(1983) 05 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No''s. 1660 and 4122 of 1981 and 90 and 91 of 1982

Sree Bahariji Mills Ltd. and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 18-05-1983

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 3, 3(2), 39, 4, 4(3)
Bihar General Clauses Act, 1914 — Section 28

Citation : AIR 1983 Patna 311 : (1983) 31 BLJR 571 : (1983) PLJR 408

Hon'ble Judges : S. Sarwar Ali, C.J;Lalit Mohan Sharma, J

Bench : Division Bench

Advocate : Shreenath Singh, G.C. Bharuka and Navanity Prasad Singh, for the Appellant; P.S. Mishra, A.R. Pandey, Shivesh Mishra, Ram Janam Ojha and L.K. Bajla, for the Respondent

Final Decision : Allowed

Judgement

Lalit Mohan Sharma, J.—The petitioners in these four cases have challenged the right of the different Agricultural Produce Market Committees, the respondents to the cases, to demand and collect market fee on Ata, Sujji and Maida under the provisions of the Bihar Agricultural Produce Markets Act, 1960 and the Rules framed thereunder. The main argument has been addressed on behalf of the petitioners in C. W. J. C. 1660 of 1981 with reference to the paperbook of that case, which has been adopted in the other cases.

2. It has been contended that since Ata. Sujji and Maida have not been legally included in the schedule to the Act and in the list of items notified in accordance with law with reference to the Market Committees, the Market Committees have no jurisdiction to direct the petitioners to collect and pay market fee thereon. The petitioners have also taken several other points in support of their case which in view of my opinion on the above question, are not necessary to be dealt with.

3. For the better regulation of buying and selling agricultural produce and the

establishment of markets therefor, the Bihar Agricultural Produce Markets Act, (hereinafter referred to as ''the Act'') was enacted in 1960. By Section 2 (1) (a), the term ''agricultural produce'' was defined as the produce specified in the schedule to the Act. Ata, Sujji and Maida were not included in the schedule. Section 3 (1) empowers the State Government to declare its intention by notification of regulating the purchase and sale of such agricultural produce and in such area as may be specified, inviting objections and suggestions within a period of two months. Section 4 provides for consideration of the objections and suggestions so received and consequent appropriate reduction in area and exclusion of any item in terms of produce by another notification. It is also enjoined that for such market area, there shall be a principal market yard (one or more sub market yards are also permitted). Sub--section (3) of Section 4 deals with the modification of the market area and the list of the agricultural produce applicable to any market area in the following terms:--

"(3) Subject to the provisions of Section 3, the State Government may at any time, by notification exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-section (1)''".

By a further notification u/s 5, the details of the principal market yard and the sub market yards are to be declared. By still another notification u/s 6 a Market Committee is to be established for every market area. Section 27 places a duty on the Market Committee to levy and collect fees on the agricultural produce bought or sold in the market area at a given rate. The fee has been made payable by the buyer and the procedure with respect to the levy and collection is laid down in Rule 82 and 83.

4. Coming to the circumstances leading to the filing of C. W. J. C. 1660 of 1981 the respondent No. 2, Patna city Market Committee was constituted, under a notification dated 11-11-1970, with only a few commodities out of the schedule. By another notification dated 9-9-1974, as contained in Annexure 2, all the commodities specified in the schedule were notified by a general reference to that effect and without actually detailing the items. Section 39 of the Act authorises the State Government to add to, amend or cancel any of the items in the schedule by a notification. By an order dated the 12th Feb. 1972, the State Government purported to add inter alia Ata, Sujji and Maida in the schedule. This order, however, was not notified before 1980. It was published in the extraordinary issue of the Bihar Gazette on the 15th May, 1980. However, no notifications were issued under Sections 3 and 4 for the purpose of declaring the added items as notified agricultural produce for the respondent-Market Committee.

5. According to the respondents, the schedule stood amended in 1972 by virtue of the aforesaid order dt. 12-2-72 and the fee on the disputed items was payable with effect from the establishment of the Market Committee in 1974. Several letters in this regard were exchanged which have been detailed in the writ

application. According to the petitioners'' case, the schedule was not amended before 15-5-1980. It is further contended that since the notifications under Sections 3 and 4 with respect to these items have not ever been issued, the petitioners cannot be liable to collect and pay fees thereon.

6. During the pendency of these cases, an Ordinance being. The Bihar Agricultural Produce Markets (Validation) Ordinance 1982 (Bihar Ordinance No. 35 of 1982) was passed. The main provision in the Ordinance is emoted below:--

"2. Notwithstanding the non-publication of the notification Nos. 14841 dt. 27th Oct. 1967 in the Bihar Gazette and 2028 dt. 12th Feb. 1972 in the Bihar Gazette in time, the orders made for regulating the market with respect to such items, and market-fees levied, collected or to be levied and collected shall not be illegal and invalid merely on that ground and notwithstanding anything contained to the contrary in any judgment, decree or order of any court, the schedule of the notifications Nos. 14841 dt. 27th Oct. 1967 and 2028 dt. 12th Feb. 1972 shall always be deemed to be valid and effective and all levies made or market-fees collected shall be deemed to have been validly realised, taken, done and issued as if the provisions of this Ordinance were in force at all material times when such realisation was made, action taken, things done and orders issued and no suit or proceeding shall be maintainable for the refund of of the levies made or fee collected or action taken, under those notifications."

The notification No. 14841 dt. 27-10-67 is not relevant in the present cases. The learned counsel for the respondents also relied on the provisions of the Ordinance mentioned above in support of their case that even if the stand of the respondents mentioned above be not acceptable, the writ applications must fail by reason of the Ordinance,

7. The question as to when the schedule to the Act got amended appears to be simple. The power in this regard has to be exercised u/s 39 only by a notification. The expression ''notification'' has been defined by Section 4 (36) of the Bihar and Orissa General Clauses Act. 1917 to mean "a notification in the Gazette." Section 28 of the General Clauses Act provides that where in any Bihar Act, it is directed that any notification shall be issued, such notification shall be deemed to be duly made if it is published in the Gazette unless the Act otherwise provides. Section 39 is not suggesting any alternative method and, therefore, it must be held that until the order was published in the Bihar Gazette, the schedule was not amended. The language of Section 39 does not suggest that the schedule could be amended with retrospective effect by a later notification. I, therefore, hold that the schedule stood amended on 15th May, 1980 when the order in this regard dt. 12th Feb. 1972 was published in the Bihar Gazette and not earlier.

8. A further question arises as to what was the effect of the notification dt. 9-9-1974 as contained in Annexure 2 as far as the Agricultural Produce Market Committee is concerned. This notification was issued u/s 4 (1) of the Act. It

purported to apply to all items in the schedule to the Act. Since in 1974. Ata. Sujji and Maida were not included in the eye of law in the schedule in respect of the 1972 Order, in absence of a notification, these items cannot be held to have been included in the agricultural produce with reference to the Market Committee.

9. It was contended on behalf of the respondents that items applicable to the Market Committee automatically stood amended by inclusion of Ata, Sujji and Maida with effect from the date on which the schedule of the Act stood amended. There does not appear to be any merit in this argument either. Section 4 (3) of the Act permitting the amendment in the list of schedule of agricultural produce has been subjected to the provisions of Section 3 which enjoins a notification to be issued declaring the intention of the State Government in this regard. Sub-section (2) of Section 3 makes it obligatory for the notification to state that any objection or suggestion to the proposed step would be considered by the Government. Section 4 reiterates the duty of considering the objections and suggestions received from public. Holding of an enquiry in this connection is also contemplated by the section. A valuable right has, therefore, been granted by the statute to the traders agriculturists and other affected persons to offer objections and suggestions which have to be decided on merits before taking final decision. Admittedly, no notification u/s 3 was issued with reference to Ata. Sujji and Maida. By holding that the list of agricultural produce in regard to the Market Committee stood amended without resorting to the aforesaid procedure, the right of raising objection by concerned persons bestowed by the Act would stand forfeited and this cannot be allowed. The observation of the Supreme Court in Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others, relied on by Mr. Shreenath Singh, learned counsel for the petitioners supports this view.

10. The learned counsel for the respondents alternatively contended that in view of the Bihar Ordinance No. 35 of 1982, referred to earlier, the petitioner''s case must be rejected and the writ application dismissed. The relevant portion of the Ordinance has been quoted in paragraph 6 above. It may be noted that Sections 3, 4 and 39 or any other provision including the schedule of the Act has not been amended and the right of objection of the concerned members of the public to addition of items of produce has not been disturbed. It must, therefore, be held that unless the necessary notifications mentioned and discussed above are issued, the objections filed to the proposed modification of the schedule are considered and a final decision in this regard is taken thereafter, the lists of agricultural produce in regard to the particular market, committee cannot be deemed to have been amended by reason of the Ordinance. The Market Committees are, therefore, not entitled to the fee on the disputed items. The demands in this respect cannot be upheld.

11. It was also urged on behalf of the petitioners that the Ordinance was not kept alive after re-assembly of the Bihar Legislature and must, therefore, be held to have ceased to exist, and it is now not available to the respondents for placing

any reliance thereon. Prima facie, the position appears to be so. But in view of my conclusion mentioned above, it is not necessary to decide this question finally.

12. In the result, the writ applications are allowed, the impugned annexures are quashed and the respondents are directed not to demand or collect any fee on Ata, Sujji or Maida. The parties, however, are directed to bear their own costs.

S. Sarwar Ali, C.J.

13. I agree.

