**(2005) 11 SC CK 0014**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 4481 of 2005

Harinagar Sugar Mills Ltd. and Another APPELLANT

Vs

State of Bihar and Others RESPONDENT

**Date of Decision :** 09-11-2005

**Acts Referred:**

Bihar Agricultural Produce Markets Act, 1960 — Section 27, 4B
Constitution of India, 1950 — Article 142

**Citation :** (2006) 3 PLJR 99 : (2006) 1 SCC 509

**Hon'ble Judges :** Ashok Bhan, J;Arun Kumar, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

1. This appeal is directed against the order dated 12.9.2002 passed by the High Court of Judicature at Patna in Civil Review Petition No. 132 of 2001 with MJC No. 2298 of 2000. In the State of Bihar a controversy arose as to whether the sugar factories engaged in purchasing sugarcane and selling sugar and sugar molasses are liable to pay market fee under the provisions of the Bihar Agricultural Produce Markets Act, 1960 (for short "the Act"). The High Court in Belsund Sugar Co. Ltd. v. State of Bihar AIR 1977 Pat 236 : 1977 Pat LJR 8, held that the sugar factories engaged in purchasing sugarcane and selling sugar and sugar molasses are liable to pay market fee under the Act. This judgment was challenged in this Court.

2. The Appellants filed Title Suit No. 84 of 1977 for restraining the Bihar Agricultural Marketing Board (for short "the Board") from realising market fee. An order of injunction was passed and ultimately the said title suit was decreed. In the appeal the order of the Trial Court was set aside. Aggrieved against the order of the first Appellate Court, the Appellants filed Second Appeal No. 516 of 1993 which was dismissed. The Appellants, being aggrieved, filed Special Leave Petition(C) No. 16487 of 2001 in this Court which was dismissed on 5.10.2001.

3. The State of Bihar issued a notification deleting sugar from the commodity to

which the Act was applicable. Later on the said notification was revived and the High Court took the view that on the revival of the notification on the commodity, the notification could not be treated to have attracted the provisions of the Act. Therefore, the Act was again amended and Section 4-B was inserted deleting the earlier notification deleting sugar from the Schedule of the Act.

4. The Appellants and some other similarly affected sugar industries challenged the aforesaid provisions of the Act. While the writ applications were pending in the High Court, it was brought to the notice of the High Court that other sugar mills were paying the market fee to some extent but the Appellants were not paying the market fee. Counsel appearing for the Appellants submitted that if the Court directs then the Appellants would deposit some amount to establish its bona fides which could be made subject to further orders to be passed by the Court. According to the Board, more than Rs. 40 lakhs was due as market fee after the insertion of the provision of Section 4-B in the Act, whereas according to the Counsel for the Appellants only Rs. 15 to 16 lakhs were due. The High Court vide its interim order dated 16.12.1993 taking note of the submissions of the parties, ordered the Appellants to deposit Rs. 15 lakhs before the Registrar of the High Court subject to further orders to be passed by the Court. Finally, the High Court upheld the amended provisions (Section 4-B of the Act) against which appeals were also filed in this Court.

5. A Constitution Bench of this Court decided the appeal filed by Belsund Sugar Co. Ltd. as well as that of the Appellants and Others vide its judgment dated 10.8.1999 titled Belsund Sugar Co. Ltd. v. State of Bihar (1999(9)SCC 620) . It was held by this Court that the provisions of the Act were not applicable in the case of sugar factories engaged in sugarcane and selling sugar and molasses. However, it was held that the operation of the judgment will be prospective and not retrospective. It was specifically stated that the market fee paid in the past will not be refunded and market fee not collected in the past shall not be collected hereafter. Paras 111, 112 and 113 of the judgment read as under: (SCC pp. 667-68, paras 111-13):

111. As a result of our conclusion on the findings of the aforesaid two contentions, the appeals and other writ petition in the sugar group matters will be required to be allowed and the impugned judgment of the High Court in all these matters will have to be set aside. However, the further question that survives is as to what relief can be given to the Appellants and the writ Petitioners in this sugar group of matters. It is obvious that during the pendency of these proceedings no interim relief was given to the Appellants and the writ Petitioners. Therefore, they must have paid the market fee on the transaction concerned all these years. In the common course of events, they would have passed on the burden of market fee on the purchasers and the ultimate consumers of sugar and molasses produced by the sugar factories by utilising sugarcane as raw material.

112. Mr. Shanti Bhushan, learned Sr. Counsel for the Appellants in this

 

connection submitted that accepting the principle of unjust enrichment we may reserve liberty to the Appellants to show before the authorities whether they have in fact passed on the burden of the impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they have not passed on the burden then they may be treated to be entitled to get refund of alt the appropriate amounts of market fee not passed on. In our view, it is not possible to accept this contention as years have rolled by since the impugned market fees have been levied by the different Market Committees in the State of Bihar. In the normal course of events, no prudent businessman/ manufacturer would ever bear the burden of such compulsory fee or tax to be paid from his own pocket. Even otherwise reserving such liberty would create unnecessary complication and may give rise to a spate of avoidable litigations in the hierarchy of proceedings. Under these circumstances, keeping in view the peculiar facts and circumstances of these cases, we deem if fit to direct in exercise our powers under Article 142 of the Constitution of India that the present decision will have only a prospective effect. Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising this purchased sugarcane by these factories will not be subjected to the levy of market fee u/s 27 of the Market Act by the Market Committee concerned. All past transactions up to the date of this judgment which have suffered the levy of market fee will not be covered by this judgment and the collected market fees on these past transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees.

113. However, one rider has to be added to this direction. If any of the Market Committees has been restrained from recovering market fee from the writ Petitioners in the High Court or if any of the writ Petitioners in the High Court has, as an Appellant before this Court, obtained stay of the payment of market fee, then for the period during which such stay has operated and consequently market fee was not paid on the transactions covered by such stay orders, there will remain no occasion for the Market Committee concerned to recover such market fee from the sugar mill concerned after the date of this judgment even for such past transactions. In other words, market fees paid in the past shall not be refunded. Similarly, market fees not collected in the past also shall not be collected hereafter. The impugned judgments of the High Court in this group of sugar matters will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be allowed in the aforesaid terms.

6. From a conjoint reading of the aforesaid three paragraphs, it is clear that this Court gave the directions in exercise of its powers under Article 142 of the Constitution that the decision shall be prospective in operation, meaning thereby that after the pronouncement of the judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market areas as well as the sale of manufactured sugar and molasses produced therefrom by utilising the

 

purchased sugarcane by these factories will not be subjected to the levy of market fee u/s 27 of the Market Act by the Market Committees concerned. So far as the past transactions up to the date of the judgment were concerned which had already suffered the levy of market fee, it was observed that levy of market fee will not be covered by this judgment and collected market fee of these transactions prior to the date of this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees. This direction was given to avoid unjust enrichment of the factories which may have collected the market fee from the buyers. Request made by the Counsel for the Appellants that liberty be reserved with the Appellants to show before the authorities whether they had in fact passed the burden of the impugned market fee at the relevant time and if they could show to the satisfaction of the authorities that in fact they had not passed the burden then they may be treated to be entitled to get refund of all the appropriate amounts of the market fee was specifically rejected. It was observed that it was not possible to accept this contention as years have rolled by since the impugned market fees had been levied by different Market Committees in the State of Bihar. That in the normal course of events, no prudent businessman/manufacturer would never bear the burden of such compulsory fee or tax to be paid from his own pocket. That reserving of such liberty would create unnecessary complications and may give rise to a spate of avoidable litigations.

7. In Para 113, a rider was added that if any of the market committees has been restrained by an order of the Court from recovering the market fee from the Appellants or any of the Appellants obtained stay of the payment of market fee then for the period during which such stay was in operation and consequently market fee was not paid on the transactions covered by such stay orders, the Market Committees concerned would not be entitled to recover such market fees.

8. After the rendering of the decision by this Court in Belsund Sugar Co. Ltd. case (supra), the Market Committee as well as the Appellants moved the Registrar of the High Court seeking refund of the sum of Rs. 15 lakhs which had been deposited by the Appellants with the Registrar of the High Court under the directions of the High Court by its order dated 16.12.1993. The High Court by its order dated 30.8.2001 rejected the claim of the Appellants for the refund of the amount and directed that the amount be paid to the Market Committee or the Board.

9. Aggrieved against the aforesaid order of the High Court, the Appellants filed SLP (C) No. 16487 of 2001. The Appellants had also filed a review application before the High Court against the order dated 30.8.2001* before the SLP was taken up for hearing in this Court. This Court dismissed *Ed.-Reported in 2001 (4) PLJR 367 the SLP by its order dated 5.10.2001. The High Court by its order dated 12.9.2002 dismissed the review application, aggrieved against which the present appeal has been filed.

10. The High Court holding the review to be maintainable in view of the law laid

 

down by this Court in Kunhayammed v. State of Kerala (2000 (6) SCC 359) dismissed the same on merits by observing that the Appellants could not be permitted to re-argue the same points which had been agitated before it earlier and rejected by the High Court by its order dated 30.8.2001*. It was observed that the right of review is not a right of appeal in the sense that the points which have been decided earlier can be re-heard again. It was held that there was neither any error of law apparent on the face of the record nor any similar legal infirmity justifying review of the order dated 30.8.2001*.

11. With the help of learned Counsel for the parties, we have gone through the grounds on which the review had been sought by the Appellants of the order dated 30.8.2001*. In our opinion, the High Court has rightly rejected the same by observing that the Appellants wanted to re-argue the points which had been rejected by the High Court by its order dated 30.8.2001* against which the special leave petition, preferred by the Appellants, had already been dismissed. Though the review may have been maintainable but the Appellants could not be allowed to reagitate the points which had already been decided by the Court. The review could be granted only if there was a mistake apparent on the face of the record. We do not find any such apparent mistake on the face of the record. The High Court in its order dated 30.8.2001* had taken the view that the amount deposited in the Court by the Appellants was in lieu of the market fee for the benefit of the Market Committee, and therefore, the Market Committee was entitled to receive the same. Two views are possible on this point but the same cannot be a ground for reviewing the said order as it does not fall within the scope of review jurisdiction. For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.

 