

(2002) 04 PAT CK 0017

In the Patna High Court

Case No : Letters Patent Appeal No. 47 of 2002

Vijay Sen Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Citation : (2002) 04 PAT CK 0017

Judgement

S.N. Jha, J.—The dispute in this letters patent appeal from the judgment and order of a learned Single Judge [reported in Sri Madhuban Virat Pashu Mela Akorhi Vs. State of Bihar and Others of this Court on a writ petition relates to grant of licence for cattls fair/mela at village Kalyanpur in the district of Kaimur (Bhabua). The parties to the dispute are the Appellant, who is proprietor of Vijay Virat Pashu Mela and Respondent No. 15 Pushp Kumar Singh @ Pushp Kumar, proprietor of Madhuban Virat Pashu Mela Akorhi (Durgawati) (hereinafter referred to as "the Respondent"). Both of them were granted licences for holding cattle fair. While the Appellant's licence was for holding the fair on Fridays, Saturdays and Sundays of the week, the Respondent's licence was for Mondays, Tuesdays and Wednesdays, besides special occasions. The dispute arose when complaint was made to the effect that the Appellant was holding the fair on all the seven days of the week and within 3 kms. of the place where the Respondent was holding the fair. This led initially to suspension and then cancellation of the Appellant's licence giving rise to dispute which, I am afraid, is not going to die with this order. The licences of the kind are granted for one year—from April to March and, therefore, in a sense on the expiry of the particular year any dispute arising out of the grant or cancellation of licence should come to an end, whereafter the parties interested have to apply for fresh licence and the matter thus has to be considered de novo. In the instant case, had it been so simple, this appeal could, have been easily disposed of as having become infructuous. The case was finally heard on 22.3.2002 followed by holidays upto 31.3.2002, that is the last day of the licence year. However, disposal of the case" as being infructuous may not be fair to the parties in view of different orders passed in

the past including the two orders which are subject matter of this appeal. It therefore seems desirable to pass a speaking order As rightly observed by the learned Single Judge, dispute involving fixed tenure, such as, grant of yearly licence should in public interest be decided by the court even if on relief can be granted to the parties, if the dispute is likely to recur in future.

2. The factual background of the case may be noticed first. But before that it would be appropriate to refer to some of the provisions of the Bihar Agricultural Produce Market Act, 1960 (in short the "Act") and the Agricultural Produce Market Rules, 1975 (in short "the Rules") under which the licence in question has been granted. The Act has been enacted to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce and for matters connected therewith. Section 3 of the Act provides that the State Government may by notification declare its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such areas as may be notified in the notification. u/s (sic) of the Act, upon the expiration of the (sic) specified in such notification and after considering objections and suggestions as (sic) be received by it the State Government may declare the area specified in the (sic) notification or any portion thereof to be a market area for the purpose of the Act in respect of all or any kind of agricultural produce specified in the notification. On or after the date of publication of the said notification or from any date as may be specified therein, no municipality or other legal authority or other person, notwithstanding anything contained in law for the time being in force, shall within the market Area or within a distance thereof to be notified in the official gazette, set up, establish or continue, or allowed 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 the Act, the Rules and the Bye-laws framed thereunder. Rule 129 of the Rules lays down that no person or authority shall Within the market area or within the distance notified u/s 4(2) set up, establish or continue any place for the purchase, sale, storage etc. of the notified agricultural produce; except in accordance with the terms and conditions of the licence in form XX issued in that behalf by the Market Committee. I shall come back to Rule 129 again and notice its relevant provisions later in this judgment. At this (sic) while referring to the statutory provides, it may be mentioned that Section 5 of the Act provides for establishment of market yard in the market area constituted u/s 4 of the Act, while Section 6 provides for establishment of Market Complete for every market area.

3. The events giving rise to the present be may now be briefly noticed. In 1996 Appellant applied for licence for holding the fair by name Vijay Virat Pashu Mela his raiyati lands bearing plot Nos. 323 and 324 of Khata No. 173 at village Kalyanpur, Police Station Durgawati, District Kaimur, falling under the jurisdiction of market Committee, Mohania, and was granted a licence in Form XX in terms of Rule 129 of the Rules on 30.9.96 for the period 1.10.96 to 31.3.97. There being no provision for renewal of licence on expiry of the period he applied for fresh

licence for the year 1997-98 which was duly granted. For the year 1998-99 also he was similarly granted the licence. The Appellant applied for fresh licence for the year 1999-2000 on 31.3.99. Though formal licence was not issued in the prescribed form he was allowed to hold the fair in the market committee as before. The case of the Appellant is that as his fair had been doing well and become popular in the area it became eyesore to its rivals. The Respondent made a complaint to the District Magistrate making certain allegations against the Appellant. On complaint being forwarded to the Director (Vigilance) of the Marketing Board, the Secretary, Market Committee, Mohania was asked by letter No. 264 dated 18.5.99 to take steps to cancel the licence. On 21.5.99 a show cause notice was issued pursuant to which the Appellant submitted show cause. On 24.6.99 the licence was suspended for one month and finally cancelled on 7.8.99.

4. The Appellant challenged the said order of cancellation before the Managing Director of the Marketing Board in appeal which was dismissed on 16.11.99 and the order of cancellation was thus upheld. The Appellant thereafter filed a writ petition, CWJC No. 11448/99 before this Court which was dismissed by a learned Single Judge. In letters patent appeal (LPA No. 43/2000), however, on 1.2.2000 the said orders dated 7.8.99 and 16.11.99 were set aside and the matter was remitted to the Market Committee for passing a fresh order. In passing the said order the Division Bench took into account the submission of the Appellant that the licence had been cancelled on the basis of a report of the Executive Magistrate even though the report related to another fair. The Appellant filed representation before the Market Committee which was rejected on 7.3.2000. The Secretary, Market Committee noted that the aforesaid report of the Executive Magistrate related to the Appellant's fair. However, as the year 1999-2000 was about to expire, on 11.3.2000 the Appellant applied for fresh licence for the next year i.e. 2000-2001 but no order was passed in the matter. The Appellant was informed by the Market Secretary that he had sought guidance from the Marketing Board. The Appellant approached this Court in CWJC No. 4060/2000 which was dismissed on 14.7.2000. The Appellant, however, again succeeded before the Division Bench in LPA No. 1023/2000. While setting aside the order of learned Single Judge and holding that the Appellant was not guilty of suppressing any material fact in the writ petition and thus the petition could not be dismissed on that ground, the Division Bench observed that the power to grant licence under Rule 129 of the Rules is vested in the Market Committee and once the Appellant had applied before the Market Committee it should have decided the matter and should not have sought any permission from the Marketing Board before taking final decision in the matter, placing reliance on decision of the Supreme Court in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, Accordingly, on 21.9.2000 while allowing the appeal the Court directed the concerned Respondents to consider the question relating to grant of licence in terms of Rule 129 of the Rules within the time specified in the order. The Court clarified that it was not expressing any opinion

on the merit of the claim of the Appellant nor on the merit of the order dated 7.3.2000 by which Secretary, Market Committee had reiterated the earlier order of cancellation of licence for the year 1999-2000. Pursuant to the said direction of this Court, the Secretary, Market Committee considered the case of the Appellant but refused to grant licence by order dated 21.9.2000. Against that order the Appellant preferred appeal before the Managing Director of the Marketing Board. On 18.7.2001 the appeal was allowed with a direction to the Secretary, Market Committee to consider the matter afresh in terms of Rule 129(3)(iii) of the Rules. On 31.7.2001 the licence was granted by the Market Committee for the year 2001-2002. The order of the Managing Director dated 18.7.2001 and the grant of licence dated 31.7.2001 were challenged by the Respondent CWJC No. 10390/2001 (giving rise to this appeal) which was allowed on 7.12.2001 with a direction for fresh consideration. Later, on application for modification of the order, registered as MJC No. 3162/2001, the learned Single Judge also set aside the impugned licence dated 31.7.2001 on 4.1.2002. The present appeal was filed on 9.1.2002 challenging the order dated 7.12.2000. Later an amendment petition, was filed challenging the second order dated 4.1.2002.

5. On 11.1.2002 when the appeal was taken up for preliminary hearing, while issuing notice to the Respondent the Court" observed that the stay matter will be considered after valid service of notice on him. The case was thereafter on 20.3.2002 mentioned for early hearing on the ground that the period was going to expire which may render the whole appeal infructuous Accordingly, the case was ordered to be listed for hearing in stay but matter making" it clear that the whole case may be finally disposed of. On 22.3.2002 when the appeal was thus taken up, detailed submissions were made by the Counsel for the Appellant and the Respondent.

6. On behalf of Appellant Shri Ram Balak Mahto went into the factual background of the case at length and submitted that the Managing Director vide his order dated 18.7.2001 had set aside the order of the Secretary, Market Committee refusing to grant licence on the ground that three of the five grounds assigned by the Market Secretary were not relevant, thus asking the Market Secretary to consider the matter afresh as per Rule 129(3) of the Rules. Counsel urged that undisputedly the matter relating to grant of licence for setting up, establishing or using any place for sale etc. of agricultural produce has to be considered within the framework of Rule 129 of the Rules and, therefore, the direction of the Managing Director dated 18.7.2001 could not be said to be erroneous so as to invite any interference. Counsel also submitted that presumption of correctness is attracted with the order passed by a statutory authority that it had exercised the powers in accordance with law and the onus lies on the person who challenges the order. The licence having thus been granted upon fresh consideration pursuant to the direction of the Managing Director the Respondent should not be allowed to challenge the grant. Besides, the order of the Market Secretary being appealable, if the Respondent felt aggrieved by it, he

mould have preferred appeal before the Managing Director rather than moved this Court in writ jurisdiction. In any case, having directed the Managing Director to pass lash order after setting aside his order dated 18.7.2001, without interfering with pie licence granted to the Appellant, the learned Single Judge should not have set aside the licence subsequently on a modification petition much less ex parte without even issuing notice to the Appellant.

7. On behalf of the Respondent Shri Y.V. Giri, apart from going into factual matter of the case, submitted that the grant of licence was a consequence of the order dated 18.7.2001, the order having been set aside, the consequential grant of licence must be deemed to have become non est and, therefore, the learned Single Judge committed no error in subsequently setting aside the licence. In this regard he submitted that the licence had been granted mechanically without considering the facts and circumstances and, further, without any regard to the factors which were to be taken into consideration under Rule 129, and thus interference with the order of the learned Single Judge in this appeal setting aside the licence would amount to revival of an illegal licence which this Court should avoid to do. Counsel urged that even though the power in the matter of grant of licence under Rule 129 is to be exercised by the Market Committee, from the counter affidavit filed by the Secretary, vide paragraph 23 of the affidavit, it would appear that he had granted licence because of the order of the Managing Director. Curiously, the Secretary took a different stand in his rejoinder filed in the MJC. Counsel contended that the writ petition of the Appellant having been allowed, and the subject matter of challenge being not only the order dated 18.8.2001 but also the licence dated 31.7.2001, it follows that the effect of allowing the writ petition was that the licence also stood set aside, the non-mention of it in the order dated 7.12.2001 was an omission which was rightly clarified in the subsequent order dated 4.1.2002.

8. I do not wish to go into the submissions of the Counsel for the parties on the merit of the case to avoid making observation which howsoever wittingly made may affect the rights and contentions of one or the other party. Undisputedly, the power of granting licence for setting up or establishing a hat/bazar or mela (fair) within the market area or specified distance thereof vests in the Market Committee being a statutory authority and no other authority is supposed to influence its decision. In fact, Clause (iii) of the said Rule provides the guidelines according to which the Market Committee is supposed to take its decision in granting" or refusing to grant the licence upon consideration of those factors. The relevant provisions contained in Clause (iii) may be noticed at this stage.

(iii) On receipt of such application together with the amount of fee prescribed under Sub-rule (ii) the Market Committee may grant him the licence applied for, if:

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

(b) Cash security or Bank guarantee, if so required, is given,

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

(d) it is satisfied that there is 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 established such Hat/Bazar or Mela, for sale, purchase, storage, processing of agricultural produce.

9. From a perusal of the above provisions it would appear that the relevant considerations are couched in positive terms, that is to say, where, firstly, the applicant is found to be solvent; secondly, he furnishes the cash security or bank guarantee, if so required; thirdly, he is found to be a desirable person to whom a licence can be granted; fourthly, there is need to establish or set up a hat/bazar/mela for the agricultural produce; and fifthly the applicant has past experience of setting up, establishing such a hat/bazar/mela for sale, purchase etc. of the agricultural produce, the Market Committee in ordinary course should grant him licence applied for. It is only when either the applicant is found to be insolvent or where he does not furnish cash security or bank guarantee, if so required, or he fails to satisfy that he is a desirable person or it has no past experience of setting up or establishing hat/bazar/mela that the licence can be refused.

10. As the learned Single Judge has observed in the order under appeal dated 7.12.2001 the right to hold hat/bazar/mela on one's own land is a fundamental right under Article 19(1)(g) of the Constitution, the exercising whereof can be restricted only in the manner envisaged under Article 19(5). Thus, even though a fundamental right, no person can be allowed an unfettered exercise of right to set up or establish hat/bazar/mela within the market area of specified vicinity thereof except under licence granted by the authority i.e. Market Secretary under Rule 129 of the Rules. It is in the light of this legal position that the claim of the Appellant or for that matter any other person is supposed to be considered by the authority.

11. In the instant case the crux of the dispute lies in the question as to whether the Appellant is an "undesirable person". According to the Respondent, the conduct of the Appellant in holding the fair on all the seven days of the week in contravention of the terms of licence, and continuing to hold the fair even while his licence had been suspended after 24.6.99, defying the order of suspension makes him an undesirable person. It is also said that the Appellant could not hold the fair within three kms. of the place where the Respondent had been holding his fair resulting in heavy loss of, revenue to the Respondent. Without intending to cause prejudice to the Respondent, so far as this aspect is concerned, I would like to observe that though this is a matter which is to be considered by the Market Committee at the first instance and later by the Managing Director in appeal, when, such occasion arises, in my opinion, where two persons are granted licence for holding hat/bazar/mela within distance of 3 kms. In violation of the government order said to have been adopted by the Market Board, both of them are to be blamed, and above all the Market Committee

which granted the licence, because if one hat/bazar/mela is within the distance of 3 kms., equally the other hat/bazar/mela too would be at a distance of 3 kms. The case of the Respondent is that it had been holding the fair from before. If it is so, rules permitting, the Market Committee should not have allowed the fair to be held on the land in question, fault, if any, would be of the Committee for which the Appellant cannot be blamed.

12. Regarding the other aspect as to whether the Appellant is a "desirable person" or not, it would be indeed difficult to make any attempt to go into this question, pie Court should also not go into that dispute. This, in my opinion, depends on the satisfaction of the Market Committee, though, of course, I must hasten to add that such satisfaction must be based on objective consideration of the facts and circumstances. I find that in both the orders which the Division Bench passed on 1.2.2000 and 21.8.2000, a clear direction was issued to the Market Secretary to consider the case taking into consideration the provisions of Rule 129(3) of the Rules. This, indeed, is also the direction of the learned Single Judge except that he has fin-pointedly referred to only one of the considerations, namely, whether the Appellant is a "desirable person". However, the learned Single Judge observed that such consideration should be "in view of the adverse findings with respect to the earlier fear which have become final". In its order (feted 21.8.2000 in LPA No. 11023/2000 (tm) Division Bench had observed that "the act that the licence was cancelled for the earlier year may be a relevant ground to be taken into consideration by the licensing authority as to whether the Appellant is a desirable person to whom the licence can be granted under Rule 129(iii)(c) of the Rules". 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 a "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.

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 31.3.2001. 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.

14. Before I conclude the matter, so far as the second order dated 4.1.2002 in MJC 3163/2001 is concerned, I would like to observe that the writ petition i.e. CWJC No. 10390/2001 having been disposed of, if the Appellant's counsel refused to accept notice in the subsequent case i.e. MJC No. 3163/2001, the notice of the case should have been sent to the party. It is also doubtful if the cancellation of the licence automatically flowed from the setting aside of the order of the Managing Director dated 18.7.2001, as contended by the Respondent's counsel. It is true that the licence was a consequence of the order dated 18.7.2001 but setting aside of that may not, necessarily, result in implied cancellation of the licence, for, sometimes in the facts and circumstances, the writ court does not interfere with the status quo while directing fresh consideration of the case. In the present case, the learned Judge, after setting aside the order of the Managing Director had directed him to pass a fresh order which suggests that pursuant to the said order the Managing Director was required to consider the matter again, without interfering with the licence till such consideration by the Managing Director. On this ground, perhaps, this Court should have set aside the second order dated 4.1.2002 but the period has already expired and the order is not likely to serve any practical purpose. 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.

15. In the result, the appeal is disposed of with the observations and directions mentioned above. There will be no order as to costs.

T.P. Singh, J.

16. I agree.