
(2002) 10 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7396 of 1996

Mohammed Ziaul Hussain

APPELLANT

Vs

APSEB and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (2002) 6 ALD 601 : (2003) 2 ALT 169

Hon'ble Judges : T. Meena Kumari, J

Bench : Single Bench

Advocate : N. Jayasurya, for the Appellant; K.N. Jwala, SC, for the Respondent

Judgement

T. Meena Kumari, J.—This writ petition has been filed for issuance of a writ of mandamus directing the respondents to bill the petitioner under agricultural tariff and revise the bills and refund the excess amounts collected from the petitioner.

2. It is stated in the affidavit filed in support of the writ petition that the petitioner is availing supply of electricity from the A.P. State Electricity Board and he is running a small agricultural nursery, namely, "Plants Land" adjacent to House No. 6-3-1104, Somajiguda, Hyderabad, over an extent of nearly one acre. He obtained agricultural connection bearing S.C.NoA4-7321 under L.T. Category-V more than 12 years ago. But, however, in February, 1995, the bill has been issued in the name of one lady, resident of Pochamma Basti, Begumpet with SC No. A1-7321 and it was brought to the notice of the Assistant Engineer, ERO-I, APSEB, Greenlands, Begumpet that prior to that bill, the bills were being issued by ERO-IV, Barkatpura in the category of agricultural connection. The said bill was withdrawn and another bill was issued on 22.3.1995. According to the petitioner, in the said bill, the name of the consumer was shown as "Plant Nursery" and the Category-V-Agricultural had been converted into L.T. Category-II-Commercial and the back billing was made and a demand was raised for Rs. 58.311.72 ps., treating the petitioner's Nursery as commercial with effect from October, 1993.

3. The learned Counsel for the petitioner submitted that the petitioner was not called upon, by issuance of a notice, to explain his case before the issuance of the said bill and the conversion of the category from Category-V-Agricultural to Category-II-Commercial. The petitioner brought to the notice of the respondent-Board that the assumption of the Board that it is a commercial activity is not tenable as it is well settled that horticulture is one type of agricultural activity. But, it is stated that the petitioner's representation went in vain and the ERO I, Greenlands issued a computerized bill dated 8.5.1995 wherein the consumer number was again changed and mentioned as 1-A4-7321 and that an amount of Rs. 64,221/- was required to be paid. On 24.5.1995, the petitioner paid a sum of Rs. 20,000/- under protest. On 3.6.1995, the petitioner seems to have addressed a letter to the Assistant Divisional Engineer, Distribution-XIV, APSEB, explaining the facts that it is an agricultural connection and the activity concerned is only agricultural and requesting him to convert his category into LT-V-Agricultural. It is further submitted that the petitioner had been informed that his case could not be considered on the ground that he is growing and selling plants and that it is a commercial activity. By the proceedings dated: 21.9.1995, the Board had also negated the petitioner's request and the petitioner was categorized as LT-Category-II from that of Category-V and he has been made to pay under Category-II i.e., Commercial.

4. The learned Counsel for the petitioner submits that the word "agriculture" has not been defined under the Act or under the Tariff and hence, the petitioner's "Plant Nursery" wherein plants and flowers are grown is also an agricultural activity. It is further argued that the service connection is utilized for agricultural purposes and the respondents are in no way concerned with the product of the Nursery. The learned Counsel relies upon a decision of the Supreme Court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , for the proposition that the agricultural operations include horticulture and in paragraph 16 of the said judgment, the Apex Court has held that the term "agriculture" in various dictionaries has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc.. It is further observed by the Supreme Court that the absence of basic operations would not necessarily make any difference to the character of the subsequent operations and would not divest them of their character of agricultural operations, so that if in a particular case one found that the forest was of spontaneous growth, even so, if forestry operations were carried on in such forests for the purpose of furthering the growth of forest trees, these operations would also enjoy the character of agricultural operations.

5. The term "agriculture" has been defined in Section 2(1)(a) of the, Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 and a Division Bench of this Court in Mohd. Kareemuddin Khan (died) and Others Vs. Syed Azam, , on which reliance has been placed by the learned Counsel for the

petitioner, had an occasion to deal with the term "agriculture" and held thus:

"An argument has been advanced on behalf of the appellants that the entries in pahanis showing the name of the cultivator could not be correct as column No. 23 relating to the name of the land shows the land to be "bagatu" meaning garden land. The submission is that there could not be any cultivation in garden land. Section 21)(a) of the Act defines agriculture as also including horticulture or raising of crops, grass or garden produce. Hence, agriculture also includes horticulture and raising of garden produce."

The learned Counsel for the petitioner has also relied upon the judgment of the Karnataka High Court in Writ Petition No. 3442-3443/1998, wherein it has been held thus:

"Unless the meaning is put of to all shades of meaning thereto will have to be accepted either by expressly defining the same or by necessary implication. In the present context, when the expression used in LT4 being agricultural purposes, agricultural operation including poultry farms, it must be understood that it would cover horticulture also. Hence, the stand of the petitioners is correct. In the circumstances, annexures A and B shall stand quashed and the demands raised on the basis of these annexures as at annexures F, G and H also shall stand quashed. Respondents are directed to collect the tariff under tariff schedule LT4(a) so far as the petitioners are concerned for the relevant period."

The learned Counsel also brought to the notice of this Court the provisions of G.O. Ms. No. 43, dated 7.2.1996 wherein the Government concluded as under:

(iv) Floriculture is agriculture and hence, when floriculture units are set up on agricultural lands, there is no change in the land use. Therefore, there is no need to effect any conversion in land use when floriculture units are set up in agricultural lands. It, therefore, follows that floriculture units coming up in agricultural lands shall not have to pay conversion charges to the Urban Development Authority. The Industries Department, the Banks and the A.P.S.E.B. should not ask the floriculture units to obtain the orders of Urban Development Authorities for change in land use, when floriculture units are being set up in agricultural lands.

..... (4) Government hereby clarify and declare that floriculture is agriculture and floricultural units shall not approach the Industries Department for investment subsidy. They shall approach the Director of Horticulture for investment subsidy. The Director of Horticulture shall process their cases for investment subsidy. This decision will be implemented with immediate effect. Since there is no budget provision for investment subsidy under the Budget of the Department of Horticulture, the Director of Horticulture shall separately submit proposals for release of funds from the contingency fund of the State for the current year and make necessary provision in the budget for 1986-87. The quantity of subsidy etc., to be given to the floricultural units will be the same as the subsidies now being given by the Commissioner of Industries for major industries set up in the

State. The floriculture units in the State shall be eligible for sale tax concessions, rebate in electricity charges and investment subsidy for captive power generation. Government further clarify and advise that the A. P. State Electricity Board, Banks, etc., need not ask the floricultural units to get clearance from the Pollution Control Board or a conversion order for change in the land use from the Urban Development Authorities when the project is taken up on agricultural lands. The Urban Development Authorities shall not levy any conversion charges for change in land use when floriculture is taken up on agricultural lands."

The learned Counsel for the petitioner states that the copy of the G.O. Ms. No. 43, dated 7.2.1996 has been marked to the Chairman, A.P.State Electricity Board also.

6. The learned Counsel for the petitioner further relied upon a decision of the Madras High Court in Commissioner of Income Tax v. Soundarya Nursery, 2000 24 ITR 530 wherein it was held thus:

"All the products of the land which have some utility either for some consumption or for trade or commerce if they are based on land would be agricultural products. If the plants sold in pots were the result of basic operations on the land expending human skill and labour thereon and if after performance of the basic operations on land the resultant product grown or such part thereof was suitable for being nurtured in a pot with water or by placing them in the green house or in shade or after performing several operations such as weeding, watering, manuring etc., and are made ready for sale, all these operations are agricultural operations and the plants are products of agriculture."

The learned Counsel for the petitioner also relied upon a decision of the Supreme Court in M/s. Park Leather Industry (P) Ltd. and Another Vs. State of U.P. and Others, , wherein the Supreme Court while considering the question as to whether "tanned leather" can be subjected to Uttar Pradesh Mandi Fee payable under the provisions of U.P. Krishi Utpadan Mandi Adhiniyam, 1964 has held thus:

"A perusal of Section 2(a) of U.P.Krishi Utpadan Mandi Adhiniyam, 1984 makes it clear that an agricultural product would be a product which is specified in the Schedule or one which is admixture of two or more items and would also include any such item in a processed form. It makes no difference, for the purposes of the Act, that the concerned item is a different commodity from the one which is included in the Schedule. It is possible that by virtue of an admixture of two or more terms or by virtue of processing a different commodity or item may come into existence. Even though a different commodity may come into existence, it would still be an "Agricultural produced".

7. On the other hand, the learned Counsel for the respondents contends that the change of tariff from Category-V to Category-II is necessitated because of the activity of the petitioner as he is selling the flowers i.e., the produce derived from the Plant Nursery and hence, he is categorised as LT Category-II-Commercial. He has further argued that the service connection is meant for the agricultural

purpose and it can not be used for any other purpose.

8. The Karnataka High Court in WP Nos.3442-43/1988, has observed that there could be wider and narrower meaning so far as the expression "agriculture" is concerned, and in a wider sense it comprises of activities including horticulture, forestry and animal husbandry. In that case, the learned Judge directed to collect the tariff under tariff schedule LT4(a) so far as the petitioners are concerned for the relevant period. In this case also, it has to be seen that the case of the petitioner is that it is only a Plant Nursery, which is used for floriculture, which is more or less, horticulture and he is growing the plants. The Apex Court in I.T. Commissioner v. Benoy Kumar (supra) after considering the various meanings of the term "agriculture" given by various dictionaries had held that the term "agriculture" has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese-making, husbandry etc. The Honourable Supreme Court in the latest judgment in Park Leather Industry (P) Ltd. v. State of U.P., (supra) has even held that it is possible that by virtue of an admixture of two or more items or by virtue of processing, a different commodity or item may come into existence and even though a different commodity may come into existence, it would still be an "agricultural produce". The decision in Commissioner of Income Tax v. Soundarya Nursery (supra) is a direct decision on the point involved in this case wherein it was held that if the plants sold in pots were the result of basic operations on the land expending human skill and labour thereon and if after performance of the basic operations on land the resultant product grown or such part thereof was suitable for being nurtured in a pot with water or by placing them in the green house or in shade or after performing several operations such as weeding, watering, manuring etc., and are made ready for sale, all these operations are agricultural operations and the plants are products of agriculture.

9. In view of the above propositions laid down in the above decisions, the contention of the learned Counsel for the respondents that the petitioner is using service connection for the purpose of selling the plants and as such, is liable to be charged under Category-II Commercial, has no force. It is evident that the agricultural connection is being used for growing the plants and the Electricity Board is in no way concerned as to whether the plants are being sold or otherwise used. It is within the province of the petitioner to deal with the produce of the plants. Hence, categorization of the petitioner's service connection in respect of "Plants Land" as Category-II Commercial has no basis and the respondents are directed to categorise the petitioner's service connection as Category-V Agriculture and to issue revised bill in Category-V and adjust the amounts which are already paid and the petitioner is entitled for the refund of the excess amount paid in view of the billing under Category-II. The respondents are directed to refund the same within a period of three months from the date of the receipt of a copy of this order.

10. The writ petition is allowed accordingly. No costs.