

(2013) 08 CAL CK 0032

In the Calcutta High Court

Case No : M.A.T. No. 1123 of 2013, C.A.N. No. 7628 of 2013, M.A.T. No. 1124 of 2013 and C.A.N. No. 7629 of 2013

Howrah Zilla Regulated Market Committee

APPELLANT

Vs

Saj Food Products Private Limited

RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2014) 1 CHN 188

Hon'ble Judges : Arun Mishra, C.J.;Joymalya Bagchi, J

Bench : Division Bench

Judgement

Arun Mishra, C.J.—The intra-Court appeals have been preferred by the Howrah Zilla Regulated Market Committee aggrieved by the common interlocutory order dated 20.6.2013 passed in six writ applications, thereby staying levy of the market fee by the Market Committee. Though we have dealt with the same impugned order in other intra-Court appeals being M.A.T. 1046 of 2013, M.A.T. 1047 of 2013 and M.A.T. 1048 of 2013 decided on 29.7.2013, where we have set aside the interim order passed by the Single Bench, the present intra-Court appeals have also been filed by the Market Committee against the same common order passed by the Single Bench.

2. The facts are common in both the appeals. They are being mentioned from M.A.T. 1123 of 2013 arising out of W.P. 20452 (W) of 2012, in which the respondents/writ petitioners have come up with the case that they are holders of the licence from Howrah Zilla Regulated Market Committee as a purchaser of agricultural produce, like flour, sugar, Vanaspati, skimmed milk, edible oil, cashew nut, spice etc. from various suppliers across the State of West Bengal and from various other States for the purpose of manufacturing bakery products, such as, biscuits etc., they are holder of licence under the provisions of the West Bengal Produce Agricultural Marketing (Regulation) Act, 1972 (hereinafter referred to as the "Act") and West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 (hereinafter referred to as the "Rules") and the bye-

laws made thereunder.

3. It is the case set up by the petitioners that they cannot be treated as traders as defined in section 2(1)(t) of the Act. They were required to file fortnightly return by notice dated 23.5.2008. It is submitted that as per section 17(2) of the Act, only licensed trader has to deposit the market fee. Since they are involved in the business of manufacturing, marketing and selling of biscuits and other bakery products, no market fee can be levied from them. They cannot be termed as licensed traders. The order of assessment was passed demanding Rs. 50,00,000/- of market fee from the petitioners on 12.9.2011. The market fee has been levied on the basis of purchases made by them. They are not liable to make payment u/s 17A of the Act. The order of assessment has been questioned by way of filing the writ applications before the Single Bench. The Single Bench by the impugned order has granted interim stay on the levy of the market fee on the ground that prima facie a person has to both purchase and sell agricultural produce in course of such person's business for such person to be regarded as a trader within the meaning of section 2(1)(t) of the Act and for the obligation to be fastened on such person u/s 17A of the Act.

4. Aggrieved by the impugned order, the intra-Court appeals have been preferred.

5. It was submitted by Mr. Roy, learned counsel appearing on behalf of the appellants that similar impugned order has been set aside in other matters, where facts are more or less similar. It is not necessary to involve in selling and purchasing both of the agricultural produce so as to attracting levy of the market fee u/s 17 of the Act. The market fee is not being levied upon finished products, but on the purchase of the agricultural produce within the market area for which the market committee is authorised. Various notifications have been issued by the market committee. As such, the order passed by the Single Bench staying recovery of market fee cannot be said to be in accordance with law and the same deserves to be set aside.

6. Mr. Sakti Nath Mukherjee, learned Senior Counsel, and Mr. Saptansu Basu, learned Senior Counsel, appearing with Mr. Kallol Bose, Mr. Dinobandhu Dan and Mr. Dipankar Ghosh, on behalf of the respondents, has submitted that it is a case where facts are different than the matters decided by this Court in M.A.T. 1046 of 2013, M.A.T. 1047 of 2013 and M.A.T. 1948 of 2013 vide decision dated 29.7.2013. It was also submitted that there is difference between the process of manufacturing and the processing. No market fee can be levied on the turn over of bakery products including biscuits. It was also submitted that turn over u/s 17 of the Act has referred as to the finished products. Thus, turn over of the respondents is constituted by the sale of bakery products such as biscuits etc. and no market fee could have been levied from the respondents. Merely by the fact that they are purchasing certain agricultural produce, they do not fall within the purview of the definition of trader" as defined in section 2(1)(t) of the Act. Reliance has been placed on various decisions in this regard. It was also submitted that authorised officer could not have been appointed u/s 22 of the

Act without supersession of the market committee and as such, the action is also illegal. There is no quid pro quo. No services are being rendered by the market committee. As such, levy of market fee could not have been ordered.

7. After hearing the learned counsel appearing on behalf of the parties, we are of the considered opinion that the case is more or less the same which we have dealt with in the previous decision passed in M.A.T. 1046 of 2013, M.A.T. 1047 of 2013 and M.A.T. 1048 of 2013 dated 29.7.2013, in which we have set aside the impugned order in three matters. In the instant case that decision is sought to be distinguished on the ground that the respondents/petitioners cannot be termed to be traders" as denied in section 2(1)(t) of the Act. When we consider the facts of the instant case, it is apparent that the respondents/petitioners are holders of licence issued u/s 13 of the Act. Licence is necessary to be issued not only to a trader, commission agent, broker, weighman, measurer, warehouseman or surveyor, but also necessary for sale or purchase of agricultural produce and other matters as specified in section 13(1) of the Act. Thus, purchase by itself where person is trader, commission agent, broker, weighman, etc. of agricultural produce, it is necessary to hold a licence as specified in section 13 of the Act. Section 13(1) of the Act is quoted below:

13. Licence.-- (1) After six months from the declaration of any area as a market area, no person shall, within the (market area), carry on business or act as a trader, commission agent, broker, weighman, measurer, warehouseman or surveyor, or sell or purchase agricultural produce, or engage in (processing or preservation) of agricultural produce, or set up, establish or continue a (place) for storage, sale or purchase of any agricultural produce, except, under and in accordance with the prescribed terms and conditions of a licence issued in this behalf by the market committee (notwithstanding anything contained in any other law for the time being in force and) (irrespective of any licence required and issued under any law for the time being in force) (Provided that nothing in this sub-section shall apply to any sale by a producer of his own produce, to retail sale and to purchase by an individual for his own consumption.)

8. When we consider the definition of trader" u/s 2(1)(t) of the Act, the same reads thus:

trader means a person ordinarily engaged in the business of purchasing and selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a person ordinarily engaged in the business or processing or preservation of agricultural produce.

9. It is apparent that as provided, in the first part of section 2(1)(t) of the Act, trader" means a person engaged in the business of purchasing and selling agricultural produce. However, in the latter portion, the definition has been made inclusive and specific, i.e., "person ordinarily engaged in the business of or processing or preservation of agricultural produce" is also a trader". When we consider Includes a person ordinarily engaged in the business", it is apparent

that the person who is ordinarily purchasing agricultural produce in huge quantity for commercial exploitation is definitely a person "ordinarily engaged in the business of purchase" for the commercial purpose. Such a person, in our considered opinion, beyond an iota of doubt, is required to make payment of market fee and would be a trader". When we consider the provisions contained in section 17 of the Act with respect to levy of the market fee, it is apparent that notwithstanding anything contained in the Bengal Finance (Sales Tax) Act, 1941 (Ben. Act VI of 1941) or any other law relating to taxation of agricultural produce in force, the market committee is empowered to levy fees on any agricultural produce "sold" in the market area. It is not in dispute that agricultural produce has been sold in the market area to the respondents and as per section 17(2) of the Act, it is the purchaser who is liable to make the payment of the market fee in the manner prescribed therein. Thus, prima facie the petitioners/respondents cannot escape the liability from making payment of the market fee.

10. The submission was raised that on biscuits and other manufactured bakery products no market fee can be levied. Such argument is fallacious on the face of it as no market fee can be levied on manufactured products. It is the market fee, which has been levied as apparent from the order of the assessment on the quantity of the purchases made of agricultural produce for commercial exploitation and on that basis the order has been based, which cannot be said to be violative of the provisions contained in section 17A of the Act nor it can be said that the market fee is being levied on a manufactured product.

11. With respect to quid pro quo, the learned counsel appearing on behalf of the appellants had shown us various activities which have been undertaken by the market committee, and it was also stated that they are also spending money for the purpose of the activities as provided u/s 20 of the Act, copy of such activities has been given to the respondents. Such activities are to be mentioned in the affidavit-in-opposition to be filed before the Single Bench. However, with respect to quid pro quo raised in the matter, we have decided in appeal MAT 1046 of 2013 as decided on 29.1.2013 and held that the question of quid pro quo has to be gone into at the time when affidavit-in-opposition is filed. Prima facie it appears that the market committee is undertaking various functions as envisaged u/s 20 of the Act and has undertaken various other activities. This being question of fact has to be decided after affidavit-in-opposition is filed and cannot be a ground so as to grant interim stay at this stage. The Single Bench has not granted interim stay on this ground.

12. It was submitted by the learned Senior Counsel that authorised officer had been appointed vide notification 11.1.2011. It was submitted that there was no supersession of the market committee and as such, authorised officer could not have been appointed.

13. However, in the relief clause, no prayer has been made in the writ petition to quash the notification dated 11.1.2011. We are mainly concerned with the main issue in the case whether market committee can realise fee or not. In the

absence of praying any relief for quashment of the notification dated 11.1.2011, the question need not be dilated upon particularly for the purpose of grant of interim relief with respect to levy of market fee, which has been prayed for in view of section 11 of the Act. Submission is palpably irrelevant for grant of interim stay.

14. The learned Senior Counsel has relied upon the decision of Orient Paper and Industries Ltd. Vs. The State of M.P. and Others, , in which the provision contained in section 19(1)(ii) of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 came up for consideration before Their Lordships. The appellant company, Orient Paper & Industries Ltd. used bamboo and wood and several chemicals for production of paper. They were involved in manufacturing process consisting of crushing bamboo and wood pieces into pulp to which chemicals were added at subsequent stage. The Hon''ble Supreme Court has observed that no market fee is payable on agricultural produce when they are neither bought or sold or brought into the market area for the purpose of sale. The appellant has been getting the agricultural produce from outside the State to its manufacturing unit at Amlai for being used as one of the raw materials and the same is not covered under the provisions of the Act. The question arose for consideration whether bamboo was brought into the market area for processing. Section 19 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 came up for consideration before Their Lordships. Section 19(1) of the said M.P. Act provides market fee shall levy on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area and secondly, on the notified agricultural produce whether brought from within the State or from outside the State into the market area and used for processing. As the market fee was sought to be justified on the ground that it was involved in processing of Bamboo, Their Lordships considered the difference between manufacturing and processing and referred to the dictionary meaning and other decisions. It was held that the paper mill was involved in the process of manufacturing. Thus, no market fee could have been levied.

15. The decision in Orient Paper Mill (Supra) has no application in the instant case as agricultural produce in the instant case is purchased by the respondents in the market area which was not the fact in the case of Orient Paper & Industries Ltd. (supra). The question was totally different and such question is not involved in the instant case. Thus, the decision has no application and to certain extent even it counter submission when inasmuch as the Hon''ble Supreme Court has laid down that when there is transaction in the market area of sell or purchase, market fee can be levied.

16. The decision in Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others, , has also been referred to by the learned Senior Counsel appearing on behalf of the respondents, in which the question involved was that after manufacturing process the fruits become an entirely different item of fruit drinks and lose their identity as fruits. As such, it was held that the same

would not be covered by the items of fruits specified in the Schedule of Bihar Agricultural Produce Markets Act, 1960. Hence, it was held fruit drinks, "Frooti" and "Appy" manufactured and marketed by the appellant company, are not covered by mango and apple specified in Items 1 and 13 of the Schedule. In the aforesaid case market fee was sought to be levied on "Frooti" and "Appy" which were manufactured products and marketed by the appellant company. Thus, entirely different items had come into being and market fee could not be levied. In the instant case the said decision has no application at all as levy of market fee it is not on the finished products - i.e. bakery products excluding biscuits - market fee being levied on the quantity of purchase of the agricultural produce, which are purchased in the market area.

17. Reliance has also been placed by the learned Senior Counsel appearing on behalf of the respondents on the decision of *Britannia Industries Ltd. v. T. N. Pollution Control Board & Anr.*, (2000) 9 SCC 68, where the expression "processing of animal or vegetable products Industry" came up for consideration in the context of the Water (Prevention and Control of Pollution) Cess Act, 1977. It was held that manufacturing of biscuits, bread and cake by using wheat flour, milk powder, sugar and vanaspati as ingredients was not covered within the expression of "Processing of animal or vegetable products industry". The question is totally different in the instant case.

18. We have dealt with the same order in other appeals decided on 29.7.2013 and we have not found any ground to grant stay. There should not normally be any interim stay on levy of market fee, recovery of tax etc. as recovery of market fee and tax cannot constitute irreparable injury. Thus, even otherwise, there is no justification to grant interim relief prayed for by the petitioners.

19. We make it clear that we have discussed the matter on the submissions being raised on behalf of the respondents. However, any observation made in the order or any finding recorded, shall not be binding upon the Single Bench at the time of deciding the case finally on merits.

20. It is stated that affidavit-in-opposition will be filed by the Market Committee before the Single Bench within three weeks. Let it be filed within three weeks from today. Thereafter, prayer can be made before the Single Bench for expeditious disposal of the writ petition.

21. We find the interim order to be unsustainable. The same is set aside.

22. Both the appeals treating the same as on day's list are allowed. The applications are also disposed of. The parties will bear their own costs.

J. Bagchi, J.

I agree.