(1996) 05 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition Nos. 5345 and 5346 of 1991

A.R. Khaleel APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 30-05-1996

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 2(28)

Citation : (1997) 1 KarLJ 327

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. By these petitions, the petitioners have prayed for the issuance of writ of certiorari or any other appropriate writ, order or direction for quashing of impugned Notification dated 19/20-3-1989 issued by respondent 1 published in Karnataka Gazette dated 23-3-1989 Annexure-B to the writ petition as well as for quashing of notices dated 30-1-1991 bearing No. :3468:90-91 copy of which is Annexure-C and the notice dated 22-10-1990 bearing No. : 1728:90-91 copy of which is Annexure-D issued by respondent 3 and for grant of such further relief, writ, order or direction as this Court deems fit.

2. The petitioners case is that, the petitioners are Coconut merchants in the district of Gulbarga. According to the petitioners case, vide notification dated 5-8-1988 bearing No. Samatu:109: Manie:88 published in the Gazette of Karnataka of 18th August, 1988 (copy of which is Annexure-A to the writ petition), respondents proposed to declare among other items, the Coconut to be the notified agricultural produce under Sections 4 and 5 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. Subsequently, the respondents after the expiry of the period mentioned in the notification, published another notification under Section 5 of the Act declaring Coconut to be the notified agricultural produce vide Annexure-B to the writ petition. Subsequently in pursuance of Notifications Annexures-A and B to the writ petition, the respondent called upon the petitioners to obtain necessary licence and to pay the prescribed fee. The notice further provided that in case the petitioners fail to comply with the notices and to obtain the licence, action may

be taken against the petitioners under Sections 116 and 117 of the Act. Feeling aggrieved from the notices contained in and copies of which are Annexures-C and D, petitioners have filed this writ petition under Article 226 of the Constitution of India and have challenged the notifications Annexures-A and B to the writ petition as well as notices issued by the respondent dated 30-1-1991 and 22-10-1990.

3. Notice of this petition had been issued to the learned Government Counsel and appearance has been put on behalf of respondents 1 and 2 by the learned Government Pleader Sri R.K. Hatti and on behalf of respondent 3, appearance has been put by Sri B.G. Sridharan, an Advocate of this Court and standing Counsel for Market Committee. No counter affidavit has been filed in this case by the opposite parties.

4. On behalf of the petitioners, it has been contended by the learned Counsel for the petitioners Sri N.S. Deshpande that Coconut is not an agricultural produce and it could not be so declared to be an agricultural produce by the notifications Annexures-A and B. Sri Deshpande further submitted that though Government proposal was published in the papers and he fairly submitted that, to his knowledge, no objection thereto had been filed by the petitioners. The learned Counsel Sri Deshpande submitted that Coconut is not an agricultural produce and produced in Gulbarga area. Petitioners imports the Coconut from other areas and sells in Gulbarga area, so with respect to Gulbarga area, this is not an agricultural produce and hence notifications could not be issued. He further submitted that after issue of notification Annexure-B in 1989, no steps had been taken and all of a sudden, on 30-1-1991 and 22-10-1990, notices were issued to the petitioners directing them to take the licence. There is no reason why after expiry of such a long time, such notices were issued. The petitioners were carrying on the business for last several years prior to the issue of notifications. The learned Counsel further submitted that Coconut is not an agricultural produce and it could not be notified as an agricultural produce, so notifications Annexures-A and B are bad and therefore, any notice such as Annexure-C issued by the respondents is also bad and illegal.

5. The above contentions made by the learned Counsel for the petitioners have been hotly contested by the learned Government Pleader Sri R.K. Hatti as well as Sri B.G. Sridharan appearing for the Market Committee. The learned Counsels for the respondents invited my attention to the definition of agricultural produce under the Act as well as to the definition of notified agricultural produce. The learned Counsel for the respondents submitted that under Section 5, that the power has been vested in the Government to add any agricultural produce as defined in the Act in the category of the notified agricultural produce for the purpose of regulating its transactions/sales and purchases in the market area. He submitted that petitioners have not filed any objections to the notifications Annexures-A and B. The learned Counsel for the respondents submitted that a perusal of Schedule to the Act shows that Coconut has been treated by the

Legislature while enacting the Act to be an agricultural produce and therefore the Coconut will have deemed to be an agricultural produce for the purposes of the Act. The learned Counsel for the respondents invited my attention to the Entry 5 under Head VIII - Plantation Crops and Spices in the Schedule and submitted that as it is included in the Schedule, the Coconut produce will be taken and deemed to be an agricultural produce under Section 2(1) of the Act. The learned Counsel further submitted that when once the notification has been published under Sections 4 and 5, in view of Section 8, no person can sell the specified agricultural produce in any other area other than the market area or market yard and subject to the conditions prescribed by the Act and the rules including the condition of taking or obtaining the licence and paying the licence fee. The learned Counsel for the respondents submitted that, therefore, the notices, copies of which are Annexures-C and D cannot be said to suffer from any illegality or there is any error of jurisdiction.

6. I have applied my mind to the contentions raised by the learned Counsel for the parties. Before going into detail about whether the Coconut is an agricultural produce or not, I think, it will be appropriate to refer to the definition of Agricultural Produce as given in Section 2, sub-section (1) of the Act. Section 2, sub-section (1) of the Act reads as under:-

"2. Definitions.-In this Act, unless the context otherwise requires,-

(1) "Agricultural Produce" means the produce or goods specified in the Schedule".

Section 2(28) of the Act defines Notified Agricultural Produce as under:-

"(28). "Notified Agricultural Produce" means any agricultural produce which the State Government has by notification issued under Sections 4 and 5 declared as an agricultural produce the marketing of which shall be regulated in the market area".

The Legislature has added the Schedule to the Act and Section 2(1) has to be read along with the Schedule. The Schedule to the Act defines various categories of agricultural produce for the purposes of the Act. Under the Head VIII - Plantation Crops and Spices, Coconut has been mentioned as Item 5. A reading of definition clause along with the Schedule per se shows that for the purposes of Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, the Legislature has considered and described Coconut to be an agricultural produce or those produce or items which are mentioned in the Schedule to be an agricultural produce. It is the principle of law of interpretation that when the Act or statute defines certain expression, unless the context otherwise requires, the definition given in the Act has to be taken as operative effectively for the purpose of interpretation of the term as used in the Act. See: Central Inland Water Transport Corporation Limited and Another v Brojo Nath Ganguly and Another1. So, when the Coconut is included in the Schedule attached to the Act and the agricultural produce is defined as the produce or goods as specified in the Schedule, Coconut has to be taken to be an agricultural produce. Section 3 of the Karnataka

Agricultural Produce Marketing (Regulation) Act, 1966, provides that in case the State Government intends to regulate the marketing of any agricultural produce in an area, then it may issue a notification making a declaration and specifying such agricultural produce with reference to the area. Section 3(2) provides that notification may provide that any objections or suggestions which may be received by the Government within a period of 30 days, will be considered by the State Government. Section 4 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, provides that after the expiry of the period of notification issued under Section 3 and after considering the objections or suggestions, if any, the State Government may issue another notification and declare the area specifying in the notification issued under Section 3 or any portion thereof to be the marketing area and that the marketing of all or any of the kinds of agricultural produce specified in the notification issued under Section 3 shall be regulated under this Act in such market area. Section 5 of the Act confers the power on the Government to make amendments in the notifications issued under Section 3 or 4 by either excluding from any market area, any area or include therein an additional area, or may declare that the regulation of the marketing of any agricultural produce in any mar-

1. AIR 1986 SC 1571: (1986)3 SCC 156 ket area shall cease or that the marketing of any agricultural produce shall be regulated in such market area. Thus, the Government has been conferred power either to exclude any area for the regulation of the marketing of agricultural produce by notification under Section 3 or 4 or to add any area or items therein in accordance with the procedure specified under Sections 3 and 4.

7. In the present case, Annexures-A and B appears to have been issued under Section 5 read with Sections 3 and 4. There is no dispute that no objections were filed to these Notifications Annexure-A and thereafter Annexure-B became final. Thus, it cannot be said that notifications suffers from any illegality or error of procedure nor the notifications suffers from any excess of authority. The Coconut as such being an agricultural produce as defined in Section 2(1) read with the Schedule and thereafter, it has been notified as agricultural produce by the issuance of Notification under Section 5 read with Sections 3 and 4, the transactions of sale or purchase in the area had to be regulated under the Act.

8. It has been contended by the learned Counsel for the petitioner that Gulbarga is not a Coconut producing area. It might not be a Coconut producing area, but, the agricultural goods can be imported from one area to other area and transactions may take place in that particular area where it might not be produced, then for regulating it, the notifications could be issued and once it has been subjected to the notification under Sections 3, 4 and 5, the transactions in relation to that agricultural produce by an importer has to be carried and regulated in accordance with the principles of law and procedure prescribed under the Act. When I so opine, I find support for my view from the language of Section 65 of the Act which provides for levy of the market fee. Section 65 of the

Act provides for market fee in respect of agricultural produce sold in the market area. The language of the section does not say that the agricultural produce produced in the area and then sold in the market area. It only says agricultural produce sold in the area, which means even if it is imported and then sold, then market fee be levied. Section 65(2-A)(ia) reads as under:-

"(ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the Committee". The reading of Section 65(2-A)(ia) per se reveals that even an agricultural produce which is imported and which might not have been produced in the area where it is sold, even in those cases where importer brings certain agricultural produce and sells in a particular market area, then a right has been conferred on him as well as duty has been imposed on him to realise the market fee from the purchaser to whom the importer has sold the goods and his further liability is to pay the same to the Committee. It means that, if the importer carries the transaction of sale of the goods imported by him and sells to a purchaser in the market area, even if he does not realise the market fee from the purchaser, then also he will be liable to pay because, it is his duty to realise and to pay. The Committee may have the right to realise the same from him.

9. In this view of the matter, in my opinion, when the opposite parties issued notices Annexures-C and D calling upon the petitioners to take the licence and to pay the required fee, they did not commit any illegality and error of law or jurisdiction. In my opinion, the notifications contained in Annexures-A and B or notices contained in Annexures-C and D do not suffer from jurisdictional error or error of law.

10. In this view of the matter, in my opinion, petitions are misconceived and the writ petitions are hereby dismissed. The costs of the petitions are to be borne by the parties respectively.

11. Sri R.K. Hatti, the learned High Court Government Pleader is permitted to file his memo.

