(2003) 09 JH CK 0081

In the Jharkhand High Court

Case No : CWJC No. 5042 of 1986 (P)

Lipton India Ltd. APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 12-09-2003

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 31B, 32B
Constitution of India, 1950 — Article 226

Citation : (2004) AIHC 1116 : AIR 2004 Jhar 34 : (2004) AIR Jhar HCR 10 : (2004) 13 AllIndCas 631 : (2003) 3 BLJR 2042 : (2003) 4 JCR 197 : (2003) 2 JLJR 404

Hon'ble Judges : Vikramaditya Prasad, J;Tapen Sen, J;S.J. Mukhopadhaya, J

Bench : Full Bench

Advocate : K.K. Jhunjhunwala, M.M. Banerjee, A. Sen and I. Sinha, for the Appellant; V.P. Singh and M.K. Roy, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The Bihar State Agricultural Marketing Board (Marketing Board for short) held that Anik Spray (Skimmed Milk Powder) is an "agricultural produce", and therefore, market fee was payable. The Director, Marketing Board asked the Secretary, Agricultural Produce Market Committee, Jamshedpur (Market Committee for short) to recover the market fee from Hindustan Lever Limited (now merged with petitioner, M/s. Lipton India Limited), vide Letter No. 1424/Patna dated 2nd March, 1983. The Marketing Secretary, Market Committee, Jamshedpur, in its turn, informed the petitioner vide Letter No. 1595/Jam dated 31st July, 1986 and Letter No. 1913/Jam dated 8th September, 1986 to pay the market fee on sale of Anik Spray (Skimmed Milk Powder) being payable under the Bihar Agricultural Produce Market (Amendment) Act, 1982, failing which action u/s 31-B and 32-B of the Bihar Agricultural Produce" Market Act, 1960 was threatened to be taken.

2. The petitioner challenged the aforesaid decision and directions, contained in

Letter No. 1424/Patna dated 2nd March, 1983, Letter No. 1595/Jam dated 31st July, 1986 and Letter No. 1913/Jam dated 8th September, 1986.

3. In the writ petition, the only plea as was taken by the petitioner was that the ''Milk'' having been deleted from the Schedule of the Bihar Agricultural Produce Market Act, 1960, vide S.O. No. 1002 dated 21st August, 1984 and the "Skimmed Milk Powder" having not been Included in the schedule, the authorities had no jurisdiction to impose Market Fee on the sale of "Skimmed Milk Powder".

4. At the time of admission of the case, the counsel for the State brought to the notice of the Court a Division Bench judgment of Patna High Court in the case of Tata Oil Mills v. Director, Marketing, Bihar State Agricultural Marketing Board and Anr., reported in 1986 PLJR 172, wherein the Court held, as follows :

"....... In my view, under the new definition whether a produce or product thereof has been specified in the Schedule is not of much consequence for being held as an agricultural produce. The only thing which has to be established is as to whether the item in question is a processed or non-processed or manufactured product of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture, live stock or poultry......"

The aforesaid finding of Division Bench was doubted by a Division Bench in the present case and so, the case was referred to a larger Bench.

5. During the pendency of this case, the Supreme Court rendered two decisions on the subject taking into consideration the definition of ''agricultural produce'' as defined under the amended Section 2(1)(a) of the Bihar Agricultural Produce Market Act, 1960. In the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., , the Supreme Court held ;

",........ that the said term ''agricultural produce'' as defined by Section 2(1)(a) clearly indicates that the agricultural produce which is to be covered by the sweep of the Act has to be one which should be specified in the schedule....."

Similar was the finding of Supreme Court in the case of Edward Keventer Pvt. Ltd. v. Bihar State Agricultural Marketing Board AIR 2000 SC 1976, as quoted hereunder :

"A perusal of Section 2(1)(a) unambiguously shows that the agricultural produce which are to be covered by the sweep of the Act necessarily has to be specified in the schedule, it goes beyond the purview of the Act and respondent has no power to levy fee on such product."

6. In view of the authoritative pronouncements of law laid down by the Supreme Court on the issue in question, we have no hesitation in declaring that the judgment rendered by the Division Bench in the case of Tata Oil Mills v. Director, Marketing, Bihar State Agricultural Marketing Board and Anr., reported in 1986 PLJR 172, is no more good in so far as it relates to the interpretation of the amended Section 2(1)(a).

7. At the time of hearing of the case, when it was pointed to the counsel that vide S.O. No. 1002 dated 21st August, 1984, only ''Liquid Milk'' was deleted, but any ''Milk product consisting of solidified milk, like ''Milk Powder'' is contemplated, as observed by the Supreme Court in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., (Paragraph ''133''), the counsel for the petitioner submitted that the ''Skimmed Milk Powder'' is not even a solidified milk. It is a ''Milk Product'' like Butter; Ghee; Cream; Chhena; Khowa and is different than Milk.

It was further submitted that while ''Milk Products'' such as Butter, Ghee; Cream; Chhena and Khowa have been included in Schedule No. VIII of the Act, 1960, ''Skimmed Milk Powder'' has not been included therein. Therefore, no market fee can be levied nor can be realized on the sale of Anik Spray (Skimmed Milk Powder).

8. The question, that thus arises for determination is :

"Whether Skimmed Milk Powder can be said to be ''Milk'', as enumerated at sub-item No.9 of Item No. VIII, under the heading ''Animal Husbandry Product'' of the Schedule of Bihar Agricultural Produce Market Act, 1960, so as to bring it within the purview of the Bihar Agricultural Produce Market Act, 1960, for the purpose of realization of market fee or not.

9. In the writ petition, the petitioner has not pleaded that ''Skimmed Milk Powder'' is not ''Milk''. On the other hand, the whole pleading is based on the presumption that ''Milk'' as shown at Item No. 9, has been deleted from the Schedule VIII by Notification No. S.O. 1002 dated 21st August, 1984. Meaning thereby, the petitioner presumes that ''Skimmed Milk Powder'' is ''Milk'', but the same having been deleted from the Schedule VIII by the said Notification dated 21st August, 1984, it is not liable to pay market fee.

10. Counsel for the petitioner submitted that Anik Spray is Skimmed Milk Powder and was being manufactured by petitioner- Company at its Factory located outside the erstwhile State of Bihar. The manufacturing of Skimmed Milk Powder involves complicated industrial manufacturing process and require, apart from Milk various other ingredients for bringing into existence the finished products - Skimmed Milk Powder.

Though aforesaid submission advanced on behalf of the petitioner, but the ingredients and constituents of the product have not been detailed in the writ petition.

11. In the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., the Supreme Court noticed the ingredients and constituents which were processed by addition of all other extra items with the result that finished products, like Baby Foods (Lactodex and Raptakos S.I.F.) emerged as manufactured items for serving as substitute for Milk and came to a definite finding that the Baby Foods i.e. Lactodex and Raptakos S.I.F. cannot be treated

to be an ''agricultural produce.''

In the present case, the petitioner has not detailed the ingredients and constituents of Anik Spray (Skimmed Milk Powder) nor has given the names of other extra items added with the result that finished product like Anik Spray emerged as manufactured item,

12. The Dictionary meaning of ''Milk'' is - "A white fluid of female mammals, secreted for the nourishment of the young" (Webster Dictionary).

"Milk" - Milk, commercially speaking, means, Skimmed Milk" (per Mathew, J., Lane v. Collins 54 LJMC 76).

(quoted from the Law Lexicon - of P. Ramanatha Aiyar, 1997 Ed.)

"Skimmed Milk" means: "Milk from which the white cream which naturally raises to the surface has been skimmed in the ordinary manner" (Law Lexicon of P. Ramanatha Aiyar, 1997 Ed.)

While the ''Milk'' contains the nutrients, as shows hereunder :

"Protein Pantothenic Acid Carbohydrates Folic Acid Vitamin A Calcium Vitamin D Magnesium Thiamin Phosphorus Riboflavin Zinc Niacin Vitamin B 6 Vitamin B 12"

The Typical Physical and Chemical Characteristics of Skimmed Powered milk is :

"ISI Standard Grade (IS : 13334-Part-l) ISI Extra Grade (IS : 13334-Part-ll)

Moisture, % max. 4.0 3.5

Total Milks Solids % min. 96.0 96.05

Insolubility Index ml. max. 2.0 0.5

Fat, % max. 1.5 1.25

Total Ash, % max. Titratable Acidity 8.2 3.2

(% LA.), max. 1.5 19.5 ml. of 0.1 NaOH

Lacate content Mg/g, max.   1.5

Phosphatase test -ve -ve

Antibiotics -ve -ve

Colour Creamy Creamy

Flavour & odour Clean Clean

Sediment Disc A/B A"

13. In absence of any definition of ''Milk'' in the Bihar Agricultural Produce Market Act, 1960; apart from the general definition of ''Milk'' and ''Skimmed'' Milk Powder'', no definition can be imported on the basis of any other Act.

14. The Supreme Court in the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., , held :

".....When we turn to the Schedule of the Act framed as per per Section 2(1)(a), we find one of the animal husbandry products at Item VIII, sub-item (20) as milk except liquid milk. Thus any product, consistent of solidified milk, like milk powder is contemplated by the said item."

15. For conversion of ''Milk'' (liquid form) to ''Skimmed Milk Powder'' (solidified form), no separate ingredient is added, nor any ingredient is taken out, except water and the basic ingredients of ''Milk'' remain in the ''Skimmed Milk Powder''. The product of petitioner Anik Spray (Skimmed Milk Powder) can be said to be a solidified form of Milk as contemplated under Item 9 of Schedule VIII of Bihar Agricultural Produce Market Act, 1960.

16. Therefore, it is well within the jurisdiction of the respondents to ask the petitioner to pay the market fee on the sale of ''Anik Spray'' (Skimmed Milk Powder).

17. There being no merit, the writ petition is dismissed. However, there shall be no order, as to costs.

Tapen Sen, J.--I agree.

Vikramaditya Prasad, J.--Humbly, I wish to supplement the views of Hon''ble Mr. Justice S.J. Mukhopadhaya as expressed by his Lordship in the judgment-prepared by him.

19. I take judicial notice of what is displayed on the containers (one of such I have of the year 1997) of Anik Spray marketed by the petitioner, It reads, as follows :

Anik Spray [Spray dried] Skimmed Milk Powder Dissolves without a Trace Leaves great Taste.

Black''s Medical Dictionary described various preparation of Milk and the manner of their preparations is as follows :

"One of the preparations is dried Milk. Dried milk is prepared by evaporation of the fluid so that milk is reduced to the form of powder. In spray drying a very fine spray of milk is forced into a heated chamber where drying is almost instantaneous. Milk powder thus prepared is nearly completely soluble in water.

20. Thus when the containers display that Anik Spray is spray dried Skimmed Milk Powder, dissolving in water without a trace, it simply conforms to the aforesaid manner of preparation of such milk. Thus in the event of petitioner''s failing to give ingredient/constituents the display in container simply means that milk when spray dried becomes Skimmed Milk Powder. This is simply a physical change brought by mechanical process in the form of the Skimmed Milk and not a chemical one and if dissolves into water (instantaneously dissolved) and takes

the form of 2.5 Liters of Skimmed Milk (against every net weight of 200 gm. as shown in container) claimed by the petitioner in the marketed containers.

21. Thus the spray dried Skimmed Milk is only physically changed form of Fluid Milk which falls within the definition of Milk. Writ dismissal.