

(1988) 11 PAT CK 0021

In the Patna High Court

Case No : C.W.J.C. No's. 1344, 1345, 1346, 1347, 1357, 1358, 1359, 1360, 1361, 1362, 2185, 2442 of 1984, 317, 722 and 791 of 1983

Durgaji Rice Mills and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-11-1988

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (1989) 37 BLJR 174 : (1989) PLJR 616

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Judgement

S.B. Sinha, J.—All these cases involving common questions of law and fact were taken up for hearing together and are being disposed of by this common judgment.

2. In all these cases the petitioners have prayed for quashing the order of assessment passed by the authorities under the Bihar Agricultural Produce Market Act, 1960 as contained in Annexure 1 to each of the writ petition and the consequent demand as against the petitioners of each case pursuant to the said orders of assessment.

3. Bereft of all unnecessary details, the facts of the case are as follows:

The petitioners are owners of rice mills and are holders of licences granted to them under the provisions of the Bihar Agricultural Produce Market Act, 1960 (hereinafter to be referred to as the said Act) and the rules framed thereunder (hereinafter referred to as the said Rules).

4. In all these cases the periods of assessment appear to be for the years 1981-82 and 1982-83.

According to the petitioners they have been filing returns in terms of the provisions of the said Act and the said Rules within the prescribed time. The

petitioners contend that they have purchased paddy outside the market area on which no Market Fee was liable to be paid as also have purchased paddy within the market area for which market fee has already been paid.

It is art admitted fact that the petitioners in the respective rice mills produces rice from the paddy.

5. According to the petitioners, the respondent-Market Committee has been demanding market fee from the petitioners both on paddy as well as on rice which, according to them, is not permissible in view of the decision of the Supreme Court in *Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another*, and the decision of this Court in *Rice and Flour Mills and Anr. v. State of Bihar and Ors.* being C.W.J.C No. 3338 of 1980 disposed of on 22-1-1981 reported in 1981 Bihar Revenue and Labour Journal page 106.

6. In some of the writ petitions namely, C.W.J.C Nos. 317/83, 722/83, 791/83, 1344/34, 1362/84, 1358/84 and 2185/84, an additional point has been taken i.e although the said Market Committee was at the relevant time under the management and control of the Special Officer appointed in terms of the provisions of the said Act, the orders of assessment have been passed by the said Special Officer along with the Secretary of the Market Committee.

7. A counter affidavit has been filed on behalf of the market committee in each writ petition. In the said counter affidavit it has, inter alia, been contended that the Agricultural Produce Market Committee at Mokha was dissolved by virtue of a notification dated 12th June, 1982 issued by the State of Bihar in exercise of its power conferred upon it under Sub-section (5) of Section 9 of the said Act as a result whereof the said market committee was dissolved and the powers and functions thereof vested in the authorised officer mentioned therein namely, Sri Kailash Ram, Sub-divisional Officer, Sasaram. A copy of the said notification is contained in Annexure "A" to the said counter affidavit. It has further been brought on record in some cases that a regular market committee had been functioning with effect from 5-5-1983 where for a notification of the said date has been filed with the counter affidavit and marked as Annexure "C" from a perusal whereof it appears that regular market committee was constituted in accordance with the provisions of the said Act and the rules framed thereunder.

8. According to the respondent, in that view of the matter, the power of the assessment sub-committee as also the power of the Chairman and the Vice-Chairman vested in the said authority.

The respondents have further pointed out that in terms of the provisions of the said Act the petitioners are liable to pay market fee on the transaction of sale and purchase of both paddy and rice.

The respondents have further contended that under the provisions of the said Act the petitioners being the rice mill owners are primarily liable to pay market fee when they buy paddy from traders/agriculturists and are also liable to pay

market fee when they sale rice to their customers.

9. The respondents have placed strong reliance upon the decision of the Supreme Court in *Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others*, . A Division Bench of this Court in *Ashok Industries v. State of Bihar* 1979 BBJ 465 and an unreported judgment of this Court being C.W.J.C. No. 1163 of 1983 and C.W.J.C No. 71 of 1986 *Azhar Islam and Ors. v. The State of Bihar and Ors.* disposed of on 20th March, 1986.

10. The said Act was 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 for matters connected therewith.

Section 2(a) of the said Act defines "Agricultural Produce" in the following terms:--

"agricultural produce" includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the schedule.

The said provisions has undergone an amendment by virtue of Act No. 60 of 1982, which now reads as follows:--

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12. In the schedule appended to the said Act both paddy and rice figure under the heading "cereal".

13. Section 27 of the said Act which is the charging section, provides for power to levy market fee. Section 27 of the said Act before its amendment by reason of Act No. 60 of 1982 read as follows:--

Power to levy fees.--(1) The market committee shall levy and collect market fees on the agricultural produce bought or sold in the market area, at the rate of rupee one per Rs. 100/- worth of agricultural produce.

(2) The market fee chargeable under Sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under Sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified market area.

The said Act, as referred to hereinbefore, has undergone a change by reason of Act No. 60 of 1982 and upon amendment read as follows:-

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14. In view of the aforementioned amendments, substantive changes have been brought about and as such now, in my opinion, market fee can legitimately be levied both on rice and paddy.

15. Rule 82 of the said Rules provides for power of market committee to levy and collect market fee on agricultural produce bought or sold in the market area.

16. From a perusal of the aforementioned provisions, therefore, it is absolutely clear that market fee is leviable on an agricultural produce.

Paddy and rice having separately notified in the schedule appended to the said Act must be held to be different agricultural produces and thus must be held to be liable for levy of separate market fee.

17. Mr. Navniti Prasad Singh, the learned Counsel appearing for the petitioners, however, submitted that the rice being a product of paddy, which having already been subjected to levy of market fee, could not have further been made subject to payment of market fee as that would amount to imposition of double levy upon the same agricultural produce.

Learned Counsel, in this connection, has placed strong reliance upon Ram Chandra Kailash Kumar and Co's case (supra) and relied upon the following passage:--

But if the trader sells the same produce or any product of the same produce to another trader neither the seller-trader nor the purchaser-trader can be made to pay the market fee under Sub-clause (8). So far as the position was not disputed by the Market Committee rather it was conceded, and in our opinion, rightly. But some difficulty arises in regard to the products of the agricultural produce which has been subjected to the levy of market fee. This will be relevant when we come to consider the various agricultural produce in respect of which challenge was made on the ground that it amounts to multi point levy. At this stage we may explain our view point by taking a few examples from the schedule appended to the Act. Wheat, an agricultural produce, is mentioned under the heading "Cereals". Suppose the transaction of wheat, namely, wheat purchased from a producer by a trader has been subjected to levy of market fee u/s 17(iii)(b)(2) no further levy of market fee in the same market area could be made, not even on wheat flour, if flour were to be included in the Schedule. The better example can be found in the items under the heading "Animal Husbandry Products" wherein in the Schedule milk and Ghee both are mentioned. Milk, of course, is not mentioned in the notification dated 11-4-1978. But if it would have been mentioned then only the transaction of milk in a particular market area could be subjected to levy of fee and Ghee manufactured from milk could not be so subjected. But since milk is not mentioned in the notification the transaction of Ghee can be subjected to the levy of fee in accordance with the principle to be discussed hereinafter. The greater difficulty arises with respect to paddy and rice as both of them are mentioned in the Schedule as well as in the notification. We shall show hereinafter that in a particular market area market fee cannot be levied both in relation to the transaction of purchase and sale of paddy and the rice produced from the same paddy. Fee can be charged only on one transaction. This finds support from the unamended Rules as they are, wherein it is to be found Sub-rule (2) of Rule 66.

18. This decision, however, was distinguished in the subsequent decision of the

Supreme Court. Further, as noticed hereinbefore, the relevant provisions of the Act have since undergone a substantive amendment and in this view of the matter too the said decision is not applicable at present.

19. However, this matter was again considered in Srinivasa General Trader's case (supra) by the Supreme Court.

It may be profitable to refer to the relevant paragraphs of the said decision in extenso.

Paragraph 41:--"The view that no market fee is payable on purchase or sale of rice stems from the premises that since paddy is dehusked into rice there cannot be levy of market fee at both the stages i.e. on purchase of paddy by a rice miller from a producer and again on purchase or sale of rice by a rice miller to a trader or trader to a trader The question whether the fee is payable fit both the stages? It would all depend upon the scheme of each Act. The decision in Ram Chandra's case (supra) turned on a construction of Sub-clause (2) of Section 17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, as amended by U. P. Act 7 of 1978, It was conceded in that case on behalf of the State Government and the market committees that there cannot be any multi point levy of market fee in the same market area. Under Sub-clause (2) of Section 17(iii)(b) of that Act if an agricultural produce is purchased from a producer directly, the trader is liable to pay market fee but when the trader sells the same produce or any products of the same produce to another trader, neither the seller nor the purchaser can be made to pay the market fee under Sub-clause (3). The scheme of the Act with which we are concerned appears to be entirely different. Under Sub-section (1) of Section 12 of the Act, a market committee is empowered to levy market fee on any notified agricultural produce, livestock purchased or sold in the notified market area. It would appear that every purchase or sale of any notified agricultural produce, livestock or products of livestock attracts the levy of market fee. One is apt to think that rice and paddy are the same commodity and, therefore, there is double taxation but, in reality, it is not so. There is distinction between "paddy" and "rice" and although paddy is milled into rice by the process of de-husking, they are two separate and distinct commercial commodities and have not been separately specified as notified agricultural produce in Schedule II as items 1 and 2 respectively. On the plain language of Sub-section (1) of Section 12 of the Act, the market fee is leviable on both on purchase of paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by a market committee at each of the stages.

Paragraph 42:--"It appears that the State Government in the Food and Agriculture Department by its memo dated March 23, 1978 informed the Director of Marketing, Andhra Pradesh that it had been decided to amend Rule 74 in order that no market fee shall be leviable on the sale or purchase of agricultural produce manufactured or extracted from the agricultural produce in which such fee was already levied. Pending such amendment, he was directed to advise the

market committee not to press for recovery of arrears of market fee on purchase or sale of rice when such fee had already been collected on purchase or sale of paddy. The matter was, however, re-examined by the State Government with reference to the provisions contained in Sub-section (1) of Section 12 of the Act. The State Government were of the view that market fee was leviable under Sub-section (1) of Section 12 on paddy if it is sold in the notified market area and it is also leviable on rice if it is put to sale irrespective of the fact that whether market fee was paid earlier on paddy or not. That view proceeded upon the basis that the market committee is required to supervise and control the sale of such commodities at both the stages and was, therefore, entitled to recover market fees both on paddy and rice. The State Government accordingly issued GOMS No. 136 dated March 26, 1981 to the effect.

Government on reconsideration decided that Rice need not be exempted from the levy of market fees even if the paddy from which the Rice is extracted was subject to market levy, orders were accordingly issued in the Memo second above that market fees should be levied both on paddy and rice.

The preliminary notification proposed to amend Rule 74 of the Andhra Pradesh (Agricultural Produce and Livestock) Market Rules, 1969 issued in G.O first read above and published at pages 227-229 of the Rules supplement to Part II of the A.P. Gazette Mo. 23 dated 15-6-1978 is hereby cancelled.

Paragraph 43 :---"In view of the clarification, it follows that paddy and rice having both been notified to be two separate agricultural commodities, upon the language of Sub-section (1) of Section 12 of the Act, market fee is leviable both on sale of paddy by a producer to a rice miller and on purchase and sale by a miller to a trader or by a trader to a trader?".

20. The aforementioned decision of the Supreme Court thus, being squarely applicable to the facts of the present case, is binding upon this Court being a law of the land in terms of Article 141 of the Constitution of India. Further, as noticed hereinbefore, in the said decision Ramchander's case (supra) was considered and distinguished.

21. This point has been considered also by this Court in Ashok Industries v. State of Bihar 1979 BBCJ 465 in which a Division Bench of this Court held as follows:--

The matter will certainly be different if any one form a food grain is notified as a distinct" agricultural produce while in an other form, after its being processed, it is enumerated as another distinct notified agricultural produce. For instance, under the heading "cereals" in Caption 1 of the Schedule we find paddy, rice and chura as having been specified as three distinct agricultural produces; so also wheat, wheat Atta and Maida, have been distinctly enumerated and so notified. Similar is the case with the gram Beesan, gram Sattu, etc. But that is not the question here,

22. In an unreported judgment being CWJC No. 1163 of 1983 and 71 of 1986

disposed of on 20th March, 1986 this court after taking into consideration the aforementioned Supreme Court decisions upheld the levy of market both on paddy and rice after taking into consideration the amendment introduced in Section 27 of the said Act by reason of Act No. 60 of 1982.

By reason of the Amending Act 60 of 1982, the position has been clarified and in that view of the matter, there is no doubt that market fee is leviable both on paddy and rice as they have separately been notified as agricultural produce in the Schedule.

23. It has been contended in the alternative that as the said amendment came into force with effect from 30th April, 1982 the market fee both on paddy and rice was not leviable till the said amendment came into force.

This submission is also misconceived in view of the decision of the Supreme Court in Sreenivasa General Traders's case (supra).

24. Further as noticed hereinbefore, the amendment brought in by Act No. 60 of 1982 was merely classificatory in nature and in this view of the matter the same will have retrospective operation.

In this view of the matter, market fee is leviable both on rice and paddy even before the said amendment came into force.

25. Further as noticed hereinbefore, this aspect of the matter was also considered by a Division Bench of this Court in M/s. Ashok Industries's case (supra) where in also it has been held that in view of (he fact that both paddy and rice were separately mentioned in the Schedule appended to the Bihar Agricultural Produce Market Act, 1960, market fee is leviable both on paddy and rice when they undergo separate transactions within the market area.

26. The aforementioned decisions of the Supreme Court as also of this Court as mentioned hereinbefore being binding upon me, it must be held that the position relating to the payment of market fee both on paddy and rice was not different prior to the coming into force of Act No. 60 of 1982.

In this view of the matter, the first question raised on behalf of the petitioner is rejected.

27. For the sake of convenience the details in respect of writ petitions which involve an additional point may be noticed:--

_____ C.W.J.C. Name of the Date of Period of For quashing & Demand No.
party Assess- Assess- Assessment notice ment ment _____

1344/84 M/s
Shree 8-12-82 1981-82 Ann. 1 Ann. 2 Durgaji Rice Mill 1358/84 M/s Rohtas
15-2-83 1981-82 Ann. 1 Ann. 2 Rice Mills 1362/84 M/s Shree 8-2-88 1981-82
Ann. 1 Ann. 2 Lakshmanji Rice Mills 317/83 M/s Murli 24-8-82 1981-82 Ann. 3
Revisional Manohar Order Rice Mills dated 13-11-82 722/83 M/s Krishna-

24-8-82 1981-82 Ann. 3 Revisional ji Rice Mills Order dated 13-11-82 791/83
M/s Maha- 31-12-82 1981-82 Ann. 1 Ann. 2 deoji Rice Mills 2185/84 M/s Shree
21-12-82 1981-82 Ann. 1 Ann. 2 Narainji Modern Rice Mills _____

28. In respect of the writ petitions mentioned at Serial Nos. 1 to 7 admittedly the assessment was done by the Special Officer as also by the Secretary.

29. In view of the notifications issued by the State of Bihar in terms of Section 9(5) of the Act the power of the assessment Sub-committee vested in the Officer named in the said Notification i.e. Sub-Divisional Officer himself. He, therefore, could not have passed any order of assessment along with the Secretary of the Market Committee.

30. This aspect of the matter is squarely covered by various decisions of this" Court including a recent decision rendered by me in Kailash Roller Mills and Anr. v. State of Bihar and Ors. 1987 PLJR 1118. In the said decision it has been held as follows:--

Paragraph 8:--In the instant case, evidently only the Special Officer who was nominated by the State of Bihar to perform the function of the Market Committee and other sub-committees which could be constituted by the Market Committee was to perform all its duties and functions. It was, therefore, not within the domain of the Special Officer to take advice or help from any person nor any other person could be associated with him for discharging such functions.

Paragraph 9:--It is also a well settled principle of law that if a person who associates himself in deliberations with some persons while discharging some statutory functions is incapable of doing so in terms of the provisions of statute or otherwise, the decision of the entire body becomes vitiated inasmuch as such person who was not authorised by law to associate himself with the other member of the Committee may influence the mind of other member while arriving at a decision.

Paragraph 10:--In this view of the matter, I am of the opinion, that the entire order of assessment as contained in Annexure 4, has become vitiated in law. Mr. G.C. Bharuka, learned Counsel for the petitioners has also rightly placed reliance upon the decision of this Court in the case of Chhabi Rani Agro Industrial Enterprises Ltd. v. The Agricultural Produce Market Committee Mohania and Ors. 1984 BBCJ 406 : 1984 PLJR 446 and Ramautar Choudhary v. The Managing Director, Bihar State Agri Marketing Board, Patna and Ors. 1984 BBCJ 441 : 1984 PLJR 412. Reference in this connection may also be made to an unreported decision in C.W.J.C. No. 5215 of 1985 (Deo Lai Singh and Ors. v. The State of Bihar and Ors.).

31. However as noticed hereinbefore, a regular Market Committee has come into being with effect from 5-5-1983. Any order of assessment Subcommittees of the said market committee must be held to be valid.

In the aforementioned circumstances the order of assessment and the consequent notices of demand involved in the writ petitions namely, writ petitions Nos. 317/83, 722/83, 791/83, 1344/84, 1362/84, 1358/84 and 2185/84 and as has been indicated in paragraph 27 hereinbefore must be held to be illegal and without jurisdiction and thus liable to be quashed.

32. However, in these cases it is observed that the respondents Market Committee shall be at liberty to pass an order of assessment as against the petitioners of the said cases in accordance with law.

33. Mr. Jha, the learned Counsel appearing for the Market Committee has also very fairly conceded that the Market Committee has been constituted only on 5-5-1983 and in that view of the matter the order of assessment in these cases prior to that date would be also illegal.

34. In the result, the writ petition Nos. 1361, 1360, 1346, 1359, 13S? 1345, 1347 and 2412 of 1984 are hereby dismissed. The writ petition Nos." 317, 722, 791 of 1983, 1344, 1362, 1358 and 2185 of 1984 are hereby allowed. In writ petition Nos. 317 and 722 of 1983 the revisional order dated 13-11-1982 as contained in Annexure 3 are quashed and in writ petition Nos. 791 of 1993, 1344,1362,1358 and 2185 of 1984 Annexures 1 and 2 are hereby quashed.

35. In the facts and circumstances of the case, there will, however be no order as to costs.