

Lakhan Lal And Others Etc vs The State Of Bihar And Others Etc on 26 March, 1968

Equivalent citations: 1968 AIR 1408, 1968 SCR (3) 534, AIR 1968 SUPREME COURT 1408

Author: R.S. Bachawat

Bench: R.S. Bachawat, M. Hidayatullah, C.A. Vaidyalingam, K.S. Hegde, A.N. Grover

PETITIONER:

LAKHAN LAL AND OTHERS ETC.

Vs.

RESPONDENT:

THE STATE OF BIHAR AND OTHERS ETC.

DATE OF JUDGMENT:

26/03/1968

BENCH:

BACHAWAT, R.S.

BENCH:

BACHAWAT, R.S.

HIDAYATULLAH, M. (CJ)

VAIDYIALINGAM, C.A.

HEGDE, K.S.

GROVER, A.N.

CITATION:

1968 AIR 1408

1968 SCR (3) 534

CITATOR INFO :

RF 1980 SC1008 (22)

R 1983 SC1246 (15)

ACT:

Bihar Agricultural Produce Markets Act (16 of 1960), ss. 2(h), 4(1), 5(2), 18(ii) and Bihar Agricultural Market Produce Rules, 1962, r. 59-Power of declaring market area under s. 4(1)-Scope of-Market, if should have well defined site, market equipment and facilities-Licence fees-If in nature of tax-Setting up market in one area of State-If offends Art. 14 of Constitution.

HEADNOTE:

The State Government of Bihar followed the procedure prescribed by the Bihar Agricultural Produce Markets Act, 1960, and the Bihar Agricultural Produce Market Rules, 1962, before issuing the necessary notifications for regulating the purchase and sale of certain items of agricultural produce and for establishing a market for them in the Gaya area of the State. Under s. 18(ii) of the Act no person can do business as a trader or other operator in the notified agricultural produce in a market except under a licence granted by the market committee on payment of the prescribed licence fees.

The validity of the notifications declaring the market area and establishing the market for the notified agricultural produce and the legality of the levy of market fees and licence fees were questioned on the following grounds. (1) the area declared to be the market area was too wide; (2) the market committee had not established any market within a well-defined site with market equipment and facilities; (3) the fees levied by the market committee were in the nature of taxes as the committee did not render any services to the users of the market and therefore the levy was illegal; (4) the setting up of a market in Gaya was discriminatory and violative of Art. 14 as the Act and Rules had not been implemented in all parts of Bihar.

HELD : (1) The power of the State Government under s. 4(1) of declaring an area or part of it to be a market area in respect of a notified agricultural produce, after considering any objections and suggestions received by it, should no doubt be exercised reasonably; But, there is nothing to show that the Government acted unreasonably or that the market was so wide that the sale and purchase of agricultural produce within it could not be effectively controlled by the market committee or that the growers within the area could not conveniently bring their produce to the market yards. [539 D-E]

(2) For establishing a market it is sufficient to issue a notification, under s. 5(2) fixing the boundaries of the 'market proper' and the 'market yards' on the recommendation of the market committee made under r. 59(2). The definition of 'market' does not require a well-defined site with market equipment and facilities. Under s. 18(1), the market committee must provide such facilities as the State Government may direct, but it was not shown that the market committee refused to carry out any such direction. Under ss. 28(2) and 30(i) the market committee may acquire and own lands and buildings for the market, but it is not obliged to do so. [539 F-H]

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(3) The fees collected by the market committee were not excessive and formed part of the market committee fund which was set apart and ear-marked for the purposes of the Act such as elimination of unhealthy market practices, ensuring

correct weighment and grading, quick settlement of disputes, dissemination of information regarding prices of agricultural produce etc. There is therefore, sufficient quid pro quo for the levies add they satisfy the test of 'fees'. [540 A-E]

Commissioner, Hindu Religious Endowments Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] S.C.R. 1005, referred to.

(4)The State Government is not bound to implement the Act and the Rules in all parts of Bihar at the same time. It may establish markets regulating the sale and purchase of agricultural produce in different parts of Bihar gradually and from time to time. [540 F-G]

JUDGMENT:

ORIGINAL/CIVIL/CRIMINAL/APPELLATE JURISDICTION Writ Petition Nos. 103 and 199 of 1967.

Petition under Art. 32 of the Constitution of India for the enforcement of fundamental rights.

AND Civil Appeal No. 1971 of 1966.

Appeal from the judgment and order dated December 2, 1965 of the Patna High Court in C.W.J.C. 442 of 1965.

AND Criminal Appeals Nos. 164 to 168 of 1966.

Appeals by special leave from the, judgment and order dated December 22, 1965 of the Patna High Court in Criminal Misc. Nos. 649, 666, 667, 668 and 669 of 1965.

N.C. Chatterjee and A. K. Nag, for the petitioners (in W.P. Nos. 103 and 199 of 1967).

M.C. Chagla and A. K Nag, for the appellants (in C.A. No. 1971 of 1966).

A.K. Nag, for the appellants (in Cr. A. Nos. 164 to 168 of 1966).

C.K. Daphtary, Attorney-General, D. P. Singh, K. M. K. Nair, Anil Kumar Gupta for respondents (in W.P. Nos. 103 and 199 of 1967).

B.P. Jha, for the respondents (in C.A. Nos. 1871 of 1966) and the respondents (in Cr. A. Nos. 164 to 168 of 1966). The Judgment of the Court was delivered by Bachawat, J. W.P. No. 199 of 1967, C.A. No. 1971 of 1966 and Cr. As. Nos. 164-168 of 1966 raise common questions as to the validity of the notifications declaring a market area and estab-

lishing a market for agricultural produce in Gaya and the legality ,of the levy of market fees and licence fees therein under the Bihar Agricultural Produce Markets Act, 1960 (Bihar Act 16 of 1960) and the Bihar Agricultural Produce Markets Rules 1962. The contentions are that (1) the notification declaring the market area is void as the notified market area is too wide, (2) the market committee has not established any market and in the absence of a market and a lawful market area, the provisions of the Act and the Rules are not enforceable in the area, (3) the fees are in the nature of taxes and are illegally levied as no services are being rendered by the market committee and (4) the enforcement of the Act and the Rules in Gaya without implementing them in the whole of Bihar is discriminatory ;and violative of Art. 14 of the Constitution. W.P. No. 199 of 1967 is a writ petition filed in this Court. C.A. No. 1971 of 1966 is an appeal from -an order of the Patna High Court dismissing a writ petition filed in that Court. Cr. As. Nos. '164-168 of, 1966 are appeals filed against the orders of the Patna High Court refusing to quash criminal prosecutions under s. 48 for refusal to take out licences in contravention of Rule 7 1.

The relevant provisions of the Act and the Rules and the relevant notifications may be noticed briefly. As stated in the preamble, the object of the Act is to provide for the better regulation of buying and selling of agricultural produce and the establishment of markets for it in the State of Bihar and for matters connected therewith. "Agricultural produce" as defined in s. 2(1)(a) includes all produce mentioned in the schedule to the Act. Sections 2, 3, 4 and 5 define and deal with market area, market, proper and market yards. "Market area" is the entire area within which purchase and sale of agricultural produce is regulated.

"Market" for the area consists of a market proper, a principal market yard and sub-market yard or yards, if any. "Market proper" is an area inside the market area and within a certain distance from a market yard. "Principal market yard" and "sub-market yard" are enclosures, buildings or localities within the market proper. The State Government may issue a notification under S. 3 declaring its intention of regulating the purchase and sale of specified agricultural produce in any Area. After considering the objections and suggestions received by it and after holding necessary enquiries, if any, the State Government may issue a notification under s. 4(1) declaring the area or any part of it to be the market area in respect of any notified agricultural produce. Section 4(2) provides that on the issue of such a notification no place can be set up, established or continued except in accordance with the provisions of the Act, rules and bye-laws for the purchase or sale of the agricultural produce other, than sales by the growers and retail sales to consumers. The State Government is required by s. 6 to establish a market committee for every market area. Under Rule 61 read with s. 27 the market committee is required to levy and collect market fees on the agricultural produce bought in the market area at the rate of 25 naye paise for Rs. 100/- worth of the produce. The relevant provisions relating to the establishment of market may now be read "2(h) market means a market established under' this Act for the market area and includes a market proper, a principal market yard and sub-market yard or yards, if any.

S. 5. Declaration of market yards-(1) For each market 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 buildings therein, within such distance of the market yard or yards as it thinks fit, to be market proper.

18. Objects and duties of the Market Committee 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;....

Rule 59. Establishment of markets (1): After the issue of the notification under section 4 and establishment of the market committee under section 6, the State Government shall direct the market committee to establish a market.

(2) when. directed to do so under sub-rule (1), the market committee shall establish a market for the market area for which it is established.

(3) After the establishment of a market by the market committee, the State Government shall issue a notification under section 5."

A market as defined in s. 2(h) is established for a market area by following the procedure laid down in sees. 5, 18(i) and Rule 59. The State Government issues a direction under s. 18(i) read with r. 59(1) to the market committee to establish a market for the market area. On receipt of this direction the market committee decides under r. 59(2) to establish a market by fixing the boundaries of the market proper and the principal market yard and sub-market yard, if any. Thereafter the government issues the necessary notification under s. 5(2) declaring the market proper and the market yards. These three steps form one integrated process and on the issue of the notification under s. 5(2) the market is finally established. The market so established consists of the market proper and the market yard or yards. There is no other separate market place. The expression "market" is used in the Act as, meaning either the market proper or the market yards or both. Under section 15 read with r. 67 as soon as a market is established all notified agricultural produce-brought into, produced or processed in the market proper save a prescribed quantity for retail sale

or consumption must pass through a market yard and shall not be sold at any other 'Place within the market proper and the price shall be settled by open auction and not otherwise. Thus the business of sale and purchase of the agricultural produce is concentrated in the market yards and takes place at fair prices under regulated conditions in the presence of a large number of buyers and sellers. Under sec. 18(ii) and Rule 71 and 73, as amended by notification No. 4575 issued by the State Government on March 25, 1965 no person can do business as a trader or other operator in the notified agricultural produce in a market except under a licence granted by the market committee on payment of the prescribed licence fees. The procedure prescribed by the Act and the Rules was followed for regulating the purchase and sale of agricultural produce and for establishing a market for it in the Gaya area. On December 13, 1962 the State Government issued the necessary notification under s. 3. On September 19, 1963 it issued a notification under s. 4(1) declaring Gaya town, Gaya Muffasil, Bodh Gaya and Paraiya Police Station within the Sadar sub-division of Gaya District as the market area for the sale and purchase of paddy, rice, masur, linseed, gur and potato. On the same date it established a market committee for the market area. On October 22, 1963 the Government acting under S. 18(i) and r. 59(1) directed the market committee to establish a market. On January 23, 1964 the market committee decided to establish a market under r.59(2) and made its recommendations regarding market proper and the principal market yard. On February 12, 1964 the market committee made its recommendation regarding the sub-market yard. The resolution of the committee dated January 23, 1964 stated that as directed by the State Government "the committee appoints Gaya bazar to be area of this bazar." This clumsy phrase really means that as directed by-the Government the committee was establishing a market for the Gaya market area. The market consisted of the market proper and the market yards. There was no other separate market known as the Gaya bazar. On April 6, 1964, the Government issued a notification under s. 5(2)(ii) declaring the entire area under the jurisdiction of the Gaya municipality and several villages as the market proper. On April 7, 1964 the Government issued a notification under s. 5(2)(i) declaring the locality of Mahallah Parani Godown within Gaya Police Station to be the principal market yard and the locality known as Kedarnath Market within Gaya Police Station to be the sub-market yard. Mr. M. C. Chagla submitted that the area declared to be the market area by the notification on September 19, 1963 is too wide. This objection is not well founded. It may be conceded that the power under s. 4(1) should be exercised reasonably. But there is no material on the record to show that the Government acted unreasonably or that the market is so wide that the sale and purchase of agricultural produce within it cannot be effectively controlled by the market committee or that the growers within the area cannot conveniently bring their produce to the market yards. The market area was duly declared under s. 4(1) after considering all objections and suggestions made in that behalf.

Counsel next submitted that the market committee has not established any market. According to Counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in s. 2(h). The market consists of market proper, and the market yards. The market yards are well defined enclosures, buildings or localities but the market proper is under s. 2(k) read with s. 5(2)(ii) a larger area. For establishing a market it is sufficient to make a declaration under s.5(2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under r. 59(2). Under s. 18(i) the market committee must provide for such facilities in the market as the State, Government may from time to time direct. It is not shown that the market committee refused to carry out any direction of the

Government. The market committee may in view of ss. 28(2) and 30(i) acquire and own lands and buildings for the market, but it is not always obliged to do so. The market is established on the issue of a L7 Sup. C.I/68-10 notification under s. 5(2) declaring the market proper and the market, yards.

The next contention is that the fees levied by the market committee are in the nature of taxes as the committee does not render any services to the users of the market and the levy of fees is therefore illegal. This contention is not tenable. The market committee has taken steps for the establishment of a market where buyers and sellers meet and sales and purchases of agricultural produce take place at fair prices. Unhealthy market practices are eliminated, market charges are defined and improper ones are prohibited. Correct weightment is ensured by employment of licensed weightment and by inspection of scales, weights and measures and weighing and measuring instruments. The market committee has appointed a dispute sub-committee for quick settlement of disputes. It has set up market intelligence unit for collecting and publishing the daily prices and information regarding the stock, arrivals and despatches of agricultural produce. It has provided a grading unit where the technique of grading agricultural produce is taught. The contract form for purchase and sale is standardised. The provisions of the Act and the Rules are enforced through inspectors and other staff appointed by the market committee. The fees charged by the market committee are correlated to the expenses incurred by it for rendering these services. The market fee of 25 naye paise per Rs. 100/worth of agricultural produce and the licence fees prescribed by Rules 71 and 73 are not excessive. The fees collected by the market committee form part of the market committee fund which is set apart and ear-marked for the purposes of the Act. There is sufficient quid pro quo for the levies and they satisfy the test of "fee" as laid down in *Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*(1). It is then said that the setting up of a market in Gaya is discriminatory and violative of Art. 14 of the Constitution as the Act and the Rules have not been implemented in all parts of Bihar. There is no force in this Contention. The State Government is not bound to implement the, Act and the Rules in all parts of Bihar at the so time. I It may establish markets regulating the sale and purchase of Agricultural produce in different parts of Bihar gradually and from.,time to time.

In Writ Petition No. 103, of 1967 the relevant notification relating to Barh and the levy of fees by the market committee are challenged on the same grounds. The notification under S. 4(1) declaring the area within Barh police station to be a market area (1) [1954] S.C.R. 1005.

in respect of the agricultural produce mentioned therein was issued by the State Government on May 26, 1965. Thereafter the market for the area was established and notifications declaring the market proper and the market yards were issued after-following the procedure laid down in secs. 5, 18 (i) and r. 59. For the reasons already given we find no substance in any of the contentions raised in this petition. In *Thakur Prasad Gupta v. The 'State of Bihar'* the High Court of Patna upheld the constitutionality of the Act and Rule 61 but it struck down Rule 71 then in force as the rule imposed the liability to take out licences for operating in the entire market area and was ultra vires s. 18(ii). This judgment was pronounced on November 20, 1964. Thereafter Rules 71 and 73 were amended by notification No. 4575 dated Match 25, 1965 and the word "market" was substituted for the words "market area" therein. The amendment cures the objection that these rules were ultra vires s. 18(ii). In all the matters before us the constitutionality of the Act and the Rules were again; challenged. But

when the hearing of these cases commenced, counsel expressly gave up all contentions regarding the invalidity of the Act and the, Rules.

In the result, C.A. No. 1971 of 1966, W.P. Nos. 199 and 103 of 1967 are dismissed with costs. There will be one hearing fee. Cr. As. Nos. 164-168 of 1966 are dismissed. V.P.S. Petitions and appeals dismissed. A.I.R. 1965 Pat 267