
(1992) 05 PAT CK 0022
In the Patna High Court
Case No : C.W.J.C. No. 1423 of 1992

Swagat Stores and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-05-1992

Acts Referred:

Citation : (1992) 05 PAT CK 0022

Final Decision : Allowed

Judgement

S.B. Sinha, J.—The petitioners, who are said to be retail traders and carry on business in the town of Gaya, in this writ application, have questioned the legality and/or validity of the directions which are contained in memo No. 226/C, dated 19th January, 1992, as contained in Annexure 1 series to the writ application, whereby they have been directed by respondent No. 2 to shift their place of business to the market yard at Chandauti, as also the letter dated 7-2-1992, issued by respondent No. 3, as contained in Annexure 2 series to the writ application, whereby the petitioners have been asked to get the shops allotted in the name of the aforesaid market yard, as also sought for declaration that the provisions of Bihar Agricultural Produce Market Act, 1960 thereafter referred to as the "said Act") have no application in relation to the retail dealers and Schedule II of the Bihar Agricultural Produce Markets Rules, 1975 thereafter referred to "as the said Rules") and/or Rule 94 thereof are ultra vires Section 15(1) of the said Act as also Articles 14 19(1)(g) and 265 of the Constitution of India.

2. According to the petitioners, they hold retail licences under the Bihar Trade Articles (Licences Unification) Order, 1984, and deal with food grains etc. The town of Gaya being a Class B town the retail dealers in terms of the provisions of the said Order are entitled to hold stock of different commodities in the following manner:

Foodgrains-- 100 quintals. Edible Oilseeds-- 150 quintals. Edible Oil-- 15 quintals. Sugar-- 5 quintals. Khandsari-- 5 quintals.

The petitioners by reason of the impugned orders have been directed to shift their respective places of business in the newly constructed market yard by the respondent No. 2 and have further been directed by respondent No. 3 to get shops allotted in their favour failing which it has been threatened that legal action would be taken against them and their respective licences would be cancelled.

3. The petitioners have, inter alia, contended that the respondents 2 and 3 are not the authorities and have no role to play in the matter of enforcement of the provisions of the said Act and the Rules framed thereunder and, as such, the impugned orders, as contained in Annexure 1 series and Annexure 2 are wholly illegal and without jurisdiction. It has further been contended that at present no agricultural produce market committee exists and in that view of the matter too, the direction of the respondents as contained in Annexure 1 series and Annexure 2 series must be held to be illegal and without jurisdiction.

4. In this case a counter affidavit and a supplementary counter affidavit have been filed on behalf of the respondent-market committee. In the said counter affidavit it has been asserted that the State of Bihar in exercise of its power conferred upon it u/s 37 of the said Act has appointed Shri K.K. Pathak, Deputy Development Commissioner, Gaya, to exercise all the powers and carry out all functions of the Market Committee and its sub-committees by a Notification dated 20th November, 1991, as contained in Annexure-A" to the counter affidavit. It has been further asserted that by a Notification dated 31-12-86. Chandauti within Gaya Market Area has been declared to be the principal market yard in respect of food: grains, pulses, oil seeds and edible oils. It has been further asserted that the petitioners have been granted licences under the provisions of the said Act and in terms of Clause II thereof, they are bound to carry out all instructions as may be given by the authorities under the said Act from time to time. It has further been contended that all facilities have been provided in the principal market yard, Gaya, and the petitioners are under a legal obligation to shift their places of business in the newly constructed principal market yard.

5. Mr. Tara Kant Jha, learned counsel appearing on behalf of the petitioners has principally raised three contentions in support of this application. The learned counsel firstly submitted that second schedule appended to the rules is ultra vires Section 15(1) of the Act so far as it relates to the amount of Rs. 100/- mentioned therein, being the upper limit of the quantum of sale. It has been submitted that the prices of the commodities have increased many fold and thus the quantity of the agricultural produce and the price of Rs. 100/- fixed thereby have lost all relevances. It has also been submitted that as the market committee has become non-existent the impugned directions, as contained in Annexures 1 series and 2 series are wholly illegal and without jurisdiction. The learned counsel in this connection has relied upon a Division Bench decision of this Court in *Ramji Prasad v. State of Bihar* 1919 (1) PLJR 446. He has also

placed reliance upon the decision in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, . It was further submitted that fixation of quantity for retail sale so far as retail dealers under Bihar Trade Articles (Licences Unification) Order are concerned, under the provisions of the said Act and the Rules is ultra vires Article 14 of the Constitution,

6. It was next contended that the District Magistrate or the Sub-divisional Officer being not authorities under the provisions of the said Act or the Rules framed thereunder, they had no jurisdiction to issue the impugned orders, particularly, in view of the fact that in terms of Clause 9 of the Bihar Trade Articles (Licenses Unification) Order, 1984, alteration or change of the site is permissible only at the instance of the trader. In this connection it has been pointed out that the State of Bihar by a Notification issued in 1985 had deleted the words "suo motu" occurring in Clause 9 of the Unification Order as a result whereof the District Magistrate does not have the power to direct any change of place of business, so far as a dealer under the said order is concerned suo motu.

7. Mr. Ram Balak Mahto, the learned Advocate General, on the other hand, submitted Rule 94 of the Rules being in consonance with the provisions of Sub-section (1) of Section 15 of the said Act, the same must be held to be valid. It was further submitted that the said Act not only controls the transactions of agricultural produces by the agriculturists but also brings within the sweep manufacturer, agricultural producers and the industrialists. The learned counsel in this connection placed reliance upon a Division Bench decision of this Court in *Belsand Sugar Company Ltd. v. The State of Bihar*, 1976 BBJ 453 : (AIR 1976 Pat 136). The learned Advocate General further contended that the definition of "wholesale traders" and "retail dealers" as contained in the Unification order cannot be taken aid of for the purpose of construction of the word "trader" as defined in the said Act and thus the provisions relating to the control of business of retail traders under the provisions of the said order cannot have any relevance in relation to "control of buying and selling of agricultural produce" by the Market Committee in terms of the provisions of the said Act and the Rules framed thereunder. It has further been submitted that the provisions of the said Act contains a penal provision and as upon publication of a notification under Sub-section (2) of Section 5 of the said Act all traders tend prohibited from carrying on any business at any place other than the principal market yard or sub-market yards this Court will not allow any person to commit offence under the said Act.

8. According to the learned Advocate General, therefore, the action of the respondents 2 and 3 although may not be strictly under the provisions of the said Act but the same is for enforcement of the provisions of the said Act, the same must be held to be legal.

9. The said Act was enacted for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith. S. 3 of the said Act provides for issuance of notification by the State declaring its intention of

regulating the purchase, sale, storage and processing of agricultural produce.

Sub-section (1) of Section 4 provides for declaration of market area. Sub-section (2) of Section 4 and the explanations appended thereto read as follows: --

"On and after the date of publication of the notification under Sub-section (1), or such later date as may be specified therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall within the market area, or within a distance thereof to be notified in the official Gazette in this behalf, set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, storage or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation-- A municipality or other local authority or any other person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section. If the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for the sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use."

Section 5 of the said Act provides for declaration of market yards. It is not in dispute that there has been a valid declaration of market area as provided for u/s 4 of the said Act as also a market yard as envisaged u/s 5 thereof.

10. It is also not in dispute that Section 15 of the said Act puts a complete embargo upon carrying on any trade or business by any trader at any place other than principal market yard or sub-market yard save and except a retail sale made by any person or for personal consumption to the limit prescribed by the rules. Rule 94 of the said rules reads as follows :--

"94. Sale of agricultural produce-- (i) All agricultural produce brought into or processed in the market area except such quantity for retail sale or consumption as per Schedule II of the rules or such description of agricultural produce exempted u/s 15 by the Board shall pass through the principal market yard or sub-market yard or yards, and shall not be bought or sold at any other place within the market area.

(ii) Such details of agricultural produce resold or re-bought in the market area shall also be reported to market committee in accordance with the provisions of bye-laws.

(iii) The price of agricultural produce intended for sale in the principal market yard or sub-market yard, shall be settled by open auction or tender system and not otherwise and no deduction shall be made from the agreed price of the consignment except for any authorised trade allowance as prescribed in the bye-

laws."

The second schedule appended to the said rules limits the quantity of sale in amount, as for example, so far as cereals are concerned, the limit has been fixed at 50 kg. or Rs. 100 whichever is less.

11. Section 15 of the said Act exempts as those persons from the applicability thereof who sells within the prescribed quantity of agricultural produce and/or for personal consumption. The dealers thus whose quantum of sale is confined to the limits prescribed by Rule 94 are thus not required to carry on any business in the principal market yard or sub-market yard.

12. The said Act apparently has been enacted for control of the purchase and sale of agricultural produce. The price at which agricultural produces are brought or sold have no relevance except for the purpose of assessing the quantum of market fee provided for under S. 27A of the said Act.

13. Even Rule 94 of the said rules does not postulate fixing of the prescribed limit in terms of any amount learned Advocate General, when questioned, very fairly stated that in Schedule II the limit of the quantity both of kg. and in money value might have been fixed keeping in view the price of the commodities prevailing at the point of time when the said rules had been framed. The said rules were framed in 1975. There is no doubt that there has been many fold increases in the prices of the commodities. Section 15(1) of the said Act as also Rule 94 postulate grant of exemption in terms of quantity of the agricultural produce and not in terms of monetary value thereof. By reason of Schedule II, therefore, the State could not have imposed further restrictions. In that view of the matter, it must be held that that portion of rules containing the words "or Rs. 100/ - whichever is less" is ultra vires Section 15(1) of the said Act and Rule 94 of the said Rules.

14. It is true that in terms of the provisions of Bihar Trade Articles (Licenses Unification) Order, the quantities prescribed for retail sale are different than mentioned in the second Schedule of the said rules. The said Act as also the Essential Commodities Act, as is well known, operate in different fields. The definition of trader, as contained in Section 2(w) of the said Act is different than "wholesale dealer" and "retail dealer" as defined in Clauses 2(P) and 2(u) of the Unification Order. The definition of " whole-sale dealer" or, retail dealer" in the said order, therefore, cannot be brought in said of for the purpose of the said Act and the Rules framed thereunder.

15. In terms of Sub-section (4) of Section 4 of the said Act, nothing in the said Act would apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed. Although no limit has been laid down in Section 4(4) of the Act the same can clearly be inferred from Rule 98 of the rules. Accordingly, in terms of the provisions of the said Act, whether a person is a retail dealer or not within the meaning of the said Act can be determined only with reference to Section 4(4) thereof read with Rule 98(xi) of the said rules and

not with reference to the definition of "wholesale dealer" and "retail trader" as envisaged under the Bihar Trade Articles (Licences Unification) Order. The provisions of the said Act are not repugnant to the provisions of the Essential Commodities Act and the orders made thereunder. The said Act has been enacted by the State in terms of Entries 26 and 27 of the State list whereas Essential Commodities Act has been enacted under Entry 33 of the concurrent list of VIth Schedule of the Constitution of India. The provisions of the said Act cannot, therefore, be held to be repugnant to any order made under Essential Commodities Act and, thus, they cannot also be held to be ultra vires. Article 14 of the Constitution of India.

16. From a bare perusal of Sub-rule (2) of Rule 94 itself it would appear that the said Act brings within the sweep control not only in respect of the first sale of the agricultural produce i.e. from the agriculturists to trader but also controls transactions from trader to trader. Rule 94(ii) merely puts an obligation upon the trader to inform the market committee when second sale takes place within the same market yard. It is, therefore, clear that even a second sale comes within the preview of the provisions of the said Act. The words "agricultural produce" has been defined in Section 2(a) of the said Act which reads as follows:--

^^(a) ?f"k mit ls vfHkizsr gS ?f"k m|ku&?f"k A cxxokuksa A] cxxokuksa i"kk&ikyu] js"ke&mRiknu] eRL;kikyu dh lHkh mit] pkgs og fo|kf;r A rS;kj gks ;k vfo|kf;r fofufeZr gks ;k ugha vkSj blds vUrZxr vuqlwph esa ;Fkk fofufnZ"V i"kk/ku ;k dqDdqV] vkfn Hkh gS A**

It is, therefore, not only confined to agricultural produce alone but also an industrial product by processing of agricultural produces.

17. This aspect of the matter has been considered by a Division Bench of this Court in *M/s. Raptakos, Brett and Company Limited Vs. The Bihar State Agricultural Marketing Board and three Others*, wherein this Court held that even industrially produced goods are subjected to levy under the said Act. This Court in the aforementioned decision relied upon its earlier decision in *The Belsund Sugar Co. Ltd. and Another Vs. The State of Bihar and Others*, and *Mahabir Tea Company v. State of Bihar* 1979 BLJR 560

18. In AIR 1981 1127 (SC) it has been held by the Supreme Court that regulation of marketing of notified agricultural produce and establishment of principal and subsidiary markets are among the prime objects of the Act. It was held that if for more effective regulation of marketing it is thought that all marketing operations in respect of declared agricultural produce should be carried out only in the principal and subsidiary markets established under the Act, it cannot be said that a rule made for that purpose is beyond the competence of the rule making authority under the Act. It has further been held that both the principal objects sought to be achieved by the Act is the securing of a fair price to the agriculturist for his produce, by the elimination of middlemen and other detracting factors. But it would be wholly incorrect to say that the only

object of the Act is to ensure a fair price to the agriculturist.

The Supreme Court states the law thus:

"It is because of these and various other services performed by the market committee for the benefit of the trader that the trader is required to pay a fee. It is, therefore, clear that the regulation of marketing contemplated by the Act involves benefits to traders too in a large way. It is also clear to our mind that the regulation of marketing of agricultural produce, if confined to the sales by producers within the market area to traders, will very soon lead to its circumvention in the guise of sales by traders to traders or import of agricultural produce from outside the market area to within the market area."

19. The Supreme Court in the aforesaid decision took into consideration its earlier decisions in *Mohammadbhai Khudabux Chhipa and Another Vs. The State of Gujarat and Another*, and in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, and came to the conclusion that transactions between traders and traders have to be controlled, if the control in the interest of agricultural producers and the general public has to be effective. It is, therefore, clear that the said Act also is applicable in relation to transactions between traders to traders with regard to the object of transaction of business of agricultural produce at one place i.e. either at the Principal market yard or sub-market yard, the Supreme Court in *Porwal's case* (supra) has observed (at page 1139 (of AIR)):

"One of the submissions strenuously pressed before us was that the statute itself imposed and provided for such stringent supervision and control sufficient and more, to regulate transactions between traders and traders, that it was superfluous to insist that such transactions do take place in the market only. We do not agree. Human ingenuity is such that vents and escapes will always be found in any system of controls. We are unable to say that the other supervisory measures for which there is provision in the Act are sufficient to make it unnecessary for the traders to move their places of business into the market. No amount of supervision may be as effective as when all the transactions take place within the market. Nor is effective supervision at all possible if traders are dispersed all over the market area."

The second contention raised on behalf of the petitioner, therefore, has to be rejected.

20. Constitution of the second and subsequent market committees is governed by Section 9 of the said Act. Section 37 provides that in absence of the market committee the Board has the power to make arrangement for the purpose of duties and functions of the market committee. However, in this case, the term of the market committee expired in 1986. The State of Bihar in exercise of its power u/s 9(5) of the said Act appointed one Sachchitanand Singh, Sub-divisional officer only to discharge the functions of the committee for the period 28-5-1986 to 27-5-1987. The assertion of the petitioners to the effect that

thereafter no notification u/s 9(5) of the Act was issued has not been denied. It has also been accepted that by a notification dated 13-6-1990, Shri C.S. Choubey was conferred power by the Board for the period 5-5-1990 to 4-11-1991 (Annexure4).

21. From Annexure A of the counter affidavit filed on behalf of the respondent-Market Committee it appears that the Board in exercise of its power u/s 37 of the Act has made arrangements by directing that Shri K.K. Pathak, Deputy Development Commissioner, Gaya, shall carry out the duties and functions of Market Committee, Gaya, from 5-11-91 to 4-5-92.

22. This Court in Ramji Prasad v. State of Bihar reported in 1991 (1) PLJR 446 clearly held that the power u/s 37 of the Act can be exercised when a committee is in existence. After 1987, there was no committee. The Board, thus, had no power to issue the notifications as contained in Annexure 4 to the writ application as also Annexure A to the counter-affidavit.

In this view of the matter it must be held that no person is now authorised to carry out the functions of the Agricultural Produce Market Committee, Gaya.

23. There cannot be any doubt, as it is well settled, that the provisions of the said Act and the Essential Commodities Act operate in different fields. Respondents 2 and 3, therefore, in their capacities as authorities under the provisions of Trade Articles (Licenses Unification) Order may not be entitled to enforce the provisions of the said Act. However, in terms of the provisions of the Essential Commodities Act as also the provisions of the said order, it becomes the duty of the Licensing authority to see that the licensees under the said order carry out their business not only in accordance with the provisions of the Essential Commodities Act or the orders made thereunder but also in terms of the provisions of the said Act. It seems that by reason of a Notification Clause (9) of the said order has been amended in terms whereof the words "suo motu" have been deleted. Thus, the respondent No. 2 or for that matter the respondent No. 3 may not have any power to make corrections in the situs of the business of the licensees in terms of Clause (9) of the said order. However, in my opinion, such a direction is permissible in law in terms of condition No. 10 of the licenses granted to the licensee which reads :

"10. The licensee shall comply with any direction that may be given to him by the State Government or the Collector or the Licensing Authority with regard to the purchase, sale and storage for sale, of these trade articles and in regard to the language in which the registers, returns, receipts or invoice shall be written and in regard to the authentication and maintenance of the register in paragraph 3 above."

Such a residuary power of the licensing authority has been preserved for its exercise only in an appropriate case like the present one. The licensing authority, therefore, although do not have any power to direct change of place of business so far as the licensee under the said order is concerned in terms of clause 9

thereof, but in a given situation, in my opinion, he can exercise such a power under Clause 10 of the said order. Only, if such a construction is put, provisions of both the Act and rules, in my opinion, can be given effect to.

24. Further Section 48 of the said Act contains a penal provision in terms whereof any person who violates the provisions of the Act, Rules or orders passed thereunder will be punished to the extent of imprisonment for one year or a fine of Rs. 1,000/- (one thousand) or both. It has not been disputed that the petitioners are licensees under the said Act. The petitioners in terms of the provisions of licence and particularly clause II thereof (Annexure C) are also bound to comply with such directions as may be given by the State from time to time. In terms of the aforementioned Notification issued under Sub-section (2) of Section 5 of the Act, the principal market yard has been declared. The petitioners who are licenced traders, thus, are bound, to comply with the said direction of the State of Bihar and thus they cannot carry on any business at a place other than the principal market yard.

However, only a market committee or a person authorised in this behalf by the State of Bihar by reason of a notification u/s 9(5) of the Act could carry the functions of the committee. Such committee being not in existence, the petitioners could not be directed by the respondents 2 and 3 to shift their places of business at the Principal market yard. Respondents Nos. 2 and 3 could issue the directions only in the event the market committee existed but not otherwise. From a perusal of Annexure 1 it appears that a meeting has been held with the traders on 12-1-92 and in the said meeting it has been decided that shifting to the market yard would be completed by 31-1-92. Despite the agreement of the traders to shift their place of business by the said period, they did not do so and file this application on 17-2-92. Under ordinary circumstances the petitioners, therefore, would not have been entitled to enforcement of any equity in their favour but in absence of the market committee, the respondent No. 2 could not have held any negotiations with the traders at all. The impugned orders, therefore, cannot be sustained. It is however, made clear that steps for shifting of the places of business by the traders can be undertaken as and when a regular market committee is constituted.

25. Before parting with the case I may, however, reiterate the observations of a Bench of this Court in *Keshoram AgarwaSa v. The State of Bihar* (1991 C.W.J.C.1802) disposed of on 25-4-1992 which are to the following effect:

"However, we feel that in the interest of general public and particularly the consumers, it is desirable that the State should make necessary amendments in the Act and as also in the notifications, so that the retail dealers may be allowed to continue their place of business within the market area and not at the principal market yard. If it is so done, the same would not only facilitate the market committee to carry out their functions properly but also thereby consumers would be saved from being put in a disadvantageous position to go to the principal market yard which in some cases would require the consumers to

cover more than 20 k.m. for purchasing the essential articles for their consumption. This purpose in our opinion may also be achieved by amending the second schedule of the Rules suitably for the present."

26. It may be observed that although the petitioners being the licensees are not exempted from the purview of the said Act. However, it can be demonstrated by any of the traders that their transactions are limited to the extent as, mentioned in Rule 94 of the said Rules read with Schedule IT of the Rules, as has been interpreted hereinbefore. It would, thus, be open to any trader to file an application in that regard before the committee as and when the same comes in existence and authorities of the said committee may thereupon verify the same and pass appropriate orders in accordance with law.

27. In the result, this writ application is, therefore, allowed with the aforementioned observations, but without any order as to costs.

I.P.Singh, J.

28. I agree