(1999) 10 GAU CK 0002

In the Gauhati High Court

Case No : Civil Rule No. 1453 of 1998

Assam Roller Flour Mills Association — APPELLANT

Vs

Assam Agricultural Marketing Board — RESPONDENT

Date of Decision : 29-10-1999

Acts Referred:

Assam Agricultural Produce Market (General) Rules, 1975 — Rule 21(7), 21(7)
Assam Agricultural Produce Market Act, 1972 — Section 21, 21
Constitution of India, 1950 — Article 226, 226

Citation : (2000) 1 GLJ 506

Hon'ble Judges : M.Sharma, J

Bench : Single Bench

Advocate : A.K.Saraf, W.Haque, S.A.Laskar, P.G.Barua, I.Rahman, H.Roy, A.K.Sharma, A.Dutta, D.K.Mishra, Z.Iqbal, Advocates appearing for Parties

Judgement

1. The writ petitioner Association, an Association of Roller Flour Mills of North East Region has preferred this writ petition challenging the vires of Rule 21 (7) on the ground that the Rule making authority under section 49 of Assam Agricultural Produce Market Act, 1972 has framed the said Rule in access of the powers granted to it and prays for a direction from the Court to declare the Rule 21 (7) ultra vires and to quash the same and also to refrain from realising the marketing cess at Srirampur check gate in anticipation of further sale. The writ petitioner further prays for a direction to refund the cess already realised by the respondent State Govt.

2. The members of the petitionerAssociation are engaged in producing Flour (Maida), Semolina (Suji), Atta, Whole Meal Atta and wheat bran by manufacturing process in the respective mills. The requirement of wheat for manufacturing the aforesaid products are purchased by the members from North India mainly Punjab, Haryana and Uttar Pradesh as the production of wheat in North Eastern Region is not adequate to cater to the requirements of the flour mills situated in the region. The members of the petitionerAssociation purchase wheat from different places in Punjab, Haryana and Uttar Pradesh by way of

paying cess to the Marketing Committees of the respective places and thereafter the goods are despatched to Assam by road and rail at the risk of the members/ consignees. The wheat is duly insured in the name of consignee and the same is brought to the State of Assam at the risk and cost of the consignee. The wheat ''are ascertained goods and are in deliverable state, as such the sale of wheat is completed in the States of Punjab, Haryana and Uttar Pradesh from where purchases are being made. The State Legislature of Assam enacted a law namely, the Assam Agricultural Produce Market Act, 1972, to prevent exploitation of growers of agricultural produce to provide for establishment of organised market and market yards to ensure sale and purchase of agricultural produce at a fair price and also to ensure correct weighment of such produce brought and sold in the market yards. The State Govt under the power conferred by section 49 of a the Assam Agricultural Produce Market Act, 1972 has framed a set of Rules namely the Assam Agricultural Produce Market (General) Rules, 1975 which came into force w.e.f. 15.6.1977. The State Govt has bees authorised under the Assam Agricultural Produce Market Act, 1972 to constitute Market Committee to enforce the provisions of the Act. The section 3(i) of the Assam Agricultural produce Market Act, 1972 confers powers on the State Govt to establish and constitute a State Agricultural Marketing Board consisting of Chairman and 10 other members to be nominated by the State Govt. The Assam State Agricultural Marketing Board is vested with the powers of superintendence and control over the Market Committee under the Act

3. Before proceeding to decide the case, it is necessary to examine the section 21 of the Assam Agricultural Produce Market Act, 1972 (hereinafter called the Act) which is reproduced below:

?21. (1) Every Market Committee shall levy and collect a cess on the agricultural produce bought or sold in the market area at a rate not exceeding one rupee of every one hundred rupees of the aggregate amount from which a notified agricultural produce is bought and sold whether for cash or for deferred payment or other valuable consideration:

Provided that no cess will be levied on goods manufactured from the agricultural produce on which cess is proposed to be levied and which are ultimately exported out of the country.

Explanation 1: For the purpose of this section all notified agricultural produce taken out or proposed to be taken out of a market area shall (unless the contrary is proved) be presumed to be bought or sold within the area.

Explanation 2: The cess referred to in section 21 shall be paid by the purchaser of the notified agricultural produce concerned.?

4. Mr. D.K Mishra, the learned counsel for the petitioner has submitted that according to the provisions of section 21 of the Act, the cess on wheat can be levied only on sale and purchase of wheat or any agricultural produce. It is / further submitted that, Explanation 1 of the section 21 creates a legal fiction that

all notified agricultural produce taken out or proposed to be taken out, shall be presumed to be bought and sold within such area; that this is a rebuttable presumption and is limited to ''taken out'' or ''proposed to be taken out'' only, that the Act did not provide for any other legal fiction to raise such presumption.

5. Mr. DK Mishra, learned counsel for the petitioner further submitted that the State Govt while framing the Rules under section 49. of the Assam Agricultural Produce Market Act, 1972 (the Act) namely, Assam Agricultural Produce Market (General) Rules'', 1975 (hereinafter called Rules, 1975) has greatly widened the scope of presumption by providing a number of factors which are beyond the legislative policy.

6. In view of the main challenge of the petitioner and the submissions made by the counsel that the rule making authority has framed the Rule 21 (7) in excess of its powers granted to it, it is necessary to set out the relevant provision of Rule 21 (7) of the Rules, 1975.

7. Rule 21 (7) of the Rules, 1975 is reproduced below :

?21. (7) For the purpose of this Rule agricultural produce shall be deemed to have been bought or sold in a notified area :

(i) if the agreement of sale or purchase thereof is entered into the said area; or

(ii) if in pursuance of the agreement of sale or purchase the agricultural produce is weighed in the said area; or

(iii) if in pursuance of the agreement of sale or purchase, the agricultural produce is delivered in the said area to the purchaser or to some other persons on behalf of the purchaser?.

8. Mr. Mishra learned counsel for the petitioner submitted that while section 21 of the Act limits that presumption to one factor, namely moving out of notified commodity out of the notified area or proposed to be taken out. Rule 21 (7) has added more to such deeming fictions by including within the presumption like weighment, delivering and entering of the agreement of sale or purchase. These factors have not been mentioned in Explanation 1 to section 21 of the Act; that scope of Explanation 1 to section 21 has been widened by State Govt in exercise of Rule making powers under section 49 of the Act which is a delegated legislation.

9. Affidavitinopposition has been filed by respondent Nos 1, 2 and 3 also by the State of Assam. All the respondents denied the claim of the petitioner that the Rule making authority has exceeded its power in framing the Rules, 1975 and, therefore, the writ petition is without any merit.

10. The stand of all the respondents is that Rule 21(7)(iii) is clear and there cannot be any controversy as one of the essential condition of sale, i.e., delivery has been made within the market area and that this provisions may not require any argument in order to sustain the attack on the validity of the same.

11. Mr. Laskar, the learned counsel for the respondent Board who led the argument objected to the main contention of the petitioner that the word ''if the agreement of sale or purchase'' as stated in Rule 21 (7) (i) is an access of the Rule making power as the Explanation in section 21(1) only stated about ''taken out or proposed to be taken out''. Mr. Laskar, the learned counsel has submitted that to resist this, it was necessary to find out whether the meaning of the ''agreement'' as indicated in Rule 21 (7) is required to be collected within the word ''proposed to be taken out''. In support of his argument Mr. Laskar referred to and relied on the word ''proposed'' as defined in the Concise Oxford Dictionary (9th Edition, 1998) wherein the word ''proposed'' means ''to put forward for consideration''. Mr. Laskar insisted that the word ''proposed'' therefore, means an offer is made; that when an offer has been made, there must be two parts; but here the word is ''proposed to be taken but'', i.e., making an offer has been completed in the meanwhile and that as such there is an agreement to accept the offer. Mr. Laskar further submitted that the dictionary meaning of the'' agreement'' as stated in the said dictionary is "act of agree; the holding of the same opinion (reached agreement); mutual understanding; an arrangement between the parties; course of action etc.? As it is seen, the gist of the submission of Mr. Laskar, learned counsel for the respondent is that when the word ''proposed'' is used, it means the agreement is complete and when the offer is made by one party, it has been accepted by the other party and to carry this meaning the word ''proposed'' is used. In that view of the submission of Mr. Laskar, the word ''proposed'' used in the Rule has to be taken to mean an agreement has been reached, whereby it has been agreed that the agricultural produce would be taken out of a market area and, therefore, it is presumed to be bought or sold as stated in Explanation 1 of section 21 (1). After interpreting the meaning, the learned counsel for the petitioner has submitted that the word ''proposed'' as contained in Rule 21 (7) connotes agreement of sale or purchase in pursuance of the agreement and the Rule making authority acted within its jurisdiction.

12. In view of the above discussion, section 21 (l)/Rule 21 (7) requires some discussion. A bare perusal of the section 21(1) and Rule 21 (7) shows that the Rule has widened its jurisdiction to those sale and purchase of agricultural produce like wheat which are proposed to be taken out. The settled position of law is that the delegated authority is authorised to make rules to work within the scope of its authority and can not either enlarge or restrict the scope of the Act.

13. In support of his submission, Mr. Mishra learned counsel for the petitioner referred to and relied on the decision of the Apex Court in the case of Agricultural Market Committee vs. Shalimar Chemical Works Ltd reported in (1997) 5 SCC 516. In this case, dispute had arisen between the above mentioned parties relating to applicability of the some provisions of Andhra Pradesh Agricultural Produce and Live Stock Market Act and Rules framed therein and particularly Rule 74 (2) and Byelaw 24 (5) is challenged on the ground that these are beyond the scope of the Act, more particularly section 12 and, therefore, ultra vires.

14. The Apex Court while deciding the issue in question, is very similar with this case held that :

?Power to make subsidiary legislation may be entrusted by the Legislature to another body of its choice, but the Legislature should, before delegating enunciated either expressly or by implication, the policy and the principles for the guidance of the delegates. These principles also apply to taking statutes. That 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 can not widen or constrict the scope of the Act or the policy laid down there under. It can not. In the ground of making rules, legislate on the field covered by the Act and has to restrict itself to the policy and purpose of the Act.?

15. The Apex Court applying this principle which is similar to the case in hand, further held as follows :

?..... market fee can be levied under the Act only on the sales and purchase of notified agricultural produce within the notified area. Explanation 1 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 transaction of sale and purchase for which direct evidence may not be available, since a notified agricultural produce can be sold only within notified market area, and that too, by a trader having a licence issued to him by the committees 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. This legal fiction was thus limited to moving of the commodity from within market area to a place outside the market area.?

16. The learned counsel for the petitioner insisted that the decision of the Apex Court in this case (supra) squarely covered the case in hand and further invited Court''s attention to this part of the decision (para 28) which is reproduced below:

?The Govt to whom the power to make rules was given under section 33 and the committee to whom power to make bye laws was given under section 34, widened the scope of ''presumption'' by providing further that if a notified agricultural produce is weighed, measured and counted within the notified area, it shall be deemed to have been sold or purchased in the 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.?

17. Relying on this decision (supra) of Apex Court, Mr. DK Mishra learned counsel for the petitioner urged that this decision of the Apex Court is squarely applicable in the case of the petitioner. I find merit in the submission of Mr. Mishra, learned counsel for the petitioner. I also disagree with the interpretation of Mr. SA Laskar,

learned counsel for the respondent, which he insisted with e support of dictionary meaning, as the ratio of the Apex Court decision (supra) laid down the law which is also involved in deciding the issue in this instant case and, therefore, squarely applicable in the interpretation of section 21 (1) of the Act and Rule 21 (7) of the Rules, which are involved in this instant writ petition.

18. In view of the above discussion, I hold that there is no provision either in the Act, 1972 or in the Rules, 1975 in support of the inhabitant of section 21 (1) and Rule 21 (7) and, therefore, the respondent plea is not sustainable.

19. The petitioner, in his writ petition also has challenged the power and function of the Agricultural Marketing Board to exercise the power conferred on the Market Committee by the Act and the Rules. But this aspect of law has already been decided by this High Court in a catena of judicial pronouncements by which the power and functions of the Marketing Board as well as the Marketing Committees under sections 14,15 arid 16 and section 37 and 38 has been decided and, therefore, can not be challenged in this writ petition.

20. Reference of the decision of this High Court (Division Bench) in the Writ Appeal No. 409 of 1995 (Anjali Trading Company vs. Assam

Agricultural Marketing Board & two others) (197 (2) LJ 633) dated 26.9.97 is not applicable as in that appeal, the question that arose for decision was whether realisation of cess by Marketing Inspector of Sri Rampur Check Gate is legal and valid and also whether the check gate at Srirampur can be established in the manner it had done. In that case, vires of Rule 21 (7) was not challenged and the writ appellate Court held that the levy of cess was permissible, a As stated above, in this case in hand this Court is required to decide on the challenge of the petitioner regarding the validity of the legal fictions contained under Rule 21 (7) and as held in the discussion herein above, this Court holds that the legal fictions provided for in Rule 21 (7) are not within the competence of the State Govt to whom power to frame Rules was delegated by the Legislature.

21. In view of the above discussion, I hold that the collection of cess from the members of the petitioner''s Association is in violation of the section 21 and Rule 21(7). By order dated 26.3.1998, this Court directed that collection of cess shall be subject to the result of the writ petition. However, prayer of the petitioner to refund the cess already realised is rejected as no retrospective effect of the refund of the collected cess can be given. The operation of this judgment and order shall be effected to the petitioner''s Association (Assam Roller Flour Mills Association) from the next financial year.

22. In the result, the writ petition is allowed with the above direction. No costs.

