
(2016) 07 BOM CK 0087
In the Bombay High Court
Case No : Writ Petition No. 252 of 2001

Marico Industries Ltd.

APPELLANT

Vs

Goa State Agricultural Marketing Board, Goa

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 31

Citation : (2017) 1 AIRBomR 315 : (2017) 3 ALLMR 96 : (2017) 1 BCR 694 : (2016) 5 MhLJ 789

Hon'ble Judges : F.M. Reis and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Mr. Rajeev Ravi, Mr. S. M. Singbal and Mr. J. P. Supekar, Advocates, for the Petitioners; Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

F. M. Reis, J.— Heard Mr. Rajeev Ravi, learned counsel appearing for the petitioners and Mr. D. Lawande, learned Government Advocate appearing for the respondents.

2. The above petition inter-alia seeks a declaration that the Explanation to Rule 32 (1) of the Goa, Daman and Diu Agricultural Produce Marketing (Regulation) Rules, 1969 is ultra vires the provisions of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 as extended and applicable in the State of Goa and is ultra vires Articles 14, 19(1)(g), 265 and 300A of the Constitution of India. It is further prayed that it be declared that the Copra is not a notified Agricultural Produce within the meaning of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (herein after referred to as "the Act of 1963"). It is also prayed that it be declared that the first petitioner is neither a trader nor a processor and is not required to obtain a licence under the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963. It is further prayed that the letters dated 30.07.2001, 6.8.2001, 10.08.2001 and 21.08.2001 (Exhibits Z,

HH, II, JJ, KK, LL, MM3, MM4 and MM6) be quashed and set aside. The petitioners have also prayed for a writ of mandamus directing the withdrawal and cancellation of the said letters issued by the respondent no.1 dated 30.07.2001, 6.8.2001, 10.08.2001 and 21.08.2001 (Exhibits Z, HH, II, JJ, KK, LL, MM3, MM4 and MM6) and also for refund of the amount paid by the petitioners.

3. Briefly, it is the contention of the petitioners that on 19.06.1968 the Central Government extended the Maharashtra Agricultural Produce Marketing Regulation Act, 1963 to Goa and coconut was declared as a specified commodity on 23.04.1969. The petitioners started manufacturing coconut oil at its factory at Khandepar, Ponda and consequently, placed orders for copra from the dealers in Tamilnadu, Kerala, Karnataka and Andhra Pradesh somewhere on 23.10.1997. The Calicut Office of the petitioners has placed the orders for such copra. Thereafter, the payment vouchers were immediately dispatched by Mumbai Head Office to its Calicut Office to be given to the suppliers which were paid before the consignment actually reached at Goa. The copra was weighed in Goa only for ascertaining the quantity and until October, 1998 the petitioners' company used to purchase copra exclusively from outside the State. It is further the contention of the petitioners that on 24.10.1997 the Market Supervisor (Ponda) issued a notice to the petitioners stating that the petitioners are dealing with agricultural notified commodity viz., in coconuts. The notice further alleged that the trading by the petitioners in declaring agricultural produce without holding a valid licence amounts to a contravention of Section 6 of the Act of 1963. The petitioners were directed to obtain a licence under Section 6 of the Act of 1963. Thereafter, the secretary of the Goa Agricultural Produce Committee issued a notice to the petitioners alleging that the petitioners are dealing in coconut copra as notified commodity and importing large quantities from outside the market area since October, 1997 without holding a valid licence. Thereafter, the application was submitted by the petitioners to the Administrator requesting him to issue a processor licence for the marketing year 1997-98 and the agreement was also executed in standard form with that regard. Subsequently, an application was filed by the petitioners for grant of "A" class processor licence on 04.02.1999. On 27.07.1999 the Secretary, GAPMC, issued a notice to the petitioners alleging that they had purchased coconut copra from the establishment at Quepem without a licence. The petitioners replied to such notice stating that the petitioners are holding a processor licence and engaged in processing activity in Goa and called upon the said Secretary to withdraw such notice. Thereafter, on 29.09.1999 the petitioners had applied for a Trader Licence for the year 1998-99 together with an agreement in standard form and consequently for the renewal of "A" class processor licence somewhere on 30.09.1999. It is further contended by the petitioners that on 30.07.2001 the petitioners received a notice from the respondent no.1 stating that the petitioners are dealing in coconut copra and purchasing large quantities of copra from Goa and importing large quantities from outside the market area without a valid licence for the year 2000-2001 and requested for payment of market fees. A reply was thereafter sent on

03.08.2001 to the notice dated 30.07.2001 inter-alia stating that the petitioners' unit in Goa carried out manufacturing activity of coconut oil by crushing copra and levy of market fees on the imported copra is not applicable since the same is brought only for the purpose of processing and not marketed or traded in Goa. The petitioners also submitted to the respondent no.1 the statement of copra purchased but however, the respondent no.1 issued five notices to the petitioners informing them that they are not a processor but a trader as per Section 2(1)(t) of the Act of 1963. Further, it is stated by the respondent no.1 that the petitioners were granted "A" class trade licence which had expired and as such has no valid licence. It is also contended that the petitioners were granted "A" class trade licence for marketing year 1998-99 but the monthly returns in respect of the trading activity in coconut copra were not received by the respondent no.1. It is further contended that a sum of Rs. 28,44,412/- was due from the petitioners by way of market fees for the copra purchased from outside the State from October, 2000 to March, 2001. It is also contended that more than 50 truck loads of copra entered in the State in July, 2001 and the market fees on such copra amounting to approximately Rs. 1.2 lakhs is payable. The petitioners replied to all such notices denying its liability to pay the amount as claimed including a sum of Rs. 28,44,412/-. It is further contended by the petitioners that the copra is not notified commodity under the said Act and that the bulk of the purchases were from outside the State of Goa. Being aggrieved by the said notices, the petitioners filed a petition before this Court. In the meanwhile, the respondent no.1 seized a truck load of copra at Pollem. The petitioners denied the liability to pay any market fees and this Court granted an ad-interim relief upon an undertaking that no further coercive steps would be taken by the respondents and ordered the release of copra on payment under protest of the market fees of 1% i.e. Rs. 2025/-. The petitioners tendered the said amount and thereafter the respondent no.1 released the seized copra. The respondents filed their reply in the petition and for the first time raised a claim that the petitioners are liable to pay a market fees of Rs. 3,67,63,471.06 prior to October, 2000 with interest at the rate of 15% per annum. The main contention of the petitioners is that the coconut is not the same as copra and in other States they have been separately notified. It is also their contention that the petitioners are not carrying out any marketing of any agricultural produce in the market area. But however, processes copra largely purchased from outside the notified market area. It is further their case that assuming that the petitioners fall within the definition of "processor" as defined in the Act even then no market fees is levied on copra in terms of Section 3 of the Act of 1963 read with Regulation 32 and bye law 13, the entire market fees on the processor is liable to be refunded. It would also be pertinent to note that an order came to be passed by this Court on 15.10.2001 whereby the petitioners were asked to furnish a bank guarantee for Rs. 30,00,000/- within eight weeks and the petitioners were asked to submit regularly the returns to the respondents with respect to such copra brought into the State.

4. After hearing the matter for some time, this Court passed an order dated 24.08.2015. It was noted therein that apart from the petitioners' contending that copra is not notified as an agricultural produce and as such they are not liable to pay the market fees, it was also contended that as the petitioners do not benefit of any services, the levy of market fees itself for such produce is unconstitutional. It was also pointed out by the learned counsel appearing for the petitioners that in terms of Section 31 of the said Act of 1963 in the alternative and in any event, in view of the proviso to the said provisions as the petitioners are procuring copra from different States only for the purposes of processing and/or exporting, the petitioners are not liable to pay the market fees. It was also noted in the said order that the learned Additional Government Advocate has pointed out that before going into the merits of the rival contentions, it would be appropriate to take inspection of the relevant records to ascertain whether copra which was brought by the petitioners is in fact used for processing and/or exporting as contended by the petitioners. As such, the petitioners were directed to furnish the relevant records for such purpose.

5. After such inspection was carried out, an additional affidavit came to be filed by the respondent no.1 disclosing the outcome of such inspection. After verifying all such relevant records, the respondent no.1 issued a letter in February, 2016 to the petitioners inter-alia stating that during the course of the inspection for the relevant period, it is observed that the petitioners have processed and marketed copra in the State of Goa weighing 3,29,870 kgs and valued at Rs. 90,80,894/- for which the petitioners are liable to pay to the respondents as market fees. Accordingly, the amount claimed by the respondent no.1 towards market fees was to a sum of Rs. 90,80,894/-. It clearly transpires that the claim of the respondent no.1 now is restricted to a mere sum of Rs. 90,80,894/- and the earlier claim found in the impugned demand has been substantially reduced as it was found by the respondent no.1 that copra which was brought by the petitioners was used for processing purpose and after such exercise, it was sold outside the State. The only amount as such claimed was a sum of Rs. 90,80,894/- based on the inspection carried out.

6. We shall only now examine whether the petitioners are liable to pay the said amount as claimed by the respondent no.1. Considering that even assuming the challenge to the constitutional validity of the Notification fails and is not examined, the above petition can be conveniently disposed of by examining whether the restricted claim put forward by the respondent no.1 is tenable in law as against the petitioners. The learned counsel appearing for the petitioners submits and reiterates that the market fees cannot be levied on copra under the provisions of the Act of 1963 as extended to Goa. This contention is essentially in support of his contention with regard to the constitutional validity of the provisions by relying upon the judgment of the Apex Court reported in (1974) 4 SCC 835 in the case of Shri Siddhi Vinayaka Coconut & Co and others v. State of Andhra Pradesh and others. But however, we do not propose to examine the said aspect in the present petition considering that upon inspection, the respondent

no.1 found that copra which was brought by the petitioners was used for processing purpose only and as such not liable to pay the market fees except to the extent referred to therein. Accordingly, the contention on the constitutional validity of the said provisions are left open. It is the contention of the learned counsel appearing for the petitioners that no market fees can be levied on copra purchased outside the State of Goa and brought into the State for processing. In support of his submission, he has relied upon the judgment of this Court reported in 1974 MLJ 463 in the case of Devendra Trading Company v. State of Maharashtra. It is further the contention of the learned counsel that it is not disputed that the petitioners do not sell copra brought from outside market area and as such the question of levying any market fees by the respondent no.1 is unjustified. The learned counsel further pointed out that it is not disputed that 90% of the copra purchased by the petitioners and brought into the State of Goa for the purpose of processing into coconut oil has been purchased from the States of Kerala, Tamilnadu and Karnataka and such copra is not marketed in market area in Goa and as such the question of calling for the payment of any market fees from the petitioners would not arise. In support of his submission, he has relied upon the judgment of the Apex Court reported in (1997) 5 SEC 516 which has been followed by this Court in the judgment reported in 2006(5) Mh LJ 266 in the case of Britannia Industries v. BAPMC. The learned counsel thereafter has taken us through the provisions of Section 31 of the Act of 1963 to point out that the petitioners are not required to pay any market fees as the petitioners have processed the copra within 30 days from its arrival and presumption therein stands rebutted. The learned counsel further pointed out that Rule 32(3) of the said Rules clearly provides that the processor shall immediately on bringing any declared agricultural produce in any market area for the purposes of processing or for export as the case may be, make a declaration in Form 8 and as such the petitioners have been regularly submitting this Form. It is further pointed out that the substantive part of Section 31 clearly provides that market fees shall be levied from every purchaser of agricultural produce marketed in the market area. But however, second proviso to Section 31 provides that no fees shall be levied and collected in the same market area in relation to agricultural produce in respect of which fees under this Section have already been levied and collected. The learned counsel further pointed out that the petitioners have purchased copra in Goa mostly from dealers/persons licensed as traders, under 1963 Act, and the liability would be discharged by such trader inasmuch as a trader who is licensed under 1963 Act, would as a matter of fact have purchased copra from other persons and was thus a purchaser under 1963 Act. The learned counsel further pointed out that it is an admitted fact that copra is not being sold in the market area by the petitioners and the claim of the respondent no.1 is to levy market fees as finished product namely coconut oil which to a limited extent is also sold in the State of Goa. The learned counsel further pointed out that no market fee is levied in terms of the said Act on the sale of coconut oil in the market area and as such the claim of the respondent no.1 of Rs. 90,80,894/- is totally misplaced. In support of his submission, the learned counsel has relied

upon the judgment of the Apex Court reported in (2000) 6 SCC 264 in the case of Edward Keventer Private Limited v. Bihar State Agricultural Marketing Board and others.

7. On the other hand, Mr. D. Lawande, learned Government Advocate appearing for the respondents has pointed out that the petitioners are liable to pay market fees in respect of 3,29,870 kgs of copra which is not accounted for by the petitioners as being exporter after processing. The learned Government Advocate further pointed out that once it is established that copra which has been brought has been marketed in the State of Goa the petitioners are liable to pay market fees. The learned Government Advocate further pointed out that as the petitioners are not in a position to show that to that extent copra was exported after processing, the claim of the respondent no.1 to a sum of Rs. 90,80,894/- stands justified. The learned counsel further pointed out that this Court in a Writ Petition cannot interfere in such calculation of the claim of the respondent no.1 and as such the contention of the learned counsel appearing for the petitioners deserves to be rejected. The learned counsel in support of his submission has relied upon the judgment of the Apex Court reported in AIR 1995 SC 1620 in the case of Regional Executive, Kerala Fishermen's Welfare Fund Board v. M/s. Fancy Food and another etc., and the judgment of the Division Bench of this Court in Writ Petition No. 151 of 1990 dated 28.07.1997 in the case of M/s Bapa Loundo Cashew Industries Private Limited v. The Goa Agricultural Produce Market Committee, Margao.

8. We have considered the submissions of the learned counsel and we have also gone through the records. Section 31 of the Act of 1963 reads thus :

"31. Power of Market Committee to levy fees [and rates of commission (adapt).]

(1) It shall be competent to a Market Committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf), from every purchaser of agricultural produce marketed in the market area :

Provided that, when any agricultural produce brought in any market area for the purposes of processing only is not processed within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have been marketed in the market area, and shall be liable for the levy of fees under this section, as if it had been so marketed:

Provided further that, -

(a) any agricultural produce brought in any market area for the exclusive purpose of export shall be exempted for the payment of fees and supervision cost, if such exporter or this duly authorised agent presents the letter of credit or confirmed order of export or confirmed export order consignment, whichever is relevant or applicable, at the time of entry of such produce in the market area, to

the officer authorised in this behalf by the market committee concerned along with a declaration in that behalf, in such form as the State Government may, by order from time to time, direct;

(b) if such exporter fails to submit a certified copy of the bill of lading or the airfreight bill or any other documents as may be specified by the State Government as a proof of such export, within ninety days from the date of entry of the agricultural produce in the market area, such agricultural produce shall be deemed to have been marketed within the market area and he shall forthwith pay the market fees under this section and shall also pay the supervision cost under section 34A on such agricultural produce, along with eighteen per cent interest on the total amount due and payable as the market fees and supervision cost, from the date of bringing of such produce in the market area.

Provided also that, no such fees shall be levied and collected in the same market area in relation to agricultural produce in respect of which fees under this section have already been levied and collected therein [or in relation to declared agricultural produce purchased by person engaged in industries carried on without the aid of any machinery or labour in any market area.]

(2) It shall be competent to a Market Committee to fix, with the prior approval of the State Government, the rate of commission (adat) to be charged by the commission agents in respect of an agricultural produce or class of agricultural produce marketed in the market area.

(3) It shall be the duty of the buyer, commission agent, processor and trader to pay the market fee fixed immediately after weighment or measurement of the agricultural produce is done. The buyer, the commission agent, processor or trader who fails to pay the market fee as fixed above shall be liable to pay a penalty as prescribed in addition to such fees.

(4) Notwithstanding anything contained in this Act or any other law for the time being in force or in any agreement, it shall be competent to a Market Committee to recover the amount of fees along with the amount of penalty which is due to a Market Committee from a buyer, commission agent, processor or trader -

(a) from the amount of deposit kept with Market Committee by the buyer, commission agent, processor or trader, as the case may be;

(b) from the Bank which gives the guarantee to such buyer, commission agent, processor or trader, and the Bank shall, on demand by the Market Committee pay the amount so demanded.

9. On plain reading of the said provisions, the contention of Mr. Rajeev Ravi, learned counsel appearing for the petitioners that the agricultural produce which has been used for processing and export are not liable to pay market fees is to be accepted. In the case of Devendra Trading Company (supra), this Court has observed at paras 11 and 12 thus :

"11. The next attack, and the only important attack, is as regards the authority of the Market Committee to levy a fee on the tendu leaves and tobacco which are purchased at places outside the market area, but brought in the market area for the purposes of rolling them into bidis. The power of the market committee to levy and collect the fees is given by Section 31 of the Marketing Act. It provides that it shall be competent to a market committee to levy and collect fees in the prescribed manner at such rates as may be decided by it (but subject to the minimum and maximum rates which may be fixed by the State Government by notification in the Official Gazette in that behalf). The Market Committee has fixed the rates within these limits and the Market Committees at Gondia and Tiroda insist on levying and collecting fees from the petitioners on tendu leaves and tobacco brought by them in their respective market areas. The substantive part of section 31 of the Marketing Act lays down two things. It empowers the Committee to levy and collect fees from every purchaser and that purchaser must be a purchaser of agricultural produce marketed in the market area. Unless these two conditions are fulfilled, no fees can be levied or collected by the market committee even though the goods may be marketed in the area. The fees are leviable only on the sale transaction of agricultural produce as defined in the Act read with schedule marketed in the market area and the liability for the payment of such fees is on the purchaser and not on the seller. In these cases though the goods in respect of which the fees are claimed are agricultural produce, they cannot be said to be marketed in the market area. The term "marketed" is not defined in the Act, but word "marketing" connotes the buying and selling of an article. The commodity must be displayed for sale and by a seller and that commodity is purchased by purchaser. These acts constitute marketing of a commodity.

12. The word "market" as a verb is defined in the Dictionary as "buy or sell in the market; sell (goods) in market". Unless, therefore, the goods are offered for sale and are purchased by others, there is no marketing of those goods. In none of these cases the goods which are brought in by the petitioners from outside the market area are put in the market for sale or purchase by others, nor are those goods purchased by these petitioners in the market area. Even if these goods which are brought in were put in for sale by these petitioners in the market area, it would be the purchasers thereof who would be liable for the payment of fees to the market committee. It is not in dispute in these cases that the petitioners do not sell the bidi leaves or tobacco brought in by them from outside in the market area. They only bring in these goods for the purposes of using them in manufacture of bidis. Under the substantive part of section 31, therefore, the petitioners would not be liable to the payment of any fees nor would the market Committee be empowered to levy and collect fees on these commodities."

10. In fact, on perusal of an additional affidavit filed by the respondent no.1, we find that the petitioners have substantially accounted for the copra which was brought in the State for processing and the coconut oil derived therefrom has been exported outside the State of Goa. As already pointed out herein above, the

only amount claimed by the respondent no.1 is restricted to the amount of Rs. 90,80,894/- which is according to the respondents has not been accounted. In this connection, the fact that copra is not sold by the petitioners in any market area in the State of Goa has not been disputed. The fact that the copra which has been brought was processed into the coconut oil has not been disputed. In such circumstances, whether selling of coconut oil in the market area by the petitioners is liable for market fees is the only point for consideration. The fact that no market fees are payable towards coconut oil is not disputed. In the present case, the finished produce after processing is evidently a different item. In this connection, the Apex Court in the judgment reported in (2000) 6 SCC 264 in the case of Edward Keventer Pvt. Ltd., v. Bihar State Agricultural Marketing Board and others, has observed at para 5 thus :

"5. A perusal of Section 2(i)(a) unambiguously shows that the agricultural produce which is to be covered by the sweep of the Act necessarily has to be specified in the Schedule. If any agricultural produce is not specified in the Schedule, it goes beyond the purview of the Act and the respondent has no power to levy fee on such produce. In the Schedule under the caption "fruits" mango and apple have been specified as agricultural produce. We further find in the Schedule that under caption "cereals" wheat is specified at item No. 3, whereas "wheat atta" "sujji" and "maida" which are the products of wheat are separately specified at item Nos. 14, 15 and 16, respectively. This shows that the agricultural produce "wheat" has been treated as a separate agricultural produce as compared to its own product manufactured out of "wheat" namely, "atta", "sujji and "maida". "Atta "sujji" and "maida" are basically the agricultural products of "wheat". Similarly, the Schedule shows that under the caption "Animal Husbandry Product", milk excluding liquid milk is specified at item No. 19 whereas "butter", "ghee", "cream", "chena" and "khoya" which are manufactured out of milk are separately specified at item Nos. 7,8,16,17 and 19 respectively. Under the caption "miscellaneous", "mango pickles" is specified at item No. 18. "Mango pickles" are a product of mango, which is a fruit; and specified in the Schedule but "mango pickles" have been specified separately. This shows that the basic ingredients may be the same but the end product which is known differently is treated as a separate item. It is true that Frooti" and "Appy" are manufactured out of mango pulp and apple concentrate, but after the mango pulp and apple concentrate are processed and beverages are manufactured, the products become entirely different items and the fruits, mango and apple, lose their identity. In common parlance, these beverages are no longer known as mango and apple or as fruits. In other words, after processing mango pulp and apple concentrate, although the basic character of the mango pulp and apple concentrate may be present in beverages, but the end products are not fruits i.e. mango and apple which are specified in the Schedule. Our views also find support from a Constitution Bench decision of this Court in the case of Belsund Sugar Co. Ltd v. State of Bihar & Ors. 1999 (9) SCC, 620 wherein it was held that Lactodex and Raptakos which are baby foods do fall

under the description milk, specified in the Schedule of the Act. Under such circumstances, we find that the products like "Frooti" and "Appy" which are ready to serve beverages not being specified in the Schedule are not covered by the term agricultural produce, as defined in Section 2(1)(a) of the Act."

11. Applying the said observations of the Apex Court to the facts of the present case as it is not disputed that the coconut oil is not specified in the Schedule, it cannot be covered by the term agricultural produce in terms of the said Act as copra is entirely a different item after processing and manufacturing copra. The judgments relied upon by Mr. D. Lawande, learned Government Advocate appearing for the respondents are as such not applicable to the facts of the present case. The judgment of this Court in the case of Devendra Trading Company, (supra) referred to herein above is on the footing that there was no material therein to show that the market produce which was brought into the market area was being used for the purpose of processing. In such circumstances and for the aforesaid reasons the restricted claim of the respondent no.1 in terms of the additional affidavit to the extent of Rs. 90,80,894/- cannot be sustained and deserves to be quashed and set aside.

12. In view of the above, we pass the following :

ORDER

(i) The petitioners are not liable to pay the market fees as claimed by the respondent no.1 during the relevant subject period as reflected in the impugned demand.

(ii) The amount claimed by the respondent no.1 restricted in a sum of Rs. 90,80,894/- in terms of an additional affidavit filed by the respondent no.1 is not sustainable in law.

(iii) The Bank Guarantee stands accordingly discharged.

(iv) Rule is made absolute in the above terms.

(v) The petition stands disposed of accordingly with no orders as to costs.