

(2003) 11 PAT CK 0007
In the Patna High Court
Case No : LPA No. 929 of 2003

M/s Adarsh Rice Mill and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-11-2003

Acts Referred:

Citation : (2003) 11 PAT CK 0007

Hon'ble Judges : R.S. Garg, J; Nagendra Rai, J

Bench : Division Bench

Advocate : N.K. Agrawal, for the Appellant; Ashok Kr. Keshri, Jai Narayan Sahay, S.K.P. Sinha and S.K. Saraf, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellants have filed the present appeal against the order dated 22.8.2003 passed in CWJC No. 4312 of 2000 [reported in Adarsh Rice Mill and Others Vs. State of Bihar and Others] by a learned Single Judge of this Court dismissing the said writ application filed by the appellants whereby they had challenged the assessment order dated 27.3.2000 passed by the respondent-Agriculture Produce Market Committee, Natwar, Rohtas, demanding market fee for the sale of rice made by them in the concerned market area. Admitted fact is that the appellant purchased paddy in the market area and paid market fee under the provisions of the Bihar Agricultural Produce Markets Act (hereinafter referred to as the Act) and hulled it to make rice for sale. It is also admitted position that they sold the rice to the respondent-Food Corporation of India under the special purchase scheme, called as "voluntary sale scheme". The scheme was a device at the instance of the State Government by the Union of India in order to save the rice mills from the losses on account of lower prevailing rate in the market. The sale by the appellants to the respondent-Corporation was made at a special rate i.e. at the rate of Rs. 708.20 Paise per quintal which was determined after taking into consideration the sales tax, market fee and other expenditure. It is also admitted position that the appellants are licensee under

the Act whereas the respondent-Corporation is not a licensee.

2. The appellants assailed the order of assessment on two grounds. Firstly that under the provisions of the Act read with Rules, the purchaser has to pay market fee and as such the appellants are not liable to pay the same. Though the market fee has to be collected and paid by the seller (appellants) but if they did not do so in view of the direction of the State Government the payment of the market fee has to be made by the respondent-Corporation and as such the respondent-Market Committee be restrained from realising the market fee from them on the sale of rice to the respondent-Corporation. Secondly that if there is any difficulty to allow the said prayer, the respondent-Corporation may be directed to make the full payment of market fee with regard to purchase of rice made by it from the appellants.

3. Learned Single Judge negatived both the contentions after taking the view that under the provisions of the Act read with Rules where the seller is a licensee and purchaser is not a licensee, the liability to collect and pay market fee is of the seller and he is liable to pay the same, as such the assessment order does not suffer from any legal infirmity and no direction can be issued to the respondent-Corporation to deposit the fee on the ground that the appellants having sold their rice on the special rate fixed by the Central Government, cannot be allowed to raise the claim against the respondent-Corporation after five years of the sale.

4. Learned counsel appearing for the appellants raised the very two points which fell for determination in this case.

5. Section 27 of the Act provides that the Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of 1% and the market fee chargeable shall be payable by the buyer. Section 27 runs as follows;

27. Power to levy fees.-(1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of rupee one per Rs. 100 worth of agricultural produce.

Illustration.-Paddy sold in the market area as well rice produced from such paddy shall both be leviable.

Explanation.-All notified agricultural produce leaving a market area, shall unless the contrary is proved be presumed to have been bought or sold in such area provided that, when any agricultural produce brought in any market area for the purpose of processing or export is not processed or exported there from as the case may be, or any such produce processed in the market area is not exported there from within twenty one days from the date of its arrival therein it shall until the contrary is proved, be presumed to have been bought or sold in the market area, and shall be liable for the levy of fees under this section, as if it had been so bought or sold.

(2) The market fee chargeable under sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) The fee chargeable under subsection (1) shall not be levied more than once on a notified agricultural produce in the same notified Market Area."

6. The manner has been prescribed under Rule 82 of the Rules framed by the State Government in exercise of power u/s 52 of the Act. The said rules runs as follows;

82. Market fee.-(i) The Market Committee shall levy and collect market fee, on agricultural produce bought or sold in the market area at the rate of Rs. 1 per Rs. 100 worth of agricultural produce.

(ii) If the buyer is a licensee, he shall within a week of the purchase, deposit the market fee, with the Market Committee.

(iii) If the seller is a licensee and the buyer is not a licensee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

(iv) If neither the buyer nor the seller is a licensee, the buyer shall deposit the market fee with the Market Committee or to its authorised officer or to staff or any person authorised by the Marker Committee.

(v) to (xiii)--xx xx xx xx

7. Sub-rule (3) of Rule 82 is relevant for the purpose of this case. According to it, if the seller is a licensee and buyer is not a licensee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

8. Conjoint reading of the aforesaid provisions thus make it abundantly clear that the liability to pay the market fee is of the purchaser and if the purchaser is a licensee he has to deposit the market fee but if he is not a licensee and the seller is a licensee then it is the duty of the seller to realise the market fee from the buyer and deposit within a week with the Market Committee.

9. The question is as to whether even if the buyer has not collected the market fee from the purchaser in terms of the provision of Rule 82 (iii) of the Rules, his liability to pay the market fee remains or the Market Committee has to take steps to realise the same from the purchaser.

10. Learned counsel appearing for the appellants has heavily relied upon a judgment of the Apex Court rendered by two Hon"ble Judges in the case of Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., . From perusal of the said judgment it appears that in that case, the Forest Department of the State Government was selling bamboos to the Orient Paper & Industries Ltd. respondent before the Apex Court from the depots falling within the market area as determined under the provisions of M.P. Krishi Upaj Mandi Adhiniyam,

1973. The validity of the aforesaid provision was challenged before the High Court. The High Court held that the Act was constitutionally valid but allowed the challenge made by the respondents before the Apex Court on the ground that it was not proved by the Market Committee that there was any direct or indirect benefit conferred on the purchasers or traders of bamboos as a class by the Market Committee. The High Court further held that the Forest Department as well as the purchaser both were traders so it was covered under the second proviso to sub-section (2) of Section 19 of the Act which contemplates that in case of a commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller and in that view of the matter the same has to be collected and paid by the Forest Department of the State Government and the Market Committee cannot require the purchasers to pay the market fee directly to them. Before the Apex Court only point was the subject matter of decision, namely, as to whether the finding of the High Court that the levy of market fees is not justified because there was no direct or indirect benefit conferred by the Market Committee either on the purchasers or traders of bamboos as a class, is valid or not. (see paragraph, 8 of the judgment). The Apex Court held that the benefit was provided by the Market Committee to the buyer and seller of the agricultural produce and as such the levy of market fee was valid. The Apex Court in paragraph 32 of the judgment held that the second proviso to subsection (2) of Section 19 of the Act which provides that in case of a commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller, cannot be pressed into service to negative the levy of the market fee even if the Forest Department is treated as a trader when it sells the bamboos. However, their Lordships observed that the provision requiring the seller to collect market fee in such case is made for the convenience of collection of the fees, as is the similar provision made in the first proviso of the said sub-section where buyers cannot be identified. The collection made by the seller, i.e. the forest departments in the present case is for and on behalf of the Committee and is eventually to be handed over to the Committee. The provision is enabling and does not prevent the Committee itself from collecting the fee, if it so proposes.

11. Relying upon the aforesaid observation made in said paragraph 32 of the judgment, the learned counsel appearing for the appellants submitted that the Market Committee can collect fee from the respondent-Corporation and it is not an obligation on the part of the appellants who are seller to pay the market fee.

12. Apart from the fact that a case is an authority what it decides and not every statement has to be treated as a law laid down, we are of the view that those observations in no way support the submission advanced on behalf of the appellants and the said observations were also held to be not laying down good law by the Constitution Bench of the Supreme Court in the case of *M/S. Mahaluxmi Rice Mills and Others Vs. State of U.P. and Others*, .

13. In the decision of the Supreme Court rendered by two Hon''ble Judges in the

case of *Krishi Utpadan Mandi Samiti, Haldwani Etc. Etc. Vs. M/s. Indian Wood Products Ltd.*, and another, , the question for consideration was the provision of Sub-clause (3) of clause (b) of Section 17(iii) of the U.P. *Krishi Utpadan Mandi Adhiniyam, 1964* which provided that if the produce is purchased by the trader from another trader, the trader selling the produce may realise the market fee from the purchaser and shall be liable to pay the same to the Committee. Their Lordships held that liability to pay the market fee under Sub-clause (3) of clause (b) of Section 17(iii) of the Act is on the purchaser. The use of word "shall" in the said clause means that where the selling trader collects the fee from the purchaser-trader, he is under an obligation to make over the fee to the Market Committee. But where the selling trader does not collect the fee from the purchasing trader, the liability to pay the market fee remains to be that of the purchaser and he cannot refuse to pay the said fee. The Apex Court relied upon the decision rendered in *Krishi Upaj Mandi Samiti and others vs. Orient Paper & Industries Ltd.* (supra) for coming to the said conclusion.

14. The correctness of the said decision was doubted in the case of *M/s Mahaluxmi Rice Mills* (supra) which was disposed of by the Constitution Bench of the Apex Court and the Constitution Bench while dealing with the said provision of the U.P. Act held that the purchaser shall pay the market fee and liability to realise and deposit the market fee is of the seller. It is immaterial whether he collects the same from the purchaser or not. It was also held that in view of the mandatory requirement of the provision, the Market Committee is entitled to collect market fee from the seller even if he has not realised it from the purchaser. In paragraph 11 of the judgment, the decision rendered in the case of *Krishi Utpadan Mandi Samiti vs. Indian Wood Products Ltd.* (supra) was held to be not laying correct law as it was observed in paragraph 11 of the judgment as follows;

"It is difficult for us to agree with the reasoning that" the use of the word "shall" in the said clause means that where the selling trader collects fees from a purchasing trader he is under an obligation to make over the fee to the Market Committee and where the selling trader does not collect the fee from the purchasing trader the liability to pay the market fee remains to be that of the purchaser."

15. The Constitution Bench of the Apex Court held in paragraph 13 of the said Judgment that the Market Committee is entitled to collect fee from the seller and it is for the seller to pass the burden on the purchaser if he so chooses. It is not the concern of the Market Committee to see that the seller gets the amount from the purchaser or not. The seller cannot run away from the responsibility to pay the market fee and then it would be open for them to recover the same from the purchaser (government in that case). In this connection, it is relevant to quote paragraphs 9, 10 and 13 of the judgment.

9. Sub-clause (3) of Section 17(ii) (b) of the Act which has been extracted above contains the following limbs:

(1) The right of Market Committee to collect market fee would arise under the sub-clause only "if the produce is purchased by a trader from another trader."

(2) In such a case it is open to the seller to realise the market fee from the purchaser.

(3) But it is the duty of the seller to pay the fee to the Committee.

10. It is significant to note that the word used for the seller to realise market fee from his purchaser is "may" while the word used as for the seller to pay the market fee to the Committee is "shall". Employment of the said two monosyllables of great jurisprudential import in the same clause dealing with two rights regarding the same burden must have two different imports. The legislative intendment can easily be discerned from the frame of the sub-clause that what is conferred on the seller is only an option to collect market fee from his purchaser, but the seller has no such option and it is imperative for him to remit the fee to the Committee. In other words, the Market Committee is entitled to collect market fee from the seller irrespective of whether the seller has realised it from the purchaser or not.

13. The aforesaid observations of the Constitution Bench makes the position clear that the Market Committee is fully entitled to collect the market fee from the seller and it is for the seller to pass the burden on the purchaser if he so chooses. It is not the look out of the Market Committee to see that seller gets the amount of fee paid by the purchaser. Thus the appellants cannot shirk the responsibility to pay the market fee to the Market Committee when the transaction falls within the purview of sub-clause (3) of Section 17(iii)(b) of the Act and then it would be open to them to recover the same from the purchaser-Government."

16. From perusal of the relevant provision of Rule 82 of the Rules it appears that it is the responsibility of the seller to realise the market fee from the buyer and deposit the same to the Market Committee. The words used are shall realise and "shall deposit". The requirements are mandatory in nature and duty is cast on the seller to realise and deposit the amount of market fee. It is immaterial whether the seller has realised the market fee from the purchaser or not, and the Market Committee is entitled to collect the same.

17. Thus, the submission advanced on behalf of the appellants that under the relevant provision it is not an obligation of the buyer to collect and deposit the market fee from the seller, where he is a licensee and the purchaser is not, is devoid of any substance and the appellants are liable to pay the market fee in terms of the Rules and the order of assessment does not suffer from any legal infirmity.

18. So far the matter with regard to direction to the respondent-Corporation is concerned, no relief can be granted to the appellants on this ground also as appears from the record that the sale to the respondent-Corporation was made

under the special purchase scheme to help the appellants as there was no taker of their rice and the purchase has been made by the respondent-Corporation in terms of the agreement entered into between the parties for sale at a special rate where relevant factors including sales tax, market fee was taken into consideration. The respondent-Corporation takes its liability to pay the market fee except to the extent as mentioned in the agreement. There is serious dispute with regard to factual aspect of the matter as it involves interpretation of the agreement and as such we fully agree with the view taken by the learned Single Judge that no direction can be given in this writ application to the respondent-Corporation to pay the market fee to the Market Committee. The appellants may pursue the other remedy available in law. Accordingly, the appeal is dismissed.