(2000) 09 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23976 of 1996 and Batch

ITC Zeneca Limited, Sec''bad APPELLANT

Vs

Govt. of A.P. and others RESPONDENT

Date of Decision : 27-09-2000

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 10, 11, 12, 13, 14
Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 — Rule 74(1)
Constitution of India, 1950 — Article 254

Citation : (2000) 6 ALD 76 : (2000) 5 ALT 427

Hon'ble Judges : S.R. Nayak, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : M/s. P. Venugopal, N. Sivareddy, S. Ganesh Rao, S. Ravi, Ramesh Kumar Nayani, D. Ranganatha Kumar, M. Srinivasa Rao, V.H.V.R.R. Swamy, T. Lakshmi Narayana, T. Nagarjuna Reddy, G. Rana Pratap, V.L.N.G.K. Murthy, P. Giri Krishna and C.R. Sridharan, for the Appellant; M/s. K. Rajanna, Government Pleader for Agriculture, Badana Bhaskara Rao, Ms. Nanda R. Rao and Posani Venkateswarlu, SC for Agricultural Market Committees, for the Respondent

Judgement

B. Subhashan Reddy, J.—Exigibility of market fee on the sale of seeds, which are inedible and meant for germination under the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (hereinafter referred to as ''A.P. Markets Act''), is the question for consideration.

2. The petitioners either sell or purchase seeds such as, Sunflower, Maize, Jowar, Bajra, Paddy, Jute, Wheat, Tomato, Safflower etc. The fact that they are operating the said sales or purchase within the market areas notified by the Government of Andhra Pradesh is not disputed. But, they dispute their liability to pay market fee on the premise that the seeds meant for germination are not the agricultural produce and their transactions are governed by the Seeds Act, 1966 (a Central enactment), hereinafter referred to as the ''Seeds Act'' and not under the A.P. Markets Act. Among the petitioners are the individual traders, companies

who deal in seeds. Their association has also joined in this legal battle. Their common stand is that after the seeds are treated chemically, are preserved for sale for germination purposes after satisfying the requirements of the Seeds Act and Rules framed thereunder including that of conforming to the standards set under the above statute and the rules, they are obliged to take the permission from the authorities under the Seeds Act and are not obliged to take any permit or pay market fee under the provisions of the A.P. Markets Act.

3. M/s. P. Venugopal, S. Ravi and other learned Counsel for the petitioners vehemently submit that only such agricultural produce, which is edible, comes within the realm of the A.P. Markets Act and not the kinds of seeds which are sold by the petitioners, as the said seeds are not edible and lose the character of agricultural produce, the moment they are treated chemically and preserved and sold for germination. The judgments rendered by the Supreme Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., , Babu Ram Jagdish Kumar and Others Vs. State of Punjab and Others, and the judgment of the Madhya Pradesh High Court in Satyapal Anand Vs. The State of Madhya Pradesh and Others, , have been cited in support of their contentions. Alternative contention has been made by Mr. D. Sudhakar Rao, the learned Counsel appearing for some of the petitioners that even assuming that the market fee is liable to be paid, it is not leviable in each and every market committee in Andhra Pradesh and that once the commodity suffers market fee in any of the agricultural market committees in the State of Andhra Pradesh, the same should not be intercepted or levied with the market fee again. Countering the argument of the learned Counsel for the petitioners, the learned Counsel appearing for the Government as also the Agricultural Market Committees, submit that the word ''agricultural produce'' has got wide amplitude and is an inclusive definition and is not restricted only to such agricultural produce which is edible and that the seeds though meant only for germination, are equally exigible to market fee and cited the decision rendered by the Supreme Court in Krishi Utpadan Mandi Samiti, Kanpur and Others Vs. Ganga Dall Mill and Co. and Others, and a Division Bench decision of this Court in Narayana Rao & Sons v. Govt. of A.P. 1997 (3) ALD 458. Insofar as the contention with regard to double levy of market fee is concerned, it remained unanswered.

4. It is true that if any of the provisions of the State Act clash with those of the Central Act, then to the extent of that repugnancy, the provisions of the State Act become inoperative. That is what Article 254 of Indian Constitution says. Now, we will go into the two Acts - A.P. Markets Act (State Act) and Seeds Act (Central Act) - to consider as to whether A.P. Markets Act clashes with the Seeds Act.

5. Seeds Act deal with the seeds of food crops including edible oil seeds and seeds of fruits and vegetables, cotton seeds, seeds of cattle fodder, Jute Seeds and also seedlings, tubers, bulbs, rihzomes, roots, cutting all types of grafts and other vegetatively propagated material of food crops or cattle fodder. But the

Seeds Act aims at regulation only in limited sphere i.e., to maintain the quality of seeds and nothing more. Every provision in the Seeds Act revolves round the maintenance and monitoring of the quality of seeds mentioned supra and the machinery is appointed and authorised for doing the same. Kinds and varieties of seeds are notified in Section 5, minimum limits of germination and purity are specified in Section 6. Regulation of sale of seeds of notified kinds and varieties is contained in Section 7, issuance of certification is provided in Section 8, revocation thereof is u/s 10, Appeal against action u/s 10 is provided u/s 11, analysis u/s 12, for effectual implementation of the Act, Seeds Inspectors are to be appointed u/s 13 and empowering them to take samples, and for that purpose exercise all incidental powers u/s 14, Penal provisions under Sections 19 and 20, are the salient features of Seeds Act and Seeds Act does not touch upon the payment of any fee akin to market fee or entitlement to levy and collect that fee to the exclusion of any other authority. The reason is obvious. Seeds Act only aims at maintaining the quality and for that purpose do all that is necessary, which are incidental for the avowed object of supply of quality seeds for healthy germination and for the right kind of output, be it agricultural or horticultural and in the context of the definition of ''Seed'' in Section 2(11) thereof.

6. A.P. Markets Act draws its legislative power from Item 28 of State List (List II of Schedule VII) and in exercise of its power to declare any area as a market area, setting up market yards and makes a provision for collection of market fee on the sale of any notified agricultural produce within the said areas. The object of A.P. Markets Act is entirely different, as it aims at regulating the markets by securing competitive price to the grower enabling him to participate directly in the sale without the intervention of the middlemen. In the process, the trader may also participate in the sale or purchase of the agricultural produce. While it is true that Section 7(1) of A.P. Markets Act mandates obtaining of licence for any person, who wants to set-up, establish or use or continue or allow to be continued any place for the purchase, sate, storage, weighment, curing, dressing or proceesing of any notified agricultural produce or products of livestock, or for the purchase or sale of livestock sub-section (2) of Section 7 facilitates a person purchasing such produce or products for his own domestic consumption. There are some provisions making exceptions and providing exemptions and they need not elaborated. Suffice it to say that licence or no licence, sale or purchase of notified commodities within the market area or market yard are exigible for payment of market fee at the rates specified and the same is also provided in Section 12 of A.P. Markets Act. The primary liability of payment of market fee is cast on the purchaser under subsection (2) of Section 12 and only if the purchase is not identifiable, then axe falls on the seller.

7. As seen from the comparison of the two enactments - A.P. Markets Act and Seeds Act - it is clear that there is no clash of jurisdiction between the provisions of the said Acts, as, the said Acts operate in different fields and there is no semblance of overlapping. Mention may be made here that the analogy of the imposition of sales-tax either under the Central Sales Tax Act or A.P. General

Sales-tax Act has also got no relevance on the collection of market fee or the criterion for the said levy and collection. The Essential Commodities Act and also the Orders promulgated thereunder, have got no relevance to A.P. Markets Act, as, the Essential Commodities Act as also the Orders promulgated thereunder revolve round the equitable distribution of essential commodities notified, be it edible or non-edible. A.P. Markets Act is simple and it deals with only establishment of market yards and the regulation of sales and purchases in the market yards and in the process, collection of market fee and other incidental matters connected with the markets. In this context, we have to mention that the decisions cited by the learned Counsel for the petitioners in Baburam Jagdish Kumar ''s case (supra) dealing with the levy of sales-tax and Satyapal Anand''s case (supra) dealing with wheat (levy) Control Order issued under Essential Commodities Act have got no bearing in these cases.

8. Now, we come to the contention with regard to the applicability of A.P. Markets Act in the context of definition of ''agricultural produce'' contained in Section 2(i) thereof, it is apt to extract the same :

" ''agricultural produce'' means anything produced from land in the course of agriculture or horticulture and includes forest produce of like nature either processed or unprocessed and declared by the Government by notification tp be agricultural produce for the purposes of this Act".

It is an inclusive definition and not exhaustive. The word ''anything'' means everything. We have to now address on two contentions viz., (1) whether only such agricultural produce which is edible is exigible to market fee; and (2) whether the seeds after separation from the agricultural produce and treated chemically for the purpose of sale only for germination process falls within the ambit of ''agricultural produce''.

9. Even a bare reading of the above definition ''agricultural produce'' does not make any distinction with regard to edibility or otherwise. Such agricultural produce, horticultural produce and forest produce by itself may not attract the market fee unless notified to that effect and finds a place in Schedule II appended to the A.P. Markets Act. Once the agricultural produce, horticultural produce or forest produce are notified, gazetted and form part of Schedule II, it does not matter as to whether the said product is edible or not. Emphasis is on the original produce, be it agricultural, horticultural or forest, and not about its edibility. Example is found in the Schedule itself. Cotton kapas, Lint and Cotton Waste at item-25, Sunhemp or Bombay hemp or Deccan hempt at items 26 and 27. Coconut fibre at item 29, Tobacco seed at item 37, Mohva seed at item 43, Wax at item 53 and Tobacco (Virginia and Natu) at item 64, are some of the non-edible items; but, yet are made exigible to pay the market fee. The intention of the Legislature in enacting A.P. Markets Act is thus clear that whatever is notified from among the agricultural produce, horticultural produce and forest produce and sold in the market areas/yards is exigible to market fee. A.P. Market Act also covers notified livestock and products of livestock. In fact, the decision cited on

behalf of the petitioners in Rajasthan Agriculture Input Dealers'' Association case (supra) itself makes it clear that edibility is not the criterion for imposing the market fee, but its specification by notification making it exigible to pay the market fee is the criterion. Therefore, we reject the contention of the learned Counsel for the petitioners that only such agricultural produce, which is edible, is exigible to market fee.

10. We now come to the prime contention that the seeds of agricultural produce, which are separated from the original agricultural produce and undergo the chemical process and emerge, useful only for the germination/plantation purposes and not for human consumption, such as the seeds of paddy, sunflower, maize, cotton, jowar, bajra, wheat, jute, tomato and other vegetables, have not been notified as agricultural produce and as such, arc not exigible to market fee under A.P. Markets Act. In support of the above argument, the learned Counsel for the petitioners heavily rely upon the decision of the Supreme Court in State of Rajasthan''s case (supra), while the respondent''s rely upon the decisions in K. U.M. Samiti''s case (supra) and Narayana Rao & Sons case (supra).

11. Insofar as Narayana Rao''s case (supra) is concerned, the question which arose was with regard to the liability of payment of market fee by the purchasers of cotton seeds and the contention raised was that inasmuch as cotton seed was purchased from the ginners and the ginners having already paid the market fee for cotton kapas and that as the seeds are the part of cotton kapas, they are not again liable for levy of market fee. The said contention was rejected on the ground that cotton kapas and cotton seeds were two independent items and even though cotton Seeds come out of cotton kapas, they were exigible to market fee. The other contention was that the petitioners therein were neither growers nor traders and thus not liable for payment of market fee. The said contention was also rejected. Even though the said decision docs not directly reflect upon the point in issue regarding the exigibility of the market fee on the chemically processed seeds meant for germination, the judgment in the above case is a pointer that any agricultural produce, edible or inedible, if notified and finds place in Schedule II, is exigible to market fee. We now come to the decisions in Slate of Rajasthan''s case (supra) and K.U.M. Samithi''s case (supra) and the ratio decided therein and the legal principles to be applied.

12. In K.U.M. Samithi''s s case (supra), which is earlier in point of time, a 3 Judge Bench of the Supreme Court was dealing with the validity of levy of market fee on the sale of dal within the market area. Repelling the argument that ''dal'' is the end product after processing the whole grain of legumes into its split folds and its sale is not exigible to market fee and in the context of the definition of ''agricultural produce'' in the said Act, it was held that the word ''gram'' as specified in the schedule would also include ''gram'' in its processed form. Further, the said dal was under the dal group and the word ''gram'' as specified in the Schedule was construed to include any such items i.e., gram in its processed form. In effect, the contention that dal assumes a different form

because of the alleged manufacturing process was negatived. The Supreme Court held that "Therefore, it is crystal clear that while enumerating legumes in the Schedule and reproduced in the 1978 notification to make them specified agricultural produce, the framers intended to include both the grain as a whole and its split parts - the dal. And when the agricultural produce enumerated in the Schedule such as Gram including its processed part is reproduced in the notification as Dwi Daliya Utpadan, the dal of each of the legumes therein mentioned became specified agricultural produce". The above decision has got no bearing in this Batch of cases as the Supreme Court was not dealing with the seeds taken out of the parent product and treated chemically for user for germination. Dal which is a food item was construed as a part of legume group.

13. Coming to Rajasthan''s case (supra), the said decision deals with similar situation like in the instant cases. There, bajra seed which was chemically treated and was to be used for germination purposes was held not to be an agricultural produce, even when it is sold within the market area. But, there is a difference insofar as specification of items for levy of market fee. Further, comparing both the Acts of Uttar Pradesh and Rajasthan, the definition of ''agricultural produce'' in A.P. Markets Act is sweeping. The grouping of the ''agricultural produce'' in A.P. Markets Act is also different from that of the Act of Rajasthan. In Rajasthan Act, bajra has been specified under the foodgrain group connoting that only such edible bajra seed which is in seed form is exigible for levy of market fee. In that context, the Supreme Court in the said case held that the definition of ''agricultural produce'' even though is inclusive definition and is of wide amplitude with no distinclion between edible seed and non-edible seed, but as the law-makers had mentioned bajra seed under the foodgrains group (emphasis is ours), the intention that only edible bajra seed was exigible to market fee and that non-edible bajra seed meant for seedling purposes was not meant to be exigible to market fee and that it did not preclude the Government from notifying the same distinctly adding to the Schedule and inasmuch as inedible bajra meant for germination purposes was not specified in the Schedule, the same cannot be inferred as being subject to levy of market fee. The situation in A.P. Markets Act is entirely different. There is no such heading like ''legume group'' or ''foodgrains group; as in the Acts of Uttar Pradesh and Rajasthan respectively. Schedule II of A.P. Markets Act comprises of 8 groups, namely, (1) agricultural group, (2) fruit group, (3) vegetable group, (4) fish group, (5) livestock group, (6) livestock product group, (7) poultry group and (8) products of poultry group. In the instant cases, we are concerned with agricultural group, fruit group and vegetable group. These three groups do not make any distinction such as edible or non-edible. The, sale or purchase of the specified items attracts market fee.

14. If the product is sold in its original form, the same has to be taken as it is for the purpose of levy of market fee and if the derivative of the said original product is sold separately, then the said derivative is also exigible to market fee. Rice is derivative of paddy and as such, it is separately mentioned as Item-2 in

Schedule II. There in no derivative of Wheat and as such, there need not be any specific mention as wheat seed. Similarly, for Maize, Jowar and Bajra (Cumbu), no special mention need be made as Maize seed, Jowar seed or Bajra seed. But coming to Castor, mention ought to have been made as Castor Pod and Castor Seed like Groundnut pods and kernels and Cashewnut (shelled and unshelled) mentioned as items 30 and 49 of Schedule II. As such, the Castor mentioned at Item 31 has to be taken as Castor with shell and not as a castor seed and consequently, the Castor seed is inexigible to market fee. Likewise, in the Vegetable group also Tomato is mentioned at Item-17, but Tomato seeds are not mentioned. As such, seeds of Tomato are not exigible to market fee. Suffice it to say that all such items grown from the land and grouped in (I) Agricultural group (II) Fruit group and (III) Vegetable group, which are specifically mentioned in Schedule II as notified produce, are exigible to market fee. But, such products which are derivatives from the original produce are exigible to market fee, only if they are specified separately or otherwise they become inexigible to market fee. The intention of the State Legislature is quite clear on this aspect and so also the exercise of powers by the Government in notifying products from time to time to be part of Schedule II. Instances can be given like Coconut fibre at Item-29 and Coconut and Copra separately at Item-42. Groundnut pods and kernels are shown at Item-30, while Tamarind seed and Tamarind are shown at Items 47 and 68. Safflower is mentioned at Item-34. Likewise, Sunflower is mentioned at Item-69. They have to be taken as seeds, edible/non-edible.

15. Insofar as double taxation is concerned, interpreting Section 12 of A.P. Markets Act and Rules 74(1) of A.P. Markets Rules, it was held by a Division Bench of this Court in Kurnool Dist. Rice Millers Association and Others Vs. Agricultural Market Committee, Amtakur and Others, , that if market fee is collected by a market committee within the State of Andhra Pradesh, it cannot be collected by another market committee, if proof is produced and there is no authority placed before us by the respondents laying down by any proposition contra.

16. In view of what is stated supra, we hold:

(1) That all such items like paddy, wheat, maize, bajra, cotton seed, sunflower, safflower, jowar etc., covered by this Batch of writ petitions, which are specified in the Schedule-II appended to the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 whether sold in original form i.e., edible or converted form i.e., chemically processed into non-edible form (seeds for germination purposes), within the precincts of notified market area/ market yard, are exigible to the levy of market fee.

(2) That such seeds like Tomato and castor seeds, which are derivatives of the main produce, but are sold separately and which are not specified in the Schedule-11 annexed to A.P. (Agricultural Produce and Livestock) Markets Act, 1966, cannot be made liable to the levy and collection of market, fee.

(3) That such items specified in Schedule II referred to above which suffered the payment of market fee in an Agricultural Market Committee, shall not again be subjected to payment of market fee in any other Agricultural Market Committee within the State of Andhra Pradesh, if the proof of such payment is furnished to the authority concerned.

(4) That the petitioners shall now submit the accounts to the respective committees within a period of one mouth from to-day, whereupon the respective Agricultural Market Committees shall make assessment of the market fee payable and within one month of the service of the said assessment orders, the petitioners shall pay off the said amounts; and

(5) That henceforth, the petitioners shall be liable to comply the provisions of A.P. (Agricultural Produce and Livestock) Markets Act, 1966 in their dealings in items covered by para 16(1) above, within the market areas/market yards and failure to do so will render them liable for the consequences under the said Act.

The writ petitions are disposed of accordingly. Each party shall bear its own costs.

