
(2005) 04 RAJ CK 0056
In the Rajasthan High Court
Case No : Civil Writ Petition No. 604 of 2005

Jai Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Rajasthan Agricultural Produce Markets Act, 1961 — Section 14, 14(2), 2(1), 3, 3(1)
Rajasthan Agricultural Produce Markets Rules, 1963 — Rule 64

Citation : (2005) 2 RLW 1313 : (2005) 3 WLC 300

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; Ravi Bhansali, for the Respondent

Judgement

Prakash Tatia, J.—The petitioners by this writ petition, have challenged the Notification dated 24.9.1986 (Annex.4) and sought declaration that bamboos and ballis are not agricultural produce and its trade cannot be regulated under the Rajasthan Agricultural Produce Market Act, 1961 (for short "the Act of 1961") and the petitioners further prayed that the notices issued for demanding mandi fees on sale of the bamboos and ballis (Annex. 5, 7, 9, 10A, 12, 13 and 15) be declared illegal and quashed. The petitioners further prayed that the respondents may be restrained from effecting the market fees from the petitioner on the purchase and sale of bamboos and ballis. The Notification dated 24.9.1986 which was issued under the provisions of Section 40 of the Act of 1961 was challenged earlier in the year 1987 by filing four writ petitions which were dismissed by this Court by common order dated 25.7.1996. According to the learned counsel for the petitioner, neither the relevant provisions of laws were brought to the notice of this Court at that time nor the effect of inclusion of certain agricultural produce in the scheduled appended to the Act of 1961 was examined. Therefore according to the learned counsel for the petitioners, the view taken by the learned Single Judge of this Court in S.B. Civil Writ Petition No. 704/1987 dated 25.7.1996 is per-incurium. It is also submitted that even the Notification u/s 40 amending the Scheduled is upheld, it itself cannot put any restriction upon the

trade in bamboos and ballis till a Notification u/s 4, after following the procedure u/s 3 of the Act of 1961 is issued. And admittedly no Notification u/s 4 has been issued by the State inspite of the fact the Notification u/s 3 has been issued.

2. The brief facts of the case are that to secure better and adequate price for agricultural for their agricultural produce an Act, namely, Rajasthan Agricultural Produce Markets Act, 1961 was enacted in the year 1963. The similar legislation has already been enacted in the State of Bombay, madras, Andra Pradesh, Punjab, Madhya Pradesh, Hyderabad, Madhya Bharat and Mysore before enactment of the Act in the year 1961 in Rajasthan. The statement of objects and reasons for enacting the Act of 1961 clearly provides that it has been enacted so as to help the agriculturists in getting the better price for their produce and for that purpose, the market is required to be regulated.

3. Sub-clause (i) of Sub-section (1) of Section 2 of the Act of 191 defines the "agricultural produce", which is as under:-

"(i) "agricultural produce" includes all product whether of agriculture, horticulture, animal husbandry or otherwise as specified in the Schedule."

4. Chapter II of the Act of 1961 provides how the market will be constituted. As per Sub-section (1) of Section 3 of the Act of 1961, the State Government, by Notification in the official Gazette, may declare its intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the Notification. If the areas falls within the municipal limit, the consultation with the municipal board or municipal council concerned has been made necessary.

5. The Notification under Sub-section (1) of Section 3 is required to be issued inviting objections and suggestions as per Sub-section (2) of Section 3. As per Section 4 of the Act of 1961, after the expiry of the period of not less than one month, specified in the Notification issued u/s 3 and after considering such objections and suggestions as may be received before the expiry of the above period and after holding such enquiry as may be necessary by the State Government, the State Government may be Notification to be published in official Gazette, declare (1) the area specified in the Notification u/s 3 or any portion thereof to be a market area for the purpose of the act of 1961, (2) in respect of all or any of the kinds of agricultural produce specified in the said Notification u/s 3(1).

6. As per Sub-section (2) of Section 4 with declaration of the market area under Sub-section (1), on place in the said area can be used for purchase or sale of any agricultural produce specified in Notification issued thereunder.

7. A Schedule has been appended to the Act of 1961 which purports to have been enacted and incorporated in the Act of 1961 to include certain agricultural produce within the purview of agricultural produce as defined in Sub-clause (i) of Sub-section (1) of Section 2. Section 40 of the Act of 1961 empowers the State

Government to add, amend or cancel any of the items of agricultural produce specified in the Schedule by publication of Notification in official Gazette for the purposes, namely, to add, amend or cancel any of the items of agricultural produce specified in the Schedule.

8. Section 14 provides that where the market is established under Sub-clause (b) of Sub-section (2) of Section 9, the market committee may issue and renew licences, in accordance with the rules and bye-laws, to traders, brokers, weighmen, measurers, surveyors, ware-housemen and other persons to operate in the market on payment of the prescribed fees. However, not licence is needed in case the person to whom licence has been granted under Sub-section (2) of Section 4 of the Act of 1961.

9. In exercise of power conferred u/s 36 of the Act of 1961, the State Government framed the Rajasthan Agricultural Produce Markets Rules, 1963 which were notified no 22.10.1963 and were published in the official Gazette on 6.2.1964. As per Rule 64, all agricultural produce brought into the market or produced or processed in the market area, are required to pass through the principal market yard or some market yard or yards and cannot be sold at any other place within the market area, however, for such restrictions, certain relaxations can be given and as per the explanation appended to Sub-Section (2) of Section 14 of the Act of 1961, the restrictions as imposed by Sub-section (2) are not to apply to the purchase or sale of any agricultural produce if the producer of such produce is himself is a 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.

10. The contention of the learned counsel for the petitioners is that firstly, the bamboos and ballis cannot be treated as agricultural produce because it is a forest produce and not an agricultural produce, secondly the Act has been enacted for the benefit of agriculturists so that the agriculturists may get better price for their agricultural produce and the bamboo is not a produce produced by the agriculturists by systematic cultivation of bamboo and balli, thirdly, the produce itself has been treated as a forest produce by the State Government itself which is apparently clear from the Notification issued u/s 3 of the Act of 1961 as well as from the Notification dated 24.9.1986 (Annex.4) issued u/s 40 of the Act of 1961 wherein the State Government itself described the Bamboo as forest produce, fourthly, the inclusion of a agricultural produce in the Schedule by amending the Schedule by exercise of power u/s 40, the restriction as imposed by the Act of 1961 cannot apply to the said agricultural produce unless the Notification u/s 4(1) is issued imposing restrictions for trade in any of the agricultural produce. Fifthly, restriction can be imposed for a particular market area or portion thereof for which there must be Notification u/s 4. As per Sub-section (1) of Section 4 the restriction, as imposed by the Act of 1961 and the Rules framed there under, applies for trade in any market area and for agricultural produce, as per the above provisions, and mere inclusion of

agricultural produce in the Schedule itself is not restriction in trade in the market area and further, the State Government cannot claim benefit under the provisions of the Rajasthan Agricultural Produce Market Act, 1961 because it was enacted for benefit to the weaker sections and for the benefit of agriculturists. The State Government cannot be an "agriculturist" nor can be exploited by the traders. It is also submitted that bamboos and ballis are sold by the State's own department, i.e., Forest Department, that too at their place and not in mandi which will be illegal if it is held that the said produce are agricultural produce.

11. The learned counsel appearing on behalf of the Mandi Committee submitted that in view of the decisions of this Court delivered in *National Bamboo Traders v. The State* (S.B. Civil Writ Petition No. 704/1987, decided on 25.7.1996), nothing survives. The petitioners cannot challenge the notification dated 24.9.1986, validity of which has been upheld by the learned Single Bench of this Court after considering Section 3 and 4 of the act of 1961 and after considering Section 40 of the Act of 1961, this Court in the above referred judgment, clearly took note of the definition of agricultural produce and thereafter declared the Notification as valid. However, both the learned counsels submit that no Notification u/s 4(1) has been issued till now.

12. I considered the submissions of the learned counsel for the parties and I found that the Notification u/s 3(1) is only a notification for inviting objects and suggestions against the State Government's intention of regulating the purchase and sale of any agricultural produce in specified areas as specified in the notification. This is clear from Sub-section (2) of Section 3 as well as from Sub-section (1) of Section 4. Section 3 provides that the objections and suggestions can be submitted to the State Government against the State Government's intention of regulating the purchase and sale of particular produce in a particular market area and the State Government can declare the agricultural produce as a commodity having restricted marketability for a particular market area or any portion of market area. Since it is admitted case that no Notification under Sub-section (1) of Section 4 has been ever issued by the State Government, therefore, there appears to be reason that the State Government has not declared its final decision for its intention to regulate the trade of bamboo for a particular market area.

13. There appears to be substance in the submission of the learned counsel for the petitioner that the inclusion of any commodity in the Schedule of the Act of 1961 is only a declaration of that produce to be agricultural produce as defined under Clause (i) of Sub-section (1) of Section 3 of the Act of 1961. Once a commodity is declared as agricultural produce, the restriction can be imposed by following the procedure under Sections 3 and 4 of the Act of 1961 only. The power u/s 40 given to the government is only enabling power by which the State Government, without amending the Act itself, can amend the part of the Act, i.e., Schedule appended to the Act which contains the list of the agricultural produce. There appears to be substance in the submission of the learned counsel for the

petitioners that if the Schedule is to be treated as containing the list of all agricultural produce for which the restriction will apply for its trade in the market area, then there cannot be any reason for issuing separate Notification for separate area and for separate agricultural produce, it is also relevant to mention here that if it was the intention of the Act of 1961 to put restriction for all the agricultural produce and its trade in the all market areas by including the agricultural produce in the Schedule by issuing Notification u/s 40 only, then after enactment of the Act of 1961, Sub-section (1) and (2) of Section 3 and Sub-sections (1) and (2) of Section 4 will render of no use because there will be no need to follow the procedure u/s 3 and 4 for the purpose of declaring the market area and agricultural produce requiring the control over its trade and the State Government will be free to include or delete the agricultural produce from the Schedule by mere issuing Notification u/s 40 of the Act of 1961. It will be further relevant to mention here that the restriction on a trade of agricultural produce affects the persons involved in the trade of such agricultural produce and, therefore, the word "such" has been used before agricultural produce under Sub-section (1) of Section 3 and Sub-section (2) of Section 3 mandates inviting objections and suggestions and consideration thereof before taking decision to include "an" agricultural produce in the category of restricted trade commodity for "any" market area.

14. The question of importance arises is whether the State can claim protection of law mean for the benefit of the weaker sections of the society and whether the State needs its "trade" to be regulated under the Act of 1961. It appears the important fact escaped from consideration is that sale of "forest produce" (as mentioned in the impugned Notification Annex.4 dated 24.9.1986 and in notification Annex. 16 dated 9.6.1987) can be regulated under the Act of 1961 and the State Government is supposed to sell the forest produce in the market area instead of in forest itself or any other appropriate place.

15. Hon"ble the Supreme Court in the case of Motor General Traders v. State of A.P. (AIR 1984 SC 121), approved the reasons given in W.A. Wynes: "Legislative, Executive and Judicial Powers in Australia", Fifth Edition, p.33 which is:-

"Time does not run in favour of legislation. If it is ultra vires, it cannot gain legal strength from long failure on the part of lawyer to perceive and set up its invalidity."

16. Therefore, though there is a delay of several years but looking to all facts and relevant law, this Court feels that it is a fit case for reconsidering the judgment of this Court delivered in S.B. Civil Writ Petition No. 704/1987 referred above.

17. It appears that all these facts were not brought to the notice of the learned Single Judge when S.B. Civil Writ Petition No. 704/1987 was decided by the learned Single Judge of this court. Therefore, the decision dated 25.7.1996, delivered in S.B. Civil Writ Petition No. 704/1987 requires re-consideration which

can be done by the Division Bench, therefore, the matter is required to be referred to the appropriate Bench with the permission of the Hon''ble Chief Justice.

18. Therefore, the matter may be placed before Hon''ble the Chief Justice for placing before the appropriate Bench to re-consider the judgment of this Court dated 25.7.1996 delivered in S.B. Civil Writ Petition No. 704/1987.