

**(1989) 07 PAT CK 0006**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 2540 of 1988**

Jamuna Flour and Oil Mills

APPELLANT

Vs

Bihar State Pollution Control Board and Others

RESPONDENT

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**Date of Decision :** 13-07-1989

**Acts Referred:**

Constitution of India, 1950 — Article 252

Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 2

**Citation :** (1989) 37 BLJR 195 : (1989) PLJR 1133

**Hon'ble Judges :** S.B. Sinha, J;P.S. Mishra, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## Judgement

S.B. Sinha, J.—This writ application involves a question as to whether a "flour mill" comes within the purview of an industry involved in processing of animal or vegetable products for the purpose of assessment of cess under Water (Prevention and Control of Pollution) Cess Act, 1977 hereinafter called and referred to for the sake of brevity as "the said Act").

2. The facts of the case lie in a very narrow compass. The petitioner is running a wheat flour mill in the town of Katihar. In the said mill, wheat is used as raw material and the same is processed into Atta, Maida, Suji and Bran by mechanical process.

3. According to the petitioner it's industry does not come within the purview "specified industry" as defined in Section 2(c) of the said Act and as specified in Schedule I thereof

4. The petitioner was directed by the authorities of the respondent--Board to file return etc in terms of the provisions of the said Act.

5. According to the respondents, the industry of the petitioner is covered by entry No. 15 of the First Schedule appended to the said Act as therein vegetable Product, is processed. According to the respondents, the word "vegetable" has

been used as opposite to the word "animal and as such and industry which is not involved in processing an animal product must be held to be an industry involved in processing of a "vegetable product According to the respondents, thus, wheat being a vegetable, the industry of the petitioner must beheld to bean industry engaged in processing of the product within the meaning of "specified industry" as defined in the said Act and as mentioned in No 15 of the First Schedule thereof.

6. Mr L.K. Raila, the learned Counsel appearing on behalf of the petitioner raised a very short question. He submitted that wheat, which is "cereal" and as such" not as a vegetable and thus the industry of the petitioner involved in processing a cereal and producing Atta, Maida and Suji does not. come within the purview of the said Act.

The learned Counsel further submitted that the said Act being a fiscal statue must be construed very strictly and by no stretch of imagination, wheat can come within the purview of the word "vegetable.

The learned Counsel, in this connection, has referred to Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, wherein the Supreme Court is held that betal leaf is not vegetable.

The learned Counsel further relied upon motipur Zamindari Co. Ltd. v. The State of Bihar 1968. 13 STC I BIHAR (SC) and Kundori Labour Co-operative Society Ltd. and Vs. State of Bihar and Others, .

7. Mr. A.B. Ojha, the learned Counsel appearing for the respondent No.1 Board on the other hand, submitted that wheat re-rolling mill, which No. 1 Board, on the Bran etc. Comes within the purview of Entry No. 15 of the Schedule appended to the said Act, i.e., processing of animal or vegetable product industry.

The learned Counsel, in this connection, has placed strong reliance upon a Division Bench judgment of the Allahabad High Court in Kisan Sahkari Chini Mills Ltd., Sheikhpur, Budaun Vs. State of Uttar Pradesh and Others, .

8. In view of the rival contentions, as noticed hereinbefore, the only question which arises for consideration is as to whether the industry of the petitioner which produces Atta, Maida and Suji comes within the purview of Item No. 15 of the First Schedule appended to the said Act, being a specified industry thereunder.

9. Some of the Legislatures of the States in India including the State of Bihar adopted a resolution in terms of Clause (1) of Article 252 of the Constitution of India to the effect that the matters as mentioned in the Preamble to the Water (Prevention and Control of Pollution) Act, 1974 should be regulated in these States by the Parliament by law; pursuant whereof the Parliament enacted the aforementioned Act being Act No. 6 of 1974.

10. The Preamble of the aforementioned Act reads as follows:--

An act to provide for the prevention and control of water pollution and maintaining or restoring of wholesomeness of water for the establishment, with a view to carrying out the provisions aforesaid of Boards for the prevention and control of water pollution for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

11. In *Tata Iron and Steel Co. Ltd. v. State of Bihar* being C.W.J.C. No. 3131 of 1982 and analogous cases, which are also being disposed of today this Court has held that cess payable under the 1974 Act is in the nature of "Tax" and not in the nature of "fees".

12. While construing statute particularly a taxing statute a dictionary or a scientific meaning cannot be assigned to a word therein. In construing such a statute, a particular commodity must be understood as is used in the world of trade or commerce or in a common parlance.

13. In *Motipur Zamindari Co. (Pvt) Ltd's* case (supra) "sugar case" has been held to be not a "green vegetable". In the aforementioned decision the Supreme Court has quoted with approval its earlier judgment reported in 1961 12 S.T.C 286(PAT), which in turn has quoted with approval a judgment of the Nagpur High Court in *Madhya Pradesh Pan Merchants' Association v. State of Madhya Pradesh* reported in 1956 7 STC 99;--

The word "vegetable" in taxing statutes is to be understood as in common parlance i.e., denoting class of vegetable which are grown in a farm and are used for the table.

14. A Full Bench of this Court in *Kundori Labour Co-operative Society Ltd's* case (supra), after taking into consideration various decisions held that "slurry" is not "coal".

15. Recently again another Full Bench of this Court in *Md. Ataur Rahman v. The State of Bihar* 1988 BLT (Rep) 564 after reviewing various decisions of the Supreme Court held that for the purpose of construing penal statute rule of strict construction has to be adopted and ultimately held that "Charcoal" in common parlance cannot be construed as coal. It was further held in the said case that for the purpose of construing a penal statute, dictionary meaning of a word should not be adopted.

16. In C.W.J.C. No. 4413 of 1981 disposed of on 6th July, 1987 (*Chanparan Sugar Co. Ltd. v. State of Bihar*) reported in 1989 PLJR 543, I had the occasion to consider as to whether sugar industry is a chemical industry or an industry engaged in processing vegetable products. In that case after taking into consideration various decisions of the Supreme Court including some as referred to hereinbefore, it has been held that sugar industry is neither an industry where vegetable is processed nor ii a chemical industry. This view also finds support from a recent division bench decision of this Court in *Tata Engineering and Locomotive Co. Ltd., Jamshedpur Vs. State of Bihar and Others*, .

17. However, this question is no longer res Integra in view of a recent Supreme Court decision in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, . In that decision the Supreme Court has clearly held that the said Act being fiscal statutes, the same must not only be construed literally, but also strictly. An industry, which otherwise does not come within the purview of "specified industry" as mentioned in the Schedule appended to the said Act; no cess can be levied thereupon. Reference in this connection may also be made to Collector, Central Excise v. Krishna Carbon Paper Co. reported in : 1988(37)ELT480(SC) .

18. The decision of the Allahabad High Court relied upon by Mr. Ojha unfortunately has not taken into consideration the principles of construction of a fiscal statute nor has it taken into consideration the well-known principles of literal and contextual interpretation of a statute, nor the well-known canon of interpretation of a statute that in a case of this nature, an expression should be understood not in technical sense but from broad commonsense point of view and what it truly means by those who deal with them.

The Division Bench of the Allahabad High Court has only proceeded to consider the entry in the Schedule appended to the said Act on the basis that the word "vegetable" product must be given such a meaning as being opposite to "animal product".

19. With utmost respect to the learned judges, I do not feel persuaded to subscribe to the views taken in the aforementioned decision.

However, in any event in view of the recent decision of the Supreme Court as mentioned hereinbefore, the judgment of the Allahabad High Court must be held to have been overruled by necessary implication.

20. It is well-known that incorporating a Schedule in an Act is a mere question of drafting and a mere question of words and the Schedule is as much a part of the statute, and is as much an enactment, and any other part.

See Attorney General v. Lamplough (1878) 3 Ex. D. 229 which has been quoted with approval in Ujagar Prints Vs. Union of India (UOI), .

Thus it is evident that same principles of interpretation of statute shall apply in relation to a Schedule appended to an Act which are applicable to the main provisions thereof.

21. In this view of the matter, it must be held that industry of the petitioner does not come within the purview of Item No. 15 appended to the Schedule of the said Act and thus is not liable to pay any cess whatsoever.

22. In the result, this writ application is allowed, but in the facts and circumstances of the case, there will be no order as to costs.

P.S. Mishra, J.

23. I agree.