

(2005) 02 CAL CK 0001

Calcutta High Court

Case No: Writ Petition No. 3729 (W) of 1991

West Dinajpur Chamber of
Commerce and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Feb. 3, 2005

Acts Referred:

- West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 - Section 1, 1(2), 1(3), 3, 3(1)

Citation: (2005) 3 CHN 391 : (2006) 2 ILR (Cal) 27

Hon'ble Judges: Pratap Kr. Ray, J

Bench: Single Bench

Advocate: Bidyut Kr. Banerji and Shila Sarkar, for the Appellant; Rabindra Nath Datta, for the respondent Nos. 6, 7 and 8, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kr. Ray, J.

Heard the learned Advocates appearing for the parties.

2. In the instant application the petitioners, who are running that respective businesses outside of the jurisdiction of Kaliagunj Regulated Market Committee, have challenged the notices issued by Kaliagunj Regulated Market Committee demanding market fees and directing them to obtain licence from the said committee. By a demand notice dated 24th December, 1990, the learned Advocate on behalf of the writ petitioners lodged grievance by contending that since the petitioners were running the business in the places, which are outside of the Kaliagunj market area namely in the areas Bansihari, Kusmandi, Hemtabad, Itahar and Raigunj, which under the statutes as yet are not controlled by setting up respective market committees, the Kaliagunj Market Committee had no jurisdiction to charge market fees and also cannot direct the petitioners to apply for the licence

under the said committee to run their businesses. As nothing was answered, this writ application praying necessary relief.

3. Subsequently by filling supplementary affidavit, another point of law has been thrashed to this effect that the impugned notifications being annexures C, D and E of the writ application declaring the market areas of different zones were not at all published in the notification as per the statutory provision namely Section 3 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, hereinafter for brevity referred to as Agricultural Marketing Act. It has been further urged in course of hearing that the aforesaid Act never come into force in the areas where petitioners are running business by issuing the notification in Official Gazette in terms of Section 1 sub-section (3) of the said Act and as a resultant effect, the respondents had no jurisdiction even to set up any market area and further the respondents cannot direct the petitioners, who are running business outside the jurisdiction of the Kaliagunj Market Committee to have the licence under them on payments of market fees.

4. This writ application has been opposed by the State respondents by filing opposition. Initially when the matter was moved, by the order dated 21st February, 1991, N. K. Mitra, J. (as His Lordship then was) passed an interim order in terms of prayer (F) of the writ application. Prayer (F) reads thus :

"(F). Grant an interim order restraining the respondents from giving any effect or further effect to the impugned notifications being annexures A, B, C, D, E, F, G and H to this writ petition as well as restraining the respondents from giving any effect or further effect to the impugned notices being annexures F, G and H to this petition and further restraining the respondents from requiring the businessmen, traders, merchants etc. to obtain licence and to pay fees till the hearing of the instant rule."

5. An application for vacating, variation and modification of the said interim order was filed by Kaliagunj Regulated Market Committee, its Chairman and the Secretary of the said Committee being applicant Nos. 1, 2 and 3 respectively, who were respondent Nos. 6, 7 and 8 of the writ application. The aforesaid respondent Nos. 6, 7 and 8 filed affidavit-in-opposition of main writ petition. In the application for vacating as well as in the affidavit-in-opposition, it has been contended by annexing the Official Gazette that in terms of Section 3 of the said Act, Kaliagunj Market Committee was established, which included the areas wherein the writ petitioners are running business namely Raigunj, Hemtabad, Buniadpur, Kushmandi, Itahar, Harirampur, Bandar Bazar, College Para and Debigunj under respective Police Stations Hemtabad, Banshihari, Itahar, Harirampur, Raigunj respectively. It is further contended that Kaliagunj Market Committee got the jurisdiction to ask the petitioner to have licence to run the business on payments of market fees.

6. At the time of hearing, learned Advocate of the petitioner has raised a legal question by contending, inter alia, that the said Act though was extended to the

whole of West Bengal in terms of Sub-section (2) of Section 1 of the said Act but as there was no Gazette notification about coming into force of the said Act under Sub-section (3) of Section 1 in the respective market areas, wherein the petitioners are running their business, any notification u/s 3 declaring places wherein the petitioners are running business as market area irrespective of its notification u/s 3 of the said Act, has not empowered the respondents to collect the licence fee. It has been contended that Kaliagunj Market Committee never was empowered to direct the petitioners to apply for licence and thereby payments of market fee, as the petitioners are not running their business within the jurisdiction of the Kaliagunj Market Committee, since there are different market areas namely Itahar, Banshihari, Raigunj etc. in terms of the aforesaid notification, which mandated to have separate market committees in terms of Section 5 of the said Act. It has been further contended that only the market committee in respect of the areas Itahar, Banshihari, Raigunj wherein the petitioners are running businesses got the right to direct the petitioners to have the appropriate licence from them to run the business and to pay the market fees, but Kaliagunj Market Committee, who is outside of the jurisdiction of that market area cannot impose such conditions. For an answer of the point as to whether Sub-section (3) of Section 1 of the said Act came into force on the respective market areas, where the petitioners are running business, the respondents were directed to produce the Gazette notification. Several adjournments were granted but no such notification was produced. The contesting party namely the respondent Nos. 6 to 8 who are in the Kaliagunj Market Committee has contended before this Court that there was no necessity to have further notification under Sub-section (3) of Section 1 as notification u/s 3 read with section 5 have already been published specifying the area as would be termed as market area. Other points as raised in the writ application were not urged by the parties save and except the notification issue.

7. Considering the rival contention of the parties, in this writ application the only point as is required to be considered as to whether any notification under sub-section (3) of Section 1 was issued to give the force of the Act itself in the respective market areas as were constituted u/s 3 of the said Act by proper notification. To advert that issue, the relevant statutory provisions are required to be discussed. Sections 1, 3, 4, 5 and 6 of the said Act reads thus:

"1. Short title, extent and commencement.-(1) This Act may be called the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different areas.

3. Declaration of market area.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, the State Government may, by notification, declare any area as a market area within which purchase and sale of such agricultural produce as may be specified in the notification, shall be regulated.

(2) On the publication of such notification under Sub-section (1), or with effect from such later date as may be specified therein, no local authority or other person shall, notwithstanding anything to the contrary contained in any law for the time being in force, within the market area, or within such distance thereof as may be [declared by notification] 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 such agricultural produce as has been specified in the notification under Sub-section (1), except in accordance with the provisions of this Act and the rules made thereunder.

(3) The State Government may, by notification, include or exclude any area in or from a market area, as the case may be, or include or exclude any agricultural produce in or from the list of agricultural produce.

(4) The State Government may, by notification, declare that a market area declared as such under sub-section (1) shall cease to be a market area with effect from such date as may be specified in the notification. When a market area thus ceases to be a market area any market established, declared or notified in such market area shall cease to be a market and the market committee constituted for the said market area shall stand dissolved with the following consequences :

(a) the members of the market committee shall be deemed to have vacated their offices, and

(b) the unexpended balance of the Market Committee Fund and other properties and liabilities shall vest in the State Government free from all encumbrances and in such manner as may be prescribed :

Provided that the liability of the State Government shall be limited to the extent of the unexpended balance of the Market Committee Fund and the value of the property vesting in the State Government as may be determined in the manner prescribed.

4. Declaration of principal market yard and sub-market yard. -(1)

The State Government may, by notification, declare 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 a market area.

(2).The State Government may, by notification, declare that no local authority or any other person, notwithstanding anything contained in any law for the time being in force, shall set up, establish or continue or allow to be continued any place for the

purchase, sale, storage or processing of any agricultural produce within such distance of the principal market yard or a sub-market yard as may be specified in the notification.

(3) Nothing contained in Sub-section (2) shall apply to :

(a) the sale of agricultural produce by the producer himself or by any person employed by him when such sale is made to an individual who purchases it for his own consumption.

(b) The purchase by an individual of agricultural produce for his own consumption, and

(c) The sale or purchase of agricultural produce through retail sale.

5. Market Committee.-(1) There shall be a market committee for every market area.

(2) Every market committee shall be a body corporate by such name as the State Government may specify, shall have [subject to the provision of Sub-section (4) of Section 3] perpetual succession and a common seal, may sue and be sued in its own name, shall acquire, hold and dispose of property both movable and immovable, enter into contracts and do all such things as may, from time to time, be necessary for carrying out the functions of this Act:

Provided that save as the State Government may, by general or special order, direct, no market committee shall permanently transfer any immovable property except in pursuance of a resolution passed at a meeting of the market committee by not less than three-fourths of its members and with the previous sanction of the State Government.

6. Date of constitution of market committee.-The names of Chairman and Vice-Chairman appointed under Sub-section (6) of section 5 with the other members of a market committee shall be declared by the State Government by notification, but such market committee shall be deemed to be duly constituted from the date of notification under [Sub-section (3)] of Section 5:

Provided that the notifications constituting market committee prior to the commencement of the West Bengal Agricultural Produce Marketing (Regulation) (Amendment) Act, 1981, shall be deemed to have been issued under sub-section (3) of Section 5."

8. On a bare reading of the said Section 1, it appears that though the Act was extended to the whole of West Bengal but coming into force of the said Act on different areas specifying different dates was conditioned with a clause of notifying the said areas by contending "coming into force" of the Act by specific notification published in the Official Gazette. The word "extend" in terms of sub-section (2) of Section 1 will not help "for coming into effect and/or force of the Act" unless it is notified in Official Gazette. Extension of the Act means one thing and coming into

force of the Act is of different thing. It is the law of framing of a statute whereby even if any Act is duly promulgated and passed by the Parliament and/or the Legislatures extending its action but if the statute provides, that coming into force of the Act would be done by separate Gazette notification, which may be termed under legal parlance of statutory interpretation as "conditional legislations", until and unless such notification is issued giving force/effect of the Act over the respective areas even if the areas are covered under the extended clause, the statute has no effect and force in those areas. Sub-section (3) of Section 1 is to be read harmoniously with other sub-section of section 1 namely Sub-section (2) itself.

9. Hence, having regard to the legal position as already discussed as in the concerned area wherein the writ petitioners are running their businesses, the said Act was not made in force by notification in the Official Gazette in terms of sub-section (3) of section 1 of the said Act, the respondents cannot direct the writ petitioners to register their business organization for necessary licence to run the business under Kaliagunj Market Committee. Since, there was no notification satisfying the date when the Act came into force by Official Gazette in those areas where petitioners are running business, it will be deemed that the said Act was not in force in the areas concerned wherein the writ petitioners are running business. Accordingly, respondents' action is ultra vires and of without jurisdiction. Hence, the impugned decision of the writ applications are set aside and quashed. Writ application is accordingly allowed in terms of prayer as made.