(2001) 01 PAT CK 0035

In the Patna High Court

Case No : C.W.J.C. Nos. 2187, 2333 and 6203 of 2000

Deolal Sha Sudist Narayan and Others, etc. etc. APPELLANT

Vs

State of Bihar and Others, etc. RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Citation : (2001) 01 PAT CK 0035

Final Decision : Allowed

Judgement

R.N. Prasad, J.—In these writ petitions, common question of law and facts are involved. They have been heard together and are being disposed of by this order.

2. (n all these writ petitions, memo No. 15/Vidhi-141/99 dated 24.1.2000 issued by Managing Director, Bihar State Agricultural Marketing Board to the Secretaries directing to realise Market fee with regard to sugar from the traders except Mill owner, is under challenge. In CWJC. No. 2187/2000 and CWJC No. 620/ 2000, the notices issued to the petitioners directing to deposit market fee are also under challenge.

3. The petitioners are traders and are engaged in wholesale business of sale and purchase of sugar within the market yard declared under the Bihar Agricultural Produce Markets Act. They have obtained licence under the provision of Bihar Agricultural Produce Markets Act and also whole-sale sugar licence under the provision of Bihar Trade Articles (Licences Unification) Order, 1984. They purchase sugar from different sugar factories and sell the same to retailers and bulk consumers/dealers throughout the State.

4. The case of the petitioners is that the ratio decided in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., is applicable in the case of the petitioners. In the said decision it was held that Belsund Sugar Co. Ltd. is not liable to pay market fee though the factory is within the market yard under the Bihar Agricultural Produce Markets Act. The Bihar State Agricultural Marketing Board had also filed a review petition bearing No. 1249-63/99 before the apex

Court and the same has been dismissed by the Constitution Bench of the apex Court vide order dated 7.10.1999 and it was held that "the grounds raised in the review petitions seek to reargue the matter on merits. This is not within the scope of the review proceedings." Food Corporation of India also filed Civil Appeal No. 2110/89 which was disposed of on 20.1.2000 by the apex Court. The apex Court held that "this matter stands concludes in favour of the appellant by Constitution Bench judgment of this Court in the Belsund Sugar Co. Ltd. v. State of Bihar and Ors. (1999) 4 SC 516. The appeal is, accordingly, allowed. This order will be effective prospectively and no refund of fee would be payable to the respondents by the appellant." The petitioners also brought on record that a review petition bearing No. 1064/2000 was filed in Civil Appeal No. 2110/89, Food Corporation of India v. Bihar State Agricultural Marketing Board and Ors., by the respondent-Bihar State Agriculture'' Marketing Board which was dismissed on 2.11.2000 holding that "apart from there being a delay of 220 days for which the explanation is not found to be satisfactory, even on merits, we see no ground to entertain this review petition." Therefore, the grievance of the petitioners is that memo dated 24.1.2000 issued by respondent-Managing Director, Bihar State Agricultural Marketing Board to the Secretaries directing for realisation of market fee on sugar from all types of traders except mill owners and the notices for depositing of market fee are illegal, bad in law in view of the decision of apex Court.

5. A counter-affidavit has been filed on behalf of the respondents. The stand of the respondents in the counter-affidavit is that in the case of Belsund Sugar Co. Ltd. (supra), the petitioner-Belsund Sugar Company was a manufacturer of sugar. The company used to purchase sugarcane and manufacture sugar, whereas petitioners are not manufacturers rather they are traders. Therefore, the decision in Belsund Sugar Co. Ltd., is not applicable to the case of the petitioners. The petitioners are traders and they purchase and sell sugar within the market yard/sub market yard. They have obtained licence under the Bihar Agricultural Produce Markets Act and also under the Unification Order. The case of the petitioners is not covered by the ratio of the judgment in Belsund Sugar Co. Ltd. (supra) and as such petitioners are not entitled to any relief. In the aforesaid judgment, it has been held that the provision of Bihar Agricultural Produce Markets Act cannot apply to the transaction of purchase of sugarcane, sale of sugar and molasses by the sugar mill constituted and functioning within the market area of the market committee concerned. There is no finding that aforesaid decision will also be applicable to the case of traders who are not manufacturers and are engaged in sale and purchase of sugar. The judgment must be read as applicable to the particular facts proved generality of expression which may be found, there is not intended to exposition of the law but governed and qualified by particular facts of the case in which such expressions are to be found. The case cannot be decided on the basis of sentence here and there of the judgment but on the ratio laid down in the case. The apex Court had no occasion to consider and decide the vires of Section 18 of Bihar Agricultural Produce

Market Act or Rule 82, 98 of the Bihar Agricultural Produce Market Rules in Belsund Sugar Co. Ltd., (supra) nor those provisions have been held ultra vires and as such the petitioners are not entitled to any relief.

6. The admitted position is that before the apex Court, Belsund Sugar Company Ltd. had challenged the legality of imposition of market fee u/s 27 of Bihar Agricultural Produce Market Act on purchase of sugarcane by Sugar Mills and also on sale of sugar and molasses manufactured out of purchased sugarcane. The apex Court considered the grievance of Belsund Sugar Co. Ltd., and also relevant law on lie question and held in Para 104 as follows: - "As a result of this discussion, the first contention will have to be answered in the negative by holding 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 Para 114 of the judgment, the apex Court has particularly held that: - "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."

7. The review petition bearing No. 1249-63/99 filed by the Bihar State Agricultural Marketing Board before the apex Court has also been dismissed by the apex Court on 7.10.1999. The Food Corporation of India who is not manufacturer of sugar also filed Civil Appeal No. 2110/89 before the apex Court which was allowed and it was held by the apex Court that this matter stands concluded by Constitution Bench in The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., . The review petition filed for review of the said order, i.e. in Civil Appeal No. 2110/89 has also been dismissed and it has been held that "on merit we see no ground to entertain this review petition."

8. The petitioners are not factories/manufacturers of sugar rather they are traders/dealers. They obtained licence under the Bihar Agricultural Produce Markets Act and also under the Unification Order. They used to purchase sugar from the factories and sell it to the retail dealers/consumers. The claim of the petitioners is that the ratio decided in Belsund Sugar Co. Ltd.; is applicable to the case of petitioners as in the case of Food Corporation of India who is not manufacturer, the apex Court has allowed their claim applying the ratio of Belsund Sugar Co. Ltd. (Supra) and as such petitioners cannot be denied relief, whereas earned Counsel for the respondents contended that ratio decided in

Belsund Sugar Co. Ltd. (supra) is not applicable to the case of the petitioners as it was with respect to the manufacturer and not trader. Trader''s case cannot be equated to the case of the manufacturer. Moreover, in view of the findings in paras 104 and 114 of the judgment the grievance of the petitioners cannot be allowed as the case of the petitioners is not covered under the aforesaid decision. It was pointed out that ratio of the decision is relevant and applicable in similarly situated case and no sentence from here and there of the judgment can be taken for applying the ratio and deciding the case.

9. On consideration, even if the submission of earned Counsel for the respondents is accepted for the time being but he could not be able to answer the question that the apex Court applying the ratio of Belsund Sugar Co. Ltd.; (supra) allowed the claim of Food Corporation of India who is not factory/ manufacturer and held that this matter stands concluded in favour of the appellant by Constitution Bench judgment, i.e., Belsund Sugar Co. Ltd. (supra) and the review petition for review of the said order has also been dismissed. Judicial discipline is essence of our judicial system. The judgment and order of the apex Court is binding on this Court. This Court has no jurisdiction to say that judgment in Belsund Sugar Co. Ltd. (supra) is not applicable to the case of the petitioners who are traders and not manufacturers, specially in view of the order passed in the case of Food Corporation of India.

10. Thus, the writ petitions are allowed. The memo dated 24.1.2000 and the notices issued to the writ petitioners in C.W.J.C. Nos. 2137/2000 & 6203/2000 are hereby quashed and it is held that the petitioners are not liable to pay market fee. However, there shall be no order as to cost.

