(2003) 08 PAT CK 0123

In the Patna High Court

Case No : C.W.J.C. Nos. 5353, 5379, 5380, 5408 and 5418 of 2003

Suday Kumar and Others APPELLANT

Vs

Bihar State Agricultural Marketing Board and Others RESPONDENT

Date of Decision : 06-08-2003

Acts Referred:

Citation : (2003) 08 PAT CK 0123

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The Bihar Agricultural Marketing Board took the decision to discontinue the practice (of several years) of having the market fee on sales and purchase taking place in Hats and Bazars all over the State collected through collecting agents and to make the collection directly by the concerned Market Committee. The decision was based on the premise that the private contractors appointed as collecting agents subjected the agriculturists and traders to undue coercion and extortions. In pursuance of the decision of the Board, the Market Committees cancelled the appointments of collecting agents in their respective areas made for the year, 2003-04.

2. This batch of five writ petitions is filed by collecting agents whose appointment for the year, 2003-04 was cancelled by the respective Market Committees in pursuance of the Board''s decision. CWJC No. 5353 of 2003 is filed by a single Petitioner who was appointed collecting agent for Belaganj Hat under the Agricultural Produce Market Committee, Gaya for the period 1.4.2003 to 31.3.2004. In CWJC No. 5379 of 2003, there are five Petitioners appointed as collecting agents for the same period for different Hats and Bazars under four different Market Committees. In CWJC No. 5380 of 2003, there are four Petitioners appointed as collecting agents for the same period for the Hats and Bazars under the Market Committee Jehanabad. In CWJC No. 5408 of 2003, there are two Petitioners appointed as collecting agents for the same period under Market Committee, Masaurhi and in CWJC No. 5418 of 2003 there is a single Petitioner appointed as collecting agent for a Hat/Bazar under the Market

Committee, Gaya.

3. All the Petitioners took part in public auctions held on the basis of notices issued by the respective Market Committees for appointment of collecting agent for the respective Hats and Bazars. They were selected for appointment on being the highest bidder in regard to the Hat and Bazar in question. They also deposited the entire bid amount as required by the rules, following which contracts were executed between each of the Petitioners and the concerned Market Committees and they were issued Parwana for collection of market fee from the Hat/Bazar for which their appointment was made. It may, however, be noted here that in case of none of the Petitioners their appointment as collecting agent was formally approved by the Managing Director of the Board or an officer authorised by him in this behalf and the Respondents tried to derive some advantage out of this fact.

4. On the basis of their appointment each of the Petitioners started collecting market fee from 1.4.2003 from the Hat/Bazar for which he was appointed as the collecting agent.

5. The Bihar State Agricultural Marketing Board in its meeting held on 5.6.2003 took the decision that having regard to the difficulties faced by the farmers, traders land ordinary citizens the practice of having the market fee collected through the collecting agent must be stopped and the collection of market fee must be made by the Market Committees through their own officers and employees and no outside person should be appointed as a collecting agent. It was further decided that directions in this regard may be given to the Market - Committees in exercise of powers u/s 33(j) of the Bihar Agricultural Produce Markets Act.

6. Following the decision of the Marketing Board, office order No. 27, dated 6.6.2003 was issued by the Managing Director under his memo No. 379, dated 6.6.2003. In this office order, it was observed that the Managing Director or any officer authorised by him would not give approval for appointment of a collecting agent on any pending proposal and all pending proposals would be immediately returned to the concerned Market Commit-pee so that necessary refunds, if so warranted, may be made to the concerned person. In the office order it was further directed that appointment of all collecting agents must be cancelled with effect from July 1, 2003 and on a proportionate basis three quarters of the deposits made by them should be refunded by 30.6.2003. It was further directed that the cancellation of the appointment of collecting agents should be given wide publicity in the areas of the respective Market Committees.

7. Following the office order of the Board, dated 6.6.2003 the Market Committees cancelled the appointments of collecting agents made under their respective areas by issuing separate orders to each of them. Some of the collecting agents whose appointments, thus, stand cancelled have come to this Court challenging the Board''s office order, dated 6.6.2003 and it is this order

which is the object of common challenge in all these writ petitions.

8. At this stage, it would be useful to take a brief look at the relevant statutory provisions. Section 27 of the Agricultural Produce Markets Act confers the power to levy fees. Section 27 of the Act in so far as relevant for the present is as follows:

27. Power to levy fees.--(1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs. 100/- worth of agricultural produce.

Illustration--x x x x x.

Explanation--x x x x x

(2) The market fee chargeable under Sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) x x x x x.

(emphasis added)

9. The manner of payment/collection is laid down in Rule 82 of the APM Rules. Sub rule V of Rule 82 was earlier as follows:

The Market Committee may authorise any of its officers or staff or any other person to collect market fee directly from the buyer or his agent.

10. On 10.9.1996 a large number of amendments were incorporated in the rules and in place of Rule 82(v) as quoted above, the following rule was substituted:

The Market Committee may authorise any of its officers or staff or any collecting agent whose appointment has been approved by the Managing Director of the Board or an officer authorised by him in this behalf, to collect market fee directly from the buyer or his agent.

11. It may be noted here that there was some difference between the counsel appearing for the Petitioners in two different cases of this batch as to whether it is the earlier unamended rule which must be held to be in operation or it is the amended provision which is in force and under which the Petitioners were appointed as collecting agents.

12. Mr. R.B. Mahto, Senior Advocate appearing for the Petitioners in CWJC No. 5408 of 2003 contended that the 1996 amendments in the Rule were made without observing the mandatory provision of Section 52(3) of the Act and, therefore, the amended Rule 82(v) would never acquire the status of a statutory rule and the unamended rule would continue on the statute book.

13. Mr. Ram Janam Ojha, Senior Advocate appearing for the Petitioners in CWJC No. 5380 of 2003, on the other hand, maintained that the amended Rule 82(v) had very much come into force and the Petitioners were appointed as collecting

agents under the provisions of the amended rule.

14. The Board also took the stand that the appointments of collecting agents were made under the amended Rule 82.

15. This divergence between the two counsel has been mentioned only for the sake of record because the controversy does not seem to have any bearing on the issue under consideration. Even if it is held that the unamended Rule 82(v) continues to be in operation, the expression "any other person'' is sufficiently wide to include a person appointed as a collecting agent and even the unamended Rule 82(v) does not prohibit the Market Committee from appointing someone as collecting agent. On the other hand, the amended Rule 82(v) does not make it obligatory upon the Market Committee to have the market fee collected only through the collecting agent; under the amended Rule 82(v) the Market Committee is perfectly free to have the market fee collected by authorising any of its officers or staff or any collecting agent.

16. A bare perusal of Section 27 and Rule 82(v), thus, makes it manifest and clear that the Market Committee is completely free to make the collection of fee either through its own agency, that is, by authorising any of its officers or staff or by appointing a collecting agent for the purpose, it goes without saying that in case the Committee decided to appoint a collecting agent, the process of selection and appointment must satisfy the constitutional guarantees, the test of reasonableness and equal opportunities and uniform application of the terms and conditions of appointment. But this is not to say that the Committee must, at all times and in all circumstances make the collection of market fee only by appointing outsiders as collecting agent. The rule, either in its unamended form or in the amended form, is an enabling provision which authorises and empowers the Market Committee to have the market fee collected through an outside agency. I find it difficult to read anything more in Section 27 of the Act and Rule 82(v) of the rules.

17. Seen thus the decision of the Marketing Board would only appear as a policy decision of which the scope for judicial review is extremely limited. But long and sophisticated arguments were advanced against the decision taken by the Board in its meeting'' held on 5.6.2003 and the Board''s office order, dated 6.6.2003 was assailed on a number of grounds. I now propose to examine the submission made by learned Counsel appearing on behalf of the Petitioners.

18. The Board''s office order, dated 6.6.2003 was sought to be assailed on all conceivable grounds. One or two of which appeared relevant and germane to the issue, some appeared to be quite stretched while still others seemed to me to be quite impossible in their application to the facts of the case.

19. Mr. S.S. Asghar Hussain, Senior Advocate appearing for the Petitioners in C.W.J.C. No. 5353 of 2003 was brief in his submissions. He did not seriously try to challenge the Board''s decision but focussed his submissions to save the appointment of the Petitioners from its effect.

20. Mr. Y.V. Giri, Senior Advocate appearing for the Petitioners in CWJC No. 5379 of 2003 submitted that a Market Committee, as defined u/s 2(j) of the Act, was a distinct entity quite separate from the Board. He submitted that the contract under which the appointment of collecting agent was made was between the Petitioners and the respective Market Committees and hence, it was not open to the Board to annul or cancel a concluded contract between the committee and a third party to which the Board was not even a party.

21. A complete answer to the submission is to be found in Section 33(j) of the Act that deals with the powers and functions of the Board. Under Clauses (i) and (ii)(apart from other clauses) of that section the Board has sufficient power to give directions to the Market Committee and the Market Committee in its turn is obliged to carry out the directions.

22. Mr. Giri further submitted that the decision not to allow collecting agents for Hats and Bazars was discriminatory in that in case of Hat (s)/Bazar (s)/Mela (s) held over raiyati lands, the market fee was directed to be collected by the licencee, the raiyat of the private plots. Mr. Giri contended that as the raiyat of the private plot was made collecting agent for the Hat/Bazar/Mela held over his private land, the collecting of market fee from Hat (s) and Bazar (s) held over Government land (s) should also be made through some contractor collecting agent. The submission is to be taken note of only to be rejected. The Hats held over Government land and those over private raiyati lands fall under two completely separate categories and they cannot be equated. Therefore, the argument that following the arrangement made in respect of private Hat/Bazar/Mela, private contractors must also be appointed for collection of market fees from Hats/Bazar/Melas held by Market Committee is wholly untenable.

23. Mr. Giri further contended that the impugned office order issued by the Board was in the nature of an executive instruction which was sought to be implemented retrospectively. What he meant by retrospective application is perhaps that the order was intended to cancel subsisting contracts. Mr. Giri also submitted that in appropriate cases a policy decision can also be examined and struck down by the court and he cited some decisions in support of the submission. The latter two submissions of Mr. Giri will be considered later on at an appropriate place in this judgment.

24. Mr. Ram Janam Ojha, Senior Advocate appearing for the Petitioners in CWJC No. 5380 of 2003 assailed the Board''s decision and the office order on a number of grounds. He invoked the fundamental right and the guarantee under Articles 19(1)(g) and 300A of the Constitution, submitting that working as collecting agent was the vocation and occupation of the Petitioners. He relied upon the judicial principle of ''legitimate expectations''. Then answering the question that Rule 82(v) provided certain options in regard to collection of market fees, Mr. Ojha submitted that the discretion could never be absolute and the exercise of power must be subject to use of proper discretion. He also submitted that the impugned office order was tantamount to amending the rule (I completely fail to

see how). He also submitted that the decision of the Board to discontinue the practice of appointing collecting agents was based on findings arrived at without any cogent materials and it was the "ipse dixit" of the Board. This submission also does not seem to hold in view of the statements made in the supplementary counter affidavit filed on behalf of the Board to which we shall advert a little later.

25. Mr. Ojha elaborated a good deal upon what he called "the application of mischief rule". He submitted that though earlier the unamended rule provided for collection of market fee through ''any other person'', it did not clearly and in so many words provide for appointment of a ''collecting agent''. Mr. Ojha emphasised that with the infra-structure and the number of staff available to a Market Committee, it was impossible for it to make any effective collection of market fees on sales and purchase going on in Hats and Bazars spread all over its area. For an effective collection of market fee, it had no other means but to appoint out-siders as collecting agents and having regard to this necessity the amendment was introduced in the rule and the provision for appointment of a collecting agent was expressely incorporated.

26. Mr. Ojha invited my attention to the statement made in para 11 of the writ petition where collection figures from Sampat Chak Bazar are given both for the periods when collections were made through a collecting agent and when the Market Committee made the collections through its own agency. The figures for; Sampat Chak Bazar show that the collection of fees by collecting agents was 10-15 times higher than the collection made by, the Market Committee on its own. He submitted that the impugned decision of the Board was the result of extraneous and political pressure. He submitted that the Board''s decision was liable to be struck'' down because it would lead to a great loss of public money. He also submitted that the new arrangement would greatly encourage corruption and malpractices in the working of the Board and the Market Committees.

27.1 am unable to accept the submissions of Mi. Ojha. On the basis of the collection figures from one Bazar out of thousands of hats and Bazars spread over the State, no definite finding can be arrived at with regard to loss of revenue by discontinuing the practice of appointing collecting agents. But assuming, for the sake of arguments, that there would be a great loss of revenue, that alone cannot be a ground to hold the decision to be unreasonable or arbitrary and liable to be interfered with by a writ court. The amount of collection may be a consideration, even an important consideration, but, that alone cannot be made the sole consideration for deciding the mode of collection of market fee. After all the aim and object to the Act is not to collect as much money as possible by means fair or foul. The Board and the Market Committees were created and Hats and Bazars were set up for the better regulation of buying and selling of agricultural produce in order that the benefit must reach the farmers and the agriculturists. It was not intended to collect as much money as possible by fleecing the farmers and traders and by subjecting them to extortion in order to maximise the profit of the middleman i.e. contractors collecting agents. Any decision in regard to whether a particular mode of collection of market fee serves the best interests of the farmers and traders and whether it is in accord with the aims and objects of the Act has to be taken by the Board and not by a handful of private individuals, appointed as collecting agent for a given year.

28. I am, therefore, not impressed by the submission that the collection of market fee by the Market Committees would lead to a great loss of revenue for the Committees and the Board and on that score this Court should interfere with the Board''s decision.

29. Mr. R.B. Mahto was quite pointed and precise in his submission. He expressely submitted that he did not question the decision of the Board as a policy decision, but, he was aggrieved by what may be described as the wrong time of its application.

30. It is noted above that Mr. S.S. Asghar Hussain, Senior Advocate appearing for the Petitioners in CWJC No. 5353 of 2003 had also assailed the action of the Market Committee in cancelling the contract executed in favour of his client on the basis of the impugned office order issued by the Board. It was also one of the main planks of Mr. Giri''s submissions and Mr. Ojha had also touched upon the point, albeit briefly.

31. On a careful consideration of the submission advanced by counsel appearing for the Petitioners in this batch of cases, I am of the view that the only point that requires some consideration by the court is in regard to the cancellation of the subsisting contracts on the basis of the impugned office order issued by the Board on 6.6.2003. In other words, what requires to be examined is not the legality or validity of the Board''s decision to discontinue the practice of appointment of collecting agents but the justifiability and propriety of the decision being taken in the middle of the financial year leading to the cancellation of existing contracts on the basis of that decision.

32. Mr. Giri had somewhat erroneously described it as retrospective application of the Board''s decision. What he meant was that the application of the decision of the Board had led to cancellation of existing contracts.

33. Mr. Mahto brought the matter sharply under focus by stating that the system of appointment of collecting agents was in practice continuously from 1985. He submitted that this had led the people to believe that it would not be discontinued suddenly or abruptly. For appointment of collecting agents for the current financial year, (2003-04) public notices were issued by the different Market Committees like previous years and in response to those notices the Petitioners took part in auctions, made their bids and on being selected deposited large sums. Apart from that, the Petitioners incurred other expenses in employing staff to make the actual collection. Arrangements had to be made for the employees and for keeping an account of the collections made by them and deposited in the Market Committee. All these arrangements was dislocated and

disrupted by the sudden decision taken by the Board, causing great financial loss and harassment to the Petitioners.

34. Mr. Mahto submitted that if the Board felt that the practice was unsuitable or undesirable, it could have taken the decision at the end of the previous financial year in March, 2003 itself and then no collecting agents would be appointed for the current financial year; or in case it did not take the decision then, it could have waited till the end of the current financial year till March, 2004 to avoid the financial loss suffered by the Petitioners and to save them from unnecessary harassment.

35. Mr. Mahto further submitted that the Petitioners had entered into the contract for collection of market fee on behalf of the respective Market Committees on the invitation and representation made by the Market Committees. The public notice was issued by the Market Committee, the auction was held by the Market Committee, the bids made by the Petitioners were accepted by the Market Committee and following the auction the respective committees accepted the deposits made by the Petitioners and finally entered into an agreement with them and issued Parwanas in their favour giving them the right to collect fees on its behalf. He submitted that in those circumstances the Market Committee/ Board was estopped from terminating the arrangement and cancelling the contracts.

36. It is true that the decision of the Board to suddenly discontinue the practice and to cancel all existing arrangements would have caused some loss and inconvenience to the Petitioners who were already appointed as collecting agents for the current financial year. But, then it is to be seen whether the Board/Market Committee had a valid reason for acting in the manner it did.

37. In this regard it may be stated here that the undesirable consequences of appointment of collecting agents for collection of market fee first came to the notice of this Court while dealing with another case being CWJC No. 12233 of 2001 Rishideo Prasad Rai v. Bihar State Agricultural Marketing Board and Ors. In that case the contract of an individual collecting agent was cancelled, when it came to light that his men were making coercive collections from the traders and they were not showing the amount of unauthorised collections in the sale receipts. Sampatchak market the same market from where the collection figures were quoted by one of the Petitioners in support of the Petitioners'' case from where he was to collect fees under the agreement is situate on a road and his men would realise fees from vehicles carrying agricultural produce through that road even though those agricultural produce were going somewhere else and were not coming to Sampatchak market for sale and purchase.

38. It now seems that that was not an isolated case and this nefarious practice was growing and finally it assumed such proportion as to become a matter of serious concern not only for the Market Committees and the Board but also for some of the members of the legislative assembly.

39. The relevant facts in this regard are stated in many sub-paras of paras 6 and 7 of the supplementary counter affidavit filed on behalf of the Marketing Board in CWJC No. 5353 of 2003. In para 7(e), it is stated as follows:

7(e) That apart from the cases of cancellation of contracts referred to in the foregoing paragraphs of this supplementary counter affidavit the question of extortion and high handedness being indulged into by the collecting agents was also raised in the Bihar Legislative Assembly. In this connection reference may be made to the proceedings of the Bihar Legislative Assembly with regard to Assurance No. 174/2001, dated 30.3.2001 raised by Sri Ganesh Paswan. It was stated by the members in the State Legislative Assembly that the collecting agents apart from the working the buyers and their agents were also harassing and exploiting members of the public who did not come within the jurisdiction of the Market Committee. It was, therefore, urged that the system of collection of market fee through collecting agents be abolished forthwith and collection of market fee should henceforth be done departmentally.

40. In the aforesaid facts and circumstances, it cannot be held that the action of the Board to take the decision in the middle of the financial year and to cancel the subsisting contracts was arbitrary or unreasonable so as to warrant any interference by this writ court.

41 This being the position all that can be said in favour of the Petitioners is that it would be a case of breach of contract for which it would be open to the Petitioners to seek their remedies in accordance with law and I find substance in the submissions made by the Advocate General appearing for the Marketing Board that the Petitioners in this case could not put their case higher than enforcement of a contractual right for which no writ petition would be maintainable. (See the decision of the Supreme Court in State of Bihar and Others Vs. Jain Plastics and Chemicals Ltd., (para 3).

42. The learned Advocate General was also correct in his submission that in this case the contract between the Petitioners and the Marketing Board was not a statutory contract but it was purely a private contract and the remedy for the breach of contract would lie before the civil court and not before a writ court. See Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, and Kamal Kishore Pandey Vs. State of Bihar and Others, .

43. Here it may be noted that there was some debate at the bar as to whether or not the arrangement had materialised into a concluded contract between the Petitioners and the Market Committee. The Advocate General submitted that as appointments of the Petitioners as collecting agents were not approved by the Managing Director of the Board or an officer authorised by him, the appointments were only provisional and not final and hence, the Petitioners could not make any grievance regarding any breach of contract or cancellation of their appointment.

44. Mr. Mahto, on the other hand, had submitted that the amended provision of

Rule 82(v) had never acquired statutory status and what remained on the statute book was the unamended Rule 82(v) which had no requirement of approval by the Managing Director.

45. Mr. Ram Janam Ojha, though emphasising that it was the amended provision that was the statutory Rule 82(v), submitted that the Petitioners had already worked for three months on the basis of the agreements executed on behalf of the Committee and, therefore, it must be deemed that their appointments had the approval of the Managing Director. He submitted that the delay/failure to grant approval was on the part of the Managing Director and he could not be allowed to take advantage of his own lapses.

46. I do not propose to express my opinion on this controversy because I have left it open to the Petitioners to seek their relief (s) for the alleged breach of the contract by the Marketing Board/Market Committees before an appropriate court.

47. Before concluding it may be noted that Mr. Giri had submitted that a decision in the nature of a policy matter may also be interfered with in an appropriate case and in support of his submission he relied upon a recent decision of this Court in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.,

48. In my considered view the decision in Onkarlal Bajaj has no application to the facts of this case. In the Supreme Court decision on allegation of irregular allotments in respect of some of the cases, the Central Government had cancelled all allotments made during the period in question without examining the individual cases. That is not the position here. In these cases a policy decision was taken to discontinue the practice of appointment of collecting agents and the decision is applied equally to everyone. In this batch of cases, there is no question of treating unequals as equals. The decision has been applied equally to all who are similarly situate and, therefore, there is no question of any discrimination.

49. For the reasons discussed above, I come to the irresistible conclusion that the Board''s decision and its application for cancelling the contracts of the Petitioners does not warrant any interference by this Court. The respective Market Committees must, however, make proportionate refund of the deposits made by the Petitioners, if not already made by them within a fortnight from today. The dismissal of these writ petitions shall not stand in the way of the Petitioners if all or any of them seek their remedies by filing suits before a civil court of competent jurisdiction or by any other legal means.

50. In the result, these writ petitions are dismissed but with no order as to costs.

