

(1991) 04 CAL CK 0054
In the Calcutta High Court
Case No : F.M.A. No. 1401 of 1990

Bethuadahari Regulated Market Committee

APPELLANT

Vs

Tapan Kumar Saha and others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 — Section 13(1), 16(2), 17, 17(1), 18

Citation : AIR 1991 Cal 371 : 95 CWN 550

Hon'ble Judges : N.P. Singh, C.J.; U.C. Banerjee, J

Bench : Division Bench

Advocate : Arun Prakash Sarkar, Rabindra Nath Dutta and S. Sanyal, for the Appellant; Kashi Kanta Maitra, C.C. Dey (Private) and Mrs. Chhabi Das, S.C. Ukil, for the Respondent

Judgement

N.P. Singh, C.J.—The appellant has filed this appeal against the judgment of a learned Judge of this Court, directing the respondents of the writ application not to realise the market fee within the market area in question till the respondents fully perform their duties and obligations as enjoined by the provisions of the West Bengal Agricultural Produce Marketing (Regulation) Act of 1972 (hereinafter referred to as "the Act").

2. It is the case of the petitioners of the writ application (hereinafter referred to as "the petitioners") that they are traders and agriculturists residing within the "Market Area" comprising Nakasipara, Kaligunj, Krishnanagar II and Tehatta II in the District of Nadia. It has been alleged that although a notification has been issued declaring several villages as "Market Area" in accordance with the provisions of Section 3 of the Act but no infrastructural arrangements have been made by the Market Committee for providing any service to the agriculturists or traders who sell or purchase the agricultural produce within the said market area. It has been stated that only the principal market yard has been established at Bethuadahari and no sale area or yard have been established anywhere within such market area extending over a distance of over 70 kms. According to the

petitioners unless the Market Committee provides the different facilities, to the traders and agriculturists within the market area, there is no justification for the Market Committee to insist the traders to take licence in accordance with the provisions of the Act or to demand market fees on the sale and purchase of the agricultural produce.

3. An affidavit-in-opposition on behalf of the Market Committee has been filed. It has been pointed out that no sooner the market area was established, writ applications were filed challenging the validity of the provisions of the Act and the constitution of the Market Committee. Because of the pendency of such applications for about ten years "the Market Committee could not take adequate measures for the improvement of the market area or to implement the provisions of the said Act providing facilities and amenities to the traders or to establish the sub-market yards in accordance with the scheme laid out for the purpose". It has been further stated on behalf of the Market Committee that "the Market Committee has the scheme to establish sub-market yards, to provide for checking of standard weights and measures and other facilities to the Market Functionaries as envisaged in the said Act. But at present the Market Committee is not in possession of such fund as to provide all such facilities instantly because of continuance of the order of injunction as stated hereinbefore". It has been asserted that "the Market Committee has already provided facilities to the Market Functionaries by setting up a well built principal market yard, by constructing godowns and sheds, internal roads in the market area, drinking water arrangements to different places, weighing facilities etc.". Thereafter it has been then stated "as the other Market Functionaries were not interested to use the godowns, the same were let out to the Jute Corporation of India, one of the market functionaries". Giving the details of such godowns and other constructions, it was stated as follows:

- (i) Bail Jute godown -- One
- (ii) Loose Jute godown -- One
- (iii) Various crops godown -- One
- (iv) Assortment-cum-boiling of Jute shed -- One
- (v) Auction Platform -- One
- (vi) Rural godown -- One
- (vii) Cattle hut shed -- One
- (viii) Community Latrine -- Ten
- (ix) Drinking water arrangements at different places -- Three tube wells
- (x) Market Committee Building
- (xi) Boundary walls

(xii) Internal Roads in the market area

(xiii) Electrical arrangements.

4. The learned Judge, on consideration of the materials on record, has come to the conclusion that the Market Committee was not discharging its statutory duties and as such not entitled to realise the market fees. On that finding he has issued a writ of mandamus restraining the appellants from realising any market fee till they have discharged their statutory obligations.

5. Section 3 of the Act vests power in the State Government to declare any area as a market area within which purchase and sale of agricultural produce as may be specified in the notification, shall be regulated.

6. u/s 5 of the Act a Market Committee for every market area has to be constituted in accordance with the provisions of the Act.

7. In view of Section 13(1) of the Act after six months from the declaration of any area as the market area no person can carry on business or act as a trader for sale or purchase of agricultural produce within the market area except under and in accordance with the prescribed terms and conditions of a licence issued in this behalf by the Market Committee.

8. Because of sub-sec. (1) of Section 13 there is not much scope for controversy as to whether any person carrying on business or acting as a trader for sale and purchase of agricultural produce, has to take licence. Section 13(1) says in clear and unambiguous words that any person who carries on business as a trader, commission agent or in any other capacity in the sale and purchase of agricultural produce within the market area has to take licence with the prescribed terms and conditions. As such the question of taking the licence for carrying on trade and business within the market area is concerned there is no scope for linking that question with the facilities available to traders within the market area.

9. So far power to realise market fee is concerned, Section 17(1) vests power in the Market Committee to levy fees on the agricultural produce sold in the market area, the relevant part whereof is as follows:

"17(1) Notwithstanding anything contained in the Bengal Finance (Sales Tax) Act, 1941 or any other law relating to taxation of agricultural produce in force, the market committee shall levy fees on any agricultural produce sold in the market area, at a rate which shall not be more than two rupees per one hundred rupees of the amount for which the agricultural produce is sold, whether for cash or for deferred payment or for other valuable consideration, irrespective of the fact that the buyer of the produce is the Central Government or the State Government or an agent or undertaking of either of them or a Corporation constituted under any law for time being in force:

Provided that no fee shall be, levied in the same market area, more than once, in

relation to the same agricultural produce irrespective of the number of transactions."

10. Whether the Market Committee can realise the market fees over the sale and purchase of agricultural produce within the market area without providing facilities to the traders, sellers and purchasers within the market area has been examined by different Courts including Supreme Court on several occasions. It is almost established by a series of judgments of the Supreme Court that fee is not a tax and as such whenever the right to realise the fee is questioned the authority charging such fee is required to satisfy the Court on the basis of the materials produced before it that there is a quid pro quo. In other words, if the fee is being realised by the authority concerned different facilities are also being provided to persons from whom such fees are being realised.

11. This question was considered in one of the earliest judgments of the Supreme Court in the case of *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, , where it was pointed out (at p. 295):

"As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority....."

"a "fee" is generally defined to be charge for a special service rendered to individuals by some governmental agency."

"The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege".

12. In the case of *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, it was reiterated that a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it. But at the same time it was pointed out (at pp. 467-468 of AIR):

"Thus the scheme of the Act shows that the cess is levied against the class of persons owning mines in the notified area and it is levied to enable the State Government to render specific services to the said class by developing the notified mineral area. There is an element of quid pro quo in the scheme, the cess collected is constituted into a specific fund and it has not become a part of the consolidated fund, its application is regulated by a statute and is confined to its purposes, and there is a definite correlation between the impost and the purpose of the Act which is to render service to the notified area."

13. In *The Delhi Cloth and General Mills Co. Ltd. Vs. The Chief Commissioner, Delhi and Others*, after a finding that 60% of the amount of licence fees charged from the mills were actually spent on services rendered to the factory owners, the validity of the licence fee was upheld by the Supreme Court.

14. Again in the case of Indian Mica Micanite Industries Vs. The State of Bihar and Others, it was impressed (at p. 1186 of AIR):

"Before any levy can be upheld as a fee, it must be shown that the levy has reasonable relationship with the services rendered by the Government. In other words, the levy must be proved to be a quid pro quo for the services rendered. But in these matters it will be impossible to have an exact correlation-ship. The correlationship expected is one of a general character and not as of arithmetical exactitude."

15. In the case of The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory, the fee charged under the Bombay Public Trusts Act, 1950 was upheld saying that Public Trusts exercise control and supervision with a view to preserve the trust properties from being wasted or misappropriated by trustees and as such certainly special services are being rendered for the benefit of the trust.

16. A Constitution Bench of the Supreme Court in the case of Kewal Krishan Puri and Others Vs. State of Punjab and Another, while examining provisions of the Punjab Agricultural Markets Act pointed out (at pp. 1015-1016 of AIR):

"The authorities, more often than not, almost invariably, will not be able to know the individual or individuals on whom partly or wholly the ultimate burden of the fee will fall. They are not concerned to investigate and find out the position of the ultimate burden. It is axiomatic that the special service rendered must be to the payer of the fee. The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee. It may be so intimately connected or interwoven with the service rendered to others that it may not be possible to do a complete dichotomy and analysis as to what amount of special service was rendered to the payer of the fee and what proportion went to others."

17. The same question came up for consideration in the case of Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, It was said (at pp. 1261-62 of AIR):--

"The traditional view that there must be actual quid pro quo for a fee has undergone a sea of change in the subsequent decisions..... The power of any legislature to levy a fee is conditioned by the fact that it must be "by and large" a quid pro quo for the services rendered. However, relationship between the levy and the services rendered expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered."

18. Section 19 of the Act says "All moneys received by a market committee shall

be paid into a fund to be called the market committee fund and all expenditure incurred by the market committee under or for the purposes of this Act shall be defrayed out of the said fund". The expression "all moneys received" shall also include the market fee, collected by the Market Committee.

19. Section 20 of the present Act enumerates some of the heads over which the Market Committee can spend its fund. That section speaks apart from other things about maintenance and improvement of the market; construction and repair of buildings and installation and repair of equipments which are necessary for the purposes of the market and for the health, convenience and safety of the persons using it; provision for and maintenance of standard weights and measures, providing facilities, such as shelter, parking accommodation and water for the persons, draught cattle, vehicles and pack animals coming or being brought to the market and construction and repair of approach roads, "culverts and bridges. As such it can be said that the market fee collected has to be spend for maintenance and improvement of the market, maintenance of standard weights and measures, providing shelter, parking accommodation and water for the persons, cattle, vehicles and pack animals, construction and repair of approach roads, culverts and bridges and for proper functioning of the market area where agricultural produce are brought or sold. Neither it is possible for the Legislature nor for the Courts to make an exhaustive list of the facilities which every Market Committee is expected to provide by way of quid pro quo for the market fee realised by it within the market area. It has been pointed out repeatedly by Courts that there is no question of correlating the collection of market fees with the expenses over facilities with mathematical exactitude. But whenever the realisation of such market fee is challenged before the Court, the Market Committee has to satisfy on the materials to be produced that the market fee is not being realised as tax over the transactions in the market area.

20. A time limit of six months from the date of declaration of any area as a market area has been fixed in S. 13(1) after which no person can carry on business or act as trader within such market area without a licence granted by the concerned Market Committee. But no such time limit has been provided under S. 17 of the Act. The Market Committee is entitled to realise market fee on the agricultural produce sold in the market area at the rate prescribed. In this background, in my view, it is difficult for the Court to impose a ban that unless all the facilities conceived are provided by the Market Committee, it is not entitled to collect the market fee. If in every case such a ban is imposed by the Court then the Market Committee may not have sufficient source of income for implementing the schemes for the benefit of the traders and agriculturists within the market area except by way of taking loans from the Banks and State Government as provided by S. 18 of the Act.

21. According to me, to hold that first Market Committees should raise independent funds from the Banks or the State Government, develop the market area fully, by providing all facilities to the traders, agriculturists, buyers and

sellers within the market area and only thereafter such Market Committee should start collecting the market fee, may be a more legalistic view in respect of realisation of market fee but that may not be a practical or workable interpretation of the different provisions of the Act. It need not be pointed out that the levy of the market fee is linked with the sale of the agricultural produce within the market area and as such the Market Committee becomes entitled to realise the market fee no sooner the transaction of sale and purchase starts in respect of the agricultural produce within the market area. At the same time the law enjoins every Market Committee to perform its duty by providing different facilities within the market area to justify the realisation of the market fee within such market area. As such, according to me, whenever any dispute is raised before the Court that a particular Market Committee is realising market fee as a tax, inasmuch as no facility is being provided, the Court should find out as to by the time the Market Committee starts, realising the market fee at least basic facilities have been provided within the market area. Some such basic facilities may be, the establishment of principal market yard, construction and repair of approach roads, shops and shelter for traders and agriculturists, facilities for drinking water, facility for maintenance of standard weights and measures. Every Market Committee is expected to provide such basic facilities within the market area, before such market area starts functioning as the exclusive market area for sale and purchase of agricultural produce. But to defer the realisation of market fee, which right has been vested in the Market Committee by statutes, till all facilities are provided by such Market Committee, in my view, will not be justified. It is very difficult to enumerate as to what shall be the "all facilities" in context of different market areas some of which may be within the interior parts of the State.

22. In the case of *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, it was observed by the Supreme Court (at p. 1264 of AIR):

"It will be noticed that these facilities are to be provided by the market committees in course of time "as and when funds permit". It is needless to stress that the question of providing these facilities would depend on the financial capacity of each market committee. That would depend on whether there are sufficient funds available at its disposal with the Market Committee. We are not impressed by the submission that if a market committee does not have sufficient funds to provide the special amenities it should borrow loans from the State Government under sub-section (1) of Section 18 of the Act or the State Government should provide grant-in-aid to such market committee under sub-section (2) (iii) of Section 16 of the Act. If any particular market committee persistently makes default in not performing the duties imposed on it by or under the Act, or neglects or refuses to carry out any general or special direction issued by the State Government under subsection (3) of S. 4 as regards providing facilities or abuses its powers, the petitioners have the remedy to take up the matter with the State Government. The State Government has ample power under Sec. 22 of the Act to direct the supersession of such a market committee."

23. In the present Act, sub-section (1 A) of S. 20 vests power in the West Bengal State Marketing Board (hereinafter referred to as "the Board") to review the requirements of persons using the market area from time to time and to direct the Market Committee to provide such facilities as the Board may consider necessary. The said sub-section (1 A) of S. 20 is as follows:

"(1A) Every market committee shall, with the previous approval of the Board, spend every year fifty per cent of the fees referred to in sub-section (1) of Section 17 for providing facilities with a view to ensuring smooth marketing of agricultural produce or for servicing loans taken on that account. If any market committee fails to spend the amount or portion of it for the aforesaid purposes, the same amount of the unspent portion shall be utilised for other purposes referred to in subsection (1):

Provided that the Board may from time to time review the requirements of the persons using the market area and direct the market committee to provide such facilities as the Board may consider necessary and any such direction by the Board shall be binding on the market committee."

24. Section 22 of the Act vests power in the State Government to supersede any Market Committee and to appoint a person to perform the functions of the Market, Committee till it is so reconstituted. Even in the present Act provisions have been made as was the position in the case of Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, to control and supervise the working of the different market committees by the Board and the State Government. They are expected to see that the market fees realised are properly spent for providing different facilities to the traders, agriculturists and others who sell and buy agricultural produce within the market area.

25. As already mentioned above it has been stated in the affidavit-in-opposition filed on behalf of the Market Committee that although the Market Committee is not in possession of sufficient fund to provide all facilities conceived by the framers of the Act but the Market Committee has already provided facilities like well built principal market yard, god owns and sheds, internal roads, arrangements for drinking water and weighing facilities. It has been asserted that the godowns have been constructed which have been let out to the Jute Corporation of India because other market functionaries were not interested to use such godowns. The respondents to the writ application took a fair stand by saying that much more is to be provided but there has been delay because the constitutional validity of the Act itself was challenged in this Court in different writ Applications which remained pending for years.

26. Taking all the facts and circumstances into consideration in my view, if a total ban is imposed against the Market Committee from realising the market fee till all the facilities conceived are provided, details whereof have not been mentioned in the judgment of the learned Judge, it may paralyse the market area itself. Accordingly, I direct that the Market Committee shall be at liberty to realise the

market fees in accordance with the provisions of the Act and the Rules framed, over the sale and purchase of the agricultural produce. But they should take immediate steps for completion of the scheme within the market area providing not only the basic facilities but other facilities which they are enjoined by law to provide so that the market fee does not become a tax in the eye of law. Such facilities, which have been indicated in the provisions of the Act, as well as in the different judicial pronouncements of the Supreme Court, should be made available in the market area within a period of one year from today. I further direct the Board as well as the State Government to supervise the functioning of the Market Committee and to see that the market fees realised over the transactions within the market area in question, are spent over the development of the market area. If there is any default or delay on the part of the Market Committee it need not be said that the Board or the State Government should exercise the power vested in them, by taking actions against the Market Committee aforesaid.

27. This appeal is accordingly allowed in part to the extent that the total ban imposed against the Market Committee from realising the market fees over the transactions within the market area in accordance with the provisions of the Act is set aside. The appeal is disposed of in terms of the direction given above. In the facts and in the circumstances of the case there will be no order as to costs.

U. C. Banerjee, J.

28. I agree.

29. Order accordingly.