

(2003) 07 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 40925 of 1977 and 7756 of 1995

Keserwani Zarda Bhandar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-07-2003

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 2

Citation : (2003) 3 UPLBEC 2254

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Arun Kumar Gupta, N.C. Gupta and Rakesh Dwivedi, for the Appellant; S.P. Gautam, B.D. Mandhyan, Pradeep Kumar and Murlidhar and S.C., for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Kesarwani Zarda Bhandar Vs. State of U.P. and Others, AIR 2008 SC 2733 : (2008) 11 JT 50 : (2008) 8 SCALE 674 : (2008) 8 SCC 305 : (2009) 13 STR 95 : (2009) 19 VST 545 : (2008) AIRSCW 4553 : (2008) 3 Supreme 636

M. Katju, J.—These two writ petitions are being disposed off by a common judgment.

2. Heard learned Counsel for the parties.

3. In Writ Petition No. 7756 of 1995 the prayer of the petitioner is for quashing the impugned demand dated 14.2.1995 Annexure -1 to the writ petition demanding Mandi fee from the petitioner and asking him to obtain licence u/s 17 of the U.P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as "the Act"). The petitioner has also prayed for a mandamus directing the respondent Mandi Samiti, Allahabad not to charge any Mandi fee or tax on the Zafrani Patti and Zafrani Zarda manufactured by the petitioner firm and not to interfere with

the petitioner's business of sale and purchase of the above items.

4. In Writ Petition No, 40925 of 1997 the petitioner has prayed that the item "tobacco" mentioned in the Schedule to the Act be declared ultra vires.

5. The petitioner is a partnership firm dealing with tobacco. As alleged in Paragraph 3 of the writ petition, the petitioner purchases raw tobacco after paying Mandi fee from the place of its purchase and thereafter the petitioner uses a manufacturing process for preparing Zafrani Patti and Zafrani Zarda. As stated in Paragraph 4 of the writ petition, the petitioner cuts the tobacco leaves in small pieces and thereafter mixes menthol, scent, geru, kattha, lime, perfumes etc. to make Zafrani Patti and Zafrani Zarda, which is packed in small packets of paper or tins of different sizes and sold in U.P. and elsewhere.

6. It is alleged in Paragraph 6 of the writ petition that this product (Zafrani Patti and Zafrani Zarda) is not agricultural produce as defined in Section 2(a) of the Act. The petitioner purchases raw tobacco/processed tobacco outside the Mandi Samiti, Allahabad. The method of manufacture of Zafrani Zarda and Zafrani Patti is given in detail in Paragraph 7 of the writ petition. In Paragraph 10 of the writ petition it is stated that the Zafrani Zarda and Zafrani Patti undergo complete change in the manufacturing process adopted by the petitioner and the product is wholly different in form, shape and use than raw tobacco. It is a different and a new commodity, and does not remain tobacco. The petitioner does not sell or purchase raw tobacco in any market yard/Market Committee in U.P. but is doing business of sale of Zafrani Patti and Zafrani Zarda. The petitioner is challenging the demand of market fee by the Mandi Samiti, Allahabad. It is alleged that the petitioner is not a broker, whole seller, commission agent or dealer as defined under the Act. It is alleged in Paragraph 23 of the writ petition that tobacco has been declared as an industry under Entry 52 of List 1 of the 7th Schedule of Constitution. Hence only Parliament can legislate on the subject of sale and purchase of tobacco, since by the Tobacco Board Act, 1975 the entire field of tobacco has been covered by a Parliamentary Law and hence the State Legislature cannot legislate on the topic of sale and purchase of tobacco.

7. A counter affidavit has been filed in Writ Petition No. 7756 of 1995 by the Secretary of Krishi Utpadan Mandi Samiti, Allahabad and we have perused the same. It is alleged therein that Zafrani Patti and Zafrani Zarda are agricultural produce as they are tobacco in processed form. It is stated that the petitioner has not clarified whether it purchases tobacco from Allahabad or from other places. It is alleged that merely flavouring or using perfumes in tobacco for fragrance does not amount to manufacture. Sale and purchase of Zafrani Patti and Zafrani Zarda is nothing but sale of tobacco. Mixing certain items with raw tobacco would not change the character of tobacco.

8. We have also perused the rejoinder affidavit.

9. We have also been shown certain tins of Zafrani Patti and Zafrani Zarda manufactured by the petitioner. On a visual appearance it seems that what is

sold by the petitioner is nothing but processed tobacco.

10. It seems to us that the petitioner purchases raw tobacco and after sprinkling some jaggery on it cuts it into pieces, and adds certain items like menthol, gent, lime, spices etc. and certain perfumes. In our opinion, this does not amount to manufacture as no new item different from tobacco comes into existence by such process.

11. It may be mentioned that Section 2 (a) of the Act defines agricultural produce as follows :

"agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items and also includes any such item in processed form, and further includes gur, rab, shakkar, Khandsari and jaggery."

12. Tobacco is mentioned in the Schedule to the Act (at Item V). Hence tobacco is certainly agricultural produce. However, the definition of agricultural produce states that not only the items mentioned in the Schedule are agricultural produce but also such. items in processed form will be treated as agriculture produce.

13. The difference between processing and manufacture has been lucidity brought out in a decision of this Court in *Krishi Utpadan Mandi Samiti Vs. Om Prakash and Others*, In that decision it has been mentioned that in a processing no new entity comes into existence, whereas in a manufacture a new entity comes into existence.

14. In *Hansraj and Sons Vs. State of Jammu and Kashmir and Others*, it was held that processing of dry fruit is not a manufacture.

15. In *Park Leather Industry (P) Ltd. v. State of UP*. 2001 (3) SCC 135 , it was held that converting of hide and skin into leather and tanned leather is only processing as it only involves cleaning, curing and adding preservatives. Even though the finished product, namely, tanned leather may have changed in physical appearance or chemical combination and may be a commercial item, yet it remains hide or skin as held in *State of Tamil Nadu Vs. Mahi Traders and Others*,

16. Learned Counsel for the petitioner, however, relied on the Supreme Court decision in *Edward Keventer Pvt. Ltd. Vs. Bihar State Agricultural Marketing Board and Others*, in which it was held that "Frooti" and "Appy" are not covered by the item of fruit mention in the Schedule to the Bihar Act, and hence market fees cannot be levied. In our opinion, this decision is distinguishable. The process for manufacture of Frooti and Appy is stated in Paragraph 4 of the aforesaid judgment and a perusal of the same shows that a complete manufacture is done and the beverages produced are totally different item from mango and apple which lose their entity. These beverages are no longer mango or apple or fruits. Even though the basic character of mango pulp and apple concentrate may be

present in the beverages but the end products were not fruits at all. The Supreme Court relied on its earlier decision in *Belsund Sugar Co. v. State of Bihar* 1999 (4) SCC 620, wherein it was held that Lactodex and Raptakos which are baby food do not fall under the description of milk specified in the Schedule to the Act. In Paragraph 7 of the judgment in *Edward Keventer's case* (supra), the Supreme Court has pointed out the difference between the U.P. Act and Bihar Act and has observed that in the U.P. Act the definition of agriculture produce includes any item mentioned in the Schedule in processed form.

17. In our opinion by merely adding menthol, scent, geru, lime, perfumes etc. to the raw tobacco and mixing it with the help of some mixture it does not amount to manufacture and it is only a processing because no new produce comes into existence. The entity remains the same, that is, tobacco, though after the processing by the petitioner it is in more presentable and marketable shape with a better colour and with fragrance and some other items which add to the marketability of the tobacco.

18. As observed in *Park Leather Industry (P) Ltd. v. State of U.P.* 2001 (3) SCC 135 (vide Paragraph 10), manufacture implies a change but every change is not a manufacture. Though every change is the result of treatment, alteration and manipulation, in a manufacture there is such a transformation that a new and different item emerges.

19. In *Krishi Utpadan Mandi Samiti Vs. Om Prakash and Others*, this Court held that sawing wood or seasoning is processing of wood, but when a bullock-cart is manufactured from wood it becomes a new entity".

20. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, the Supreme Court observed:

"Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and undeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experience a change. But it is only when the change, or series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place."

21. In *U.P. Aata Chakki v. Krishi Utpadan Mandi Samiti* 1976 UPTC 322, this Court held that converting of wheat into flour was processing not manufacturing.

22. In *Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan*, it was observed that manufacture implies a change but every change is not manufacture. It is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new

distinct article that a manufacture can be said to take place.

23. From the examination of the facts of the case it is evident that the petitioner only processes the tobacco so as to make it more marketable by adding some spices, colour, fragrance etc. but in our opinion, this by no stretch of imagination can be said to be a manufacture. Zafrani Patti and Zafrani Zarda remain the same entity, namely, tobacco.

24. In Smt. Kusum Chandrakant Khaushe Vs. L. Hmlinglian and others, it was held that gur-lauta and raskat and rab-galawat and rab-salawat are agricultural produce.

25. In M/s. Ram Bharosey and Ors. v. Krishi Utpadan Mandi Samiti 1995 ALJ 115, a Division Bench of this Court held that chewing tobacco is nothing but tobacco in processed form and therefore, is liable to market fee under the Mandi Adhiniyam

26. Learned Counsel submitted that no Mandi fee can be charged on transactions outside the market area. This submission is no doubt correct and we declare that, if any, transaction of sale takes place outside the market area no Mandi fee can be charged. It may be mentioned that Section 17 (iii) (b) states :

"market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area."

27. The above provision makes it clear that if the sale transaction is not inside the market area obviously no market fee can be realized.

28. As regards the submission that the field of tobacco is covered by the Tobacco Board Act which is a Parliamentary Law, this contention is no longer res Integra after the decision of the Supreme Court in the I.T.C. Limited Vs. The Agricultural Produce Market Committee and Others, Hence this point has to be decided against the petitioner.

29. In M/s. Atma Ram Ratan Lal v. State of U.P. 1979 ALJ 126, a Division Bench of this Court held that the Mandi Adhiniyam is applicable not only to producers but also traders. It was held in that decision that a person manufacturing agricultural produce but selling outside the market area is covered by the Act as storage of agricultural produce is within the market area. It was also held that could storage owners, potato dealers, furniture dealers, saw millers were included within the definition of producer and have to pay Mandi fee.

30. Thus, there is no merit in these petitions and they are dismissed.