
(2004) 03 AP CK 0047

In the Andhra Pradesh High Court

Case No : Criminal P. No's. 5302, 5386 to 5393 of 2000

Coramandal Traders

APPELLANT

Vs

Agricultural Market Committee and Another

RESPONDENT

Date of Decision : 22-03-2004

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 3, 4, 4(4), 4(5)

Citation : (2004) 3 ALD 285 : (2004) 1 ALD(Cri) 829 : (2004) 2 ALT(Cri) 393 : (2004) 2 APLJ 100

Hon'ble Judges : Gopalakrishna Tamada, J; Bilal Nazki, J

Bench : Division Bench

Advocate : Nooty Ram Mohan Rao, in Criminal P Nos. 5386, 5387, 5389, 5390, 5392 and 5393 of 2000, N. Jayasurya, in Criminal P No. 5388 of 2000 and G.V.R. Choudary, in Criminal P No. 5391 of 2000, for the Appellant; Posani Venkateswarlu, SC for Agricultural Market Committee for Respondent No. 1 and Public Prosecutor, for the Respondent

Judgement

Bilal Nazki, J.—All these petitions raise common question of law and fact and had been referred to this Bench by a Single Judge of this Court vide his order of reference dated 12.9.2002. The facts as averred in Criminal Petition No. 5302 of 2000 shall be taken for reference.

2. The petitioner submitted that the 1st respondent filed a complaint in STC No. 101 of 1998 before the Additional Munsif Magistrate, Guntur under Sections 7, 23 and 25(2) of the A.P. Agricultural (Produce and Livestock) Markets Act, 1966 (hereinafter referred to as "the Act"). The case of the 1st respondent was that the petitioner was doing business in onions, which was a notified agricultural commodity in the notified area, without obtaining a licence from the 1st respondent-Market Committee as was required under the provisions of the Act. The filing of complaint was termed as gross abuse of process of law and was sought to be quashed on the ground that in terms of G.O. Rt. No. 997 dated 4.4.1979, onion was omitted from the applicability of the provisions of the Act.

Therefore running a business in onions without obtaining licence from Market Committee would not be an offence under the Act. Secondly, it was contended that the Market Committee could not have instituted a complaint without obtaining a sanction as contemplated under Rule 46 of A.P. Agricultural (Produce and Livestock) Market Rules. It was also contended that the complaint had been filed in violation of the order passed by this Court in Writ Petition No. 35394 of 1997. It was also contended that the complaint was barred in terms of Section 468 of the Criminal Procedure Code.

3. The respondents filed the counter through the Secretary, Agricultural Market Committee, Guntur. He submitted that the Market Committee was constituted under the provisions of the Act and the commodity onion was one of the notified agricultural products in respect of the Market Committee of Guntur. The Government had issued G.O.Rt. No. 997 on 4.4.1979 de-notifying the onion from the respondent-Market Committee. Subsequently, the Government issued another G.O. being G.O. Ms. No. 286, dated 5.7.1994, notifying all the commodities which are specified in Schedule-II annexed to it, to all the Agricultural Market Committees and by virtue of said G.O. Ms. No. 286, dated 5.7.1994, the onions were brought again under the notified commodities list with effect from 5.7.1994. It is further contended that u/s 7 of the Act, the person who transacts the business of purchase and sale of notified produce, has to obtain a licence and he has to comply with the conditions of the licence and in terms of Section 23, the transaction of business of notified commodity without licence is an offence. When the matter came up before the learned Single Judge, he thought it proper to refer the matter to the Division Bench and according to the learned Single Judge, the G.O. Ms. No. 286 dated 5.7.1994 was issued without following the procedure u/s 3 of the Act. Therefore, the learned Single Judge wanted this Bench to decide whether G.O. Ms. No. 286, dated 5.7.1994 could be implemented or not.

4. Now before going to that question, the scheme under the Act will have to be gone into. It appears that there is some confusion with regard to the scope of Section 3 of the Act which has led to making of this reference. Agricultural produce has been defined in Sub-section (i) of Section 2 as:

"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.

Market under Sub-section (vi) of Section 2 means:

. "A market established under Sub-section (3) of Section 4 and includes market yard and any building therein."

Notification under Sub-section (ix) of Section 2 means:

"A notification published in the Andhra Pradesh Gazette, and the word "notified"

shall be construed accordingly."

Notified area under Sub-section (xi) of Section 2 means:

"Any area notified u/s 3."

Notified market area under Sub-section (xii) of Section 2 means:

"Any area declared to be a market area by notification u/s 4."

Now in the light of these definitions, Section 3 has to be seen. Section 3 lays down:

"(1) The Government may publish in such manner as may be prescribed a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification.

(2) Such notification shall state that any objections or suggestions which may be received by the Government from any person within a period to be specified therein will be considered by them.

(3) After the expiration of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification."

5. Perusal of this Section would show that it lays the methodology which has to be adopted before a declaration of "notified area" is made. Under Sub-section (xi) of Section 2 also it is stated that notified area would mean an area notified u/s 3. Even if an area is notified in terms of Section 3 in respect of any agricultural produce, livestock and products of livestock specified in the notification, even then, it does not constitute any rights or liabilities. Rights or liabilities are constituted u/s 4, which is a second step. There is a pre-requisite for issuing a notification in terms of sub-sections (i) and (ii) of Section 3 for declaring an area to be notified area. Once that is done, the next step would be to proceed in terms of Section 4, which does not prescribe a notification prior to exercising of power under that Section. For the purposes of this case, sub-sections (4) and (5) of Section 4 would be relevant, which reads:

"(4) As soon as may be after the establishment of a market under Sub-section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of this Act in respect of any notified agricultural produce, livestock or products of livestock.

(5) Subject to the provisions of Sub-sections (1), (2), (3) and (4), the

Government may, by notification-

- (a) exclude from a notified market area, any area comprised therein; or
- (b) include in any notified market area, any area specified in such notification:

Admittedly Section 3 notification was issued after draft had been published and thereafter onions were notified and in terms of Sub-section (4) of Section 4, but subsequently by G.O. Rt. No. 997 dated 4.4.1979, onions were de-notified. Therefore the exercise of issuing a draft notification and a final notification u/s 3 is a one time exercise. For the purposes of declaring a notified area, sub-sections (4) and (5) of Section 4 make it clear that notification for a specified notified market area with respect to a produce can be issued and revoked without any draft notification u/s 3. We are fortified in our view by a Full Bench judgment of this Court reported in Mamidi Satyanarayana Murty and Others Vs. The State of Andhra Pradesh and Others, . While analyzing the Act in para 5, the Full Bench held:

"In order to understand the controversy in this case, it is necessary to point out that there are five distinct concepts mentioned in the Act. u/s 2(vi) "market" means a market established under Sub-section (3) of Section 4 and includes market yard and any building therein. Section 2 (viii) defines "market committee" to mean a committee constituted or reconstituted under the provisions of the Act. Section 2(xi) defines "notified area" to mean any area notified u/s 3. Section 2(xii) defines "notified market area" to mean any area declared to be a market area by notification u/s 4. The confusion is likely to arise because similar terminology was also used in the repealed Acts viz., "notified area", "market" and "market yard". Under Sub-section (3) of Section 3 of the Act of 1966 after the preliminaries set out in Sub-sections (1) and (2) have been gone through, the Government has to publish a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purpose of the Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification published under Sub-section (1) of Section 3. We are not concerned, in the course of this judgment, with the rest of the provisions of Section 3. Thus it is clear that the notified area in the instant case, so far as Anakapalli notified area was concerned consisted of five taluks of Anakapalli, Yellamanchili, Chodavaram, Narsipatnam and Chintapalle. The area of these five taluks was thus a single notified area for purposes of the Act. Section 4 deals with the constitution of a market committee and declaration of notified market area. Sub-section (1) makes it clear that the setting up of a market committee by the Government is second step in the process of setting up the entire machinery under Act of 1966."

6. If the contentions raised by the petitioners is accepted, then even the de-notification could not have been done without a notification u/s 3. Then, G.O. Rt. No. 997, dated 4-4-1979 would also be without jurisdiction. The Division Bench of this Court also considered similar issue in a judgment reported in Vijayawada

Skin Merchants Association and Ors. v. State of Andhra Pradesh, Agricultural and Co-operation (Maktg-I) Department, Hyderabad and Ors. 1997 (3) ALD 720 (DB). In para 11 of the judgment, it is held:

"Section 4 of the Act, inter alia, enjoins that after the establishment of the market committees under Sub-section (3) of that section, the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification to be a notified market area for the purposes of the Act in respect of any "notified agricultural produce, livestock or products of livestock". Thus a combined reading of Sub-section (3) of Section 3 and Sub-section (4) of Section 4 of the Act, leads to the conclusion that in respect of the declared notified area of a market committee, "agricultural produce, livestock or products of livestock" may be notified in respect of which the market committee is entitled to exercise the power under Sections 7 and 12 of the Act. Section 7 mandates that trading etc., in "notified agricultural produce, livestock and products of livestock" in the notified area shall be under and in accordance with the conditions of a licence granted to any person by the market committee."

7. Therefore, we do not think that the prosecution launched can be quashed because the notification notifying onions to be the agricultural produce was without jurisdiction, as Section 3 had not been complied with. The reference is ordered accordingly.

8. The learned Counsel for petitioners submitted that in case the reference is ordered by not accepting their contentions, then the matters may be remanded back to the learned Single Judge for a decision on other issues. An additional affidavit was also filed in which, it was stated that the Guntur Wholesale Onion Merchants' Association had filed Writ Petition No. 35394 of 1997 before the High Court challenging the action of respondents in insisting to obtain licence in respect of onion business. Court has disposed of the Writ Petition on 31-12-1997 directing the Agricultural Market Committee, Guntur to dispose of the matter. The Market Committee, Guntur issued show-cause notice and the Union submitted explanation but the Agricultural Market Committee has not decided the matter and the Agricultural Market Committee, Guntur has launched criminal prosecution. In view of the directions issued by the Court, the prosecution launched was not proper.

9. Since we are holding that the notification in G.O. Ms. No. 286, dated 5-7-1994 of Agriculture and Co-operation (Mktg-1) Department is not bad on the ground that a fresh notification has not been issued u/s 3, we do not think on this ground also, the petitioners can succeed. But the other grounds which have been submitted in the petition inter alia of limitation, etc., are not being dealt by us. Therefore the matters are remanded back to the learned Single Judge for disposing of the matters with regard to the grounds which are not covered by this order, but taken in the petition.