
(1977) 08 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 956, 959, 960 of 1976 and 136, 137 and 154 of 1977

Narayan Hari Shanker

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-08-1977

Acts Referred:

Constitution of India, 1950 — Article 110, 19

Citation : (1977) RLW 485 : (1977) WLN 430

Hon'ble Judges : A.P. Sen, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.P. Sen, J.—These six writ petitions raise common questions and therefore they are disposed of by this common order.

2. The petitioners, who are commission agents and grain merchants, challenge the validity of the levy of the market fee and the requirement of licensing of dealers by the Krishi Upaj Mandi Samiti, Chhabra, under Sections 14 and 17 of the Rajasthan Agricultural Produce Markets Act, 1971.

3. The writ petitions fell into three groups. Writ petition Nos. 956, 959 and 960 of 1976 are directed against an order of the Krishi Upaj Mandi Samiti, Chhabra, dated April 28, 1975 requiring the licensing of dealers engaged in the business of purchase and sale of agricultural produce in the market area and making a demand for payment of market fees i.e. before the establishment of the principal market yard at Chhabra or a sub yard at Chhipabarod. Writ petitions Nos. 136 and 137 of 1977 challenge the validity of Notification No. F. 10 (24)/Agr. Cr. 2/75 dated October 14, 1976, issued by the State Government u/s 9(2)(b) of the Rajasthan Agricultural Produce Markets Act, 1971 (hereinafter referred to be "the Act") for the establishment of the principal market yard at Chhabra and sub-market yard at Chhipabarod. The petitioners in these writ petitions also claim refund of the market fee already paid for various periods. Writ petition No. 154 of

1977 by a trader, challenges the levy of market fee; because there is at village Sarthal neither a principal market yard nor is a sub-yard and also because no services are rendered to him by the Mandi Committee.

4. Writ Petitions Nos. 956, 959 and 960 of 1976 were filed during the course of arguments in *Karamchand and Co. v. The State, of Rajasthan* and Ors. S.B. Civil Writ Petition No. 624 of 1975 and 189 other connected writ petitions before Joshi J. and were based on the ground that Krishi Upaj Mandi Samiti, Chhabra, had established no principal market yard or sub-market as required by law. On the strength of that averment, the petitioners secured an ad interim stay order restraining the Mandi Committee from recovering the market fee. In its reply filed in these writ petitions, the Mandi Committee controverted the facts that it had not established market-yard or sub-market-yard in the area, or that it was not providing any services. It placed on record Notification dated 14-10-1976 showing that the principal market yard at Chhabra and a sub-market yard at Chhipabarod had been established for the area. The Mandi Committee asserted that it was rendering various services to the licensees who are doing their business in the principal market yard at Chhabra and the sub market-yard at Chhipabarod and was providing services to the petitioners agriculture cists and other businessman of that area. It further asserted that it had prepared a scheme for development of the Mandi, the site had been approved by the Authorities and it was trying to purchase land for the construction of a market-yard. On 18-11-1976, the Mandi Committee applied for dismissal of the writ petitions. The matter came up before Joshi J. on 25 9-1976 when the petitioners wanted time to file a reply. Despite the fact that they were repeatedly given time, they have filed no reply. The case was adjourned to 16-11-1976 then to 23 11-1976 again to 8 5-1977 and to 25-7-1977. It is obvious that by the establishment of the principal, market yard by the Notification of the State Government dated 14-10-1976, the writ petitions have become infructuous.

5. Writ petition No. 154 of 1977 by M/s Madanlal Radha Ballabh is not by a trader at Sarthal, as asserted. It is averred in paragraph No. 1 of the petition that the petitioner is a partnership firm having its head quarters at Chhipabarod. The petition is supported by an affidavit Sworn in by Radha Ballabh, one of the partners of the firm, to that effect Respondent No. 2 in paragraph No. 1 of its reply has admitted the fact. There is, therefore, nor controversy that M/s. Madan Lal Radha Ballabh is a trader of Chhipabarod, i.e., at the place where the principal market yard is located. The contention that, the establishment of a market yard or principal market yard at Chhipabarod, renders no benefit to the traders of village Sarthal, therefore, does not arise.

6. The constitutional validity of the Act. is beyond, question. Their Lordships of the Supreme Court and different judges of this Court have on more occasions than one, upheld the validity similar legislation in *Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay* and *Another, Lakhan Lal and Others etc. Vs. The State of Bihar and Others etc.*, *Bhanwarlal Sohanlal v. State*

(3) 1966 RLW 339 Kundanmal Bastimal v. State of Rajasthan RLW 1974 4 263 and H. Paras ram and Ors. v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 1777 of 1975 decided on May 14, 1976 and Karamchand and Co. v. State of Rajasthan S.B. Civil Writ Petition No. 624 of 1976 decided on September 29, 1976.

7. Shri C.K. Garg, learned Counsel for the petitioners, does not seek to traverse the same grounds over again. He was indeed, frank enough to concede that no question of constitutional invalidity arises. He confines his challenge to the validity of the licensing of dealers by the Mandi Committee and the levy of market fee by it, principally on the following grounds, namely,

(1) The so-called market fee is, in reality, not a fee but a tax. It is said that the distinction between a fee and a tax is well settled according to the several decisions of their Lordships of the Supreme Court and there must be a definite co-relation between the fee charged and the services rendered i.e., there is no quid proquo. The submission is that when the Mandi Committee seeks to recover a market fee without rendering any service, there is, in effect deprivation of property of the petitioners without the authority of law. On the contrary, the licensing of the dealer amounts to harassment and therefore is an impediment to free trade and commerce;

(2) even assuming that the levy of market fee was valid, it is not recoverable as a fee in view of the surplus funds created in the hands of the Mandi Committee, and therefore, it partakes the nature of a tax;

(3) the licensing of dealers of the Mandi Committee offends against the fundamental rights guaranteed under Article 19(1)(f) of the Constitution;

(4) till October 14, 1975, i.e. the date of establishment of the principal market yard, the Mandi Committee had no authority or jurisdiction to levy any market fee or require the licensing of the dealers;

(5) the requirements of Section 3(1) of the Act. were not fulfilled because the Municipal Board, Chhipabarod, was not consulted;

(6) the increase of market fee from 25 paise per Rs. 100/- worth of agricultural produce to Rs. 1/- per Rs. 100/- worth of agricultural product was not justified; and

(7) the services as contemplated by Section 19 of the Act. are, in fact, not being provided.

There is, in my opinion, no substance in any of the contentions.

8. The petitioners aver that the Mandi Committee has not established any market; nor any principal market yard or a sub-market yard; and that, in fact, it is not rendering any services what so ever.

9. Though the averment that the Mandi Committee was rendering "various

services" in its reply filed in the writ petitions Nos. 956, 959 and 960 of 1976, lack in particulars, the particulars have been furnished by the Mandi Committee in its reply in writ petition No. 136, 137 and 154 of 1977. Along with the reply, the Mandi Committee has also filed detailed account of its income and expenditure for the financial year 1976-77 showing gross receipts of Rs. 2.36,069/68 against total expenditure of Rs. 1,08,374/97, leaving a sure plus of Rs. 1,27,694/70. It is vehemently argued that if the surplus in one year amounts to Rs. 1,27,694/70, there is no need of maintaining the levy of market fee because the Mandi Committee has sufficient funds to carry out the objects of the Act. I am afraid, I cannot appreciate this line of reasoning. When the Mandi Committee has been established, it has to consolidate its funds for carrying out the various purposes and objects of the Act. I am informed by Shri Rastogi, learned Counsel for respondent No. 2, Mandi Committee, that the development plan framed by the Mandi Committee would alone cost Rs. 60 lacs. Section 18 of the Act. contemplates the creation of Market Committee Fund and all expenditure incurred by the Market Committee under and for the purposes of the Act. have to be defrayed but of the said fund.

10. It cannot be said that the levy of market-fee @ of Rs. 1/- per Rs. 100/- worth of agriculture produce is excessive as to be a pretext of a fee and not fee in reality nor can it be said that the levy from the fee leaves a large surplus which is utilised by the Govt. for general purpose of the administration. No part of the receipts of the Mandi Committee go into the consolidated funds of the State. It is set apart and earmarked into the Mandi Committee Fund for the fulfillment of the various objects and performance of the functions of the Mandi Committee for the carrying out the various purposes of the Act.

11. The principles are well settled by several decisions of their Lordships of the Supreme Court. Mukherjee J. as he then was, in his classical judgment in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, referred to the celebrated dictum of Latham C.J. and observed:

A neat definition of what "tax" means has been given by Latham C.J. of the High Court of Australia in *"Mathews v. Chicory Marketing Board"* 60 CLR 263 .

"A tax", according to the learned Chief Justice, is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment "for services rendered.

This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it.

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That very eminent Judge laid down the following propositions:

The distinction between a tax and a fee lies primarily in the fact that a tax is

levied as a part of a common burden, while a fee is a payment for special benefit or privilege."

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We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though, in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees.

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If as we hold, a fee is regarded a sort of return or consideration for services rendered, it is absolutely necessary that the levy of fee should, on the face of the legislative provision, be correlated to the expenses incurred by Government in rendering the services.

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As indicated in Art. 110 of the Constitution, ordinarily there are two classes of cases where Government imposes "fees" upon persons. In the first class of cases, Government simply grants a permission or privilege to a person to do something, which otherwise that a person would not be competent to do.

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In such case, according to all the writers on public finance, the tax element is predominant vide Seligman's. Essay on Taxation page 409 and if the money paid by licence holders goes for the upkeep of roads and other matters of general public utility, the licence fee cannot be but regarded as a tax

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In the other class of cases, the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriate specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax.

12. Mukherjee J., in *Ratilal Panachand Gandhi Vs. The State of Bombay and Others*, reiterated these principles; and observed.

It follows, therefore, that although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the State to be applied for general public purposes. Tax is a common burden and the only return which the tax-payer gets is a participation in the common benefits of the State.

Fees, on the other hand, are payments primarily in the public interest but for

some special service rendered or some Social work done for the benefit of those from whom the payments are demanded. Thus in fees there is always an element of quid pro-quo which is absent in a tax. It not be possible to prove in every. case that the fees that are collected by the Government approximate to the expenses that are incurred by it in Tendering any particular kind of service or in performing any particular work for the benefit of certain individual. But in order that the collections made by the Government can rank as fees, there; must be correlation between the levy imposed and the expenses incurred by the State for the purpose of rendering such services This can be proved by showing that on the face of the legislative provision itself, the collections, are not merged in. the general revenue but are set apart and appropriated for rendering these services.

13. In *The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others*, the validity of access on the lessees of coal mines in a certain area and the creation of a Coal Mines Development Fund with it was challenged on the ground that the cess levied was not a fee but was, in reality, a tax. In repelling the contention the Supreme Court observed -

If specific services are rendered to a specific Area or to a specific class of persons or trade or business in any local area and as a condition precedent for the said services or in return for them cess is levied against the said area or the said class of persons or trade on business the cess is distinguish able from in a tax and is described as a fee. Tax recovered by public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, where as a cess levied by way of fee is not intended to be, and does not, become a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is however, an element of compulsion in the imposition of both tax and fee. When the Legislature decides to render a specific service to any area or to any class of persons, it is not open to the said area or to the said class of persons to plead that they do not want the service and therefore they should be exempted from the payment of the cess. Though there is an element of quid pro quo between the tax-payer and the public authority there is no option to the tax-payer in the matter of receiving the service determined by public authority. In regard to fees there is, and must always be, co-relation between the fee collected and the service intended to be rendered. Cases may arise where under the guise of levying a fee Legislature may attempt to impose a tax; and in the case of such a colourable exercise of legislative power courts would have to scrutinise the scheme of the levy very carefully and determine whether in fact there is a co-relation between the service and the levy, or whether the levy is either not co-related with service or is levied to such an excessive extent as to be a pretence of a fee and not a fee in reality. In other words, whether or not a particular cess levied by a statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.

Their Lordships, in distinguishing a tax from fee, observed that a tax collected by

public authority invariably goes into the consolidated fund which ultimately is utilised for all public purposes, whereas a cess levied by way of fee is not intended to be, and does not become a part of the consolidated fund. It is earmarked and set apart for the purpose of services for which it is levied. There is, however, an element of compulsion in the imposition of both tax and fee. Their Lordships further observed that whether or not a particular cess levied of statute amounts to a fee or tax would always be a question of fact to be determined in the circumstances of each case.

14. Sarkar J., as he then was, in *Corporation of Calcutta and Another Vs. Liberty Cinema*, while dealing with an increase in the licence fee of cinema theatres in the City of Calcutta from Rs. 400/- to Rs. 6,000/- per year, held that the imposition was nothing but a tax. That was because no question arose there of co-relating the amount of the levy to the costs of any service. The levy was, therefore, a tax.

15. The points in controversy are directly covered by the decision of the Supreme Court in *Lakhan Lal and Ors. v. State of Bihar and Ors.* (2) (supra) where in their Lordships negated similar contentions, as here, and not only upheld the validity of a notification establishing a market under the Bihar Agricultural Produce Markets Act, 1960 as also the levy of a market fee by the Market Committee, but also the licensing fee imposed on the dealers on the ground that the funds collected by the Market Committee formed part of the Market Committee Fund, which was set apart or earmarked for the purposes of the Act. Their Lordships, accordingly, held that there was sufficient quid pro quo for the levies and they satisfied the test of a fee.

16. Learned Counsel for the petitioners contends that a market, as defined in Section 2(vii), means a regulated market and includes a market proper. It is said that the Mandi Committee has established no such market. My attention was also drawn to the definitions of "market proper" in Section 2(x), "principal market yard" in Section 2(xiii) and "sub-market yard" in Section 2(xvii). The submission is that unless there is an enclosed market, the Mandi Committee cannot levy a market fee nor provide for licensing of dealers. I am afraid, the contention is wholly unfounded. I am informed by learned Counsel appearing for the Mandi Committee, that the existing Mandi at Chhabra has been declared to be a principal market-yard and that at Chhipabarcd as the sub-market yard. That meets with the requirements of the Act.

17. In *Lakhan Lal's case* (2) (supra), their Lordships negated a similar contention., stating:

Counsel next submitted that the market committee has not established any market. According to Counsel, a market must be a well defined site with market equipment and facilities. The argument overlooks the definition of market in Section 2(h). The market consists of market proper and the market yards. The market yards are well defined enclosures, buildings or localities but the market

proper is u/s 2(k) read with Section 5(2)(ii) a larger area. For establishing a market it is sufficient to make a declaration u/s 5(2) fixing the boundaries of the market proper and the market yards on the recommendation of the market committee made under Rule 59(2). u/s 18(1) the market committee must provide for such facilities in the market as the State Government may from time to time direct.

That really concludes the matter.

18. The contention, however, is that there is, in fact, no Co-relation between the levy of a market fee on the dealers and the services rendered to them. The observations of their Lordships in *Hingir-Rumpur's case* (7) (supra) is sufficient answer to the contention. The distinction between a tax and a fee, as already stated, is whether there is a Co-relation between the imposition of a fee and the services rendered. In the present case, there is no doubt that the levy of the fee is of fee levied essentially for the services rendered and as such there is the element of quid pro quo. The question whether the levy is a fee or a tax, as laid down by Mukherjee J. in *Sri Lakhshmindra Thirty Swamiar's case* (5) (supra), should primarily be seen from the legislative provisions authorising such levy. It is always necessary in such cases to enquire what was the essential purpose which it intends to achieve.

19. As already stated, there is a definite public purpose behind the Act viz., the establishment of regulated markets for purchase and sale of agricultural produce to protect the agriculturists from being exploited by the middle-men and profiteers, to enable them to secure a fair return for their produce by establishment of regulated markets. Section 9 of the Act. deals with the functions and duties of a market committee. Section 17 of the Act. authorises the levy of a market fee and Section 18 provides that all monies received by a market committee established shall be paid into the Fund called the "Market Committee Fund" and all expenditure incurred by the Market Committee under and for the purposes of this Act, shall be defrayed out of the said Fund. There is a definite Co-relation between the fee collected and the services intended to be rendered. The amount of market-fee is correlated to the expenses incurred by the Mandi in rendering the services (though in the case of a particular fee, the amount may not be arithmetically commensurate with the expenditure).

20. In *The State of Maharashtra and Others Vs. The Salvation Army, Western India Territory*, Methew J., speaking for their Lordships stated that though a fee must, as far practically as possible be answered with the services rendered, one should not seek any mathematical accuracy in these matters when there is surplus, it cannot immediately be said that the surplus must necessarily go in reducing the rate of the contribution to be levied thereafter. Their Lordships observed that it would neither be expedient nor prudent to lay down any abstract proposition that whenever there is surplus in a particular year, or a number of years, that surplus must always be taken in to consideration and the rate of contribution should be reduced for the next year. The reason for this is obvious.

An organisation like the Mandi in question may have to incur capital expenditure for the better administration of the markets and it might not be able to foresee all the contingencies in which such expenditure will have to be incurred for the more efficient working of the Mandi.

21. In Lakhan Lal's case (2) (supra), their Lordships not only rejected the contention that the Market Committee had not established a market or the principal market yard., but also it has no power to levy a market fee. As already stated, the concept of market defined in Section 27 means an area, the market being "regulated by the provisions of the Act. and the Rules framed thereunder". The power to levy a fee, the power to collect market fees from the licensees in the prescribed manner of agricultural produce, bought or sold, by them in the market area, flows out of Section 17. Their Lordships have unequivocally held that the levy of such market fees is valid. The State Government has prescribed a uniform rate of Rs. 1/- on agricultural produce worth Rs. 100/-. It is neither excessive nor arbitrary nor does it suffer from any vice or discrimination.

22. The contention that the failure to consult the Municipal Board, Chhipabarod, u/s 3(2) of the Act vitiates the establishment of the market cannot be accepted. In Anand v. State of Rajasthan and Ors. (10) ILR (1968) Raj1110 it has been held that the requirement of Section 3(2) are only directly and not mandatory.

23. The most of the contentions are covered by the decisions of their Lordships in Mohammad Hussain Gulam Mohammad and Another Vs. The State of Bombay and Another, and Lakhan Lal's case (supra) (2) as well as by the decision of Kansingh J. in Kundanmal Bastimal v. State of Rajasthan (4) (supra) and of Lodha J. in S.B. Civil Writ Petition No. 1777 of 1975 H. Paras Ram & Sons v. State of Rajasthan and Ors., decided on May 14, 1976 and of Joshi J. in S.B. Civil Writ Petition No. 624 of 1974 Karamchand and Co. v. State of Rajasthan and Ors. decided on September 29, 1976, by which he disposed of a bunch of 189 writ petitions involving identically the same questions. There is no season for me to take any different view in these cases.

24. The result therefore is that the writ petitions fail and are dismissed with costs. Hearing fee Rs. 100/- each case.