

(1973) 08 BOM CK 0010

In the Bombay High Court

Case No : Spl. C.A. No's. 570, 573 to 577, 626, 629 and 631 of 1973

Devendra Trading Company

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 18-08-1973

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 3

Citation : (1974) MhLj 463

Hon'ble Judges : D.B. Padhye, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : C.G. Madkholkar, for the Appellant; M.M. Qazi, Addl. Govt. Pleader, P.G. Palshikar, V.A. Masodkar and M.P.M. Pillai, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Padhye, J.—All these nine petitions raise a common question of law. Special Civil Application Nos. 570, 626 and 631 of 1973 raise an additional ground about the validity of the notification u/s 3 of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963, hereinafter called the Marketing Act. Since all these cases raise in the main a common question of law, all these petitions can be disposed of by a single judgment. The common question that is raised in all these petitions Is:-

Whether in the facts and circumstances of the case, the Agricultural Produce Market Committee is entitled to levy and collect market fees on the tobacco and tendu leaves purchased by the petitioner in each case from outside the market area and brought into the market area for the purposes of its consumption, namely, for manufacture of bidis out of these goods. ?

The additional question raised in Special Civil Applications Nos. 570, 626 and 631 of 1973 is-

Whether the notification published by the State Government u/s 3 (1) of the Maharashtra Agricultural Produce Marketing (Regulation) act, 1963, is ineffective

owing to the non-observance of the requirements of section 6 of the Marketing Act and rule 8 of the Maharashtra Agricultural Produce Marketing (Regulations) Rules, 1967 framed under sub-sections (1) and (2) of sections 60 of the Marketing Act ?

2. We heard the counsel for the parties in the first instance on the common question aforesaid and after hearing the counsel on that question, we did not call upon the counsel for the petitioners in S. C. A. No. 570, 626 and 631 of 1973 to argue the other ground raised in this petition.

3. Out of these nine petitions, six relate to the Agricultural Produce Market Committee, Gondia and the other three, namely, Special Civil Applications Nos. 576, 577 and 629 of 1973 relate to the Agricultural Produce Market Committee, Tiroda. In each of these cases the petitioner is a partnership firm doing business in manufacturing bidis, in the respective market areas. By a notification u/s 3 (1) of the Marketing Act, the State Government declared its intention to regulate marketing of agricultural produce specified in the notification and the area is also specified in the said notification. Thereafter the State Government issued another notification in the Official Gazette u/s 4(1) of the Marketing Act declaring that the marketing of the Agricultural Produce specified in the notification shall be regulated under the said act in the area specified in the notification. The area so specified was the market area and so far as the Agricultural Produce Market Committee of Gondia is concerned, it comprises of 211 villages mentioned in the accompaniments to Annexure-A of the petition. The said notification regulated the marketing amongst other commodities of bidi patta and tobacco. Bidi patta in this part is from tendu leaves and by putting tobacco in these tendu leaves, bidis are rolled which after processing are put in the market. These bidi pattas are forest produce and by the Maharashtra Minor Forest Produce (Regulation of Trade) Act, 1959, (Maharashtra Act No. LVII of 1969), trade in the said bidi pattas is taken over by the Government and it is the Government who collects the said bidi pattas and sells it to the buyers. These pattas are then sold by the Forest Department to the consumers.

4. In some, petitions that is, Special Civil Applications Nos. 574, 629 and 631/1973, the petitioner purchased bidi leaves from the Forest Officer at Gondia, which is within the market area of the Agricultural Produce Market Committee, Gondia. The rest of the petitioners have been purchasing bidi patta from outside the market area either of the Gondia Market Committee or the Tiroda Market Committee. The tobacco required for the manufacture of bidis is purchased by these petitioners either from the State of Gujrat or the State of Mysore which are both outside the market areas of either Gondia or Tiroda. After purchasing the tendu leaves and the tobacco from outside these market areas, they are brought into these areas by the petitioners for the purposes of rolling them into bidis. In the market areas of Gondia and Tiroda, the respective petitioners have got their factories for the manufacture of bidis. Before rolling the bidis the bidi manufactures have to do some processing of the bidi leaves as well as tobacco

and thereafter the bidis are rolled which are also required to be processed before they are put in the market.

5. It appears that when these commodities, i.e. bidi leaves and the tobacco are brought into the market areas by these manufacturers, the Agricultural Produce Market Committees in these places recover the fees on those goods, according to the rates notified before these commodities are allowed in the area. It further appears that the petitioners in each of these cases were required to obtain a licence from the Market Committee for marketing the agricultural produce commodities with a threat that non-obtaining the licences against the provisions of section 6 (1) (a) and (b) of the Marketing Act and the breach thereof is liable to punishment u/s 46 of the Marketing Act. The petitioner in each of these cases lodged a protest against the notice requiring them to take a licence as also against the levy and collection of the market fees contending that they did not carry on any activity of sale or purchase of tobacco or bidi leaves in the market area and as such, they were not liable either to take a licence or pay the fees. Apprehending that the petitioners would be prosecuted for the alleged breaches, the petitioners have filed these petitions challenging the authority of the Market committees requiring them to obtain licences and to pay the market fees. These petitions are contested by the Market Committees as well as by the State Government.

6. In the first place, the counsel for the petitioners contend that neither the tendu leaves, nor tobacco are agricultural produce, and therefore, the Marketing Act has no application to these commodities and market fee cannot be levied on them. This contention on the face of it has no force. In section 2(1)(a) of the Marketing Act, the term "agricultural produce" has been defined and it means all produce (whether processed or not) of agricultural, horticultural, animal husbandry apiculture, pisciculture and forest specified in the schedule. Tobacco is undoubtedly a produce of agriculture, as it is sown and reaped as an agricultural produce like any other agricultural produce. Similarly tendu leaves are forest produce and, therefore, are included in the term "agricultural produce" as defined in the Marketing Act. The definition is very comprehensive and takes in not only a produce from agriculture, but also from the other categories mentioned therein.

7. In *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, , the term "Agriculture" was held to have both a narrow and wide import and in its wider sense it was held to include all activities in relation to the land, even though they did not comprise basic agricultural operations. Tendu shrubs from which the tendu leaves are picked were held to be comprised in agriculture, though it was materially a forest produce. But here the Marketing Act itself provides its own definition of "agricultural produce" and takes in its field a wide range of produce which includes the produce specified in the Schedule to the Act. The Schedule to the Act includes tobacco as well as bidi leaves as will be found in items Nos. V and XV of the Schedule. For the purposes of this Act,

therefore, tobacco and bidi leaves are both agricultural produce and the Marketing Act would be applicable to both these commodities.

8. It is next contended that none of these petitioners can be compelled to take a licence for dealing in these goods in the market area as they are not traders within the meaning of the Marketing Act. The word "trader" is defined in section 2 (1) (i) as a persons who buys or sells agricultural produce as a principal or as duly authorised agent of one or more persons. It is contended, and for the purposes of these petitions it is not disputed, that the petitioners except in three petitions do not buy or sell either the tendu leaves or the tobacco in the market areas either of Gondia or Tiroda. Only three petitioners at times purchased tendu leaves from the Forest Office at Gondia within the market area of the Gondia Market Committee. So far as the petitioners in Special Civil Application Nos. 574, 629 and 631 of 1973 which buy the tendu leaves within the Gondia Market Committee area is concerned, they would undoubtedly be liable to take a licence u/s 6 (1) of the Marketing Act as this petitioner is not covered by sub-section (2) of section 6. These petitioners are not averse to taking licence as traders if they are held to be so under the provisions of section 6 (1) of the Act. We hold that they are "traders" under the Act. As regards the other petitioners who neither buy, nor sell either tendu leaves or the tobacco in the market area, they could not be called traders liable to take a licence u/s 6 of the Marketing Act. Section 6 deals with regulation of marketing of agricultural produce. Section 6 (1) prohibits any person from using any place in the market area for the marketing of the declared agricultural produce or to operate in the market area or in any market therein as a trader, commission agent, broker, processor, weighman, measurer, surveyor, warehouse-man or in any other capacity in relation to the marketing of the declared agricultural produce, without a licence granted by the Market Committee or otherwise then in conformity with the terms and conditions of a licence. For obtaining a licence as a trader, broker and commission agent, an application has to be made under rule 6 complying with the requirements mentioned therein and for obtaining a licence as a warehouseman, measurer, surveyor, processor, weighman or in any other capacity in relation to the marketing of any declared agricultural produce, an application has to be made under rule 7 and in the form prescribed complying with the requirements mentioned in that rule.

9. A "processor" u/s 6 (1) (b) is required to take a licence for operating in the market area. "Processor" is defined in section 2 (1) (n) to mean a person who processes any agricultural produce either on his own account or on payment of charge. It is not disputed that after the tendu leaves and tobacco are brought in the market area and before they are rolled into bidis, some kind of processing is required to be done with respect to the tendu leaves as also tobacco. The petitioners who are manufactures of bidis do this processing of their own account by employing labour and they would be covered by the definition of the term "processor". The petitioners would, therefore, be processors within the meaning of section 2 (1) (n) of the Marketing Act.

10. The learned counsel for the petitioners do not seriously dispute that they would be processors within the meaning of the Marketing Act and the learned counsel for the petitioners in Special Civil Applications Nos. 570, 626 and 631 of 1973 were not adverse to the petitioners in these cases taking licences as processors in respect of the commodities if they would be liable to take one u/s 7 of the Act. We are of the view that each of these petitioners is a "processor" within the meaning of the Marketing Act, though not a "trader" as their activities are confined only to the rolling of bidis out of tendu leaves and the tobacco brought in the market area and not in buying or selling these goods in the market areas. As such, each of the petitioners is liable to take a licence as "processor" since the processing is done within the the market area and they have to carry on that activity in Conformity with the terms and conditions of the licence granted to them.

11. The next attack, and the only important attack, is as regards the authority of the Market Committee to levy a fee on the tendu leaves and tobacco which are purchased at places outside the market area, but brought in the market area for the purposes of rolling them into bidis. The power of the market committee to levy and collect the fees is given by section 31 of the Marketing Act. It provides that it shall be competent to a market committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf). The Market Committee has fixed the rates within these limits and: the Market Committees at Gondia and Tiroda insist on levying and collecting fees from the petitioners on tendu leaves and tobacco brought by them in their respective market areas. The substantive part of section 31 of the Marketing Act lays down two things. It empowers the Committee to levy and collect fees from every purchaser and that purchaser must be a purchaser of agricultural produce marketed in the market area. Unless these two conditions are fulfilled, no fees can be levied or collected by the market committee even though the goods may be marketed in the area. The fees are leviable only on the sale transaction of agricultural produce as defined in the Act read with schedule marketed in the market area and the liability for the payment of such fees is on the purchaser and not on the seller. In these cases though the goods in respect of which the fees are claimed are agricultural produce, they cannot be said to be marketed in the market area. The term "marketed" is not defined in the Act, but word "marketing" connotes the buying and selling of an article. The commodity must be displayed for sale and by a seller and that commodity is purchased by purchaser. These acts constitute marketing of a commodity.

12. The word "market" as a verb is defined in the Dictionary as "buy or sell in the market; sell (goods) in market". Unless, therefore, the goods are offered for sale and are purchased by others, there is no marketing of those goods. In none of these cases the goods which are brought in by the petitioners from outside the market area are put in the market for sale or purchase by others, nor are those

goods purchased by these petitioners in the market area. Even if these goods which are brought in were put in for sale by these petitioners in the market area, it would be the purchasers thereof who would be liable for the payment of fees to the market committee. It is not in dispute in these cases that the petitioners do not sell the bidi leaves or tobacco brought in by them from outside in the market area. They only bring in these goods for the purposes of using them in manufacture of bidis. Under the substantive part of section 31, therefore, the petitioners would not be liable to the payment of any fees nor would the market Committee be empowered to levy and collect fees on these commodities.

13. However, resort is taken to the first proviso to section 31 of the Act for the purposes of levying and collecting the fees on the tendu leaves and tobacco brought by these petitioners in the market area even though purchased by them from outside the market area. The first proviso reads thus:

Provided that when any agricultural produce brought in any market area for the purposes of processing only or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this section, as if it had been so marketed.

In these cases we are concerned with the first part of the first proviso, i.e. bringing in the agricultural produce in the market area for the purposes of processing only. It is urged on behalf of the respondents that where the agricultural produce is brought in the market area for the purposes of processing only, a presumption arises that the said agricultural produce is not processed and the burden is on the petitioners to prove that the said agricultural produce which had been brought in for the purposes of processing only has been processed within a period of thirty days from the date of its arrival in the area. It is urged that if the petitioners fail to prove that the said goods have been processed within thirty days from the date of their arrival, then they are liable for the fees to the market committee. On the other hand, it is urged on behalf of the petitioners that no presumption arises till the expiry of the period of 30 days and it is only on the 31st and the subsequent days that a presumption arises which presumption according to them would be that those goods have been marketed in the market area i.e. sold in the market area. This will also apply to the goods which are brought in the market area for the purposes of export and on the 31st day and thereafter the presumption would arise that the goods have been marketed in the market area. According to the petitioners this presumption can be rebutted by them by showing that the said goods have not been marketed i.e. sold by them in the market.

14. According to the petitioners, so far as the goods brought in for the purposes of export are concerned, they can export the goods at any time within a period of thirty days and till that time, no question regarding the presumption arises. Of course, if in the meanwhile the goods are sold in the market area, those goods would be liable for the fees which are payable by the purchaser. The presumption

may come into operation only on the 31st day and thereafter and in the case of goods brought in for export, the petitioners could rebut the presumption by satisfying the market committee that the said goods are still lying with them and, therefore, not marketed. According to the petitioners even inspite of the presumption, they could export the goods at any time and if they could show that the goods which they brought in were either with them in specie or exported out of the market area, a presumption in either case would stand rebutted. So far as the goods brought in for the purposes of processing only are concerned, the petitioners contend that if the goods which were brought in for the purposes of processing, though not processed by them, are still lying with them in specie then, the presumption about its being marketed will stand rebutted. This presumption also would stand rebutted if the petitioners were to prove to the satisfaction of the Market Committee that the goods have been processed by them and are with them in the processed condition or utilised in the manufacture of bidis. This processing, according to the petitioners, need not be done within a period of thirty days from the date of arrival of the goods but could be done at any time provided they prove that the goods are with them in the unprocessed condition or have been actually processed.

15. On the reading of the first proviso to section 31, it is clear that no presumption as is contemplated by the proviso can be raised for the first thirty days, because the person bringing in the goods for that purpose is entitled to have them processed any time during that period. It is only on the 31st day on thereafter that the Committee can put the processor to proof that the goods are not being marketed by them. Though ordinarily the liability for the fees is on the purchaser of the goods under the main section 31, still the proviso makes the person who brings in the goods, liable for the fees, though he may not have purchased the goods in the market area, if he neither processed, the goods nor exports the same. This provision seems to have been made to prevent the evasion of the fees by clandestinely disposing of the goods which were brought in the market area for the avowed purposes of either processing or exporting though an actual purchaser in the market area is made liable for the fees. On reading the first proviso, it appears to us that the presumption which is raised is as regards the marketing of the goods in the market area i.e. having a transaction of buying or selling in the market area and the presumption does not relate to the non-processing or non-export of the goods and it is this presumption that has to be rebutted by the person bringing in the goods in the market area for the declared purposes.

16. The first proviso is not a deeming provision that if the goods are not processed or exported within thirty days, those goods would be deemed to have been marketed in the market area. It only raises a rebuttable presumption which can be rebutted by the other side by showing that the goods have not been marketed in the market area, It is contended on behalf of the respondents that if the goods are not processed or exported within 30 days, it may be presumed to have been marketed in the market area and those persons will be liable for the

levy of such fees as if the goods had been so marketed. If this contention of the respondents is accepted, then there is nothing to rebut and the persons bringing in such goods would be precluded from proving the contrary. On the other hand, if the presumption is, as is contended by the respondents, that though the goods have been purchased by the petitioners outside the market area and brought in the market area, they will be presumed to have been marketed in the market area. That presumption stands rebutted by the very fact that admittedly those goods were purchased outside the market area and brought in the market area for the purposes of processing only or for export. In such a case, it will be meaningless to draw any presumption whatsoever. Had it been a deeming provision, the matter would have been quite different. The only meaning, therefore, which could be given to the first proviso would be that on or after the 31st day the presumption having been raised, the person bringing in the goods could show that the goods have not been marketed by him in the area which he can show either by satisfying the Committee that the goods are lying with him in the condition in which they were brought or have been processed or exported by him. In the former case, there could not be much difficulty in rebutting the presumption if the goods are still lying with that processor or exporter in specie and in the latter case by satisfying the authorities that the goods have in fact been processed or exported. For that purpose the person against whom the presumption is drawn will have to establish satisfactorily that the goods have in fact been processed or exported. It is only when he fails to give a satisfactory explanation that he could be held liable for the payment of fees as if those goods have been marketed.

17. If the Legislature wanted to say, as the counsel for the respondents say, that the person who brought in the goods for the purposes of processing only or for export would be liable for the payment of fees even though failed to process or export the goods within a period of thirty days, the Legislature could have said that in clear words and when they said that if the goods are not processed or exported within a period of thirty days, they will have to be taken to have been marketed in the market area, that intention, if it was so, could have been brought out by enacting a deeming provision instead of raising a rebuttable presumption. If we may say so, in order to bring such an intention as is pressed upon us by the respondents' counsel the proviso would have been somewhat like this:

Provided that when any agricultural produce brought in any market area for the purposes of processing only or for export is not processed or exported therefrom within thirty days from the date of its arrival therein, it shall be deemed to have been marketed in the market area and shall be liable for the levy of fees under this section, as if it had been so marketed.

The words "until the contrary is proved, be presumed" would not have found place if such was the intention of the Legislature. If the first proviso to section 31 meant what is pressed upon us on behalf of the respondents, then we may say,

with respect, that the Legislature failed to bring out that meaning by the first proviso by using the words which it has used therein. Not that the Legislature could not have intended to levy the fees if it so meant on the goods which are not processed or exported within a period of 30 days, but such an intention had to be clearly expressed. As an instance, we may point out to a provision in the rules under the Bihar Agricultural Produce Markets Act, 1960, where the Legislature clearly expressed themselves and made the goods liable for the levy of fees as if they were so marketed if they were not processed or exported within a particular time. Rule 61 thereby its proviso specifically provided that if the Agricultural Produce brought into a market area for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the Market Committee shall levy and collect fees on such agricultural produce from the persons bringing the produce in the market area at such rates as would be specified in the bye-laws. If such was the intention of our Legislature, then such intention could have been brought out by enacting such a specific proviso which admits of no other construction.

18. We are, therefore, of the view that the first proviso to section 31 raises a presumption after the expiry of thirty days and that presumption is to the effect that the agricultural produce has been marketed in the market area which presumption is capable of being rebutted. Further we are of the view that this presumption may be rebutted by showing that the goods which were brought in for the purposes of processing or export have been in fact processed and exported though not necessarily within the period of thirty days of their arrival. What is the nature of the proof that is needed for such rebuttal will depend upon the facts and circumstances of each case. The presumption could also be rebutted by showing that the goods which were brought in for processing or exporting were still intact in specie on the date on which that person is put to proof for rebutting the presumption.

19. In these cases no opportunity has been given to these petitioners for rebutting the presumption. The Agricultural Produce Market Committees have taken for granted that the goods would be deemed to be marketed and on that basis either demanded the market fees or intended to appropriate the fees which were provisionally recovered at the time the goods were brought in. It will be open to the petitioners to show that they are not liable to pay the fees or to show that they are entitled to the refund of the fees already recovered from them when they brought in the goods.

20. It was contended on behalf of the petitioners that the market committee could not collect the fees from the petitioners when they brought in the goods for the purposes of processing, because section 31 provides for the levy and collection of fees only from a purchaser of agricultural produce, which is marketed in the market area and since at the time the goods were brought the petitioners were neither purchasers of the agricultural produce in the market area, nor were the goods marketed in the market area, the levy and collection of

fees was not justified. The contention does have some force but for the bye-laws. Section 31 contemplates a levy and collection of fees only on the transactions of the agricultural produce made in the market area and the collection is to be made from the purchaser. The act of bringing the goods in the market area does not fall within the provisions of section 31. The levy and collection could not have been made as soon as the goods were brought in. The petitioners relied upon sub-rule (3) of rule 32 of the Rules and Form No. 8 appended to the Rules. In fact, sub-rule (2) of rule 32 makes it clear that the market fee is to be paid by the purchaser immediately after the weighment or measurement of the declared agricultural produce is done. Sub-rule (2) only provides for a declaration being given by the processor on his bringing in any declared agricultural produce in the market area for the purposes of processing. That is all that is required to be done. Even the Form No. 8 appended to these rules requires only a declaration to be given as regards the kind of the agricultural produce, the quantity of that produce, the place where brought, name of the seller, through whom bought and the name of the buyer or his agent. It does not provide for the levy or payment of the market fees. The fees in a case which would fall under the first proviso to section 31 could be levied and collected only after the party fails to rebut the presumption that is raised against him. However, the bye-laws framed by the Committee u/s 61 of the Act provides for the levy and collection of advance fees and provides for the refund, if ultimately the committee is not entitled for the fees. Such byelaws could be validly framed as they prescribe a convenient method of levying fees and provide for refund of the amount. Such a refund could also be claimed if the processor rebuts the presumption that is raised under the proviso to section 31. Levy and collection of such advance fees has been upheld by the Supreme Court in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, . However, an opportunity has to be given to the party bringing in the goods for the purposes of processing of rebutting the presumption, and if he succeeds in rebutting the presumption, he will be entitled to get the refund to the extent he succeeds.

21. We, therefore, pass the following order in the respective petitions : Special Civil Applications Nos. 570/73, 573/73, 574/73, 575/73, 576/73, 577/73, 626/73, 629/73, and 631/73 claiming immediately the refund of the fees are dismissed.

22. The prayer of the petitioners in Special Civil Applications Nos. 570, 576, 577, 626 and 631 of 1973 for restraining the respondent Market Committees in not insisting on taking the licenses is rejected. All these petitioners are liable to take processor's licence and those who purchase the tendu leaves or tobacco in the market area are required to take Trader's licence.

23. Though we have ordered above that the fees already recovered by the market committees from the respective petitioners are not liable to be refunded to them as the matters stand at present the petitioner could claim the refund to the extent they would succeed in rebutting the presumption under the first

proviso to section 31, for which purpose an opportunity is to be afforded to the petitioners by the market committee.

24. Subject to what we have stated above as regards the giving of opportunity to the petitioners rebut the presumption and then claim the refund of such amounts to which they show themselves entitled to, all the Special Civil Applications are dismissed. We make no order as to costs.