

(2003) 09 PAT CK 0013
In the Patna High Court
Case No : C.W.J.C. No. 3038 of 2003

Vijay Sen Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-2003

Acts Referred:

Bihar Agricultural Produce Markets Rules, 1975 — Rule 129, 129(3)

Citation : (2003) 4 PLJR 590

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Ram Balak Mahto and Ajay, for the Appellant; Y.V. Giri, S.C. Giri for Respondent No. 6, K.P. Yadav and Suresh Kumar for Board, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—The controversy in this case relates to grant of licence for holding cattle fair on a piece of private land under Rule 129 of the Bihar Agricultural Produce Markets Rules, 1975. And counting the Letters Patent Appeals separately, this is the eighth round of litigation before this Court within a period of less than four years.

2. This writ petition is filed against the order dated 24.1.2003 (Annexure-1) passed by the Managing Director, Bihar State Agricultural Marketing Board, Patna (hereinafter referred to as "the Board") in Appeal Petition No. 3/2002 Under Rule 129(V) by which he rejected the Petitioner's appeal and affirmed the order, dated 5.6.2002 (Annexure-1/1) passed by the Market Secretary, Agriculture Produce Market Committee, Mohania (hereinafter referred to as "the Market Committee"), rejected the Petitioner's application for grant of licence for the year 2002-2003 for holding cattle fair on his raiyati land in terms of Rule 129 of the Market Rules.

3. From the opening line of this order itself it would be evident that this case has held a convoluted course. It would be, therefore, appropriate to give here a brief

resume of the material facts. The Petitioner holds raiyati land bearing Survey Plot Nos. 323 and 324 under Khata No. 173 (Area not stated in the petition) situate at Village Kalyanpur, P.S. Durgawati in the district of Kaimur. He took a licence from the Market Committee for holding cattle fair on his land called "the Vijay Virat Pashu Mela". The licence allowed him to hold Mela on three days in a week i.e. every Friday, Saturday and Sunday. The licence was first issued on 30.9.1996 for the period 1.10.1996 to 31.3.1997 and the Petitioner got licenses issued in his favour for the year 1997-98, 1998-99 and 1999-2000. On the basis of the licence issued by the Market Committee the Vijay Virat Pashu Mela was set up for the first time in October, 1996 in proximity of (at a distance of about 3 K.M. by the shortest route, as appearing from the records) another Mela called "Madhuban Virat Pashu Mela" that was being held since 1951 on the raiyati land of Respondent No. 6. There was yet another Mela in the area from before called "Khajura Mela". That was a government Mela being held on Government Khas Land. It seems that the new Mela set up by the Petitioner hurt the interests of both the Madhuban Virat Pashu Mela of Respondent No. 6 and Khajura Mela of the Government. There was no one to object on behalf of the government, partly because the Petitioner himself was the settlee (or at least one of the settlees as stated by the counsel appearing on his behalf) of the government Mela. But Respondent No. 6 started making noises. He made complaint before the Market Committee and when no action was taken by the Committee, he moved the District Magistrate, Kaimur (Bhabua). The District Magistrate asked the Additional Collector to enquire into the matter. He submitted his report on 6.5.1999 in which it was stated that in course of inspection he found that in holding the Mela the Petitioner was violating a number of terms and conditions of the licence. The findings in the enquiry report by the Additional Collector were as follows:

(i) The Petitioner was holding the Mela on all days of the week in breach of the condition of the licence that permitted holding of Mela on Friday, Saturday and Sunday.

(ii) Mela was being held on government land though the licence was for the raiyati land of the Petitioner and even the road-flanks were occupied.

(iii) The proprietors of Vijay Virat Pashu Mela were also the settlees/licence-holders of Khajura Mela of the government. They had defaulted on payment of government dues and a certificate case was going on for recovery of Rs. 1,30,000/- from them. It is undeniable that the present Petitioner was also a certificate debtor in the proceeding.

(iv) Due to their acts of omission and commission Khajura Mela, being held from before on government Khas land was on the verge of closure.

4. The District Magistrate forwarded the report of the Additional Collector to the Board. No action, however, was taken against the Petitioner on the basis of the Additional Collector's report and the Managing Director of the Board asked the Director, Marketing to further enquire into the matter. The Director, Marketing

inspected the site on 17.5.1999 and submitted his report in which he confirmed all the findings of the Additional Collector, as noted above. On the basis of the report of the Director the Petitioner's licence was suspended by the Market Secretary for one month from 24.6.1999. The Petitioner made a representation against the order of suspension which was dismissed by the Market Secretary and his appeal against that order was also dismissed by the Managing Director of the Board on 13.7.1999.

5. At this stage, a complaint was received in the Board from Respondent No. 6 stating that the Petitioner was holding his Mela notwithstanding the order of suspension. The Managing Director of the Board requested the District Magistrate to have an enquiry made into the allegation and the District Magistrate deputed an Executive Magistrate on the job. The Executive Magistrate confirmed that the Mela was being held even during the period of suspension of the licence. Then, the Market ; Secretary cancelled the licence by order, dated 7.8.1999 which was confirmed in appeal by order, dated 16.11.1999 passed by the Managing Director of the Board. The Petitioner challenged the orders of cancellation of his licence in C.W.J.C. No. 11448 of 1999 which was dismissed by a learned Single Judge by order dated 6.12.1999 (Annexure-5). The Petitioner preferred an appeal against this order being L.P.A. No. 43 of 2000. Before the Division Bench it was submitted on behalf of the Petitioner that the report was in regard to some other Mela and not the Mela held by the Petitioner. The Division Bench found that a copy of the report of the Executive Magistrate that had formed the basis of the cancellation order was not given to the Petitioner. The orders cancelling the licence were, therefore, quashed and the Secretary, Market Committee was directed to reconsider the matter after giving reasonable opportunity to the Petitioner (Annexure-6).

6. In pursuance of the court's direction the Market Secretary duly heard the Petitioner and passed order, dated 7.3.2000, cancelling the licence issued in favour of the Petitioner, once again on the ground of violation of the terms and conditions of the licence.

7. This order was passed on 7.3.2000, that is to say, at the fag end of the financial year. Therefore, it seems the Petitioner let the proceedings in regard to the licence for the year 1999-2000 rest at that stage; he did not challenge that order either by filing an appeal or before this Court. Instead, he filed an application on 11.3.2000 for grant of licence for the year 2000-01.

8. I think that by his omission to challenge the order, dated 7.3.2000 he allowed not only, the operative order but the findings on which the order was based to become final. This aspect of the matter was also noted by Katriar, J. who dealt with one of the writ petitions being C.W.J.C. No. 10390 of 2001 filed by the Petitioner. In the long judgment by which the writ petition was dismissed the learned Judge made the following observations on this aspect of the matter.

It is relevant to state that the matter relating to cancellation of the licence for

the period 1.4.1999 to 31.3.2000 rested with order and attained finality. In other words, the adverse findings have remained intact and have become final.

9. On the Petitioner's application, dated 11.3.2000 for the grant of licence for the year 2000-01 the Market Committee did not take any action and presumably on account of the recent controversy referred the matter to the Board for instructions. As no order was passed on his application for licence the Petitioner once again came to this Court in C.W.J.C. No. 4060 of 2000. A learned Single Judge of this Court who heard the matter took the view that the Petitioner should have sought his relief by challenging the order, dated 7.3.2001 by which his licence for the previous year was cancelled and not by filing an application for grant of licence for the following year. The learned Single Judge also found that the writ petition was based on suppression of material facts and that the Petitioner was not a desirable person for the grant of licence in terms of Rule 129(3)(c) of the Rules. The learned Single Judge, accordingly, dismissed the writ petition by order, dated 14.7.2002 (Annexure-8). The Petitioner preferred appeal against the judgment being L.R.A. No. 1023 of 2000 which was allowed by judgment and order dated 21.8.2000 (Annexure-9). The Division Bench took the view that the Petitioner-Appellant could not be accused of any suppression of material facts and that under the rules the authority for granting licence was vested in the Market Committee and, therefore, on the application made by the Petitioner the Market Committee was legally obliged to take a decision independently and without being influenced by any instructions or directions by the Board. The appeal was, therefore, allowed with a direction to the Market Committee to take a decision on the Petitioner's application for grant of licence for the year 2000-01. The Division Bench further left it expressly open for the Petitioner to challenge the order, dated 7.3.2000 passed by the Market Committee, in accordance with law. The Petitioner, however, does not seem to have availed of the opportunity granted by this judgment.

10. The Market Committee rejected the Petitioner's application for grant of licence for the year 2000-01 by order, dated 21.9.2000. The Petitioner preferred an appeal against this order before the Managing Director of the Board. The appeal was disposed of by order, dated 18.7.2001. In that order the Managing Director pointed out that the year 2000-01 was already over on 31.3.2001 and, therefore, no licence could be granted for that year. But he directed the Market Committee to consider the Petitioner's request for grant of licence for the year 2001-02, if an application was made by him. On the following day (19.7.2001) the Petitioner made an application for grant of licence for the year 2001-02 and the Market Committee granted him the licence on 31.7.2001.

11. At this stage the matter was once again brought to this Court, this time at the instance of Respondent No. 6 who filed C.W.J.C. No. 10390 of 2001, challenging the order, dated 18.7.2001 passed by the Managing Director of the Board and the licence granted to the Petitioner by the Market Committee on 31.7.2001. The writ petition was allowed by a learned Single Judge of this Court

by judgment and order, "dated 7.12.2001 (Annexure-16). By this, judgment the order of the Managing Director of the Board dated 18.7.2001 was set aside and the matter was remitted for a fresh consideration after taking into account certain points enumerated in the order. One of the issues which the court directed the Licensing authority to take into consideration was whether or not the Petitioner (Respondent No. 15 in that writ petition) was a desirable person within the meaning of Rule 129 of the Rules. Later on, a petition being M.J.C. No. 3163 of 2001 was filed by Respondent No. 6 (Petitioner in that writ petition) in C.W.J.C. No. 10390 of 2001 which had already been disposed of by order, dated 7.12.2001. In the M.J.C. it was stated that though both the order of the Managing Director and the licence issued by the Market Committee in favour of Vijay Sen Singh were under challenge, the judgment in the writ petition had only set aside the order of the Managing Director; that taking advantage of the fact that the licence issued by the Market Committee was not expressly set aside the, Petitioner (Respondent No. 15 in that case) was continuing to hold the Mela even though the question of grant of licence was under consideration before the Licensing authority on being remanded by this Court. On that petition the learned Single Judge set aside the licence issued by the Market Committee in favour of the present Petitioner on 31.7.2001 (Annexure-17).

12. The Petitioner filed L.P.A. No. 47 of 2002 against the judgment and order passed by the learned Single Judge in the writ petition and the order dated 4.1.2002 passed in M.J.C. No. 3163 of 2001. The Division Bench disposed of the appeal by judgment and order dated 2.4.2002 (Annexure-18). The Division Bench noted that though the period for which the licence was applied for was over on 31.3.2002, having regard to the nature of the dispute it was necessary to dispose of the appeal on merits. The Division Bench further noted that the learned Single Judge had pointedly asked the licensing authority to consider whether or not the Petitioner was a desirable person for the grant of licence under Rule 129. It was then pointed out that being a desirable person was only one of the four considerations under the rule and, therefore, the Market Committee must consider his request for grant of licence on the basis of all the relevant considerations as provided under Rule 129. In paragraph 13 of the Division Bench judgment it was observed and directed as follows:

13. Be that as it may, the period 2001-2002 has already expired and strictly speaking the controversy so far as it relates to the order of the Managing Director dated 18.7.2001 and the Licence dated 31.7.2001 has become infructuous with the expiry of the period on 31.3.2002. Undisputedly, the Appellant is required to make an application for grant of fresh licence for the year 2002-2003. All that is required to be done in this case is to reiterate that while considering the claim of the Appellant for fresh grant the Market Committee will give due consideration to the different factors specified in Clause (iii) of Rule 129 and pass a speaking order and subject to the conclusion being favourable to the Appellant, grant him the licence in accordance with law.

13. And further in paragraph 14 of the Division Bench judgment it was observed and directed as follows:

14. xx xx xx The ends of justice would be served by directing the Secretary of the Market Committee, Mohania to consider the matter afresh on a clean slate without being prejudiced by the observations, findings etc. recorded in the earlier proceeding though he would be entitled to take into account the past conduct of the Appellant, in accordance with law.

14. In pursuance of the Division Bench judgment the Petitioner made an application for licence for the year 2002-03 which was rejected by the Market Secretary by order, dated 5.6.2002. The Petitioner preferred an appeal against this order being Appeal Petition No. 3/2002 Under Rule 129(V) before the Managing Director of the Board.

The Managing Director by order, dated 24.1.2003 rejected the appeal and affirmed the order passed by the Market Secretary. It is this order (Annexure-1) that comes under challenge in this case.

15. The Managing Director noted that under Rule 129(iii) a licence could be granted, provided the Market Committee was satisfied on the following four issues:

(a) that the Applicant was solvent;

(b) that Cash security or Bank Guarantee, if so required was given;

(c) that the Applicant was a desirable person to whom a licence could be granted and

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

16. That on a consideration of all the material facts and circumstances of the case the Managing Director recorded the following findings on the issues regarding the Petitioner being a desirable and the need for the Mela:

(3) It is to be examined that the Applicant is a desirable person to whom a licence may be granted-the Appellant has no regard for Rules and orders of the authority as brought out above. The Appellant has violated conditions of licence and held fair every day though licence was given only for 3 days in a week. He was holding fair on Govt, land but the licence was for holding fair on raiyati land only. The Appellant was organizing cattle fair when he was directed not to hold fair by suspending his licence by competent authority. Besides, the Appellant is defaulter in paying govt, dues. Hence, it is obvious that the Appellant is not desirable person to be given licence to organize a cattle fair.

(4) It is to be examined that there is need to establish or set up a Hat/Bazar/

Mela for agricultural produce-holding cattle fair by Appellant has resulted in damage to old fair of Madhuban Birat Pashu Mela. More importantly, holding this fair has brought the Khajura Pashu Mela on the brink of its closure. Khajura Pashu Mela was being held on Govt, land and Appellant was holding licence before they switched over to holding Pashu Mela on their own land. Hence role of Appellant in damaging the Khajura Pashu Mela to serve the interest of Vijoy Birat Pashu Mela which was sought to be held on raiyati land cannot be denied. Hence there is no need to run a Pashu Mela on the raiyati land of the Appellant.

Hence, out of four, two conditions essential to grant licence are not satisfied. It is clear that even if one condition is not satisfied licence must not be given by the Market Committee.

17. The findings of the Managing Director on the issues of the Applicant being a desirable person and on the need to establish an additional private mela in that area are purely findings of fact based on incontrovertible materials and hence, these findings can hardly be interfered with in a writ proceeding.

18. Mr. Ram Balak Mahto, Sr. Advocate appearing for the Petitioner submitted that everything had started on the basis of an enquiry report submitted by the Additional Collector on the direction of the District Magistrate, Kaimur (Bhabua). Mr. Mahto further submitted that the District Magistrate was not an officer either of the Board or of the Market Committee and he had no authority under the Act or the Rules. Therefore, any action taken on the basis of an enquiry at his instance would have no sanction in law and would amount to an interference in the affairs of the Market Committee by an external agency.

19. I am unable to accept the submission. While recording the undisputed material facts of the case earlier in this judgment it was noted that the District Magistrate had forwarded the enquiry report to the Board but the Board did not act simply on the basis of that report. The Managing Director asked the Director, Marketing to make an enquiry and the Director confirmed the findings of the Additional Collector. It was on the basis of the report of the Director that the Petitioner's licence was put under suspension for one month. As regards the second enquiry in regard to the mela being held even while the licence was under suspension, the Managing Director of the Board had requested the District Magistrate to get an enquiry made in that regard. It, therefore, cannot be argued by any means that the proceedings for suspension/cancellation of the Petitioner's licence was initiated at the behest of an outside agency.

20. Mr. Mahto next submitted that on the basis of the order, dated 18.7.2001 passed by the Managing Director of the Board the Petitioner was granted licence for the year 2001-2002. He further submitted that there was no material change in the relevant facts and circumstances for the successor Managing Director to take a contrary view and to reject his application for licence by the impugned order. The submission appeared attractive at the first glance but on a closer scrutiny it turned out to be without any substance, it is noted above, that the

order of the Managing Director dated 18.7.2001 and the licence granted to the Petitioner on the basis of that order on 31.7.2001 came up for consideration before this Court in C.W.J.C. No. 4060 of 2000 and in the appeal being L.P.A. No. 1023 of 2000 arising from the judgment in that case. In fact the Division Bench judgment in L.P.A. No. 1023 of 2000 is the last in the series of the orders passed by this Court on this controversy. Now, this is what was stated in the Division Bench judgment in regard to the grant of licence to the Petitioner for the year 2000-01:

The problem arises because though pursuant to the direction of the Managing Director contained in his order dated 18.7.2001 the Market Committee granted licence to the Appellant on 31.7.2001 it is not known if such grant was based on the satisfaction that the Appellant is a "desirable person". It is, in fact, not known if any decision was taken in the file. What has been brought on record is licence in the prescribed form, namely, Form XX. If the Market Committee granted licence without any application of mind even though the Managing Director had passed a speaking order, indicating the factors which were to be taken into account in considering the grant of licence to the Appellant including the question as to whether he is "desirable person or not", it was expected of the Secretary, Market Committee to properly apply his mind and take a conscious decision and thereafter issue the licence.

21. It is, therefore, apparent that the decision to grant licence to the Petitioner for the year 2000-01 was not based on a proper consideration of all the relevant issues as required under Rule 129 and the Petitioner, therefore, cannot take any advantage from the fact that he was granted licence for the year 2000-01.

22. Mr. Mahto lastly submitted that the finding of the Managing Director on the need for an additional private mela was quite erroneous and in this regard he invited my attention to certain reports in which the revenue authorities had recommended for closing down Khajura Mela that used to be held on government Khas land. Mr. Mahto further submitted that for the past 2-3 years this Mela was not held and no settlement of this mela was made in favour of anyone. According to him, therefore, there was clearly the need for; an additional mela. I am not impressed by this submission either. The circumstanced in which the government mela has been reduced to its present position and the direct responsibility of the Petitioner in this regard is already noted above. In the given facts and circumstances, interfering with the Managing Director's finding would amount to rewarding the Petitioner for effectively closing down the Government Mela by his own acts of omission and commission.

23. On hearing Mr. Mahto, Mr. K.P. Yadav appearing for the Board and Mr. Y.V. Giri appearing on behalf of Respondent No. 6, I find that this controversy is concluded by findings of fact that do not call for any interference in a writ proceeding.

24. I find no merit in this writ petition. It is accordingly dismissed.