

PATNA HIGH COURT

Thakur Prasad Gupta

Vs

State of Bihar

Misc. Judl. Case No. 1100 of 1964

(V. Ramaswami, C.J. and N.L. Untwalia, J.)

20.11.1964

JUDGMENT

Ramaswami, C.J.

1. The impugned legislation in this case is the Bihar Agricultural Produce Markets Act (Bihar Act 16 of 1960), hereinafter referred to as the impugned Act. The Act received the assent of the Governor on the 6th of August 1960. By a notification made under Section 4 of the Act the State Government declared the entire area of Buxar as the "Market area" (Annexure B to the writ application, dated the 19th September, 1963). By another notification dated the 8th April, 1964, the State Government notified the principal market yard and the Sub-market yard for the Buxar market area under Section 5 of the Act. The State Government also established a market committee by a notification under Section 6 of the Act on the 19th September, 1963. The petitioners are traders and commission agents for the sale and purchase of agricultural produce in Buxar in the Shahabad district. Their case is that respondent No. 2 had issued a notice on the 29th March, 1964, requiring them to obtain a licence for trading in agricultural produce. It is contended on their behalf that the provisions of the Act imposed unreasonable restrictions on the right of the petitioners to carry on business and there is violation of the guarantee contained in Article 19(1)(g) of the Constitution. It was contended that the notification of the State Government declaring the market area under Section 4 of the Act and the action of the market committee in asking the petitioners to take out licences, (which are Annexures-B and A to the Writ applications), are ultra vires and illegal and must be quashed by grant of a writ in the nature of certiorari under Article 220 of the Constitution. It is also the case of the petitioners that the market committee has no lawful authority to levy and collect the market fees on the agricultural produce bought in the market area and the provisions of Rule 61 empowering the market committee to do so ultra vires.

2. In order to appreciate the constitutional question raised it is necessary to set out the relevant

provisions of the impugned Act. The Act is described as "An Act to provide for the better regulation of buying and selling of agricultural produce and establishment of markets for agricultural produce in the State of Bihar and for matters connected therewith." Section 2(a) defines a "agricultural produce" as including "all produce whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule". Section 2(h) defines "market" as a market established under the Act for the market area and includes a market proper, a principal market yard and sub-market yard or yards, if any. Section 2(i) defines "market area" as any area declared to be a market area under Section 4. Section 2(o) defines the "principal market yard" as "any enclosure, building or locality within the market proper declared to be a principal market yard under Section 5." Section 2(t) defines a "Sub-market yard" as any enclosure, building or locality within the market proper declared to be a sub-market yard under Section 5. Section 2(k) defines "market proper" as "any area within the market area including all lands, with the buildings thereon, within such distance of the principal or sub-market yard, as the State Government may, by notification, declare to be a market proper under Section 5". Section 3 provides as follows :

"3. (1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase and sale of such agricultural produce and in such area, as may be specified in the notification.

(2) A notification under Sub-Section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be considered by the State Government."

Section 4(1) states :-

"4. (1) After the expiry of the period specified in the notification issued under Section 3 and, after considering such objections and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification declare the area specified in the notification under section a or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under Section 3.

The consequence of the establishment of a market area is given in Section 4(2) of the Act which states :-

"4. (2) 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 or sale 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 allow to be set up, established or continued a place as a place for the purchase or sale of agricultural produce within the meaning of this section, if the seller is himself the producer of the agricultural produce offered for 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 at retail sale to a person who purchases such produce for his own use."

Section 4(3) empowers the State Government at any time by notification to exclude from a market area any area or any agricultural produce specified therein or include in any market area any area or agricultural produce included in a notification issued under Sub-Section (1). Section 4(4) is in the nature of a saving clause and provides that nothing in the Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed. Section 5 deals with declaration of market yards and states :

"5. (1) For each market area there shall be one principal market yard and there may also be one or more sub-market yard or yards as may be necessary.

(2) The State Government may, by notification, declare :

(i) any enclosure, building or locality in any market area to be the principal market yard and other enclosures, buildings or localities in such area to be one or more sub-market yard or yards for the said market area; and

(ii) any area, including all lands, with the buildings thereon, within such distance of the market yard or yards as it thinks fit, to be market proper."

Section 6 provides that "for every market area the State Government shall, by notification, establish a Market Committee." Section 15 is important and is to the following effect :

"15. All agricultural produce specified in the notification under Sub-Section (1) of Section 4 brought into or produced or processed in the market proper, except such quantity for retail sale or consumption as may in this behalf be prescribed, shall pass through the principal market yard or sub-market yard or yards, as the case may be, and shall not be sold at any other place within the market proper and the sale and purchase of such agricultural produce in such yards shall notwithstanding anything contained in any law be made by means of open auction except in class or description of cases which may be exempted by the State Government.

Explanation :- For the purposes of this section, the seller shall be entitled, at his option to accept or reject any bid made at the open auction." Section 18 enumerates the objects and duties of the Market Committee.

Section 18 states as follows :

"18. Subject to the other provisions of this Act, the following shall be the objects and duties of the Market Committee :

(i) When so required by the State Government, to establish a market for the market area providing for such facilities as the State Government may, from time to time, direct in connection with the purchase and sale of the agricultural produce concerned :

(ii) where a market is established under sub-clause (i), to issue licenses in accordance with the rules to traders, commission agents, brokers weigh-men, measurers, surveyors, warehousemen and other persons including persons or firms engaged in the processing or pressing of agricultural produce concerned operating in the market :

(iii) to maintain and manage the principal market yard and sub-market yards and to control, regulate and run the market in the interests of the agriculturists and licensees in accordance with the provisions of this Act and the rules and the bye-laws made there under :

* * * *

(vii) to enforce the provisions of this Act, the rules and bye-laws; and

(viii) to perform such other duties and exercise such other powers as are imposed or conferred upon it by or under this Act, the rules or the bye-laws,"

Section 27 empowers the Market Committee to levy market fees. Section 27 states :

"27. (1) The Market Committee shall levy and collect market fees on the agricultural produce bought in the market area, at such rate not exceeding fifty naye paise per Rs. 100 worth of agricultural produce, as may be prescribed.

(2) The fee realised from the buyer under Sub-Section (1) shall be recoverable by the buyer from the seller as a market charge."

There is a historical background for the Bihar Act. The object of the legislation is to protect the producers of agricultural crops from being exploited by the middle men and to enable them to secure a fair return for their produce. The Royal Commission on Agriculture in India appointed in 1928 observed :

"That cultivator suffers from many handicaps : to begin with he is illiterate and in general ignorant of prevailing prices in the markets, especially in regard to commercial crops. The most hopeful solution of the cultivator's marketing difficulties seems to lie in the improvement of communications and the establishment of regulated markets and we recommend for the consideration of other provinces the establishment of regulated markets on the Berar system as modified by the Bombay legislation. The establishment of regulated markets must form an essential part of any ordered plan of agricultural development in this country. The Bombay Act is, however, definitely limited to cotton markets and the bulk of the transactions in Berar market is also in that crop. We consider

that the system can conveniently be extended to other crops and, with a view to avoiding difficulties, would suggest that regulated markets should only be established under Provincial legislation."

The Royal Commission further pointed out :

"The keynote to the system of marketing agricultural produce in the State is the predominant part played by middlemen."

"It is the cultivator's chronic shortage of money that has allowed the intermediary to achieve the prominent position he now occupies."

In the Second Five Year Plan the Planning Commission also stressed the importance of the development of agricultural marketing. At page 276 the Planning commission observed as follows :

"The primary consideration for the development of agricultural marketing is so to re-organise the existing system as to secure for the farmer his due share of the price paid by the consumer and sub-serve the needs of planned development. To achieve these objects, malpractices associated with buying and selling of agricultural produce have to be eliminated; arrangements made for the efficient distribution of marketable surpluses from producing to consuming areas and co-operative marketing has to be developed to the maximum extent possible. Rural marketing and finance have to be integrated through the development of marketing and processing on co-operative lines. Programmes for co-operative marketing and processing which have been drawn up so far for the second five year plan have been outlined in an earlier chapter. Here it is proposed to refer to other aspects of agricultural marketing. It is estimated that co-operative agencies may be able to handle about 10 per cent of the marketable surplus by the end of the second plan. The rest of the surplus will continue to be sold through other marketing agencies. In the interest of the primary producer, therefore, the importance of regulating markets and market practices needs more emphasis. Moreover, the success of co-operative marketing itself depends on the efficiency with which regulated markets function. It has been observed that in states in which regulated markets have not been established to any extent, the cultivator is in a situation of much greater disadvantage than elsewhere."

In the statement of objects and reasons for the Bihar Act it has been observed :

"The importance of properly organized markets of agricultural and allied commodities, though long recognized, has once again been emphasized by the Planning commission. They have recommended that all the States which have not done so should review the present position and draw up suitable programmes for regulating all important wholesale markets during the Second Plan. The need for legislation for regulating markets is all the

greater in Bihar where the agriculturists have to depend in a large measure on the mercy of middlemen to whom they are obliged to sell their produce as soon as the harvesting season is over. The Arhatiyas and wholesale buyers enter into a secret understanding to exploit the unwary agriculturist and they prevent him from having correct informations as to the current sale prices of agricultural produce with the result that the agriculturist seldom gets a fair share of the price paid by the consumer for his produce. The main object of having regulated markets is to secure to the cultivator better prices, fair weighment and freedom from illegal deductions. A fair deal for his produce is a good incentive for an agriculturist to adopt improved agricultural programme."

3. The first question presented for determination in this case is whether the provisions of Section 4 of the impugned Act empowering the State Government to declare a market area in respect of all or any of the Rinds of agricultural produce specified in the notification is constitutionally valid. On behalf of the petitioners the argument was stressed that the restrictions imposed by Section 4, read along with Section 15, of the Act are unreasonable as there is an infringement of the fundamental rights of the petitioners guaranteed under Article 19(1)(g) of the Constitution. I am unable to accept this argument as correct. In my opinion this question is fully covered by the decisions of the Supreme Court in *M.C.V.S. Arunachala Nadar v. State of Madras*, AIR 1959 SC 300 and *Mohammad Hussain Gulam Mohammad v. State of Bombay*, 1962 (2) SCR 659 . In the first case the question at issue was the validity of the Madras Commercial Crops Markets Act (Madras Act 20 of 1933). It was contended on behalf of the appellants in the Supreme Court that the statute imposed unreasonable restrictions on the fundamental right of the appellants to carry on business. The argument was rejected by a unanimous Bench of the Supreme Court and it was held that the impugned provisions of the Act imposed reasonable restrictions on the right of the appellants to do business and were constitutionally valid. The same principle has been laid down by the Supreme Court in the second case, 1962 (2) SCR 659 . in that case the question debated before the Supreme Court was the constitutional validity of the Bombay Agricultural Produce Markets Act, 1939 (Bombay Act 22 of 1939). The Act was passed by the Bombay Legislature to provide for the better regulation of buying and selling of agricultural produce in the State of Bombay and the establishment of markets for such produce. Section 3 of the Act provided for the constitution of markets and market committees and gave power to the Commissioner by notification to declare his intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification; and objections and suggestions were invited within a month of the publication of the notification. Thereafter the Commissioner, after considering the objections and suggestions, if any, and after holding such inquiry as may be necessary, declared the area under Section 4(1) to be a market area for the purposes of the Act. The consequence of the establishment of the market area was given in Section 4(2) which laid down that after the market area was declared no place in the said area shall, subject to the provisions of Section 5-A, be used for the purchase or sale of any agricultural produce specified in the notification. After the declaration of the market area the State Government was given the power under Section 5 to establish a market committee for every market area. Thereafter under

Section 5-AA it became the duty of the market committee to enforce the provisions of the Act and also to establish a market therein on being required to do so by the State Government, providing for such facilities as the State Government may from time to time direct, in connection with the purchase and sale of the agricultural produce. In that case the petitioners challenged before the Supreme Court the validity of the Bombay Act and the rules framed there under, and in particular Section 4, Section 4-A, Section 5, Section 5-A and Section 5AA, which provided for the declaration of a market area and the establishment of a market, as unconstitutional on the ground that they placed unreasonable restrictions on their right to carry on the trade. The argument was rejected by a unanimous Bench of the Supreme Court and it was held that Section 4, Section 4-A, Section 5, Section 5-A and Section 5AA of the Act were constitutional and intra vires and did not impose unreasonable restrictions on the petitioners to carry on trade regulated under the Act. The main provisions of the Bihar Act with respect to declaration of market area, namely, Sections 4 and 15, are similar in material respects to Section 4, Section 4-A, Section 5, Section 5-A and Section 5-AA of the Bombay Act, and the principle laid down by the Supreme Court in 1959 (2) SCR 659 applies to the present case. It is also manifest that the impugned provisions of the Bihar Act are also similar in material respects to those of the Madras Act, namely, Madras Act 20 of 1933, and the ratio of the Supreme Court decision in AIR 1959 SC 300 also governs the present case. It follows, therefore, that the provisions of the Bihar Agricultural Produce Markets Act (Bihar Act 16 of 1960) with regard to declaration of market area must be held to be intra vires and constitutional.

4. On behalf of the petitioners it was submitted in the next place that the market has been established by the Market Committee under Section 18(11) of the Act and so the Market Committee has no power to levy or collect market fees on agricultural produce under Section 27 of the Act. In paragraph, 10 of the application it is also alleged by the petitioners that no facilities have been provided by the Market Committee; but in paragraph 10 of the counter-affidavit respondent No. 1 has said that the Market Committee has taken steps to safeguard the interests of the agriculturists. The Market Committee has appointed a number of staff who are always present in the market to see that the lots of the cultivators are properly weighed, that payments are made quickly by the purchasers and that the ruling prices are prominently displayed in the market area. A grading unit has also been set up to educate the cultivator in the method of grading and improving the quality of agricultural produce offered for sale. A dispute subcommittee has also been formed to decide disputes arising in the market between a purchaser and seller. Reference was also made in this connection to Rule 61 of the Bihar Agricultural Produce Markets Rules which states as follows :

"61. (1) The Market Committee shall levy and collect fees on agricultural produce bought in the market area at the rate of twenty-five naye paise per Rs. 100 worth of agricultural produce.

Explanation :- For the purposes of this rule, a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed by a

licensed weigh-man, measurer or surveyor in the market area for the purposes of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person to a place outside the market area.

(2) The Market Committee shall also levy and collect license fees from traders, commission agents, brokers, weigh-men, measurers, surveyors, warehousemen and other persons operating in the market according to rates specified in sub-rule (3) of Rule 71 and sub-rule (2) of Rule 73.

(3) No fees shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concern situated in the market area or for export, and in respect of which a declaration has been made and a certificate has been obtained in form V :

Provided that if such agricultural produce brought into the market area for export is not exported or removed there from before the expiry of twenty days from the date on which it was so brought, the Market Committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such, rates as may be specified in the bye-laws.

(4) The seller who is himself the producer of the agricultural produce offered for sale and the buyer who buys such produce for his own household use, shall be exempted from payment of any fees under this rule."

It was argued on behalf of the petitioners that a market committee cannot lawfully levy and collect market fees unless a market has been established under Section 18(ii) of the Act. But I see no warrant for accepting this argument. Section 27 of the Act empowers the market committee to "levy and collect market fees on the agricultural produce bought in the market area". Rule 61 provides that the market committee shall levy and collect fees on the agricultural produce bought in the market area at the rate of twenty-five naye paise per Ks. 100/- worth of agricultural produce. There is nothing in the language of Section 27 of the Act or Rule 61 to suggest that the market committee cannot lawfully levy or collect market fees unless a market has been established in the first instance. I, therefore, reject the submission of learned Counsel for the petitioners on this aspect of the case. It was also argued on behalf of the petitioners that Section 27 empowered the market committee to levy and collect market fees on all agricultural produce bought in the market area and not merely on the agricultural produce specified in the notification under Section 4 of the Act.

The expression "agricultural produce" is defined in Section 2(a) of the Act as including all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the schedule. It is manifest that the market committee has the power to levy and collect market fees only on such agricultural produce which is specified in the notification under Section 4 of the Act. The reason is that the language of Section 27 must be construed subjects materies in the context and background of other Sections of the Act, and, so construed, the power of the market committee to levy and collect market fees tinder Section 27 must be confined to the agricultural produce specified in the notification under Section 4 of the Act.

Learned Counsel for the petitioners also referred in this connection to the decision of the Supreme Court in 1959 (2) SCR 659 with regard to Rule 53, framed under the Bombay Act 22 of 1939. It is true that the Supreme Court declared Rule 53 of the Bombay rules as not valid in so far as it enabled the market committee to fix any rate as it liked, but the reason was that under Section 11 of the Bombay Act the State Government had to prescribe the maximum rate by rule, and unless the maximum was fixed by the State Government it was not open to the market Committee to fix any fee at all. In the present case the material facts are different. Section 27 of the Bihar Act has itself fixed the maximum rate of fees at fifty naye paise per Rs. 100/- worth of agricultural produce, and Rule 61 framed by the State Government has fixed the fees to be levied by the market committee at the rate of twenty-five naye paise per Rs. 100/- worth of agricultural produce. The reasoning of the Supreme Court with regard to Rule 53 of the Bombay Act has therefore no application to the present case.

5. It was also contended on behalf of the petitioners that the provisions of Bihar Act 16 of 1960 violate the freedom of trade and commerce contemplated by Article 301 of the Constitution, and as the previous sanction of the President for the introduction of the bill was not taken the statute is not saved by the provisions of Article 304(b) of the Constitution. In my opinion there is no substance in this argument. The State of Bihar has stated in the counter-affidavit that the previous sanction of the President was taken before the Bihar Act 16 of 1960 was introduced in the State Legislature. In the course of argument the Advocate-General also produced letter no. Part. 6(11)/58 of the Government of India, dated the 30th September, 1958, to indicate that the sanction, of the President under the provisions of Article 304 of the Constitution was given to the introduction of the bill in the State Legislature. I, therefore, reject the contention of the petitioners on this point.

6. It was finally submitted on behalf of the petitioners that the Market Committee could not issue licenses under Rule 71 unless a market has been previously established. It was argued that R. 71 was ultra vires of Section 18(11) of the Act. In my opinion the argument of learned Counsel on this point is well founded. Rule 71(1) states that "no person shall do business as commission agent or trader in agricultural produce in a market area except under a license granted by the Market Committee under the rule." Section 18(ii) of the Act states as follows :

"18. Subject to the other provisions of the Act, the following shall be the objects and duties of the Market Committee :

* * * * *

(ii) where a market is established under Sub-clause (i), to issue licenses in accordance with the rules to traders, commission agents, brokers, weigh-men, measurers, surveyors, warehousemen and other persons including persons or firm engaged in the processing or pressing of agricultural produce concerned operating in the market."

In my opinion Rule 71 is ultra vires for two reasons. In the first place, the Market Committee has

the power to issue licenses under Section 18(ii) of the Act only after a market has been established under Section 18(i). In the second place, the power to issue license is confined to traders, commission agents, etc., operating in the market. Having regard to the definition of a "market" in Section 2(h) of the Act and "market area" in Section 2(i) of the Act, it is manifest that the "market" is a narrower conception than the "market area" and the Market Committee has no proper authority under Section 18(ii) of the Act to issue licenses to traders, commission agents, brokers, etc., operating in the market area. For both these reasons I am of opinion that R. 71 is ultra vires of Section 18(ii) of the Act and must be held to be illegal. It follows, therefore, that the notice issued by respondent No. 2. dated the 29th March, 1964 (Annexure-A to the writ application) requiring the petitioners to take out licenses under Rule 71 is illegal and ultra vires.

7. In conclusion I hold that the challenge made by the petitioners with regard to the constitutional validity of the impugned provisions of the Act and the provisions of Rule 61 fails, but the challenge of the petitioners with regard to the legal validity of Rule 71 succeeds. I would, therefore, allow this application in part and issue a writ in the nature of mandamus commanding the respondents not to enforce the provisions of Rule 71 against the petitioners till a market is properly established in law for the market area and till the rule is amended so as to bring it in conformity with Section 18(ii) of the Act.

8. I would accordingly allow this application to the extent indicated above, but there will be no order as to costs.

Untwalia, J.

9. I agree.

Petition partly allowed.