**(1989) 06 KAR CK 0039**

**In the Karnataka High Court**

**Case No :** W.P. Nos. 986-993/1989

Niranjan Provision Stores and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

**Date of Decision :** 12-06-1989

**Acts Referred:**

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 65(2a)(Ia)

**Citation :** (1989) 2 KarLJ 249

**Hon'ble Judges :** K. A. Swami, J

## Judgement

K.A. Swami, J.-As these petitions can be disposed of on a short ground, they are heard for final disposal.

2. In these petitions under Articles 226 and 227 of the Constitution, the petitioners have prayed for the following reliefs:

(a) Mandamus or direction, directing the respondents not to enforce the notification in respect of Belekalu, and delete the same from notification as has become absolete by its non-implementation for the last 34 years and as such committee has lost its right to levy market fee on Belekalu and its products since the notification by non-implementation has lost limitation and saved under clause 6 of General Clauses Act under Annexures ''D'' and ''E'';

(b) declare that the amendment to Section 65 in so far as it relates to Section 65(2-A)(iii) and Sec. 65(2A) (ia) as ultra vires of the Act and violative of Art. 19(1)(g) of the Constitution;

(c) declare by issuing writ that the 2nd respondent has no power to impose or demand market fee on the commodities on which it has already suffered a market fee in another market area;

(d) declare that ''dal'' or Belekalu is not an agricultural produce when it has undergone manufacturing process from grain to Dhal by issuing writ;

(e) issue a writ of Mandamus directing the 2nd respondent not to collect market fee on the sale of commodities on which the market fee has already been collected from another market committee;

(f) issue a writ in the nature of Mandamus directing the 2nd respondent not to collect market fee on the commodities which are imported from outside the area of the 2nd respondent and also outside the State.

3. The first relief, (prayer) proceeds on wrong assumption of facts. As a matter of fact, pulses, whole and split came to be notified for regulation of trade in them within the market area of respondent-3 by the notification dated 19-2-1987 bearing No. RDC. 129 MMD 84 published in the official gazette dated 5th March, 1987. Thereafter a corrigundum dated 15th December, 1987 bearing No. RDC. 129 MMD. 84 came to be published in the official gazette on 31st December, 1987. A reading of both these notifications together makes it clear that the pulses, whole and split mentioned in the aforesaid notifications came to be notified for the market area of the 3rd Respondent with effect from the date mentioned therein. As such the relief ''a'' sought for by the petitioners does not survive.

4. The petitioners have also sought for a declaration that Section 65(2A)(ia) and 65(2A)(iii) of the Karnataka Agricultural Produce Market (Regulation) Act, 1966 (hereinafter referred to as the ''Act'') are violative of Article 19(1)(g) of the Constitution and to strike down the same. It is not possible to agree with the contention of the petitioners and hold that Section 65(2A)(ia) and 65(2A)(iii) of the Act, in anyway, interfere with the exercise of fundamental right to trade by the petitioners. These provisions do not impose any restriction much less an unreasonable restriction on the fundamental right to trade. Section 82 of the Act provides thus:

"82. Assistance by the Market functionaries: Every Market Functionary shall render such assistance in the collection and the prevention of the evasion of payment of fees or other amounts due under this Act, the rules and the bye-laws, and in the prevention of the breach of the provisions of this Act, the rules and the bye-laws, as may be required by the market committee."

Thus Section 82 imposes a duty on the market functionaries to assist the Market Committee in the collection of market fee and also in the prevention of evasion of payment of market fees and breach of any of the provisions of the Act and Rules and bye-laws. Section 65(2A) (ia) and (iii) are nothing but reiteration of the duty cast on the market functionaries under Section 82 of the Act. Section 65(2A) (ia) and (2A)(iii) are as follows:

"65(2A): The Market fee payable under this section shall be realised as follows:

i) xx xx ia) if the produce is sold by an importer to the purchaser, the importer shall realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

ii) xx xx iii) if the produce is purchased by a trader from another trader, the trader selling the produce shall realise it from the purchaser and shall be liable to pay the market fee to the committee."

These two provisions only make it incumbent upon the importer who is also a market functionary, if he sells the agricultural produce to any other person to collect the market fee from the purchaser and pay it to the Market Committee and in case the agricultural produce is sold by one trader to another trader, the trader who sells the agricultural produce is made to realise the market fee from the trader who purchases and pay the same to the Market Committee. The liability to pay market fee is not upon the importer or the trader who sells the agricultural produce to another trader or another person. The liability to pay market fee is upon the purchaser. It is the purchaser who has to pay the market fee. The duty that is cast on the trader or the importer who sells the agricultural produce is only to collect the market fee from the purchaser and remit the same to the Market Committee. The traders and the importers who are also market functionaries are required to render this much assistance to the Market Committee. In case on selling the agricultural produce they fail to collect the market fee from the purchasers they are made liable to pay the same to the Market Committee. This liability is necessary in order to ensure that the duty of collecting fee cast on them is discharged without fail; otherwise law will be teethless. That being so, it is not possible to hold that the provisions contained in Section 65(2A)(ia) and (iii) impose unreasonable restrictions on the fundamental right to trade and as such are violative of Article 19(1)(g) of the Constitution.

5. Prayers ''c'' and ''e'' both go together. Prayer ''c'' cannot be gone into this petition because it is a matter for verification by the Market Committee. If an Agricultural produce has suffered market fee within the market area and on a second sale of the same agricultural produce within the same market area, a market fee is demanded, it has to be established before the Market Committee by the market functionary or the petitioner concerned as he case may be, that it has already suffered the market fee in the same market area; therefore, on the resale of it in the same market area, no fee is payable. If the market functionary or the purchaser as the case may be establishes before the Market Committee, that the agricultural produce is not liable to market fee because it is a resale of the same agricultural produce in the same market area, he will be entitled to refund. Therefore, in this regard, the petitioners have to approach the Market Committee. Hence prayers ''c'' and ''e'' are left open to be agitated before the Market Committee.

6. It is also not possible to grant prayer ''d''. As per the schedule to the Act, agricultural produce includes pulses, whole and split. Therefore, the Chief Marketing Officer was entitled to notify them for regulation of trading in them in the market area of respondent No. 3. Hence prayer ''d'' is rejected.

7. As far as prayer ''f'' is concerned, it is a misconceived prayer. The agricultural produce which is brought into the market area of a particular market committee will be liable for market fee if it is sold within the market area. Mere importation

 

does not attract imposition of market fee. If the imported agricultural produce is sold in the market area it becomes liable for the market fee and the purchaser of the same has to pay the market fee and the person who sells it if he is an importer or a commission agent or a trader he is required to collect the market fee from the purchaser and remit the same to the Market Committee. Therefore, prayer ''F'' cannot be granted.

8. For the reasons stated above, these writ petitions are dismissed. However, it is made clear that in respect of prayer ''c'' and ''e'' it is open to the petitioners to agitate the same before the Market Committee and establish before it that the market fee claimed in respect of the agricultural produce sold in the market area has already suffered market fee in the very market area of the 3rd respondent in which event they are entitled to appropriate refund.

9. Sri N. Devadas, learned High Court Govt. Advocate is permitted to file his memo of appearance on behalf of respondents and Sri H. Kantharaja learned High Court Govt. Pleader on behalf of respondents 1 and 2 within six weeks.

Petitions dismissed.