(1998) 11 AHC CK 0018

In the Allahabad High Court

Case No : First Appeal From Order No''s. 243 and 275 of 1998 and Civil Misc. Writ Petition No''s. 6215, 27867 and 30079 of 1991, 2658, 9421, 9795, 24818, 10626, 10665, 30216, 30654, 30655, 30656, 30657, 30659, 30683, 30684, 30685, 31058, 31562 and 31563 of 1995, 11

Krishi Utpadan Mandi Samiti and Another APPELLANT

Vs

Mahan Proteins Ltd. RESPONDENT

Date of Decision : 26-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17

Citation : (1999) RD 135 : (1999) 1 UPLBEC 490

Hon'ble Judges : D.P. Mohapatra, C.J;R.R.K. Trivedi, J

Bench : Division Bench

Advocate : B.D. Mandhyan, for the Appellant; Madhev Jain and P.N. Saxena, for the Respondent

Judgement

D.P. Mohapatra, C.J.—The short question that arises for determination in these cases is whether in the facts and circumstances of the case as revealed from the record the trial Court was right in passing the order of interim injunction against the defendants. Since all the cases involve common questions of fact and law, they were heard together with consent of learned Counsel for the parties and they are being disposed of by this common judgment.

2. The factual matrix of the case relevant for determination of the question may be stated thus :

The plaintiff Company, M/s. Mahan Proteine Ltd. filed Original Suit No. 289 of 1997 in the Court of the Civil Judge (Senior Division), Mathura against the Krishi Utpadan Mandi Samiti, Kosi Kalan and the State Agricultural Produce Market Board; Uttar Pradesh seeking a decree of permanent prohibitory injunction restraining the defendants from demanding or charging any market fee in respect of transfer of stock from the factory of the plaintiff Company at Kosi

Kalan to different depots established by it, in any manner whatsoever. The case of the plaintiff Company, shortly stated, is that there is no transaction of sale of the goods when the plaintiff transfers stock of Ghee from the factory situated within the market area of the Mandi Samiti to its sale depots situated outside the market area inasmuch as title of the goods continues with the plaintiff, the plaintiff does not realise any market fee from anybody at that stage.

3. The case of the defendants, on the other hand, is that whether a particular transaction is ''sale'' or ''stock transfer'' depends on several factors for determination of which it is necessary to consider the nature of the transaction and the papers relating to the transaction. According to the defendants, this determination is to be made by the Mandi Samiti when the stock is proposed to be transferred outside the market area. In such a case it is not permissible for the Court to pass a decree of permanent injunction in the suit or pass an order of interim injunction during pendency of the suit, restraining the defendants from discharging their statutory duty to assess and realise market fee from the plaintiff.

4. The plaintiff also filed an application for interim injunction in the suit. The said application was allowed and an order of injunction was passed on 7-2-1998. The operative portion of the order (translated in English) is to the effect:

"That the defendant No. 1 Krishi Utpadan Mandi Samiti, Kosi Kalan and defendant No. 2 State Agricultural Produce Market Board, Uttar Pradesh, are restrained from demanding Form No. 9-R (bill of Commission Agent) from the plaintiff when it is transferring its product to its depots in other cities or in the name of issuing gate pass or creating other obstacles either by themselves or through their agents and during the pendency of the suit the defendants should not demand any amount in the name of Mandi fee an issue gate pass for stock transfers."

5. Being aggrieved by the injunction order, the defendants filed an appeal being First Appeal From Order No. 243 of 1998 challenging the said order. On the case of the parties and the order passed by the trial Court, as discussed above, the point formulated earlier arises for determination

6. Market fee is levied under the provisions of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (for short ''the Act''). In Section 2(a) of the Act, ''agricultural produce'' is defined as such items or produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as 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.

7. Section 2(r) defines ''sale'' to include barter or deposit of goods by way of pledge or as security for the amount received as advance.

8. Section 17 of the Act enumerates the powers of the Committee, Clause (iii) of

the said Section vests power in the Committee to levy and collect such fee as may be prescribed. The provisions of the said Section, so far as relevant for the purposes of the present case, are quoted hereunder :

"(iii) Levy and collect:

(a) such fee as may be prescribed for the issue or renewal of licences, and

(b) market fee, which shall be payable on transactions of sale or specified agricultural produce in the market area at such rates, being not less than one percentum and not more than two percentum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner :

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer the traders shall be liable to pay the market fee to the Committee;

(3) if the produce is purchased by a trader from another trader, the trader selling the produce may realise it from the purchaser and shall be liable to pay the market fee to the Committee; and

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee;

Provided that no market fee shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only :

Provided further that notwithstanding anything contained in this Act, the Committee may at the option of, as the case may be, the Commission agent, trader or purchaser, who has obtained the licence, accept a lump sum in lieu of the amount of market fee that may be payable by him for an agricultural year including any agricultural year prior to the commencement of the Uttar Pradesh krishi Utpadan Mandi (Sansodhan) Adhiniyam, 1994 in respect of which market fee is outstanding, in respect of such specified agricultural produce, for such period, on such terms and in such manner as the State Government may, by notified order, specify.

Explanation.--For the purpose of Clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed."

9. It may be stated here that the Explanation in Section 17(iii) was added by

amendment by U.P. Act No. 12 of 1987 w.e.f. 31-3-1987. Since then disputes relating to levy and collection of market fee has engaged the attention of this Court and the Apex Court in several litigations. We will notice some of the decisions a little later. The learned trial Judge in his order has held that the transfer of stock from the factory premises to the depots of the plaintiffs is only a stock transfer and it is not a sale as defined in Section 4 of the Sale of Goods Act or Section 77 of the Indian Contract Act. He has further held that the plaintiff does not realise any market fee from anybody at the time of such transfer of stock. On these facts the learned trial Judge, relying one the decision of the Supreme Court in the case of State of Gujarat v. Variety Body Builders AIR 1976 SC 2100, held that no demand of market fee can be raised against the plaintiff on transfer of stock. The consequential finding recorded by the learned trial Judge is that the plaintiff has a strong prima facie case in its favour.

10. Discussing the point of balance of convenience, the learned trial Judge held that the plaintiff has been unnecessarily harassed by the defendants'' insisting on submission of Form 9-R and demanding market fee for issuing gate passes before it transfers the stock from the factory premises to the company''s sale depots outside the market area.

11. On the findings noted above, the learned trial Judge passed the order of interim injunction in the form and on the terms noted earlier.

12. The thrust of the submissions of Sri B.D. Mandhyan, learned Counsel for the appellants, was that the learned trial Judge clearly erred in issuing a general order of injunction against the appellants restraining them from charging market fee from the respondent on transactions alleged to be ''stock transfers''. According to Sri Mandhyan, the order of interim injunction prevents the Mandi Samiti to examine the relevant materials produced by the respondent and to pass an order of assessment according to law. Elucidating his submission further, Sri Mandhyan contended that whether a particular transaction amounts to ''sale'' or not depends on examination of the materials in the light of the relevant statutory provisions by the Mandi Samiti in an assessment proceeding. It is the submission of Sri Mandhyan that the suit for permanent injunction is not maintainable and the learned trial Judge without examining that question passed the order of interim injunction. The order is vitiated on that score.

13. Sri P.N. Saxena, learned Counsel for the respondent straneously urged that in the facts and circumstances of the case the learned trial Judge rightly passed the order of interim injunction in order to safeguard the interest of the respondent against the harassment meted out of it by the Mandi Samiti every day. It was the submission of Sri Saxena that the respondent, which holds a trader licence from the Mandi Samiti, has its factory within the market area of the Mandi Samiti, if it is held, in the suit that market fee is chargeable on the transactions of ''stock transfer'', then the market fee on such transactions can be collected from the respondent without any difficulty. On the question of maintainability of the suit Sri Saxena contended that the Act and the Rules framed thereunder do not make

any provision for assessment of market fee and despite repeated observations made by this Court and the Apex Court in different judgments, the State Government and the appellants have not made any provision regarding assessment of market fee and for determination of any dispute raised in that connection in the Act or the Rules. In such compelling circumstances the respondent had to option but to file the suit seeking a decree for permanent injunction against arbitrary and unjustified demand of market fee by the Mandi Samiti.

14. It was not disputed before us that the respondent is engaged in production of Ghee in the factory situated within the market area of the appellant-Mandi Samiti and it holds a traders'' licence granted by the Mandi Samiti.

15. As noted earlier, the question of levy and realisation of market fee by Mandi Parishad has engaged the attention of this Court as well as the Supreme Court from time to time.

16. In the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, , a Constitution Bench of the Supreme Court held, inter alia, that it is high time that Market Committees should be constituted in a regular manner on a permanent basis in accordance with the provisions contained in Chapter III of the Act; but it is not correct to say that in absence of such a machinery no market fee can be levied or collected; if a dispute arises then in the first instance the Market Committee itself or any Sub-Committee appointed by it can give its finding which will be subject to challenge in any Court of law when steps are taken for enforcement of the provisions for realisation of the market fee.

17. This Court in the case of Shri Mahalaxmi Sugar Works, Farid Nagar and Ors. v. State of Uttar Pradesh and Ors. (1987) 2 UPLBEC 957 , after noticing the decisions of the Supreme Court in Vishnu Agencies (Pvt.) Ltd. Vs. Commercial Tax Officer and Others, , Ashok Kumar Mishra and Others Vs. Collector, Raipur and Others, , Sodhi Transport Co. and others Vs. State of U.P. and others, , and State of Bihar and Others Vs. Ashok Industries and Others, , held, inter alia that from a bare perusal of the Explanation and the back ground in which it has been enacted, it is apparent that the effort was to check evasion or avoidance of payment of market fee on transactions of sale or purchase of specified agricultural produce by placing the burden on the person who is taking out the goods to prove that it was not to be sold in the market area. It was not intended to widen or alter the meaning of ''sale''. It the person concerned fails to discharge the burden placed on him by the explanation then it, ''shall be deemed'' that the goods have been ''sold within such area''. To put it conversely, if the person concerned proves that the goods are being taken out for sale outside the market area then he shall have discharged his burden. (Emphassis supplied). Referring to the observations in Sondhi Transport Co. (supra), to the effect ''But when it (presumption) is rebuttable it only points out the party on whom lies the duty of going forward with evidence on the fact presumed, and

when that party has produced evidence fairly and reasonably tending to show that the real fact is not as presumed, the purpose of presumption is over, in Paragraphs 11 and 12 of the Judgment, the following significant observations were made by this Court :

"11. What should be done that? On the one hand are traders who if the construction of the Explanation added by the orders by Secretaries or as argued by learned Counsel for Mandi Samiti is attracted may be subjected to untold hardship and misery as they may not be liable to pay only market fee but once mere movement of goods is deemed to be sale by statute then they may be liable for payment sales tax as well. During arguments it was suggested that it was device to bring in those transactions and levy sale tax on them which otherwise were stock transfer or meant for sale by Commission Agents. On the other hand is the anxiety of the State to avoid any evasion of market fee.

12. For this purpose we are constrained to observe that due to apathy of State Government in framing the necessary Rules and making provision for assessment etc. this Court considers its appropriate to issue following directions to protect the interest of traders and safeguard payment of fee in accordance with law :

(1) Every trader proposing to take out the goods manufactured or produced in the market area shall be entitled to issue of gate passes from the Mandi Samiti if he produces documents to establish that goods were being taken out of the market area. Necessary entries shall be made by Mandi Samiti in records maintained by it.

(2) A trader taking out goods shall file a statement before the Mandi Samiti within six weeks indicating therein that the goods were sold by the Commission Agent or by the petitioners themselves inside or outside the market area.

(3) In case the traders do not file the statement the Mandi shall issue notice to the traders after expiry of six weeks to file the statement within 10 days of receipt of notice.

(4) If the return is filed the same shall be scrutinised by the Mandi Samiti and if it is satisfied about its correctness then it shall pass appropriate orders levying fee, if the sale has been made in the market area and exemption in case, it has been made outside the market area.

(5) In case the return of the trader is found to be incorrect or he omits to fill his return despite notice by Mandi Samiti then the Mandi Samiti shall levy market fee on trader on the goods which had been taken out and for which gate pass has been issued."

18. The Krishi Utpadan Mandi Samiti challenged the Judgment in a SLP filed in the Supreme Court. The Supreme Court construing the Explanation to Section 17 (iii) of the Act, held as follows :

"From this it is clear that there is a presumption against the dealers. In view of this presumption it is open to the appellants-Krishi Utpadan Mandi Samiti to raise demands against the dealer before passes could be issued. If there is a valid rebuttal in that the sale did not take place within the notified market area, the dealers will be entitled to the passes otherwise not. Of course, when the dealers are compelled to pay the market fee as demanded, it is open to them to challenge it in the manner provided under the Act."

19. In Civil Appeal Nos. 1769-1773 of 1998, Krishi Utpadan Mandi Samiti v. Saraswati Cane Crusher and Ors., a Three Judge Bench of the Supreme Court disposed of the appeal by the judgment dated 25-3-1998 in which it has been held as follows :

"This Explanation was expanded by the High Court by a process of reasoning to encompass the following acts :

(1) Every trader proposing to take out the goods manufactured or produced in the market area shall be entitled to issue of gate passes from the Mandi Samiti if he produces documents to establish that the goods were being taken out of the market area. Necessary entries shall be made by Mandi Samiti in records maintained by it.

(2) A trader taking out goods shall file a statement before the Mandi Samiti within six weeks indicating therein that the goods were sold by the commission agent or by the petitioners themselves inside or outside the market area.

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(5) In case the return of trader is found to be incorrect or he omits to file his return despite notice by Mandi Samiti then the Mandi Samiti shall levy market fee on the goods which had been taken out and for which gate pass had been issued."

20. On discussion the Court proceeded to hold :

"We are satisfied that the orders of this Court afore-referred to would need some repair work. We treat the said order to be conceiving of a provisional assessment whereafter doors are opened for a final assessment. We conceive that when demands are raised by the Krishi Utpadan Mandi Samiti against a trader before he could ask for transit of goods outside the market area, the trader would be entitled to tender a valid rebuttal to say that no sale had taken place within the notices area and that if the explanation is accepted there and then by the Mandi Samiti, no question of payment would arise as also of withholding the gate pass.

If prima facie evidence led by the trader is not accepted by the Mandi Samiti the trader or the dealer can be compelled to pay the market fee as demanded before issuance of gate pass. If the trader makes the payment without demur, the matter ends and the assessment finalised. But in case he does so and raises protest, then the assessment shall be taken to be provisional in nature making it obligatory on the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged and the provisional assessment has been made, a time-frame would be needed to devise making the final assessment. We, therefore, conceive that it innately be read in the order of this Court that a final assessment has to be made within a period of two months after provisional assessment so that the entire transaction in that respect is over enabling the aggrieved party, if any, to challenge the final assessment in the manner provided under the aforesaid Act or under the general land of the land in appropriate fore. Having added this concept in this manner in the two-Judge Bench decision of this Court. We declare that what repair has been done instantly would add to the orders of the High Court and the instant corrective decision shall be the governing rule. The Civil Appeal would thus stand disposed of."

21. Discussions in the aforementioned judgment of the Apex Court, quoted above, clearly lay down the manner and the procedure to be followed in raising a demand of market fee by Mandi Samiti on a trader. Tested on the principles laid down in the judgment, the impugned order in the case is clearly unsustainable. The learned trial Judge has granted interim injunction completely restraining the appellants from realising market fee on transactions which the respondent claims to be stock transfers. Injunction order does not even permit the Mandi Samiti to examine the papers relating to the transaction and pass a provisional order of assessment dealing with the claim of the respondent that the transaction is a mere ''stock transfer'' and not a ''sale''. The injunction order, in our considered view, runs directly against the law laid down by the Supreme Court and amounts to defeating the very purpose for which the Explanation was added in Section 17 (iii) of the Act.

22. Coming to the question of maintainability of the suit, which was raised by Sri B.D. Mandhyan, we do not consider it necessary and proper to deal with the question at this stage lest the finding may influence the trial Court and affect one party or the other in the suit, if the question is raised in the suit, the trial Court will deal with it in accordance with law.

23. On the discussions in the foregoing paragraphs, the appeal is allowed. The order of interim injunction dated 7-2-1998 in Suit No. 289 of 1997 is set aside. It is ordered that the demand and collection of market fee by the appellants from the respondents will be made strictly in accordance with law and the judgment of this Court in the case of Shri Mahalaxmi Sugar Works, Faridnagar and Ors. v. State of Uttar Pradesh and Ors. (supra), and the judgment of the Supreme Court in Krishi Utpadan Mandi Samiti v. Saraswati Cane Crusher and Ors. (supra).

24. By this judgment First Appeal From Order No. 275 of 1998 and Writ Petition

Nos. 6215, 27867, 30079 of 1991, 24818, 30216 of 1994, 10626, 10665, 2658, 9795, 30654, 30655, 30656, 30657, 30659, 30683, 31058, 31562, 31563, 30684, 30685, 9421 of 1995, 11957, 15387, 19871, 24696, 30974, 41569 of 1996, 233, 269, 31530 of 1997 and 7334, 7335, 9963 of 1998 also stand disposed of.

25. There will be no order for costs.

