
(1990) 12 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No"s. 44, 4431, 4436 and 4438 of 1989

Gokal Chand and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-12-1990

Acts Referred:

Rajasthan Agricultural Produce Markets Act, 1961 — Section 4

Citation : (1990) 2 RLW 615 : (1990) 2 WLN 400

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Judgement

A.K. Mathur, J.—Since all these writ petitions involve common questions of law and facts, therefore, they are disposed of by this common order.

2. The principle question, which involves in all these writ petitions, is as to whether the principle of quid pro quo is applicable under the Rajasthan Agricultural Produce Markets Act, 1961 (referred to hereinafter as the "Act of 1961") and in the matter of the Rajasthan Agricultural Produce Markets Rules, 1963 (referred to hereinafter as "the Rules of 1963").

3. For the convenient disposal of these writ petitions, the writ petitions are divided in two categories, one, the writ petitions filed by the whole-salers, and the other filed by the retailers.

4. For the convenient disposal of these writ petitions, first the cases of whole salers are taken up and for that purpose the facts given in S.B. Civil Writ Petition No. 4431/1989: Gokal Chand v. Slate of Rajasthan and Anther. are taken into consideration:

5. The petitioner is a resident of Varada District Sirohi situated within the State of Rajasthan. The petitioner's firm carries on its business in agricultural produce at Varada situated within the Panchayat Samiti, Sirohi. The State of Rajasthan issued a Notification on 21.4.1977 which was published in the Rajasthan Gazette dated 28.4.1977 where the area of Panchayat Samiti, Sheoganj and Sirohi

District Sirohi were placed under the Krishi Upaj Mandi Samiti, Sheoganj under the Act of 1961. Thereafter, the State Government issued another Gazette Notification dated 2.1.1979, which was published on 18.1.1979 creating sub-market yards at Sirohi, Jawal, Kalandari and Las. The petitioners' allegation is that neither Mandi yard nor sub Mandi Yard have been established at the petitioner's village where the petitioner is carrying on its business. It is alleged that the petitioner is not liable to take licence under the Act and to pay the market fee under the Act and the Rules as no facilities worth the name are being provided by the respondents where the petitioner is carrying on its business of agricultural produce. Hence, the petitioner has filed the present writ petition that since no facilities are being provided by the Sheoganj Mandi, therefore, the petitioner is not liable to take a licence and pay the market fees as there is no quid pro quo.

6. A return has been filed on behalf of the respondents and the respondents have pointed out in the return that the petitioner is a trader, who deals in the sale and purchase of agricultural produce in the notified market area, and, therefore, he is bound to take a licence under the Act and the Rules. It is further submitted that the question of providing facilities to every individual as provided in Section 19 of the Act is not a precondition for obtaining a licence. It is also pointed out that obtaining of the licence is a pre-requisite condition for doing business of agricultural produce in the notified market area. It is also pointed out that whole area has been notified as market area u/s 4 of the Act and once the area where the petitioner is carrying on its business has been declared as market area then he is bound to take a licence and if a trader fails to obtain a licence then he incurs a penalty u/s 28 of the Act. It has also been pointed out that after declaration of the market area, a committee has been established, proper budget has been prepared spending the money collected as market fee for development of market-yard. The budget expenditure has been placed on the record as Annexs. 1 to 3 respectively. A perusal of expenditure would show that the money has been spent on development of market area in planned manner. It is alleged that it is not at all the requirement of law that every village in the market area should have an office of the committee. The main office is situated at the principal market yard at Sheoganj and sub-markets are at Sirohi, Jawal and Las. It has also been pointed out that the market committee proposes to provide the necessary facilities progressively after raising funds to other place in the market area. It has also been submitted that it is not necessary to establish the correlation ship of the fee and the services rendered by a mathematical formula. The main Purpose under the Act to be regulate the buying and selling of the agricultural produce by establishing market and market yards so that the agriculturists can secure better and a deqhate prices of the in Produce and their illiteracy and ignorance are not exploited. It is also alleged that the petitioner is a middleman and the fee does not come out of his pocket and he has to charge it from the purchasers in the course of the transactions and transfer the same to the committee. All such fees collected make a marketing fund out of that fund

the necessary facilities are to be provided in the area.

7. There is another batch of writ petitions, which relate to retailers who carry on their business of agricultural produce. For the convenient disposal of this category of cases, the facts given in S.B. Civil Writ Petition No. 4434/1989: Babu Lal v. State of Rajasthan & Ann are taken into consideration:

8. The petitioner is a resident of paldi District Sirohi situated within the State of Rajasthan. The petitioner's firm is carrying on its business in agricultural produce at Paldi situated within the parichayat Samiti, Sheoganj. The petitioner is a retail trader. It is alleged that he is not liable to take a licence. He has also made a grievance that there is no principle of quid pro quo involved in the present case. In addition to that, it is alleged that under explanation to Section 4 of the Act of 1961, the retailer is not liable to take a licence under the Acticle

9. The respondents have filed" a reply and contested the position. It has been submitted that the principle of quid pro quo is not applicable mathematically. It is also denied that the petitioner is not liable to take a licence being a retailer.

10. I have heard the learned Counsel and perused the record.

11. So far as the question of quid pro quo is concerned, it is true that there should be some correlation between the fee charged and the services rendered. It is true that there cannot be a mathematical correlation between these two but it does required that when the fees is charged in lieu there of certain services have to be provided by the market committee. The market committee has produced on record its budget and it has also been pointed out that various duties which they propose to discharge by establishing sub-market yard and by providing the necessary link roads and other various duties which they are required to discharge u/s 19 of the Act. But it is difficult to establish the correlation between the services rendered and the market fee collected by them. But once the market area has been declared than no person can sale or purchase any agricultural produce without obtaining a licence. As a matter of fact, it is not necessary to establish sub-market yard at every village. By establishment of market yard or sub-market yard all the persons who deal or involve in the same and purchase of any agricultural produce stands benefited. There are three sub-market yards, which have been established at Sirohi, Jawal, Kalandari and has and the principal market yard is established at Sheoganj. These traders are directly and indirectly avail the facilities provided at the principal market yard and sub-market yards. However, the principle of quid pro quo has undergone a radical change by series of judgments of their lordships of the Supreme Court. In this connection, reference may be made to Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, , wherein it was observed as under:

The traditional view that there must be actual quid pro quo for a fee has undergone a sea of change subsequent to decision in AIR 1980 SC 1008. Correlation ship between the levy and the services rendered/expected is one of

genera a character and not of mathematical exactitude. All that is necessary is that there should be a "reasonable relationship" between the levy of the fee and the services rendered. Moreover, there is no generic difference between a tax and a fee. Both are compulsory exaction of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realized that merely because the collections for the services rendered or grant of a privilege of licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. It is also increasingly realized that the element of quid pro quo in the strict sense is not a sine qua non for a fee.

12. Recently, their Lordships of the Supreme Court in the case of *Kishan Lal v. State of Rajasthan* 1990 18 VLR (C) 570 have also, reiterated and reaffirmed the same principle in relation to sugar matters.

13. Thus, by these authoritative pronouncements of the Hon'ble Supreme Court, it appears that it is not possible to establish a mathematical correlation between the fee charged and the services rendered. But in view of the return filed by the respondents, it appears that necessary steps have been taken by the respondents in providing the essential services to the traders who deal in sale and purchase of agricultural produce within the notified market area. Therefore, it can safely be said that the contention of the petitioner that he has not been provided with any facility and on account of the failure of the market committee to extend the services to the petitioner, they are not entitled to take licence and pay market fee, is not correct. Looking to the budget and the steps taken by the market committee, it can safely be said that the petitioner is likely to be benefited by the services rendered by the market committee and are sought to be provided by the market committee at the principal market yard or at the sub-market yards. It is not possible to establish a sub-market yard at every village but it is certain that the traders who deal in the sale and purchase of agricultural produce are directly or indirectly benefited by the establishment of the market yard as the agricultural produce of every kind are to be purchased and sold within the market area.

14. In this view of the matter, the contention of the whole seller that since they are not getting the facilities, at the market area in their villages therefore, they are not liable to take licence cannot be sustained.

15. In the result, the writ petitions filed by the whole sellers, namely, writ petitions No. 4431/1989; 4432/1989; 4433/1989 and 4435/1989 fail and they are dismissed.

16. Now, I take up another batch of writ petitions, which relate to the retailers. So far as the first aspect is concerned I need not touch the same in these cases for the simple reason that under Explanation to Section 4 an exemption has been granted to the retailers from obtaining a licence for sale and purchase of the agricultural produce. Section 4 reads as under:

4. Declaration of market area (1) After the expiry of the period specified in the notification issued u/s 3 and after considering such objections and suggestions as may be received before such expiry and after holding such inquiry as may be necessary the State Government may, by notification in the official Gazette, declare the area specified in the notification u/s 3 or any portion thereof to be a market area" for the purposes of this Act in respect of all or any of the kinds of agricultural produce specified in the said notification.

(2) On and after the date on which any area is declared to be a market area under Sub-section (1), no place in the said area shall, subject to the provisions of Section 14, be used for the purchase or sale of any agricultural produce specified in the notification issued there under:

Provided that, pending the establishment of a market in such area u/s 9 the State Government may grant, subject to such terms and conditions as may be specified by a general or special order published in the official Gazette a licence to any person to use any place in the said area for the purchase or sale of any such agricultural produce. Explanation-Nothing in Sub-section (2) shall apply to the purchase or sale of any agricultural produce if the producer of such produce is himself its seller and the purchaser is a person who purchases such produce for his own private use or if such produce is sold to such purchaser by way of a retail sale.

(3) On and after the date of the notification issued under Sub-section . (1) or such later date as maybe specified therein, no local authority, notwithstanding anything contained in any law, and no other person, shall within the market area or within a distance thereof to be notified in the official Gazette in this behalf in each case by the State Government set up to establish or continue or allow to be set up, established or continued any place for the purchase or sale of any agricultural produce so notified.

(4) i he State Government may, on the report of the Collector or of the Director or of the market committee or an office appointed in this behalf and after such inquiry as it deems fit to make, suspend or cancel any licence granted under Sub-section (2).

(5) The State Government may, at any time by notification in the official Gazette, exclude from a market area any area or include in any market area any other area.

(Emphasis added)

17. Since, these retailers sell the agricultural produce by way of retail sale then

they are not liable to take the licences. In the present cases, the explanation to Section 4 of the Act exempts the purchase and sale of agricultural produce if the producer of such produces is himself its seller and the purchaser is a person who purchases such produce for his own private use or if such produce is sold to such purchaser by way of a retail sale. All these retailers are therefore, exempt from obtaining a licence by virtue of the explanation to Section . 4 of the Act. This Court in *Slate v. Sukan raj* 1988 (1) RLR 540 after reviewing the decision of their Lordships of the Supreme Court in the case of *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another*, wherein an identical question came up for consideration, has held that" the retail traders are exempted from obtaining a licence for carrying on retail trade in the market area.

18. In Mohammed Hussain's case (supra), their Lordships of the Supreme Court observed as unden.

Thus, it is clear from this exception that the provisions of the Act do not apply to retail sale and are confined to what may be called wholesale trade in the crops regulated thereunder.

19. Thus, in this view of the matter, it is established beyond doubt that the retailers are not liable to take a licence.

20. In this view of the matter, all the writ petitions filed by the retailers bearing Nos. 4434/1989, 4436/1989; 4438/1989; 4439/1989; 4440/1989; 4441/1989; 4442/1989; 4443/1989 and 4444/1989 are allowed and it is declared that these petitioners are not liable to take the licences.

21. In the result, the writ petitions No. 4431/1989; 4432/1989; 4433/1989 and 4435/1989 of the whole-salers are dismissed and that the writ petitions No. 4434/1989; 4436/1989; 4438/1989; 4439/1989; 4440/1989; 4441/1989; 4442/1989; 4443/1989 and 4444/1989 filed by the retailers are allowed.