

(2001) 10 PAT CK 0026
In the Patna High Court
Case No : L.P.A. No. 157 of 2001

Bihar State Agricultural Marketing Board and Others	APPELLANT
Vs	
Arti Enterprises	RESPONDENT

Date of Decision : 08-10-2001

Acts Referred:

Citation : (2001) 10 PAT CK 0026

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Both the appeals arise out of a common order dated 19.1.2001 reported in 2001(1) PLJR 546 passed by a learned Single Judge of this Court, whereby he has allowed the writ applications filed by the writ Petitioners-Respondents herein and quashed the memo dated 24.1.2000, issued by the Managing Director, Bihar State Agricultural Marketing Board (Appellant No. 2), to the Secretaries of the Market Committees constituted under the provisions of the Bihar Agricultural Produce Markets Act (hereinafter referred to as the Market Act) to realise the market fee with regard to transaction of purchase and sale of sugar from traders except the sugar mills, as well as the notices issued to the writ Petitioners-Respondents to pay market fee on the transaction of sugar in pursuance of the aforesaid order dated 24.1.2000.

2. The facts of the case lie in a narrow compass. Admittedly, the writ Petitioners Respondents are wholesale dealers in sugar and holding licence under the provisions of the Bihar Trade Articles (Licences Unification) Order, 1984, as well as the provisions of the Market Act. It is also admitted position that they purchase sugar from different sugar factories/sugar mills and sell the same in the market area as defined under the Market Act to the retailers and bulk consumers/dealers throughout the State.

3. The only controversy between the parties in this case is as to whether the wholesale dealers in sugar are liable to pay market fee with regard to transaction of purchase and sale of sugar in the market area or market yard or sub market yard created within the market area under the provisions of the Market Act.

4. According to the writ Petitioners-Respondents, they are not liable to pay market fee on-the transaction of purchase and sale of sugar as their case is covered by the judgment rendered by the Constitution Bench of Supreme Court in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc.,

5. According to the Appellants-Board, in said case the question for consideration was as to whether the sugar mills situate in the market area engaged in transaction of purchase of sugarcane and sale of sugar and molasses are liable to pay market fee under the Market Act or not in view of the special provisions dealing with the said matter. The said case does not cover the case of transaction of sale and purchase of sugar by the wholesale dealer. It has been held that the purchase of sugarcane by the sugar factories as well as the sale of manufactured sugar and molasses by these factories functioning in the areas of the Market Committees concerned and whose transactions are governed by the Special Acts mentioned in the judgment are not within the purview of the provisions of the Market Act. in other words, the provisions of the Market Act cannot apply to the purchase of sugarcane by the sugar factories as well as the sale of manufactured sugar and molasses by the sugar mills situate within the market area constituted under the Act.

6. The question that has to be considered in these appeals is as to whether the case of the writ Petitioners-Respondents is covered by the aforesaid decision of the Supreme Court or not. If it is found that the case is covered by the aforesaid judgment, then the matter will come to an end. In case not then it has to be decided as to whether the wholesale dealers in sugar are liable to pay market fee or not.

7. The Market Act has been enacted to provide for the better regulation of buying and selling of Agricultural Produce and the Establishment of Markets for Agricultural produce in the State of Bihar and in the matter connected therewith. The Market Act has been enacted with a view to protect the interest of growers of agricultural produce who on account of their ignorance & illiteracy were being exploited by the middlemen. Section 3 of the Market Act contains a provision authorising the State Government to declare its intention of regulating the purchase, sale, storage and processing of agricultural produce by issuance of a notification and Section 4 of the Act empowers the State Government to declare a market area for the purpose of the Market Act after considering the objection I under Sub-section (2) of Section 3 of the market Act. Section 5 of the Market Act empowers the State Government to declare Principal Market yard and sub-market yard within the market area for agricultural produce. Section 6 of Market Act contains a provision with regard to establishment of the market committee for every market area. Section 15 of the Market Act contains a provision with regard to sale of agricultural produce. It provides inter alia that no agricultural produce shall be bought or sold by any person at any time in the market area other than the relevant principal market: yard or sub-market yard or yards estate lished therein except such quantity as may on this behalf be prescribed for

retail sale or personal consumption. Section 27 is the charging section and it empowers: the Market Committee to levy and collect market fees on the agricultural produce bought or sold in the market area at the rate prescribed therein. It further provide that the market fee shall be payable the buyer in the manner prescribed. Rule 82 of the Bihar Agricultural Produce Markets Rules, 1975 (hereinafter referred to as the Rules) framed under the Market Act, provides for collection of market fee. According to the said provision, the buyer is liable to pay market fee and the mode of collection is provided therein. Rule 98 provides that no person shall carry on business as trader, in the market area except in accordance with the terms and conditions of the licence in the form prescribed under the Rules.

8. Section 2(a) of the Act defines the agricultural produce and according to which all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, etc. are agricultural produce. It is not in dispute that the sugar which is made out of sugarcane is an agricultural produce as defined under the provisions of the Market Act. Section 2(w) defines the traders according to which, a person ordinarily engaged in the business of buying and selling agricultural produce is included under the definition of Trader.

9. Thus, according to the provisions of the Market Act, writ-Petitioners are traders Sugar being an agricultural produce and the place of business of the traders is within the market area, as such under the provisions of the Market Act, they are liable to pay market fee on the luation of sale and purchase of the sugar. However, according to the Respondents, they are not liable to pay market fee inspite of the aforesaid provisions of file Market Act in view of the judgment of the Apex Court in the case of Belsund Sugar Co. Ltd. (supra)

10. The question with regard to market fee concerning sugar matter has been dealt with in paragraphs 3 to 114 (Paras 3 to 112 of PLJR) of the said judgment. As appears from paragraph 5 of the judgment, two contentions were raised for consideration in the aforesaid case which are as follows:

1. Whether the Market Act can apply to the transactions of purchase of sugarcane and sale of sugar and molasses by the Appellant Sugar Mills in view of the fact that regulation of these transactions is already effected by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 (for short "the Sugarcane Act") as well as by the Sugarcane (Control) Order 1966 and the Sugar (Control) Order, 1966 both issued u/s 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Essential Commodities Act) and also under the provisions of the Bihar Molasses (Control) Act, 1947.

2. In the alternative, whether imposition of market fee under the Market Act by the respective Market Committees is justified in the absence of any service rendered to the Appellant Sugar Mills under the provisions of the Market Act and consequently the levy of market foe can be said to be not supported by any quid

pro quo.

11. Thus, the first question for consideration in that case was as to whether the Market Act would apply in the case of transactions of purchase of sugarcane and sale of sugar and molasses by the Sugar Mills in view of the fact that the said transaction has already been effected and covered by the Special provisions as mentioned therein. So far as the second contention is concerned, the same is not relevant for the case.

12. The Apex Court held that the Market Act has been enacted by the State Legislature under legislative power vested in it by Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution. It held that any law made in exercise of aforesaid legislative power will be subject to any other legislation under Entry 33 of the concurrent list. The Sugarcane Act was enacted by the State Legislature in exercise of its legislative powers under Entry 33 of the concurrent list. After consideration of the provisions of the Sugarcane Act enacted by the State Legislature in exercise of legislative power under Entry 33 of List III and the provisions of the Sugarcane Control Order issued u/s 3 of the Essential Commodities Act, the Apex Court held that in view of the fact that Sugarcane Act as well as Sugar (Control) Order has occupied the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied by sugarcane-growers to the earmarked sugar factories, both being Special Acts dealing in sugar, the same will exclude the operation of the Market Act with regard to sugarcane. Paragraph 62 (Para 60 of PLJR) of the judgment reads as follows:

It has to be appreciated that the aforesaid provisions of the Sugarcane (Control) Order operate in the same field in which the Bihar Legislative enactment, namely, the Sugarcane Act operates and both of them are complementary to each other. When taken together, they wholly occupy the field of regulation of price of sugarcane and also the mode and manner in which sugarcane has to be supplied and distributed to the earmarked sugar factories and thus lay down a comprehensive scheme of regulating purchase and sale of sugarcane to be supplied by sugarcane-growers to the earmarked sugar factories. It is, however, true that a comprehensive procedure or machinery for enforcing these provisions is found in greater detail in the Sugarcane Act of the Bihar Legislature. But on a combined operation of both these provisions, it becomes at once clear that the general provisions of the Market Act so far as the regulation of sale and purchase of sugarcane is concerned get obviously excluded and superseded by these special provisions.

13. The question of applicability of Market Act with regard to sugar manufactured by the Sugar Mills has been considered in Paragraphs 72 to 86 (Paras 70 to 84 of PLJR) of the judgment and after taking note of the provisions of the Sugar (Control) Order, 1966, Sugar (Packing & Marking) Order, 1970, Sugar (Restriction on Movement) Order, 1970 and Levy Sugar Supply (Control) Order, 1979, it has been held in paragraph 84 (Paras 82 of PLJR) of the judgment that all sale

transactions of sugar by factories manufacturing sugar out of the sugarcane, the basic "agricultural produce" and raw material, are regulated by the aforesaid provisions. Section 15 of the Market Act is not applicable because of the notification of the State Government keeping sugar factories out of its sweep. The sale of sugar manufactured out of sugarcane and fixation of price thereof will also go out of the sweep of Sections 15(1) and (2) of the Market Act and will be governed wholly by the special provisions of the control orders. On the parity of reasons governing the transactions of sale and purchase of sugarcane, transactions of sale of sugar manufactured out of purchased sugarcane by the same very sugar factories functioning the market area would also be governed by the special provisions of the aforesaid special Sugar (Control) Orders and would pro tanto get excluded from the general sweep of the Market Act.

14. in paragraph 86 (Para 84 elm PLJR) of the judgment, it was further held that the provisions of the Sugar (Control) Orders have not to be read in isolation but have to read with the special provisions controlling the production, sale and purchase of sugarcane out of which sugar is manufactured by the very same sugar factories. It is relevant to quote paragraph 86 (Para 84 of PLJR) of the judgment which runs as follows:

It is not possible to agree with this submission for the simple reason that the provisions of the Sugar (Control) Orders have not to be read in isolation but will have to read with the special provisions controlling the production, sale and purchase of sugarcane out of which sugar is manufactured by the very same sugar factories functioning in the market area. They are all integrated transactions and are subject to a well-knit statutory scheme of control of these commodities. It is obvious that regulation of sugarcane supply and distribution is not in isolation. The main purpose of such regulation is for ensuring better quality and adequate quantity of sugar manufactured out of sugarcane supplied by sugarcane-growers to earmarked sugar factories which manufacture sugar by crushing sugarcane in their factories by resorting to vacuum pan manufacturing process. Therefore, it is the ultimate sale of the manufactured article, namely, sugar by way of levy sugar or in free market that is sought to be controlled by the Control Orders which cannot effectively operate save and except in harmony with the provisions enacted for the control of raw material, namely, the sugarcane as envisaged by the Sugarcane Orders as well as the Sugarcane Act. They together, therefore, provide a complete machinery for controlling the production, sale and purchase not only of the raw material sugarcane but also the finished product--sugar and in this background we have to visualise the legislative intent underlying the enactment of the Sugarcane Act on the one hand and the exclusion of Section 15 to such transactions by the delegate of the legislature, namely, the State of Bihar on the other. It is also necessary to visualise that once Section 15 is out of the way for governing the sale and purchase transactions by sugar factories not only the purchase of sugarcane as raw material by them but also the sale of their finished product, namely sugar is also out of the sweep of Section 15 of the Market Act. Consequently, the entire

regulatory machinery and the infrastructural facilities to be made available by the Market Committees for regulating the sale and purchase of such an "agricultural produce" would not give any signals and would get totally excluded.

15. The conclusion with regard to point No. 1 has been arrived at in paragraph 104 (Para 102 of PLJR) of the judgment wherein it has been held that the provisions of the Market Act cannot apply to the transactions of purchase of sugarcane and sale of sugar and molasses by the sugar mills situated and functioning within the market area of the Market Committee concerned constituted under the Market Act. In paragraph 114 (Para 112 of PLJR) of the said judgment, the Apex Court held as follows:

Before parting with this group of matters, it must be clarified that the present judgment will be applicable in connection with the purchase of sugarcane by the sugar factories as well as the sale of manufactured sugar and molasses by these factories functioning in the areas of the Market Committees concerned and whose transactions are governed by the provisions of the Sugarcane (Control) Order, 1966 as well as the Sugarcane Act of 1981 and also by the relevant provisions of the Sugar Orders and the provisions of the Molasses (Control) Act. Any other transactions of purchase and sale, in the principal market yard or sub-market yards of sugarcane, sugar or molasses by any other licensed dealers not governed by the aforesaid provisions will not be covered by the ratio of this judgment.

(Underlining is mine)

16. Thus, from the judgment of the Apex Court, it is clear that only question for consideration was as to whether the Sugar mills situate in the market area and engaged in the transaction of purchase of sugarcane and sale of sugar and molasses are liable to pay market fee on the transaction of purchase and sale or not, in view of the Special Acts covering the field. It was clearly stated that any other transactions of purchase and sale in the principal market yard or sub-market yards, of sugarcane, sugar or molasses by any other licensed dealers not governed by the aforesaid provisions will not be covered by the ratio of the judgment. Thus the said case, as stated above, has the dealt with the case of other licensed dealers or traders except the case of Sugar Mills.

17. learned Counsel for the writ Petitioner-Respondents however submitted that wholesale dealers of free sale sugar had also filed Special Leave Petitions before the Apex Court against the judgment of this Court in the case of Delhi Cloth and General Mills Co. Ltd. and Others Vs. The Agricultural Produce Market Committee and Others in connection with levy of market fee on the sale of sugar and other commodities including edible oil and vegetables, being SLP (Civil) 9684 of 1992 (Civil Appeal No. 4376 of 1999) and Civil Appeal No. 4500-05/92 and the same were also allowed by the Apex Court as mentioned in paragraphs 205 and 206 (Paras 201 and 202 of PLJR) of the said judgment so far as the market fee on sugar was concerned. Thus, the Apex Court has held that even he wholesale

dealers in sugar are also not liable to pay market fee on the transaction of sale and purchase of sugar. In the case of Food Corporation of India (Civil Appeal No. 2110 of 1989) the Supreme Court held the matter regarding levy of market fee on whole-sale dealer in sugar is concluded by the aforesaid judgment.

18. As I have stated above that the question with regard to liability of wholesale dealers to pay market fee on sugar was not the question before the Apex Court for consideration and the question of sale and purchase of sugar was not considered in isolation. On the other hand, the said question was considered also in view of the special provision controlling the production, sale; and purchase of sugarcane out of which sugar is manufactured. Their Lordships held [Para 86 (Para 84 of PLJR) that they are all integrated transactions "and are subject to a well-knit statutory, scheme of control of these commodities and thereafter held as stated above. The judgment of a Court is not to be construed as a statute. The ratio of judgment has to be understood in the context of the facts of the case and the decision] rendered by the Court is only an authority for what it actually decides and not what I logically follows from it. Thus, the said submission is fit to be rejected.

19. learned Counsel for the writ? Petitioner-Respondents further submitted that the Sugar (Control) Order, 1966 issued u/s 3 of the Essential; Commodities Act, 1955 (hereinafter-referred to as the Control Order) also applies in a case of wholesale dealers in sugar. They are the recognised dealers under the aforesaid Control Order as defined under Clause 2(c). Under Clause (5), the Central Government has been empowered to issue direction not only to the producer but also to the recognised dealers with regard to production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar. Thus, there is elaborate provision to cover the case of the dealers also under the aforesaid Control Order and as such the Control Order being a Special Provision, it would exclude the general provision of the Market Act.

20. According to the aforesaid Control Order, "recognised dealer" means a person carrying on the business of purchasing, selling, or distributing sugar, and licensed under the order relating to licensing of sugar dealer for the time being in force in a State or Union Territory. The petitioner-Respondents is admittedly a registered dealer under the Unification order as stated above. So they are recognised dealer within the meaning of the Control Orders. Clause (5) of the Control Order empowers the Central Government to issue direction to producers and dealers which runs as follows:

5. Power to issue directions to producers and dealers.--The Central Government may, from time to time by a general or special order, issue to any producer or recognised dealer, or any class of producers or recognised dealers, such directions regarding the production, maintenance of stocks, Storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any kind of sugar as it may deem fit.

21. Clause (5-A) contains a provision Kt sugar attached by Government officers etc. not to be sold without directions. Clause (6) deals with the power of in Central Government to regulate movement of sugar. Clause (7) deals with the power of the Central Government to regulate quality of sugar. Clause (10) empowers the Central Government or any person authorised by it to call for information from any producer or recognised dealer. The learned Counsel appearing for the writ Petitioner-Respondents has brought to the notice of the court the two notifications issued under Clause (5) of the aforesaid Control Order by the Central Government. One is the notification being GSR 442(E), dated 9.5.1994, published in the Gazette on 9th May, 1994, wherein it issued certain directions to certain producer and not to the dealer and as such the said notification is not relevant for decision of the case; and the other notification is GSR 377(E) dated April 11, 1994, wherein direction has been given to the recognised dealer to the effect that they shall not hold any stock of vaccum pan sugar or Khandsari (open pan sugar) for a period exceeding seven days from the date of receipt by him of such stock and shall not keep in stock at any time.

22. Under the Control Order, there is no provision controlling the transaction of purchase, sale, storage etc. of sugar. The Central Government has been empowered to issue directions. No direction has been issued by the Central Government with regard to transaction of purchase, sale, storage etc. of sugar by the recognised dealer in exercise of power under Clause (5) of the Control Order. As stated above, one notification issued under the aforesaid provision does not deal with the recognised dealer and by the other notification the recognised dealers were directed not to hold any stock of vaccum pan sugar or Khandsari for a period exceeding seven days. The Apex Court in the case of Belsund Sugar Co. Ltd. (supra) while dealing with the case" of wheat products, noticed the provision of Section 18-G of the Industries (Development and Regulation) Act, 1951 while deciding the question whether in view of the provision contained under the aforesaid Act, the provision of the Market Act be excluded with regard to wheat products. The Apex Court held that unless the Central Government in exercise of its statutory power u/s 18-G promulgates any statutory order covering this field, it cannot be said that mere existence of a statutory provision for entrustment of such power by itself would result in regulation of purchase and sale of flour even if it is a scheduled industry.

23. Thus, on the same analogy, there is no difficulty in coming to the conclusion that in absence of any order issued under Clause (5) of the Control Order, dealing with sale, purchase, storage etc. with regard to sugar by the dealer, it cannot be said that the provisions of the Market Act being general Act will get excluded by the Control Order with regard to wholesale dealer in sugar which is recognised dealer within the meaning of the aforesaid Control Order. Thus, there is no Special Act or Control Order with regard to dealers in sugar and in view of the admitted fact that they are engaged in transaction of sale and purchase within the market area, they are liable to pay market fee in terms of the provision of the charging Section 27 of the Market Act. No notification has been

issued by the State Government u/s 42 of the Market Act making provision of Section 15 of the Market Act inapplicable as in the case of Sugar Mills. Thus, the dealers/traders under the Market Act dealing with transaction of sale and purchase of sugar in the market area or principal market yard or sub-market yards, are liable to pay market fee in terms of the provisions of the Act.

24. In the result, the order passed by the learned Single Judge in the writ applications out of which these appeals arise, are set aside and the appeals are allowed.

S.K. Katriar, J.

25. I agree.