

(1997) 05 PAT CK 0046

In the Patna High Court

Case No : C.W.J.C. Nos. 6411 and 8820 of 1989

Lipton India Ltd., Calcutta and etc.

APPELLANT

Vs

Bihar State Agricultural Marketing Board, Patna and Others

RESPONDENT

Date of Decision : 16-05-1997

Acts Referred:

Citation : (1997) 05 PAT CK 0046

Final Decision : Dismissed

Judgement

1. Both these writ petitions were heard together as the question of law which is involved in both of them is common. The factual aspects, save and except some minor differences, indicated herein below, are also common. In C.W.J.C. No. 6411 of 1989, the subject-matter of challenge is a communication bearing No. 370 dated 19th April, 1989, and No. 687 dated 7th July, 1989, issued by the Secretary of the Agricultural Produce Market Committee, Patna City. By those communications, the Secretary of the Agricultural Produce Market Committee demanded from the petitioner payment of market fee on its products "ready to serve beverages" under the brand name "Tree-Top" and on the failure to pay the market-fee actions under Sections 31-B and 31-C of the Bihar Agricultural Produce Market Act, 1960 (hereinafter to be referred to as "the Act") will be taken.

2. In C.W.J.C. No. 8820 of 1989, the subject-matter of challenge is a communication dated 28th March, 1989, issued by the Secretary of the Agricultural Produce Market Committee, Musalehpur, Patna, by which the petitioner has been directed to pay market-fees on its products which is ready to serve beverages under the brand name FROOTI AND APPY. It was also said that on petitioner's failure to pay the market fees, actions will be taken under the said Act. In this petition the petitioner had also filed an appeal to the Bihar State Agricultural Marketing Board being appeal No. 2 of 1989 against the said order of the Secretary. But the appeal was dismissed. Prayer has also been made to quash the appellate order dated 19th June, 1989.

3. The primary question which falls for decision in these two writ applications is whether Tree Top, Frooti and Appy which are ready-made beverages are agricultural produce within the meaning of Sections 2(1) (a) of the said Act.

4. There are certain admitted factual positions, which are noted herein below: Section 2(1)(a) of the Act defines, what is agricultural produce and refers to a schedule which is appended to the said Act. It is admitted that none of these items, namely. Tree Top, Frooti and Appy is included in the schedule, which is appended to the said Act. It is, however, admitted that Tree Top, Frooti and Appy are manufactured items. Mango pulp and apple juice are their necessary ingredients and both mango and apple are included within the said Schedule. The petitioners in their writ petitions have claimed that apart from the contents of mango pulp and apple juice in both the items there are Various other contents like sugar, water, Citric Acid, Vitamin C. Therefore these products the petitioners claim are neither mango nor apple.

5. The definition of Agricultural produce under the said Act has been substituted as a result of amendment introduced by Act 60 of 1982. The definition of Agricultural produce which existed prior to the amendment is set out below :

"Agricultural produce includes all produce, whether processed or non-processed, of agriculture, horticulture, animal husbandry and forest specified in the schedule."

After the introduction of the aforesaid amending Act, the amended definition is also set out herein below :

"Agricultural produue" means all produce whether processed or non-processed, manufactured or not, of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture and includes livestock or poultry as specified in the schedule."

6. The main argument of the learned counsel appearing for the writ petitioners is that since neither Tree-Top, nor Frooti nor Appy is included in the schedule referred to in the said amendment, it cannot become an agricultural produce.

Learned counsel submitted that from a perusal of the schedule it will appear that mango pickle as been included in the said schedule. This, according to learned counsel, shows that if a processed item from mango is required to be included in the schedule then this should have been specifically mentioned as in the case of mango pickle. The very fact of non-mentioning of any of these items in the schedule in question, shows that these items are not agricultural produce. Learned counsel, however, conceded that there is some element of mango and apple in the products under consideration but that by itself will not make them agricultrual produce. Learned counsel further submitted that in order to become agricultural produce it must be either mentioned in the schedule or it must be an item which has some close nexus with or resemblance in character to what is mentioned in the schedule. If the processed item becomes altogether different

from one which is mentioned in the schedule then it cannot be an agricultural produce. Learned counsel submitted that Section 39 of the Act, which is an independent Section from Sections 3 and 4 of the Act must be given due importance. Section 39 of the Act vests the State Government with the powers by notification to add, amend or cancel any of the items of agricultural produce specified in the schedule. Therefore, it is open to the State Government to include in the schedule the items in question. But in the instant case without the items being mentioned in the Schedule, the items in question cannot be treated as agricultural produce. That will make the provisions of Section 39 of the Act redundant and the Court may not adopt this principle of interpretation.

7. Learned Counsel for the respondents, however, has contended that one of the ingredients of Tree-lop, Frooti and Appy is either mango or apple, which are admittedly mentioned as agricultural produce in the schedule. Therefore, these beverages are nothing but processed items of mango and apple. These items are so processed by addition of various other materials for preservation of the same for a longer time and by undergrowing the same process, the items do not acquire a character which is other than items of agricultural produce mentioned in the schedule of the Act. Learned Counsel further submitted that the items retain entire basic character of agricultural produce, namely, mango and apple and are meant for human consumption. Similarly Tree top and Frooti are also meant for human consumption. Therefore, there is no change in the basic ingredients of products. Therefore, both these items Frooti and Tree Top as also Appy come under the definition of Agricultural produce are subject to levy of market-fees.

8. In support of the rival contentions, learned Counsel for the parties have relied upon various reported judgments on the point and the matter, therefore, requires some serious consideration. Learned counsel for the respondents is relying very much on a Division Bench Judgment of this Court in the case of Tata Oil Mills Co. Ltd. v. Director, Marketing Bihar State Agricultural Board, Patna reported in 1986 P LJR 172. The said judgment is also reported in 1986 BLJ 636. Learned Counsel also relied upon a Division Bench Judgement of this Court in the case of M/s. Raptakos, Brett and Company Limited Vs. The Bihar State Agricultural Marketing Board and three Others, and also on latest Supreme Court decision in the case of State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., and also another decision of the Supreme Court in the case of Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc.,). In the case of Raptakos, Brett and Company Ltd. (supra), learned Counsel has relied upon an observation occurring in paragraph No. 25 of the said judgment from which it appears that the tomato is mentioned against item No. 8 in the schedule of the Act. But the Court held that Tomato Ketchup does not come within the purview of agricultural produce under the said Act. The ratio of coming to the said decision has been given in para 25 of the judgment, wherein the learned Judges have held that items of agricultural produce if after being processed become totally different items the same cannot be called agricultural produce even though there

may be some basic ingredients of items of agricultural produce. The said ratio is as follows :

The petitioner in C.W.J.C. No. 4138 of 1986 M/s. Patliputra Cands in Agent of M/s. Food Specialities Limited. It deals in products like Milkmaid which is sweetened and condensed milk in sealed tins with contents milk and sugar. Condensed Milkmaid is not milk in liquid form. It thus falls squarely within item 9 in Part VIII of the Schedule to the Act. Lactogen is nothing but milk in powder form with some minerals and vitamins super added. Nespray as described by the petitioner himself is Milk powder and, therefore, this also falls within the mischief of the Agricultural Market Act. This petitioner also deals in Nestum Baby Cereal commonly known as "N.B.C." It is baby food in flake form prepared from rice, flour, sucrose and iron salt with added vitamins. Similarly Cerelac is also a food prepared for children after mixing grains, milk, oil etc. I have some difficulty in branding them as Agricultural produce. It is true that they are made out of Agricultural items, but after being processed they become entirely different items. They are neither wheat, nor flour, nor skimmed milk nor rice etc. In my view, therefore Nestum Baby Cereal and Cerelac are not agricultural produce. Tomato Ketchup another produce of this company is not "tomato". This item also cannot be held to be agricultural produce. Tomato is mentioned against Item 8 in Part VI of the Schedule to the Act. Thus barring Nestum, Cerelac and Tomato Ketchup, company would be liable to pay market fee on all its products mentioned in the petition."

9. Unfortunately the said Division Bench judgment has not taken into consideration the previous Division Bench Judgment on the point delivered in the case of Tata Oil Mills Co. Ltd. v. Director, Marketing Bihar State Agricultural Board, Patna reported in 1986 PLJR 172, which is also reported in 1986 BLJ 636. The subsequent judgment which has been cited before this Court will show that the Division Bench decision in the case of Tata Oil Mills (supra) has been repeatedly referred to and relied upon whereas the decision of the Division Bench in the case of M/s. Raptakos, Brett and Company Limited Vs. The Bihar State Agricultural Marketing Board and three Others, has been subsequently distinguished by another Division Bench Judgment. The decision of the Division Bench in the case of Tata Oil Mills (supra) has affirmatively held that the definition of agricultural produce has been changed by the Amendment Act 60 of 1982 and it has become very wide and inclusive in nature. The learned Judges of the Division Bench have held that the present definition says in clear and unambiguous term that "agricultural produce¹ shall mean not only the product of agriculture, horticulture, animal husbandry, forest etc. in its original form, but also what has been processed and manufactured from such original products. According to the learned Judges the definition has to a great extent delinked "agricultural produce" from the Schedule of the Act. According to learned Judges reference to the Schedule of the Act is only in the context of livestock and poultry and now agricultural produce shall mean all produce of agriculture, horticulture, plantation, animal husbandry, forest, sericulture, pisciculture,

livestock or poultry including the processed and manufactured products of such produce. The said position has further been elaborated by following words : "In my view, under the new definition whether a produce or product thereof has been specified in the schedule is not of such 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, livestock or poultry." Relying on the aforesaid interpretation, the learned Judges came to the conclusion that even though coconut oil is not mentioned in the schedule should be treated as an agricultural produce in view of the fact that coconut is an agricultural produce and so any derivative through processing shall also be an agricultural produce.

10. Therefore, going by the aforesaid ratio, which is a Division Bench Judgment of this Court, it is difficult for this Court to hold that Tree-top, Frooti or Appy which are admittedly processed items from mango and apple, which are items in the Schedule are not agricultural produce. Subsequent judgment of the Division Bench in the case of Delhi Cloth and General Mills Co. Ltd. and Others Vs. The Agricultural Produce Market Committee and Others was delivered on a different question relating to legislative competence. But in that judgment also at para 50 (page 292) (of Pat LJR) : (at p. 79 of AIR) the learned Judges of the Division Bench held that since Vanaspati is the processed form of the vegetable oil and such vanaspati is fully covered by the definition of "Agricultural produce". But the aforesaid findings are also against the contention advanced by the learned Counsel for the petitioner.

11. In a subsequent decision of this Court in the case of M/s. Durga Mills v. Agriculture Produce Marketing Board reported in 1995 (1) PLJR 30, a Division Bench of this Court has affirmed the previous judgment of the Division Bench in the case of Tata Oil Mills (1986 P LJR 172) (supra). Again in another subsequent Division Bench Judgment of this Court in the case of Agriculture Produce Market Committee Vs. State of Bihar and Another the ratio of Tata Oil Mills (supra) was affirmed and the judgment of the Division Bench in the case of M/s. Raptakos, Brett and Company Limited Vs. The Bihar State Agricultural Marketing Board and three Others, was distinguished by clarifying that in Raptakos Brett case (supra) this Court held that if a notified agricultural produce is not the essential nature or base of a product and such product is not mentioned in the Schedule specifically, only then the market fee is not liable to be paid for the same. This has been construed to be the ratio of Raptakos (supra). So by applying the ratio of subsequent judgment in the case Agriculture Produce, Market Committee (supra), this Court cannot hold that "Tree-top", or "Frooti" or "Appy" does not have the base either of mango or apple. In fact these are fruit drinks from mango or apple. Therefore, it cannot be said that essential nature of mango or apple is absent in either of these items i.e. Frooti, Tree-Top or Appy. Therefore, this Court is constrained to hold that market-fee is leviable on Frooti, Tree Top and Appy.

12. Apart from the aforesaid decisions, several decisions of Supreme Court have been referred, which are now being discussed herein below. First of such judgment is in the case of *Krishi Utpadan Mandi Samiti v. M/s. Shankar Industries* reported in . The Supreme Court while considering the definition of "agricultural produce" as given u/s 2(a) of the relevant Act held that where the legislature uses the words "means" and "includes" in the definition such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included in such definition. In the definition under the present Act also expressions "means" and "includes" have been used. Therefore, following the said ratio of the Supreme Court the present definition of "agricultural produce" under the said Act must also be given wider meaning and it must be construed that such definition is not exhaustive or restricted to the items contained or included in such definition. Thereby the said judgment is an authority for the proposition that the schedule of the said Act which is a part of the definition clause does not exhaust the list of items which are covered within the sweep of "agricultural produce" as defined under the said Act. In a subsequent judgment of the Supreme Court the unamended definition of "agricultural produce" under the said Act came up for consideration. Said judgment was delivered in the case of *Sita Devi (Smt) (Dead) by Lrs. Vs. State of Bihar and Others*, . In the said judgment the Apex Court while considering the definition of "agricultural produce" came to the conclusion that definition is an inclusive one and so of wide import. It goes without saying that after the amendment as; pointed out earlier the definition of "agricultural produce" has become much wider. Therefore the ratio of the aforesaid two judgments of the Supreme Court in no way supports the contention of the petitioners. Counsel for the petitioner has also relied upon strongly a decision of the Supreme Court in the case of *State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc.*, . In this case the question which came up for consideration before the Supreme Court was whether seeds which are notified not human consumption can be considered as foodgrains and, therefore, agricultural produce. The learned Judges of the Supreme Court held that by process of coating and applying insecticides, other chemicals and poisonous substances to the foodgrains meant to be utilised as seeds, one of its basic character, i.e. its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from foodgrains as commonly understood. Therefore, relying on this distinction between foodgrains and seeds, the learned Judges of the Supreme Court came to the conclusion that seeds cannot be considered as agricultural produce. Here the aforesaid ratio has no application. Even after processing mango and apple fruit drink which is produced is meant for human consumption and, therefore, the basic fruits do not change its basic character as the same are meant for human consumption. Therefore after being processed the end product is not something totally different from the basic ingredients. Therefore, the ratio in the said State of Rajasthan case (supra) in no way helps the submission of learned Counsel for the petitioner. The other judgment of the Supreme Court on

which very strong reliance was placed by the learned Counsel for the petitioner is in the case of Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., . Reliance was placed on an observation of the Supreme Court at para 28 (page 190) (of Pat LJR) : (para 35 at p. 205 of AIR) of the report. In the said para the learned Judges of the Supreme Court held that after giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties that unless agricultural produce is included in the schedule to the Markets Act, the provisions of the Act have no application to such produce. Learned Counsel submitted that since Frooti or Tree Top or Appy is not mentioned in the Schedule of the Act they cannot be held to be agricultural produce in view of observation of the Supreme Court. This Court is not in a position to uphold the said submission. The question which came for consideration before the Supreme Court in Sasa Musa case is not what is an agricultural produce and what is not an agricultural produce rather the question was with regard to validity of Sections 4A of the said Act and the matter relating to interpretation of Sections 3, 4, 15 and 39 and Schedule in the context of deletion of sugar from the schedule by legislative power u/s 39. The width and ambit of the definition u/s 2(1)(a) of the Act and whether processed items can be included in the schedule or not is not the question which came for consideration before the Court. It may be stated here that sugar is an item which is specifically mentioned in the schedule and not as a processed item. Therefore, those observations must be understood in the context of the items mentioned in the schedule and not in respect of such items which are not mentioned in the schedule. The entire discussion in the case before the Supreme Court, referred to above, is on the question of exclusion of an item mentioned in the schedule which is not the question in the case before this Court. Therefore, the aforementioned observation of the Supreme Court must be understood in the context of that case.

13. In a Constitution Bench Judgment of the Supreme Court in the case of H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , it has been held in para 138 at page 578, "it is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

14. Applying the aforesaid ratio of the Constitution Bench judgment in H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, this Court holds that the observations made in Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., cannot be regarded as an exposition of the law on the question, which is relevant here. The said question does not even fall for consideration in that case. Therefore, those observations cannot be applied to the facts of the present case.

15. If the aforesaid observation of the Supreme Court is to be accepted as laying down the law on the point in that case all processed and manufactured items

from the agricultural produce mentioned in the schedule will have to be excluded. This will be contrary to the express provision of Section 2(1)(a) of the Act and also the various decision of the Apex Court discussed above. Therefore, the Court must accept that those observations in Sasa Musa Sugar Works etc. etc. Vs. State of Bihar and others etc., do not relate to either processed or manufactured items but were made in the context of deletion of "sugar" an agricultural produce specifically mentioned in the schedule.

16. For the reasons and discussions aforesaid this Court is of the view that a proper interpretation of definition of agricultural produce u/s 2(1)(a) of the Act will include within its sweep "Tree-Top", "Frooti" and "Appy". Therefore, this Court holds that "Tree-Top", "Froott" and "Appy" are agricultural produce and exigible to the levy of market fee under the said Act. Both the writ petitions are, therefore, dismissed. Interim orders are necessarily vacated. There shall be no order as to costs.