
(2004) 08 PAT CK 0073
In the Patna High Court
Case No : LPA No. 1009 of 2003

Vijay Sen Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Citation : (2005) 1 PLJR 161

Hon'ble Judges : Nagendra Rai, Acting C.J.; S.N. Hussain, J

Bench : Division Bench

Advocate : Ram Balak Mahto, Ajay, for the Appellant; K.P. Yadav, Y. V. Giri, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal is directed against the order dated 10.9.2003, passed by the learned Single Judge in C.W.J.C. No 3038 of 2003, [Reported in Vijay Sen Singh Vs. State of Bihar and Others, dismissing the writ application, by which the appellant has challenged the order dated 24.1.2003 (Annexure 1), passed by the Managing Director, Bihar State Agricultural Marketing Board (hereinafter referred to as "the Board") in appeal, wherein the appellant had challenged the order dated 5.6.2002 (Annexure 1/1), passed by the Market Secretary, Agricultural Produce Market Committee (hereinafter referred to as "the Committee") rejecting his application for the grant of licence for holding cattle-fair on his raiyati land for the year 2002-03 in terms of Rule 129 of the Market Rules. This case has a chequered career. The holding of the Mela on his raiyati land by the appellant, appertaining to Survey plot Nos. 323 and 324 under Khata No. 173, situate in village Kalyanpur, P. S. Durgawati in the district of Kaimur, has given rise to the numerous litigations to this Court, details of which are not to be given for the reason that we are going to uphold the order passed by the learned Single Judge.

2. Shorn of all the details, relevant facts are that respondent No. 6 Pushpa Kumar was holding Madhuban Virat Pashu Mela at a distance of about 3 K.Ms,

from the aforesaid two plots since 1951 on his own raiyati land. Another Mela, Known as Khajura Mela was also running at some distance, which was a Government Mela. The appellant applied for licence in terms of Rule 129 of the Market Rules for holding a Mela by the name of Vijay Virat Pashu Mela for year 1996 and he was granted licence from 1.10. 1996 to 31.3.1997. Again he was granted licence for three subsequent years i.e. 1997-98,1998-99 and 1999-2000.

3. It is to be stated here that the said licence was granted to the appellant to hold the Mela only on three days i.e. Friday, Saturday and Sunday, whereas, Madhuban Virat Pashu Mela was being held on other three days i.e. Monday, Tuesday and Wednesday.

4. Respondent No. 6, who was being adversely affected because of holding of Mela by the appellant at the nearby place made a complaint to the Market Committee regarding holding of Mela by the appellant on other days also apart from the days allotted to him. When no action was taken then he moved before the Additional Collector to hold enquiry and, accordingly, he held enquiry and found that the appellant was holding Mela in breach of the terms of the licence permitting him to hold Mela on three days i.e. Friday, Saturday and Sunday; he was holding Mela on the Government land apart from his own Raiyati land; he has also made earlier a default in payment of Government dues in respect of Khajura Mela of the Government and due to his acts of omission and commission Khajura Mela, being held from before on Government Khas land, was on the verge of closure. The said report was forwarded by the District Magistrate to the Board. The Board also decided to make an enquiry at its own level and directed the Director, Marketing, to enquire into the matter and submit a report. The Director also submitted a report agreeing with the findings of the Additional Collector. Thereafter, a show-cause was issued to the appellant and the licence of the appellant for holding Mela was suspended and that order, though challenged by the appellant, remained affirmed up to the Board.

5. Respondent No. 6 again complained that inspite of suspension of licence, the appellant was holding his Mela, Then again an enquiry was made on the order of the Managing Director of the Board and on being found that the Mela was being run by the appellant in spite of suspension of his licence, the licence of the appellant was cancelled on 7.8.1999, which was upheld by the Managing Director of the Board. The appellant challenged the said matter before this court and the writ was dismissed, but in appeal, the matter was remanded for consideration on the basis of the submission made on behalf of the appellant that the report was with regard to other Mela and a copy of the said report was not even supplied to him before passing the order of cancellation of his licence. Thereafter, the Market Secretary of the Committee again considered the matter and cancelled the licence. Thereafter, the appellant did not challenge the order dated 7.3.2000 and filed a fresh application for grant of licence for the year 2000-01. The Market Committee did not take any decision and referred the matter to the Board and as no order was being passed, the matter again came to this Court and the learned

Single Judge dismissed the writ application on the ground that the appellant has not challenged the order dated 7.3.20C0.

6. The matter was taken in appeal being L.P.A. No. 1023 of 2000, which was finally disposed of on 21.8.2000 (Annexure 9) by a Bench to which one of us (Nagendra Rai, J.) was a party and which is reported in *Vijai Sen Singh Vs. Bihar State Agricultural Marketing Board and Others*, , in which this Court found that there was no suppression of material fact and the Market Committee itself should have decided the matter and wrongly sought for a direction from the Board before taking a final decision in the matter and, accordingly, set aside the order of the learned Single Judge and directed to consider the question with regard to grant of licence in terms of Rule 129 of the Rules. This court further observed that the fact that the licence was cancelled for the earlier year might 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 was a desirable person, to whom licence could be granted under Rule 129(iii)(c) of the Rules, but non-mention of the said fact in the writ application could not be said to be suppression on the part of the appellant.

7. The Secretary, Market Committee, again rejected the application of the appellant by order dated 21.9.2000 for holding Mela for the period 2000-01. The appellant preferred an appeal before the Managing Director of the Board, who disposed of the appeal on 18.7.2001 observing that the period for 2000-01 was over but directed the Market Committee to consider the application of the appellant for 2001-2002. Thereafter, the Market Committee granted him licence for 2001-2002 on 31.7.2001. Again the matter was challenged by respondent No. 6 before this Court and the writ application was allowed and the order of the Managing Director dated 18.7.2001 was set aside and the matter was remanded for fresh consideration in terms of the order. Again an M.J.C. application was filed by respondent No. 6 with a prayer to set aside the order granting licence to the appellant as that prayer was made, but no direction was issued in the writ application and, accordingly, the learned Single Judge set aside the order granting licence to the appellant dated 31.7.2001, passed by the Secretary, Market Committee. This order was again challenged in L.P.A. No. 47 of 2002, which was disposed of on 2.4.2002, which is reported in *Vijay Sen Singh Vs. The State of Bihar and Others* and this Court having noticed that the period of 2001-2002 has expired and practically the writ application had become infructuous after expiry of the said period. and the appellant was required to make an application for grant of fresh licence for the year 2002-2003, observed that all that was required to be done in that case was to reiterate that while considering the claim of the appellant for fresh grant of licence, the Market Committee will give due consideration to the different factors specified in clause (iii) of Rule 129 and pass a speaking order. This Court directed the Secretary, Market Committee 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. Thereafter, the Market Secretary again rejected the application of the appellant for grant of licence for the period 2002-2003 and appeal against the said order was also dismissed by the Managing Director of the Board by order dated 24.1.2003 by giving a clear-cut finding that the appellant is not a desirable person in terms of Rule 129 of the Rules and that there is no need to establish or set up a Hat/Bazar/Mela on the raiyati land of the appellant in view of the said two Melas being held there and holding Mela by the appellant will damage the Madhuban Virat Pashu Mela and Khajura Pashu Mela.

8. The appellant challenged the aforesaid order before the learned Single Judge, who, by an elaborate order, has dismissed the writ application on the ground that the findings arrived at by the Managing Director of the Board are based on findings of fact and nothing has been pointed out to show that the findings have been vitiated on account of error of law.

9. Learned counsel appearing for the appellant submitted that some grounds given by the Managing Director are irrelevant and secondly that the appellant has already suffered on account of his past conduct and the same should not be taken into consideration for all the time in the matter of grant of licence to him.

10. The findings arrived at by the Managing Director of the Board, which are not controverted, are that while the appellant's licence was under suspension, he continued to hold Mela. It has also been found that he has violated the terms of the licence by holding Mela not only on his raiyati land but also on the Government land and also beyond the days specified in the licence. It has also been found that two Melas are already in the vicinity and there is no need to have another Mela and holding of another Mela will prejudice and cause financial loss to the said Melas. The relevant Rule to grant licence for setting up Hat/Bazar or Mela is Rule 129 of the Rules and Clause (iii) of Rule 129 provides that the licence will be granted if the applicant is solvent, cash security or Bank-guarantee, if so required, is given the applicant is a desirable person to whom the licence is to be granted and the licensing authority is satisfied that there is need to set up Hat/ Bazar or Mela for agricultural produce and the person or the authority had in the past ever set up or established such Hat/Bazar or Mela, for sale, purchase, storage, processing of agricultural produce. Two of the grounds, as contained in sub-clauses (c) & (d) of clause (iii) of Rule 129 of the Rules; whether the appellant is a desirable person or there is a need to set up Hat/ Bazar or Mela, have not been satisfied by the appellant. The Managing Director in an elaborate order has found non-fulfilment of the aforesaid two conditions and the relevant part of his order has been quoted by the learned Single Judge in his orders.

11. The writ Court cannot function as a Court of Appeal in disguise. It will interfere with the order only when the authority in the decision making process has committed procedural error and the order is illegal, arbitrary and malafide. Nothing has been pointed out on behalf of the appellant that the order of the Managing Director of the Board is vulnerable on these grounds. The fact that in

the past his licence was not renewed for the aforesaid reasons does not mean that in future those grounds cannot be taken into consideration. The question whether the person is a desirable person or not is to be judged on the basis of his past conduct and the past conduct of the appellant shows that he is not a desirable person, which will be always taken into consideration at the time of grant of licence in consonance with the Rules. The fact that other two Melas are also there and their functioning's should not be damaged is also a relevant consideration, which has been taken into account by the authorities while refusing the prayer of the appellant for grant of licence. We fully agree with the view taken by the learned Single Judge. Accordingly, we find no merit in this appeal and it is, thus, dismissed.