

(2000) 08 PAT CK 0115
In the Patna High Court
Case No : L.P.A. No. 1023 of 2000

Vijai Sen Singh

APPELLANT

Vs

Bihar State Agricultural Marketing Board and Others

RESPONDENT

Date of Decision : 21-08-2000

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 52

Citation : (2000) 4 PLJR 586

Hon'ble Judges : Nagendra Rai, J; D.P.S. Chaudhary, J

Bench : Division Bench

Advocate : R.B. Mahto, Ajay, for the Appellant; K.P. Yadav and Suresh Kumar for Respondents 1 to 4, M/s. Y.V. Giri, K.B. Sharma and Shrawan Kumar Singh, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against the order dated 14th July, 2000 passed by the learned single Judge of this Court in C.W.J.C. 4060 of 2000, by which he has dismissed the writ application filed by the appellant for a direction to the respondents to grant him licence to hold Vijay Virat Pashu Mela for the period 2000-2001 under Rule 129 of the Bihar Agricultural Produce Markets Rules, 1975.

2. The factual matrix for the disposal of the present appeal are as follows. The State Government enacted Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as the "Act") 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 the matters connected therewith. The State Agricultural Produce Markets Rules (hereinafter referred to as the "Rules") in exercise of power conferred by section 52 of the Act. Section 3 of the Act empowers the State Government to declare its intention, by notification, of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the notification. After issuance of the aforesaid notification, market area has to be declared u/s 4 of the Act and

once the market area is declared sale, storage, processing etc. of agricultural produce within the market area or within the distance notified in the official gazette has to take place in accordance with the provisions of the Act, Rules and Bye-laws. Under the provisions of the said Act, Mohania Market Committee has been constituted and village Kalyanpur within Durgawati Police Station falls within the aforesaid market Committee.

3. The appellant owns plot nos. 323 and 324 under Khata no. 173 in the aforesaid village as a raiyati land. In 1996 the appellant has applied for a licence under Rule 129 of the Rules for setting up Hat/Bazaar/Mela (Vijay Virat Pashu Mela) on the aforesaid raiyati land for the period ending 31st March. Licence was granted to the appellant to hold Mela and accordingly the appellant held Mela during the aforesaid period.

On 21.5.1999, the Secretary of Mohania Market Committee issued notice to the appellant to show cause as to why his licence to hold Mela be not cancelled on account of violation of terms and conditions of the licence. The appellant filed his show cause on 24.5.1999 and after consideration of the same, the Secretary, Mohania Market Committee suspended his licence for one month. While the licence was under suspension the Managing Director of the Bihar State Agricultural Marketing Board, a Body constituted under the Act (hereinafter referred to as the "Board") received a report that the appellant during the period of suspension of his licence was also holding Mela over the raiyati land and he asked the District Magistrate, Kaimur to hold enquiry. The District Magistrate entrusted the enquiry to the Executive Magistrate, who conducted the enquiry and submitted adverse report against the appellant on 11.7.1999. After receipt of the aforesaid report, fresh notice was issued to the appellant by the Market Committee through the Secretary on 29.7.1999 to show cause as to why his licence be not cancelled. Reference with regard to the report submitted by the Executive Magistrate was also made in the said show cause. The appellant showed cause and thereafter the licence of the appellants was cancelled.

4. The appellant preferred an appeal before the Managing Director of Board, who dismissed the appeals a order dated 16.11.1999. The appeal is thereafter filed C.W.J.C. No. 11448 af 1999 before this Court which was missed on 6.12.1999. Thereafter the appellant challenged the judgment of the learned single Judge by filing L.P.A. No. 43 of 2000. The aforesaid L.P.A was lowed on 1.2.2000 and the order of cancellation of the licence of the appellant as well as the appellate order uphold in order of cancellation was set aside are the matter was remitted back to the Secretary of the Market Committee is consider the matter afresh in the light the observations made in the one. During hearing of the L P.A. the appellant took a plea that the of the Executive Magistrate which was the basis of cancellation of licence of appellant was not served upon him as result of which he was prejudiced further stand of the appellant was that the render of the Executive Magistrate was a regard to another Mela and not a regard to the Mela of the appellant. Taking into consideration these aspect of this court allowed the L.P.A.

and set aside the orders passed by the authorised well as remanded back the matter. It appears that thereafter the matter has been considered by the Secretary of the Committee, who by order dated held that the report of the Executive Magistrate was with regard to the Mela the appellant and reiterated the order of cancellation.

5. The appellant on an application in Form-XIX for renewed the licence but no order was the Secretary of the Committee. On 13.4.2000 the appellant filed an application before the Mohania Market Committee in that had already applied for grant of licence for the period 2000-2001 but no decision has been taken as yet. Thereafter the Secretary informed the appellant by letter dated 18.4.2000 that Dr. Shamsheer Bahadur Singh, proprietor of Madhubani Virat Pashu Mela has objected to the grant of licence and a direction has been sought for from the Board and as no direction has been received, it is not possible to grant licence to the appellant for the said period. Thereafter, the appellant filed writ application for grant of licence. In the writ application the appellant did not mention about the order dated 7th March, 2000 passed by the Secretary of the Mohania Market Committee in pursuance of the order passed by this Court in the aforesaid L.P.A. However, he has stated the facts regarding earlier cancellation of his licence by the authorities and the quashing of the same by this Court and the direction to consider the matter afresh by the Secretary.

6. Pushp Kumar Singh claiming himself to be proprietor of Madhubani Virat Pashu Mela held in village Akorhi within Durgawati Police Station filed an intervention application in the writ application and his application was allowed and he was added as respondent no. 5 in the writ application.

7. Two sets of counter affidavit were filed, one on behalf of Market Committee and its Secretary and the other on behalf of Respondent no. 5. Their stand is identical. Their stand is that the appellant has suppressed the material fact from this Court. He has not mentioned about the order passed by the Secretary on 7.3.2000, a copy of which has been annexed as Annexure-B to the counter affidavit filed on behalf of respondents no. 3 and 4 in the writ application. He should have challenged the order in appeal so long as the order remains that no licence can be granted to the appellant. Their further stand was that the appellant filed an application for renewal of licence which could not be done as the licence itself had been cancelled by order dated 7.3.2000.

8. Learned counsel appearing on behalf of appellant submitted that under Rule 129 of the Rules, which contains the provision for grant of licence for setting up of Hat/Bazaar/Mela for the financial year ending on 31st March, licence is granted for one financial year ending on 31st March and as such for each year a fresh licence has to be granted and there is no provision for renewal of the licence and in that view of the matter when the appellant applied for licence for the year 2000-2001, the Market Committee should have granted the licence. The Market Committee is the competent body to decide the question of grant of licence and as such it has to decide the matter and it need not take direction

from the Board before deciding the question of grant of licence and accordingly the Market Committee was not justified in seeking direction and guidance from the Board before finalising the question of granting licence to the appellant. He also submitted that as the licence is granted on yearly basis, cancellation of the licence by order dated 7.3.2000 for the year 1999-2000 will not be a ground to deny the grant of fresh licence for the subsequent year.

9. Learned counsel appearing on behalf of the Board as well as Private respondent contended that the appellant himself has applied for renewal of the licence and as his licence has already been cancelled, there was no question of renewal of licence. They also submitted that the appellant is guilty of suppression of fact as he has not mentioned about the cancellation of licence after remand by this Court and as such the learned single Judge rightly dismissed the writ application on the ground of suppression of fact by the appellant.

10. Before adverting to the submissions advanced at the bar, it would be expedient to refer to Rule 129 of the Rules which has a bearing on the question to be decided. The said Rule runs as follows:

129. Licence for setting up Hat/Bazaar/Mela.- (i) No person or authority shall, within the market area, or within the distance notified under sub-section (2) of section 4, set up, establish, or continue any place for the purchase, sale, storage or processing of notified agricultural produce except under and in accordance with the terms and conditions of the licence in Form XX issued in this behalf by the Market Committee.

(ii) Every person or authority desiring to hold licence shall make an application in writing to the Market Committee and shall pay the licence fee of Rs. 50 annually. Every licence issued under this rule shall be valid for the financial year ending on 31st of March.

(iii) On receipt of such application together with the amount of fee prescribed may grant him the licence applied for if-

(a) it is satisfied that the applicant is solvent;

(b) Cash Security or Bank's guarantee if so required is given;

(c) it is satisfied that the applicant is a desirable person to whom a licence may be granted; and

(d) it is satisfied that there is need to establish or set up a Hat/Bazaar/Mela for agricultural produce and the person or the authority had in the past ever set up or established such Hat or Bazar or Mela, for sale, purchase storage, processing of agricultural produce.

(iv) The Secretary may suspend the licence for a period of one month and with the approval of the Chairman for three months for breach of any of the terms and conditions of the licence. If such breach is repeated twice, the licence may be cancelled by the Market Committee provided before passing such order, a

reasonable opportunity, of being heard shall be given to the licensee.

(v) Any person or the authority aggrieved or dissatisfied by the order of the Secretary or the Chairman, may appeal to the Chairman of the Board within seven days of the order and the order passed by him shall be final.

11. From the perusal of the said Rule, it appears that the licence granted for setting up of Hat/Bazaar/Mela shall be valid for the financial year ending on 31st of March. On receipt of the application to grant of licence the Market Committee to grant licence on fulfilment of the conditions mentioned in clause (a), (b), (c) and (d) of Sub-rule (iii) of Rule 129. In case of suspension/cancellation of licence there is provision for appeal before the Chairman of the Board.

12. A raiyat can hold a Cattle Fair of his field subject to his obtaining licence under the aforesaid Rule. As the licence is only for one financial year, even if two appellant in his application filed for grant of licence on 11.3.2000 has mention of renewal of the licence, the same will not make any difference. When there is no provision for renewal of the licence, use of the words "renewal of licence" in the application form will not be a ground to hold that the appellant has applied for renewal of the licence. It is the substance and not the form that matters. Thus, there is no force in the submission advanced on behalf of the respondents that the application filed by the appellant was for renewal of the licence.

13. The law is well settled that if an authority is vested with the power to decide the matter, then that matter has to be decided by that authority alone and not by any other authority. Reference in this connection may be made to the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, .

14. Admittedly, power to grant licence under Rule 129 of the Rules is vested in the Market Committee and once the appellant applied for grant of licence, the Market Committee itself should have decided the matter and should not have sought for a direction from the Board before taking final decision in the matter. As such, the Market Committee was not justified in seeking direction from the Board while deciding the question of grant of licence under Rule 129 of the Rules.

15. The appellant is not guilty of suppression of any fact in the writ application. He has mentioned about the earlier cancellation order passed by the licensing authority and the appellate order affirming the same as well as the order passed by this court though he has not mentioned about the order dated 7th March, 2000 passed by the Secretary of the Mohania Market Committee after remand by this court but in my view that was not necessary to be stated to decide the controversy raised in the writ application, i.e. to issue a direction to the Secretary of the Market Committee to consider the question of grant of licence for the financial year 2000-2001. At this stage, I would like to clarify that the fact that the licence was cancelled for the earlier year may be a relevant ground to be taken into consideration by the licensing authority at the time of coming to the conclusion as to whether the appellant is a desirable person, to whom licence can be granted under Rule 129 (iii) (c) of the Rules, but non-mention of the said fact

in the writ application cannot be said to be suppression on the part of the appellant. Thus, in my considered view, the Market Committee was not justified in postponing the consideration of grant of licence under relevant Rule and seeking direction from the Board in the matter.

16. Accordingly, the respondents no. 3 and 4 are directed to consider the question with regard to grant of licence in terms of Rule 129 of the Rules within a period of three weeks from the date of receipt and/or production of a copy of this order. It is clarified that whether licence has to be granted or not is to be decided by them in the light of the provisions contained in Rule 129 of the Rules. This Court is not expressing any opinion with regard to the merit of the claim of the appellant. So far as the order dated 7.3.2000 passed by the Secretary, Mohania Market Committee reiterating the earlier order of cancellation of licence for the period 1999-2000 is concerned, this court is not expressing any opinion and it will be open for the appellant to challenge the same in accordance with law.

17. In the result, this appeal is allowed and the order passed by the learned single Judge is set aside and the respondents no. 3 and 4 are directed to consider the matter within the period stipulated above. There shall be no order as to costs.