notification is to be issued showing the intention for regulating the purchase and sale of agricultural produces in such area. Such notification is also to be published in newspapers in regional language circulated in the said area or in such other manner as the State Government may deem fit. The purpose of issuance of such proposed notification is to invite objections, and if any objection is filed by any person, it should be considered. Section 4 of the Act, 1956 provides for declaration of market area and Clause-1 thereof provide that after considering the objection, if any, filed u/s 3(2) of the said proposal, the State Government

may declare the area specified in the notification u/s 3 or any portion thereof to be a market area for the purpose of the Act. However, a notification in the regional language of that area in the newspaper circulated in the said area is to be published u/s 4(1) and after publication of this notification, u/s 4(3) no local authority or person shall set up, established or continue or allow to be set up, any place for the purpose of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the Gazette by the State Government. Sub-section (5) of Section 4 provides that after issuance of notification under Sub-section (1), the State Government shall, as soon as possible, on the recommendation of the Director, declare by issuing a notification, market yards and markets in the market area specifying the area over which each market shall extend around the respective market yard and subsequent to the publication of the notification u/s 4(5), no person shall without or otherwise than in conformity with the terms and conditions of a licence granted by the authority mentioned therein, use any place in the market area for marketing of agricultural produces as specified in the said declaration. Sub-section (7) of Section 4 provides that the State Government may at any time by notification, exclude or include any market area or agricultural produce by issuing notification. Before amendment in the year 1984, this power was vested with the State Government u/s 4(5).

The main thrust of argument of Shri Mishra is that notification u/s 4(5) is not permissible without issuance of notification u/s 4(1) of the Act, 1956, as it is basically a foundation to proceed further. The notification, which is alleged to have been issued u/s 4(5) has been published without making any notification u/s 4(1), and further, notification u/s 4(1) cannot be issued unless a notification u/s 3(1) is issued showing intention and inviting objections. It was argued that without issuing proper notification u/s 4(1) of the Act, 1956 declaring the area covering village Chatra as market area, the prohibition u/s 4(3) of the Act, 1956 is not applicable. When the State Government has not published notification under Sub-sections (1), (3) and (5) of Section 4 of the Act, 1956 to the knowledge of general public in compliance with the mandatory provisions, either in the gazette or in local newspapers, petitioners cannot be held to have violated the provisions of Section 4(3) of the Act, 1956. No notification has ever been published in the gazette or newspapers in respect of the entire subdivision of Jagatsinghpur covering the village Chatra u/s 4(1) of the Act, 1956. The impugned calculation sheet of market fee from 5.6.1994 to January 2003 as prepared by opposite party No. 2 was baseless and without any authority of law. Section 11 of the Act, 1956 does not prescribe for collection of any market fee from the Hat owners.

4. On the contrary, Shri P. Panda, learned Addl. Standing Counsel for the State has submitted that State Government has issued notification under Sub-section (1) of Section 3 of the Act, 1956 disclosing the intention to declare certain area as market area in respect of some specified agricultural produces in Jagatsinghpur market in the district of Cuttack inviting objections and

suggestions. On 22.9.1996 notification under Sub-section (1) of Section 4 of the Act, 1956 was issued declaring the area specified in the schedule to be the market area of Jagatsinghpur in the district of Cuttack. On 25.11.1955, the Revenue Department published a notification declaring the name of the subdivisions, police stations, villages comprising local area and name of the Gram Sabhas, i.e., Gram Panchayats. On 23.10.1967, notifications regarding constitution of market committee in the market area of Jagatsinghpur u/s 6 of the Act, 1956 were published. On 21.03.1973, notification as per Rule 46 of the OAPM Rules declaring certain area/plots to be the market yard in the market area of Jagatsinghpur was published. On 09.01.1981, the State Government issued notification under Sub-section (5) of Section 4 read with Section 3 of the Act, 1956 disclosing the intention to declare the entire subdivision of Jagatsinghpur in the district of Cuttack as market area inviting objection and suggestions. On 19.02.1982, finally the notification was published under Sub-section (5) of Section 4 of the Act, 1956 declaring the entire Revenue subdivision of Jagatsinghpur in the district of Cuttack as market area. On 19.11.1985, notification was issued under Sub-section (5) of Section 4 of the Act, 1956 read with Rule 46 of the Orissa Agricultural Produces Marketing Rules (hereinafter called "the OAPM Rules") declaring certain plots to be the market yard in the market area of Jagatsinghpur. On 03.06.1994, notification under Sub-section (5) of Section 4 of the Act, 1956 read with Rule 46 of the OAPM Rules was issued declaring certain plots of village Chatra of Jagatsinghpur district as market yard.

Mr. Panda in support of his contention that Chatra as Mouza under Jagatsinghpur Police Station relied on the ROR published in respect of one tenant.

Thus, it was submitted that once notification has been issued including the entire Revenue Sub-division of Jagatsinghpur as the market area of Jagatsinghpur, the prohibition contained under Sub-section (3) of Section 4 of the Act, 1956 will automatically come to operation. Therefore, the petition is devoid of any merit and liable to be dismissed.

5. Mr. B.K. Sharma, learned Counsel appearing on behalf of opposite party No. 2 submitted that the State Government vide notification dated 15th July, 1966 issued in accordance with Section 3 of the Act, 1956 invited objections before declaring the market area of Jagatsinghpur. Vide notification dated 22nd September, 1966 the State Government declared the areas specified in Schedule-B to the said notification to be the market area of Jagatsinghpur in the district of Cuttack for the purpose of the said Act and also in respect of the agricultural produce specified in Schedule-A thereto. In the said notification, reference has been made to the earlier notification dated 15th July, 1966, which is in conformity with the provisions of Section 3 of the said Act. By virtue of the notification dated 22nd September, 1966, some of the Grama/Gramas/area of Jagatsinghpur revenue subdivisions were included in the market area of Jagatsinghpur RMC. The State Government is empowered to exclude or to include certain areas from or in a market area and also exclude and include

certain agricultural produces, but that is subject to provisions of Section 3 of the Act. This power was available with the State Government before 1984 under Sub-section (5) of Section 4 of the Act. After the amendment of the Act in the year 1984, the said power has been conferred upon the State Government under Sub-section (7) of Section 4 of the Act. By virtue of the power conferred under Sub-section (5) of Section 4 of the Act. By virtue of the power conferred under Sub-section (5) of Section 4 of the Act the State Government vide notification dated 17th December, 1980 declared its intention to include the area set out in the schedule annexed thereto in the market area of Jagatsinghpur RMC earlier issued notification dated 22nd September, 1966. In the said notification, objections were invited in compliance with the provisions of Section 3 of the Act before including the area set out in the schedule to the market of Jagatsinghpur RMC. The said notification was published in the Orissa Gazette, 9th January, 1981. The State Government vide notification dated 8th January, 1982 included the entire Jagatsinghpur district in the market area of Jagatsinghpur. The said notification was published in the Orissa Gazette of 19th February, 1982. Referring to this notification Mr.Sharma vehemently argued that the entire revenue subdivision of Jagatsinghpur has been included in the market area of Jagatsinghpur RMC. The market area of Jagatsinghpur RMC has been declared under Sub-section (1) of Section 4 of the act vide notification dated 22nd September, 1966. Hence, by virtue of power conferred upon the State Government under Sub-section (5) of Section 4 (after amendment of Sub-section (7) of Section 4), the entire revenue subdivision has been included in the market area for which a notification has already been published. Since the entire revenue subdivision of Jagatsinghpur has been included in the market area of Jagatsinghpur, the prohibition contained in Sub-section (3) of Section 4 of the Act automatically comes into force. Therefore, the village Chatra falling within the Jagatsinghpur subdivision definitely comes within the market area of Jagatsinghpur RMC. Petitioners, due to such statutory liability, should have refrained from running Somanath Hat, as provided under Sub-section (3) of Section 4.

Mr. Sharma relied upon the decision of Hon"ble Supreme Court in Talcher Municipality Vs. Talcher Regulated Mkt. Committee and Another, and decisions of this Court in The Regulated Market Committee, Khariar Road v. Notified Area Council, Khariar 68 (1989) C.L.T. 467; Bahadajhola Regulated Market Committee v. Balugaon Gram Panchayat and Ors. 64 (1987) CUT. 769.

6. Shri M.S. Panda and Shri B.B. Das learned Counsel appearing for the intervenors have supported the above contentions raised by Mr. P. Panda and Mr. B.K. Sharma.

7. On the rival contentions raised at the Bar, the following questions fall for consideration by this Court.

(i) Whether entire revenue sub-division of Jagatsinghpur within which the Somanath hat at Chatra runs is duly notified in terms of Sub-section (1) of Section 3 and Sub-section (1) of Section 4 of the Orissa Agricultural Produce

Markets Act, 1956?

(ii) Whether the provisions of Sub-section (3) of Section 4 is attracted in absence of any notification u/s 4(1) of the Act, 1956 declaring entire revenue subdivision of Jagatsinghpur as market area within which the Somanath Hat at Chatra runs?

(iii) Whether the Orissa Agricultural Produce Markets Act, 1956 is applicable to any market where notified agricultural produces are not bought and sold ?

(iv) Whether the impugned notices dated 10.3.2003 under Annexure-10 and dated 16.3.2003 under Annexure-12 by which the petitioners have been directed by the opposite party- authorities not to run the Somanath Hat and to pay dues of the market fees to the tune of Rs. 13,46,978/- for the years 1994 to 2003 respectively are legally sustainable ?

8. To deal with the above questions, it is necessary to refer to the relevant provisions of law particularly Sections, 3, 4 and 11 of the Act, 1956, which read as under:

3. Notification of intention of exercising control over purchase and sale of agricultural produce (1) The State Government may by notification declare its intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified in the notification. Such notification may also be published in the regional language of the area in a newspaper circulated in the said area or in such other manner as the State Government may deem fit.

(2) Any objection or suggestion which may be received by the State Government within a period of not less than one month to be specified in the said notification may be considered by the State Government.

4. Declaration of market area - (1) After expiry of the period, specified in the notification issued u/s 3 and after considering such objections and suggestions as may be received before such expiry and after holding such inquiry as may be necessary, the State Government may, by ratification declare the area specified in the notification u/s 3 or any portion thereof to be a market area for the purpose of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification. A notification under this section may also be published in the regional language of the area in a newspaper circulated in the said area or may be published in such other manner as the State Government may deem fit.

(2) x x x

(3) On and from the date of notification issued under Sub-section (1) or such later date as may be specified therein, no local authority or person shall, notwithstanding anything contained in any other law for the time being in force, set up, establish or continue or allow to be set up, established or continued any place for the purpose of sale and purchase of any agricultural produce within a distance thereof to be notified in the Gazette in this behalf in each case by the

State Government:

(4) x x x

(5) After the issue of the notification under Sub-section (1), the State Government shall, as soon as possible on the recommendation of the Director, declare by notification, market yards and markets in the market area specifying the area over which each market shall extend around the respective market yard.

(6) Subject to the provisions of this Section and of the rules regulating the marketing of agricultural produce at any place in the market area, no person shall, on and after the date on which the declaration is made under Sub-section (5), without or otherwise than in conformity with the terms and conditions of a licence....

(7) Subject to the provisions of Section 3, the State Government may at any time by notification, exclude from a market area, any area comprised therein or any agricultural produce in relation to such market area, or include in any market area, any area or any agricultural produce included in a notification issued u/s 3.

xx xx xx

11. Levy of fees - It shall be competent for a Market Committee to levy and collect such fees (.hereinafter referred to as the market fees) not being less than one rupees from every purchaser for every hundred rupees worth of agricultural produce market in the market area in such manner as may be prescribed and at such rate as may be specified in the bye-laws:

Provided that the rate of fees to be specified in the bye-laws shall not exceed three per cent of the value of agricultural produce sold in the market within the market area.

Section 3(1) of the Act enables the State Government to declare by notification its intention of regulating purchase and sale of agricultural produce in any area as specified in the notification. Section 3(2) provides that any objections/suggestions that may be received within a period not less than one month may be considered by the government. Section 4(1) provides that after expiry of the period specified in the notification issued u/s 3 and after considering the objections/suggestions, if any, received before the expiry of the said period and after holding such inquiry as may be necessary, the State Government may by ratification declare areas specified in the notification u/s 3 or any portion thereof to be the market area for the purpose of the Act in respect of all or any kinds of the agricultural produce specified in that notification. Section 4(3) says, it is only after making such declaration u/s 4(1) no person shall set up, establish or continue or allow to be set up, established or continued any place for the purpose of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the Gazette. Sub-section (5) thereof provides for a further notification making a declaration of market yards and markets in the market area. u/s 4(7) the State Government is empowered to

exclude or include certain area from or in any market area and also exclude and include certain agricultural produce, but that is subject to compliance of Section 3 of the Act, 1956. Section 11 provides levy of fees. Under this Section a market committee is authorized to levy and collect market fee not being less than Rs. 1/- from every purchaser for Rs. 100/- worth of agricultural produce marketed in the market area in such manner as may be prescribed and at such rate as may be specified in the bye-laws which however shall not exceed 3% of the value of agricultural produce sold and further no such fees shall be levied and collected in same market area in relation to any agricultural produce in respect of which fees in this section have already been levied and collected therein.

9. So far as the first question is concerned, admittedly, in exercise of powers conferred by Sub-section (5) of Section 4 of the Act, 1956, the State Government, vide notification dated 18th January, 1982, included the entire revenue sub-division of Jagatsinghpur in the market area of Jagatsinghpur in the district of Cuttack and the village Chatra is coming under the said sub-division of Jagatsinghpur where the Somanath Hat is being run. Now the question arises as to whether any such notification u/s 4(5) of the Act is permissible without making any notification u/s 4 (1) of the Act, which should be preceded by a notification u/s 3(1) of the Act showing intention of Government and inviting objections. The notification dated 18th January, 1982 issued u/s 4(5) refers to publication of earlier Notification dated 22nd September, 1966 under Sub-section (1) of Section 3 of the Act disclosing intention of the Government for regulating the purchase and sale of agricultural produces in such area as specified in the notification. Perusal of the said notification dated 22nd September, 1966 reveals that the said notification was not published in pursuance of Section 3(1) of the Act, 1956, but issued in pursuance of Sub-section (1) of Section 4 of the Act, 1956 declaring the areas specified in Schedule-B annexed to such notification to be the market area of Jagatsinghpur in district of Cuttack for the purpose of the Act, 1956 in respect of agricultural produces specified in Schedule-"A" thereto. Further, in the said notification dated 22nd September, 1966, the entire revenue sub-division of Jagatsinghpur does not appear. However, there is one notification dated 15th July 1966 published in pursuance of Sub-section (1) of Section 3 of the Act, 1956 but the entire revenue sub-division of Jagatsinghpur also does not appear in said notification. This notification again refers to some previously published notifications as required under Sub-section (1) of Section 3 of the Act, which bear no number and date and thus cannot be put to service.

10. According to Mr. P. Panda, learned Counsel for the State, the Government had published notification in the Orissa Gazette on 9th January 1981 in pursuance of Sub-section (5) of Section 4 read with Section 3 of the Act, 1956 disclosing the intention of the Government to declare the entire revenue sub-division of Jagatsinghpur in the district of Cuttack as market area of Jagatsinghpur and invited objection/suggestion. Perusal of such notification reveals that the said notification was made in pursuance of Sub-section (5) of Section 4 read with Section 3 of the Act, 1956. Referring to Notification dated

18th January, 1982, Mr. Panda contended that this was the notification published in pursuance of Section 4(1) of the Act, 1956. Perusal of the said notification reveals that the said notification was published in exercise of powers conferred by Sub-section (5) of Section 4 of the Act, 1956 and not in pursuance of Section 4(1) of the Act, 1956. Even if assuming that the notification dated 18th January, 1982, as contended by Mr. Panda, is a notification published in pursuance of Section 4(1), Mr. Panda has failed to show any other notification, which was published in exercise of powers conferred by Sub-section (5) of Section 4 of the Act, 1956 whereby the entire revenue sub-division of Jagatsinghpur was included in the market area of Jagatsinghpur.

Mr. Sharma, learned Counsel for O.P. No. 2 also could not point out any notification in terms of Section 4(1) declaring the entire revenue sub-division of Jagatsinghpur as market area. Thus, the opposite parties have failed to satisfy us that prior to the Notification dated 18th January, 1982, in pursuance of Section 4(5) [After amendment of Section 4(7)] for including the entire revenue sub-division of Jagatsinghpur in the market area of Jagatsinghpur, there was any notification for entire revenue sub-division of Jagatsinghpur u/s 4(1) of the Act, 1956.

11. The second question relates to applicability of Section 4(3) of the Act, 1956 in absence of notification u/s 4(1). A plain reading of Sub-section (3) of Section 4 makes it amply clear that only after a declaration, as required u/s 4(1) is made, no local authority or person shall set up, establish or continue or allow to be set up, establish or continue any place for the purpose of sale and purchase of any agricultural produce within the market area or within a distance thereof to be notified in the gazette.

In Talcher Municipality's case (supra), the Hon'ble Supreme Court held that by reason of the provisions of the Act not only wholesale but also retail sale of the agricultural produces as also the market wherein the buying and selling of the agricultural produces are carried on is sought to be regulated and controlled. A "market area" and the "market" as defined in Section 2(vii) and 2(vi) respectively are required to be declared as such in terms of Sub-section (1) of Section 4 and Sub-section (5) of Section 4 respectively. Once the market area is declared, the rights of those dealing in agricultural produces would be governed by the provisions of the said Act.

In Regulated Market Committee, Khariar Road's case (supra), this Court held so far as Sub-section (3) of Section 4 is concerned, it directs that after a notification is published under Sub-section (1), any local authority or person is not to set up, establish or continue any place for the sale and purchase of the notified agricultural produces within the market area or within a distance thereof to be notified in the gazette in that behalf in each case by the State Government, or allow the same to be made.

This Court in Bahadajhola Regulated Market Committee's (supra) held that once

notification is published u/s 4(1) of the Act, the Grama Panchayata which was the authority against whom writ was sought for in that case, had the statutory liability to discontinue the market run by it.

Thus, only after notification is made u/s 4(1), Section 4(3) comes into operation.

The judgment of this Court in Talcher Regulated Market Committee case (supra) is of no help to the petitioner. The question, which was before this Court for consideration was whether Section 4(4) of the Act covers the transfer of the land and building of a daily market run by a municipality or a Grama Panchayat and whether the land and building of a market where both notified agricultural produces and other commodities sold are liable to be transferred to the market committee if requisition is made therefore u/s 4(4) of the Act. This Court held that a Municipality or a Grama Panchayat is under an obligation after the notification is published u/s 4(1) of the Act, to transfer the land and building, if a requisition is made thereof by the market committee and where the land or the building had been put to mixed use of marketing both notified agricultural produces or also other types of commodities the liability to transfer to arise.

In the instant case, no notification under Sub-section (1) of Section 4 of the Act, 1956 was published in the gazette/newspapers in respect of the entire revenue subdivision of Jagatsinghpur, which covers village Chatra and in absence of any such notification the provisions of Section 4(3) is not attracted. Hence, it cannot be said that the petitioners have violated the provisions of Section 4(3) of the Act, 1956.

12. To deal with the third question, it is necessary to know the purpose for which the Orissa Agricultural Produce Markets Act, 1956 has been enacted. The purpose of such enactment is to provide better regulation for buying and selling of agricultural produces and establishment of markets for such agricultural produces in the State of Orissa. The statement of objects and reasons for enactment of the Act is amply clear to this effect.

Further, the notifications required to be published under Sections 3 and 4 of the Act, 1956 are with relation to regulating the purchase and sale of agricultural produces in some areas. This Court in Talcher Regulated Market Committee v. Talcher Municipality 1998 (I) OLR 125 held that there is no difficulty to say that if the land or building was being used exclusively for marketing of only non-notified agricultural produces or non-agricultural produces there cannot be any direction for their transfer for the simple reason that those were not being used for any similar purpose for which the market committee is to set up the market. The jurisdiction of the market committee extends only to regulate the marketing of the notified agricultural produces and no further. This judgment has been confirmed by the Hon'ble Apex Court in Talcher Municipality case (supra).

In view of the above, the Act, 1956 is applicable only to market or Hat where agricultural produces are bought and sold subject to the proviso enumerated in Section 4 of the said Act.

13. So far as fourth question is concerned, law is well settled that any order passed by an authority/tribunal/court must be supported by reasons.

In Krishna Swami Vs. Union of India and another, , the Apex Court observed that reasons are the links between the material, the foundation for these erections and the actual conclusions. They would also administer how the mind of the marker was activated and there rational nexus and syntheses with the facts considered and the conclusion reached. Least it may not be arbitrary, unfair and unjust, violate Article 14 or unfair procedure offending Article 21 of the Constitution.

It is the settled proposition of law that even in administrative matters the reasons should be recorded, as it is incumbent upon the authorities to pass a speaking and reasoned order. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the Apex Court has observed as under:

Every such action may be informed by reason and if follows that an act un-informed by reason is arbitrary, the rule of law contemplates governance by law and not by humour, whim or caprice of the men to whom the governance is entrusted for the time being. It is the trite law that "be you ever so high, the laws are above you." This is what a man in power must remember always.

In State of West Bengal Vs. Atul Krishna Shaw and Another, , the Hon"ble Supreme Court observed that "giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review.

In the present case, notice dated 10.3.2003 under Annexure-10 has been issued by the opposite parties not to run Somanath Hat in view of Notification No. 1662 dated 18.01.1982 issued in pursuance of Section 4 and Notification No. 8105 dated 05.06.1994 and provisions contained in Section 4 (3) of the Act 1956. This notice was received by the petitioner on 10.03.2003. Immediately thereafter on 13.03.2003, petitioners submitted reply contending therein that nowhere they had violated the provisions of the Act, 1956 and the allegations were totally unfounded. In the said reply, the petitioners also requested the Chairman, RMC, Jagatsinghpur to call them for a meeting so as to enable them to explain the matter and doubts, if any. As it appears, no opportunity was offered to the petitioners. In paragraph 11, we have already held that the petitioners have not violated the provisions of Section 4 (3) of the Act 1956.

Subsequently, opposite party No. 2 vide notice dated 16.03.2003 (Annexure-12) directed the petitioners to pay market fees to the tune of Rs. 13,46,978/- for the years 1994-2003 by 31.03.2003. In the said notice, no basis was also indicated as to how the Hat days are fixed and market fee per day is determined. No opportunity of hearing was also afforded to the petitioners before assessing the petitioners for such huge amount of market fees for the year 2002-2003 so also for the preceding eight years. No reason whatsoever was assigned as to why the opposite party No. 2 had not taken any step for collection of such market fee

during past eight years. The opposite party No. 2 could not able to satisfy us as to under which provision of the law such amount of fees was demanded from the petitioners. Section 11 of the Act 1956 authorizes the market committee only to levy and collect market fees from purchaser of agricultural produce and not from owner of any Hat. In absence of any statutory provision for levying and collecting such fees from the owner of a Hat, the levy is not sustainable in law.

14. In view of the discussion made above, notices issued under Annexures-10 and 12 are hereby quashed. It is however made clear that this will not stand on the way of the opposite parties to proceed against the petitioners, if so advised, in accordance with law.

15. The writ petition succeeds and thus is allowed to the extent indicated hereinabove.

B.S. Chauhan, J.

16. I agree.