

(1997) 05 SC CK 0061

In the Supreme Court Of India

Case No : Civil Appeal No. 3359 of 1997

Agricultural Market Committee

APPELLANT

Vs

Shalimar Chemical Works Ltd.

RESPONDENT

Date of Decision : 07-05-1997

Acts Referred:

Constitution of India, 1950 — Article 245

Sales of Goods Act, 1930 — Section 19, 20, 21, 22, 23

Citation : AIR 1997 SC 2502 : (1997) AIRSCW 2443 : (1997) 3 ALT 20 : (1997) 5 JT 272 : (1997) 4 SCALE 93 : (1997) 5 SCC 516 : (1997) 1 SCR 164 Supp : (1997) 4 Supreme 575

Hon'ble Judges : S. Saghir Ahmad, J;K. S. Paripoornan, J

Bench : Division Bench

Advocate : K. Ram Kumar, Y.S. Rao, Asha Nair and C. Balasubramaniam, for the Appellant; D.D. Thakur, L.N. Rao, V.V. Ramana and S. Udaya Kr. Sagar, for the Respondent

Final Decision : Dismissed

Judgement

S. Saghir Ahmad, J.—Leave granted.

2. Agricultural Market Committee (for short, 'the Committee') which is the appellant before us is a statutory body created under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 ('the Act') while the respondent is a licenced trader dealing in "Copra" (dried coconut kernel) which it imports from various places in the State of Kerala for manufacturing coconut oil.

3. "Copra" is a notified agricultural produce and, therefore, the Committee has a right to levy and realise the market fee on all transactions of purchase and sale provided the transactions take place within the notified area of the Committee.

4. By orders dated 2.3.89 and 28.3.89, the Assessing Authority who is also the Secretary of the Committee levied the market fee on the respondent who challenged those orders in appeals (No. 1 of 1989 and No. 2 of 1989). filed u/s

12E but the appeals were dismissed on the technical ground of non-compliance with Section 12E(2) under which the whole amount of market fee had to be deposited before filing the appeal.

5. The respondent then approached the Andhra Pradesh High Court in Writ Petition 12199 of 1991 which was allowed and the appeals were directed to be entertained provided the respondent deposited half of the amount of market fee and furnished bank guarantee for the remaining half. The appeals were consequently taken up for hearing but were dismissed compelling the respondent to file a revision u/s 12F of the Act which was dismissed by the Director of Marketing by order dated 8.11.93. The respondent then approached the High Court by another appeal u/s 12G which was allowed by judgment dated 18.4.96 and consequently the matter has come to this Court.

6. In order to levy market fee on the transaction of sale and purchase by the respondent, the Assessing Authority had relied upon Rule 74(2) of the Andhra Pradesh (Agricultural Produce and Livestock) Market Rules, 1969 (for short, 'Rules') and Explanation to Bye-law 24(5) of the Bye-laws of the Committee which contained a statutory presumption that if a notified agricultural produce was weighed or measured within the notified area of the Committee, it shall be deemed to have been purchased or sold within that area. The appellate as also the revisional authorities had also relied upon this provision and had held that since "Copra" which was imported from the State of Kerala was, admittedly, weighed at Hyderabad, it shall be deemed to have been sold to the respondent at Hyderabad and, consequently, the respondent was liable to pay market fee on all the transactions of sale/purchase of "Copra" during the period in question.

7. The High Court held that the provisions contained in Rule 74(2) and Bye-law 24(5) relating to the 'rule of presumption' were beyond the scope of the Act and, consequently, were bad in law. It also held on the basis of evidence and material on record that the transaction of sale/purchase took place in the State of Kerala and not at Hyderabad and, therefore, the authorities under the Act were not justified in levying the market fee on those transactions.

8. The findings recorded by the High Court have been challenged before us on the ground that the goods were imported into the State of Andhra Pradesh on the basis of Form-X prescribed under the Act and the delivery of commodity was taken by the respondent after weighment which indicated that the transaction of sale took place at Hyderabad and not in the State of Kerala from where the goods were imported. It was also contended that after weighment, if the commodity was found to be deficient in weight, a debit note is issued to the seller which also indicated that the property in the goods passed only at Hyderabad where weighment was made by the respondent after payment of price and collection of document through a Bank. The findings of the High Court that Rule 74(2) and Bye-law 24(5) were beyond the scope of the Act was also assailed and it was contended that these provisions were made only to give effect to the policy already laid down by the Legislature in the principal Act.

9. We will first examine the validity of Rule 74(2) and Bye-law 24(5).

10. Rule 74(2) reads as under :

Rule 74(2)-Such fees shall be leviable as soon as the notified agricultural produce, livestock and products of livestock is purchased or sold by a licensee. The notified agricultural produce, livestock or products of livestock shall be deemed to have been purchased or sold after the notified commodity has been weighed or measured or counted or when it is taken out of the notified market area.

11. Bye-law 24(5) is as follows :

The fees shall be leviable as soon as the notified agricultural produce, livestock, or products of livestock is purchased or sold by licensee.

EXPLANATION : The notified agricultural produce or livestock or products of livestock shall be deemed to have been purchased or sold after the said notified commodity has been weighed, measured or counted or when it is taken out of the notified market area.

12. We may also, at this stage, notice certain provisions of the Act.

"Agricultural produce" has been defined in Section 2(i) as under:

2(i) "Agricultural Produce" means anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of this Act.

Section 2(vi) defines "market" as under :

2(vi) 'market' means a market established under sub-section (3) of Section 4 and includes market yard and any building therein.

"Market Committee" has been defined in Section 2(vii) as under:

2(vii) 'market committee' means a committee constituted or reconstituted under the provisions of this Act.

"Notified agricultural produce" is defined in Section 2(x) as under:

2(x) 'notified agricultural produce, livestock or products of livestock' means agricultural produce, livestock or products of livestock specified in the notification u/s 3.

"Notification area" is defined in Section 2(xi) as under :

2(xi) 'notified area' means any area notified u/s 3.

"Notified market area" is defined in Section 2(xii) as under :

2(xii) 'notified market area' means any area declared to be a market area by

notification u/s 4.

"Trader" is defined in Section 2(xvi) as under :

2(xvi) 'trader' means the person licensed under sub-section (1) of Section 7 and includes the person in whose management the collection of fees is placed whether he is called a commission agent, ginner, presser, warehouseman, importer exporter, stockist or by whatever local name he is called.

13. Notified Area is constituted u/s 3 of the Act whereas a Market Committee is constituted by the Government u/s 4(1). Thus Market Committee is constituted for every notified area. The Notified Market Area is established u/s 4(4) of the Act.

14. Section 7(1) provides that no person shall, within a notified area, set up, establish or use, or continue or allow to be continued, any place for the purchase, sale, storage, weighment etc. of any notified agricultural produce or products of livestock or for the purchase or sale or livestock except under and in accordance with the conditions of a licence granted to him by the market committee.

15. Section 12 of the Act provides for the levy of fees by the Notified Market Committee. The relevant portion of this Section is reproduced below :

12. Levy of fees by the market committee : (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area (at such rate, not exceeding (two rupees) as may be specified in the bye-laws) for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation I : For the purposes of this Section, all notified agricultural produce, livestock or products or livestock taken out of a notified market area shall, unless the contrary is provided, be presumed to have been purchased or sold within such area.

Explanation II :

(2)

16. The market fee is liable to be paid by every trader operating in the notified area. He is also under a statutory duty to submit returns relating to his turnover as required by Section 12A. The assessment is made by the Market Committee u/s 12B. The assessment made by the Market Committee is appealable before the Regional Joint Director of Marketing u/s 12E. A revision is provided by Section 12F against the judgment of the Regional Joint Director to the Director of Marketing. The order of Director of Marketing is appealable before the High Court u/s 12G.

17. A perusal of Explanation I appended to Section 12, extracted above, would indicate that the statutory presumption regarding purchase and sale is raised in respect of all notified agricultural produce, livestock or products of livestock if they are taken out of a notified market area. As soon as a notified agricultural produce is moved out of a notified market area, it is to be presumed that such notified agricultural produce was either purchased or sold within the notified market area. Acting on this presumption, the Committee can proceed to levy market fee on such transaction. What is important to notice in this provision is that the presumption is confined to the movement of notified agricultural produce. No other factor can give rise to such presumption nor can any additional factor be considered to raise such presumption. The statutory presumption is thus of a limited character. Since it relates to the levy of market fee and is fiscal in nature, it has to be strictly construed in the sense that any circumstance, situation, factor or condition which are not contemplated by the Act cannot be taken into consideration to raise the presumption regarding sale or purchase of the notified agricultural produce.

18. Section 33 of the Act gives power to the Government to make Rules. It is in exercise of this power that the Government made the Rules, in 1969. Section 34 authorises a Market Committee to make Bye-laws. Sub-section (1) of this Section provides as under :

34. Bye-laws : (1) Subject to any rules made by the Government u/s 33 and with the previous sanction of the Director of Marketing, a market committee may, in respect of the notified area for which it was constituted, make bye-laws for the regulation of the business and the conditions of trading therein.

19. Bye-law 24(5) made by the Committee has already been quoted above. Rule 74(2) as also Bye-law 24(5) also contain the deeming provisions concerning sale or purchase of a notified agricultural produce. They provide that a notified agricultural produce shall be deemed to have been purchased or sold after the Notified Commodity has been Weighed or Measured or Counted or when it is taken out of the Notified Market Area. Thus while the Act limited the presumption to only one factor, namely, moving the notified agricultural produce out of the notified market area, the Rule and the Bye-law have additionally provided that such presumption would also be raised if the commodity is weighed, measured or counted. "Weighed" "Measured" or "Counted" are factors which are not mentioned in Explanation I to Section 12 of the Act. The question which, therefore, arises is whether the scope of Explanation I to Section 12 can be widened by Rule 74(2) or the Explanation appended to Bye-law 24(5).

20. The Act was made by the State Legislature while the Rules have been made by the State Government and the Bye-laws have been made by the Committee. Both constitute delegated legislation.

21. Delegated Legislation has been defined by Salmond as "that which proceeds from any authority other than the sovereign power and is therefore dependent

for its continued existence and validity on some superior or supreme authority." (See Salmond, Jurisprudence, 12th Edn. Page 116).

22. Delegated Legislation is not a new phenomenon. Ever since the Statutes came to be made by Parliament, the Delegated Legislation also came to be made by an authority to which the power was delegated by the Parliament. It is no use going back into the pages of history or to look to the Statute of Proclamations 1539, under which Henry VIII was given extensive powers to legislate by proclamations, what is intended, to be emphasised is that there has always been, and continues to be, need for delegated legislation. The exigencies of the modern State, especially the social and economic reforms, have given rise to the making of Delegated Legislation on a large scale (by authorising the Government, almost in every Statute passed by Parliament or the State Legislature to make Rules) so much so that a reasonable fear could have arisen among the people that they were being ruled by the Bureaucracy.

23. The reasons for giving delegated power to the Government to make Rules are many, but the most prominent and dominant reasons are:

(i) The area for which powers are given to make delegated legislation may be technically complex, so much so, that it may not be possible and may even be difficult to set out all the permutations in the Statute

(ii) The Executive may require time to experiment and to find out how the original legislation was operating and thereafter to fill up all other details.

(iii) It gives an advantage to the Executive, in the sense that a Government with an onerous legislative time schedule may feel tempted to pass skeleton legislation with the details being provided by the making of Rules and Regulations.

24. The power of delegation is a constituent element of the legislative power as a whole under Article 245 of the Constitution and other relative Articles and when the Legislatures enact laws to meet the challenge of the complex socio-economic problems, they often find it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out the policy laid down by the Acts as part of the Administrative Law. The Legislature has to lay down the legislative policy and principle to afford guidance for carrying out the said policy before it delegates its subsidiary powers in that behalf (See : Vasantlal Maganbhai Sanjanwala Vs. The State of Bombay and Others, . This Court in another case, namely, Municipal Corporation of Delhi Vs. Birla Cotton, Spinning and Weaving Mills, Delhi and Another, as also in an earlier decision in In Re : The Delhi Laws Act, 1912, The Ajmer-Merwara (Extension of Laws) Act, 1947, and In Re: The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 and the Part C States (Laws) Act, 1950, has laid down the principle that the Legislature must retain in its own hands the essential legislative functions and what can be delegated is the task of subordinate legislation necessary for implementing the purposes and objects of the Act concerned.

25. In *Avinder Singh and Others Vs. State of Punjab and Others*, , Krishna Iyer, J. laid down the following tests for valid delegation of legislative power. These are :

- (1) the legislature cannot efface itself :
- (2) it cannot delegate the plenary or the essential legislative function;
- (3) even if there be delegation, Parliamentary control over delegated legislation should be a living continuity as a constitutional necessity.

It was further observed as under :

While what constitutes an essential feature cannot be delineated in detail it certainly cannot include a change of policy. The legislature is the master of legislative policy and if the delegate is free to switch policy it may be usurpation of legislative power itself.

26. The principle which, therefore, emerges out is that the essential legislative function consists of the determination of the legislative policy and the Legislature cannot abdicate essential legislative function in favour of another. Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice but the Legislature should, before delegating, enunciate either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to Taxing Statutes. The effect of these principles is that the delegate which has been authorised to make subsidiary Rules and Regulations has to work within the scope of its authority and cannot widen or constrict the scope of the Act or the policy laid down thereunder. It cannot, in the garb of making Rules, legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the policy and purpose of the Act.

27. Applying the above principles to the instant case, it will be seen that the market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation I to Section 12 creates a legal fiction and provides that if any notified agricultural produce is taken out of a notified market area, it shall be presumed to have been purchased or sold within such area. The presumption is a rebuttable presumption and can be shown to be not correct. The policy in enacting this provision is only to cover such transactions of sale and purchase for which direct evidence may not be available. Since a notified agricultural produce can be sold only within the notified market area, and, that too, by a trader having a licence issued to him by the Committee, it is obvious that if such commodity is moved out of the notified area, it would mean either that it has been sold or purchased. Otherwise, there would be no occasion to move such commodity out of the notified market area. The legal fiction was thus limited to the "moving" of the commodity from within the market area to a place outside the market area.

28. The Government to whom the power to make Rules was given u/s 33 and the Committee to whom power to make Bye-laws was given u/s 34 widened the

scope of "presumption" by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the Legislature and not by a delegate in exercise of the rule making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore ultra vires. The reliance placed by the Assessing Authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighment of "Copra" within the notified area committee that the transaction of sale took place in that market area.

29. Let us now consider the next question relating to the nature of transaction relating to sale/purchase of "Copra" by the respondent from various dealers in the State of Kerala.

30. It is contended by the learned counsel for the appellant that if an order was placed with a dealer at Kerala in pursuance of which goods were despatched by lorry to Hyderabad where the respondent, after making payment to and receiving documents from the bank, obtained delivery of goods, and that too, after weighment, the transaction cannot but be treated as sale at Hyderabad and not in the State of Kerala.

31. During the pendency of the proceedings before the Appellate Authority, statement of Shri Somnath Bhattacharya, Director of the respondent Company was recorded. He stated that the "Copra" was brought into the State of Andhra Pradesh from outside. It was unloaded at the premises of the appellant where it was crushed and coconut oil was extracted. He further stated as under :

After the material comes to Hyderabad, we will weigh the same for the purpose of verification regarding the quantity despatched by the Kerala dealers. We have a running account with the dealers in Kerala State. The account of the dealers will be settled some times monthly and sometimes within two or three months from the date of despatch... very rarely it is found on weighment at Hyderabad that the quantity despatched by the dealer at Kerala is less than the quantity mentioned in the concerned invoice and in such cases, the Hyderabad unit will send a report to our Head Office and the Head Office raises a debit note against the dealer for the shortage of Copra.

32. The above statement has been considered by the High Court which came to the conclusion that the weighment was done only for the satisfaction of the buyer and was not a condition of contract. The High Court also took into consideration the contents of the invoice and Form-X and observed as under :

The appellate authority has referred to a copy of invoice No. 357 dated 16.5.1985 for arriving at the conclusion that the purchase was effected by the appellant in Hyderabad. This invoice dated 15.5.1985 show that one Abdul Hameed despatched 200 bags of 'Copra' through lorry No. MSO 3971 from

Alleppey in Kerala to Hyderabad and the demand draft for Rs. 1,39,000 was forwarded to bank. The note to the invoice says that the despatch of the goods is made solely at the risk and responsibility of M/s. Shalimar Chemical Works, the appellant herein, and that Abdul Hameed takes "no responsibility or liability as to delayed despatches, losses due to theft, pilferage, rain or damage, leakage, wear and tear etc. Column 1 of the accompanying Form X mentions the name of the person consigning the goods as Abdul Hameed. Clause 5 of Form X is the following terms :

If the consignor is transporting goods in pursuance of a sale for purpose of delivery to the buyer, the name and address of the person to whom the goods are sold, his registration certificate No. under the Andhra Pradesh General Sales Tax Act, 1957. If he is a dealer furnish bill number and date relating in the sale.

Against this column No. 5, it is mentioned that the appellant herein is the person to whom the goods are sold. The consignor's name is mentioned in column No. 6 as Abdul Hameed of Alleppey. Column No. 7 is in the following terms :

7. If the consignor is transporting the goods from one of his shops or godown to an agent for sale or from one of his shops or godowns to another for the purpose of storage, the address of the agent or of the shop or godown to which the transport are made.

Against this column, it was written "For Sale". Because it was written in Column No. 1 as "for sale", the appellate authority held that this evidenced that the transport of 'Copra' was only to enable the appellant to purchase the same and that the same was not sold in Alleppey.

The view taken by the appellate authority is totally unsustainable.

33. The High Court further observed as under :

One significant aspect to be noticed in this case is that after the stocks were loaded into the trucks, the sellers in Kerala had absolutely no liability with regard to any future losses. That is the reason why the goods were insured and the insurance premia were paid by the appellant. Where goods have been delivered to a common carrier to be sent to the person, by whom they have been ordered, the carrier becomes the agent of the vendee and such a delivery amounts to delivery to the vendee Section 23(2) of the Sale of Goods Act. There was thus completed sale in Kerala State and no purchase in the State of Andhra Pradesh.

34. On the basis of material placed on record, the High Court came to the conclusion that the sale of "Copra" took place in the State of Kerala and not at Hyderabad.

35. We may, at this stage, consider certain provisions of the Sale of Goods Act, 1930, specially as the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 does not contain any definition of sale or purchase. Sections 19 and 20 of the Sale of Goods Act are quoted bellows :

19. Properly passes when intended to pass-

(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

(3) Unless a different intention appears, the rules contained in Sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

20. Specific goods in a deliverable state - where there is an un-conditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

36. We may, before analysing the provisions of Sections 19 and 20, observe that the Indian Sale of Goods Act is based largely upon the English and American Acts. Under these Acts, namely, the English Sale of Goods Act, the American Uniform Sales Act and the Indian Sale of Goods Act, the relevant factor for determining where the sale takes place, is the intention of parties. A contract of sale, like any other contract, is a consensual act inasmuch as parties are at liberty to settle, amongst themselves, any terms they may choose.

37. Section 19 attempts to give effect to the elementary principle of the Law of Contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of the making of contract. It all depends upon the intention of the parties. It is, therefore, the duty of the Court to ascertain the intention of the parties and in doing so, they have to be guided by the principles laid down in Section 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.

38. Section 19 indicates that in case of unconditional contract to sale in respect of specified goods in a deliverable state, the property in the goods passes to the buyer at such time as the parties intend it to be transferred . Section 19(3) provides that Section 20 to 24 contain the rules for ascertaining the intention of the parties as to the time at which the property in the goods shall be treated to have passed to the buyer. Both Sections 19 and 20 apply to the sale of "specific" or "ascertained" goods.

39. Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of "specific goods" in a "deliverable state", the property in the goods passes to the

buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased.

40. In order that Section 20 is attracted, two conditions have to be fulfilled : (i) the contract of sale is for specific goods which are in a deliverable state; and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, "Unless a different intention appears" occurring the Section 19(3). In AIR 1935 182 (Privy Council) it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case.

41. This Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, has held that in an auction sale of chattels, property passes to the purchaser on the acceptance of his bid. This occurs not because of Section 64(2) but because of the rule contained in Section 20.

42. In the instant case, the goods which were the subject matter of sale were ascertained goods. They were also in a deliverable state. On the order being placed by the respondent, the seller in the State of Kerala, loaded the goods on the lorry and despatched the same to Hyderabad. It is at this stage that the conduct of the parties becomes extremely relevant. It was one of the terms of the contract between the parties that the seller would not be liable for any future loss of goods and that the goods were being despatched at the risk of the respondent. The respondent had also obtained insurance of the goods and had paid the policy premium. He, therefore, intended the goods to be treated as his own so that if there was any loss of goods in transit, he could validly claim the insurance money. The weightage of the goods at Hyderabad or the collection of documents from the bank or payment of price through the bank at Hyderabad were immaterial inasmuch as the property in the goods had already passed at Kerala and it was not dependent upon the payment of price or the delivery of goods to the respondent.

43. We are in full agreement with the view expressed by the High Court and are also of the opinion that having regard to the evidence on record which indicated that on the order placed by respondent, the stocks were loaded into the trucks for despatch to Hyderabad with the clear stipulation that the despatch was at the risk of the purchaser and that the seller had no liability with regard to any future losses and that the stock was insured and the insurance premium was paid by

the respondent, the sale took place in the State of Kerala and not at Hyderabad.

44. In view of the above, the appeal has no merit and is dismissed. There will be no order as to costs.