

(2000) 04 PAT CK 0059

In the Patna High Court

Case No : C.W.J.C. No's. 4261, 4246, 4247, 4245, 4256, 4257, 4258, 4259, 4260, 4262, 4303, 4304, 4387, 4388, 4407, 4412, 4413, 4417 and 4418 of 1999

Harinagar Sugar Mills Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Constitution of India, 1950 — Article 132, 133, 142

Citation : (2000) 2 BLJR 1297 : (2000) 3 PLJR 419

Hon'ble Judges : Nagendra Rai, J;D.P.S. Choudhary, J

Bench : Division Bench

Judgement

Nagendra Rai, J.—These nineteen writ applications have been filed by the common petitioner (for the convenience "the petitioner") for quashing the assessment orders passed in nineteen cases on 16.5.1997 by respondent No. 6, the Sub-Divisional Officer, Bagaha, on behalf of the Assessment Sub-Committee of the Bagaha Agricultural Produce Marketing Committee, formerly known as Ramnagar Agricultural Produce Market Committee (for short "the Market Committee") for the assessment years 1977-78 to 1994-95 making a total demand of Rs. 5,52,19,712.84. as market-fee and Rs. 1,85,51,071 towards penalty from the petitioner, order dated 29.5.1998 passed by the Regional Director, Bihar Agricultural Produce Marketing Board, Muzaffarpur (respondent No. 7) in all the cases dismissing the nineteen appeals passed against the assessment order and order dated 20.3.1999 dismissing the revision applications against the appellate order passed by the Managing Director, Bihar Agricultural Produce Marketing Board, Patna (respondent No. 3). The said orders have been annexed as Annexures 26, 31 and 40 in C.W.J.C. No. 4261 of 1999.

2. Learned Counsel for the parties agree that the points involved in all the nineteen cases are the same have been disposed of by a common order by the appellate Court and the revisional Court and as all the writ, applications have been heard together, they are being disposed of by this common order.

3. The necessary facts essential to dispose of the matter are that the Bihar Agricultural Produce Market Act, 1960, (for short "the Act") was enacted 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. The sugar was also included as one of the agricultural produce and was covered by the provisions of the Act. Two sugar factories Belsund Sugar Co. Ltd. and Anr. challenged the authority of the Market Committee to levy the fee under the provisions of the Act on several grounds. The matter was finally disposed of by a Division Bench of this Court in *The Belsund Sugar Co. Ltd. and Another Vs. The State of Bihar and Others*, . This Court held that the State Government is competent to legislate the Act and the provisions of the Act are not repugnant to the Essential Commodities Act and other Control Orders and there is element of quid pro quo in imposition of fee. This Court granted certificate of fitness under Articles 132(1) and 133(1) of the Constitution of India and in pursuance of that an appeal bearing Civil Appeal No. 398 of 1977 was filed before the apex Court.

4. The petitioner is a company registered under the Companies Act having a Sugar Mill at Harinagar. It filed Title Suit No. 84 of 1977 in the Court of the Subordinate Judge for grant of permanent injunction against the Market Committee on the ground that the Act is not applicable to the sugarcane or any commodities purchased by it for manufacture and sale of sugar and molasses sold by it. During the pendency of the case, the trial Court granted injunction restraining the Market Committee from proceeding to take any step with regard to the realization of the fee and other steps. On 13.3.1985, the trial Court decreed the suit. The Market Committee challenged the said judgment by filing an appeal bearing Title Appeal No. 43 of 1993 and ultimately, the appeal was allowed by the 2nd Additional District Judge, Bettiah, on 28.8.1993, against which the petitioner filed S.A. No. 516 of 1993. It appears that prior to that on 2.5.1977, the State Government by issuance of a notification u/s 39 of the Act, which empowers it to amend the schedule, omitted the sugar. However, the said notification was subsequently cancelled on 21.5.1977. Delhi Cloths Mills and others challenged the aforesaid notification dated 21.5.1977 and a Division Bench of this Court decided the matter that once the notification has been issued deleting the sugar, the subsequent notification did not have the effect for reintroducing sugar as one of the items of agricultural produce, and as such after issuance of the notification dated 2.5.1977, the Committee has no power to collect fee on sugar under the Act. The said judgment is reported in *Delhi Cloth and General Mills Co. Ltd. and Others Vs. The Agricultural Produce Market Committee and Others* , against which an appeal was also filed before the Supreme Court.

5. The State Government, thereafter, came out with an amendment and one of the amendment was introduced as Section 4-B in the Act. The said amendment was challenged before this Court by H.M.P. Sugar Mill Ltd., the petitioner and others and this Court upheld the validity of the second part of Section 4-B, which

provided that the notification dated 2.5.1977 shall be deemed never to have been issued. As a result of the aforesaid judgment, the fee can be levied on sugar also under the provisions of the Act. The said judgment of this Court is reported in H.M.P. Sugar Ltd. Vs. State of Bihar and Others . The said judgment was also challenged by the Sugar Factories, including the petitioner before the Supreme Court. The appeal preferred by the petitioner is Civil Appeal No 1282 of 1995.

6. Surfer as the second appeal filed by the petitioner is concerned, that was also heard along with the batch of the cases i.e. filed by H.M.P. Sugar Mills Ltd. and Ors. but the second appeal filed by the petitioner was sent back to be heard by a learned Single Judge on certain point, that is with regard to the maintainability of the appeal in absence of quid pro quo in the imposition of fee. The said Second Appeal was, thereafter, heard by a learned Single Judge; one of us (Nagendra Rai, J.) and was dismissed on 1.4.1996 and the SLP was filed against the said judgment before the apex Court being SLP (Civil) No. 9811 of 1996, which was dismissed in limine on 10.2.1997. As the matter remained pending before the Court and the petitioner had obtained an order of injunction, no assessment proceedings were initiated for collecting market fee by the Committee against the petitioner. After dismissal of the SLP, the petitioner filed an application for renewal of licence for assessment years 1976-77 till 1996-97, which was renewed by the authorities on the same day. Thereafter, the Assessment Sub-Committee initiated the proceeding for assessment of the market fee for the said assessment years and sittings were held on different dates. The petitioner did not co-operate in the proceeding as the relevant documents were not filed and, thereafter, the aforesaid orders, assessment proceedings were disposed of by the authority to the best of its judgment and the amount of market-fee leviable on the petitioner was determined and penalty was also imposed in terms of the provisions contained in Sub-sections (7) and (8) of Section 27-A of the Act. The petitioner preferred appeals and revision against the said orders, which have been dismissed as stated above. It challenged the aforesaid orders by filing 19 writ applications and the matter was placed before a learned Single Judge, which, by order dated 4.8.1999, referred the matter to a Division Bench on the ground that the case raises very important questions of law.

7. While the matter was pending, a Constitution Bench of the Supreme Court disposed of the batch of the appeals filed by Belsund Sugar Co. Ltd., the petitioner and others on 10.8.1999 and the said judgment is Reported in The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., . The apex Curt held that the provisions of the Act do not 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 Act. It further held that: the charge of market fee on sale of sugar is not attracted. It is apt to quote paragraphs 98 and 104 of the aforesaid judgment, which are as follows:

98. As a result of this discussion, the first, contention will have to be answered in negative by holding that the provisions of the Market Act cannot apply to the transactions of purchase of sugarcane and sell 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.

104. Contention No. 2 is, therefore, answered in negative not on the ground that the services rendered by the Market Committee to the appellants sugar factories were not having any adequate quid pro quo but on the ground that they were not statutorily required to be made available to the sugar factories by way of statutory obligation of the Market Committee to regulate the sale and purchase transactions of sugarcane, sugar and molasses by these sugar factories and also on the ground that the charge u/s 27 by levying market fee on the aforesaid transactions was not attracted at all on the facts and circumstances of the case, as seen earlier.

8. In the result, the appeals filed by the appellants including the petitioner were allowed. The judgment was made prospective in operation meaning thereby that it would be operative from the date of delivery of the judgment dated 10.8.1999. The apex Court further issued a direction in exercise of the power under Article 142 of the Constitution of India with regard to the reliefs to be granted to the parties concerned. The relevant directions issued by the apex Court in this connection are contained in paragraphs 106 and 107 of the judgment, which are as follows:

106...Even otherwise reserving such liberty would create unnecessary complication and may give rise to 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 it fit to direct in exercise of our powers under Article 142 of the Constitution of India that the present decision will have only prospective effects, Meaning thereby that after the pronouncement of this judgment all future transactions of purchase of sugarcane by the sugar factories concerned in the market area as well as the sale of manufactured sugar and molasses produced there from 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 committees 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 this judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees.

107. However, one rider as 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 petitions 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 past shall not be refunded. Similarly, market fees not collected in past also shall not be collected thereafter. The impugned judgments of the High Court in this group of sugar mills will stand set aside as aforesaid. The writ petition directly filed before this Court also will be required to be required in the aforesaid term.

9. In view of the said judgment of the apex Court, now the settled law is that the provision of the Market Act is not applicable to the sugar factories, whose transactions are governed by the provisions of the Sugar (Control) Order as well as the Sugarcane Act and also by the relevant provisions of the Sugar Orders and the Provisions of Molasses Control Act.

10. Thus, in view of the judgment of the Supreme Court, the petitioner is not liable to pay market fee under the Act from 10.8.1999. With regard to the past, transactions, as held by the Supreme Court, all past transactions up to the date of this judgment, which have suffered the levy of market fee, will not be covered by the judgment and the collected market fees on these past transactions prior to the date of the judgment will not be required to be refunded to any of the sugar mills which might have paid these market fees. With regard to matter where stay has been granted by the High Court or the Supreme Court, it has been held by the apex Court that the market fee paid in past shall not be refunded and similarly the market fees not collected in past shall not be collected thereafter.

11. Thus, the question as to whether orders of assessment were passed according to law, in my view, becomes academic for the simple reason that in view of the aforesaid judgment of the Supreme Court, now the matter is to be considered in the light of the law laid down in the said case. In these cases, the petitioner obtained injunction order from the Civil Court and did not pay market fees and when after disposal of the civil suit, the assessment proceedings were initiated, the market fees and penalty were levied by the impugned orders. Thereafter, the petitioner preferred appeals u/s 27-B of the Act. While at the time of filing of the appeals as required, the petitioner has paid one third of the fee assessed and 10% of the penalty in terms of the provisions contained in Sub-section 2(a) and (b) of Section 27-B of the Act.

12. Learned Counsel for the petitioner submitted that in view of the judgment of the apex Court now the Market Committee cannot collect the market fees and penalty, which have not been paid to it up till now and the amount deposited u/s Sub-section (2)(a) and (b) of Section 27-B at the time of filing of the appeal is not a payment of market fee to the Market Committee, on the other hand, that was deposited for the purpose of filing the appeals. In other words, that was one of the conditions of filing the appeal and as such the amount deposited while filing the appeals is not a market fee paid in past and as such the said amount should be refunded to it. It was also submitted that in any view of the matter

that 10% of the penalty, which has been deposited at the time of filing of the appeals, is not a fee and as such it should be refunded to the petitioner.

13. Learned Counsel appearing for the Market Committee, on the other hand, submitted that the petitioner has collected market fees in past, but did not deposit the same because of the order of injunction granted in civil suit and it has passed the burden of market fee on the purchasers and the assessment authorities have determined the amounts of market fee and the penalty and the petitioner should deposit the entire market fee and penalty on the principal of unjust enrichment.

14. As stated above, in the assessment proceedings, an order for payment of market fee and penalty for default has been passed against the petitioner. The petitioner filed an appeal u/s 27-B of the Act. The deposit of one-third of the market fee assessed and 10% of the penalty is a condition precedent for filing an appeal. The said amount has been deposited by the petitioner. What has been deposited by the petitioner is itself a part of the fee and penalty as evident from the provisions of Section 27-B of the Act itself. There is no force in submission advanced on behalf of the petitioner that the amount deposited is not a fee. The penalty is an integral part of the fee as the same was imposed for default on the part of the petitioner. These deposits have admittedly been made prior to the judgment passed by the Supreme Court in the aforesaid case on 10.8.1999 and as such, the same will be treated to be market fees paid in the past and are not liable to be refunded. As such, direction can be given for the refund of the market fees and the penalty deposited by the petitioner prior to the said judgment of the apex Court.

15. So far as the claim of the Market Committee that the petitioner is liable to pay the remaining amount assessment as fee and penalty is concerned, that is also without any substance. In paragraph No. 107 of the said judgment of the apex Court, it has been clearly stated that where the amount has not been deposited because of any stay order passed by the High Court or the Supreme Court, the market fee not collected in past shall not be collected hereafter. No doubt, there is no mention about the fact with regard to civil suit wherein stay has been granted, but the same principle will apply and with regard to the payment of remaining amount of market fee and penalty, which has not been paid prior to the said judgment of the apex Court, now no direction can be given to the petitioner to make payment of the remaining amount of market fee and penalty as assessed by the impugned assessment orders.

16. In the result, with the aforesaid observations/directions, all these writ applications stand disposed of.

D.P.S. Chaudhary, J.

I agree.