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(2014) 03 OHC CK 0037

In the Orissa High Court

Case No : O.J.C. No. 1230 of 1994

Orissa State Agricultural Marketing Board APPELLANT

Vs

Collector RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 32
Orissa Agricultural Produce Markets Act, 1956 — Section 12, 15, 18A, 2(1)(i), 2(1)(i)(II)

Citation : (2014) 2 ILR 597

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dr. B.R. Sarangi, J.—Orissa State Agricultural Marketing Board established u/s 18A and defined u/s 2(ii-a) of the Orissa Agricultural Produce Markets Act, 1956, hereinafter to be referred to as "the Act", in short, being the petitioner, has filed this application to quash the instruction of the Collector directing the Sub-Collector, Bargarh/Sadar/Jharsuguda not to collect RMC fees on the rice from the purchaser pursuant to Memo No. 41450/CS dated 24.10.1992 pending receipt of clarification from the Government and further assails the action of the Food Corporation of India, in short, ''FCI'' in not paying the market fees on rice purchased from the market area. The short fact of the case, in hand, is that FCI purchases rice from the market area declared as such under sub-section (1) of Section 4 of the Act, which includes market yard, which means any enclosure, building or locality in any market area declared as market yard under sub-section (5) of Section 4. As per Section 2(i), "Agricultural Produce" means such produce (whether processed or not) of agriculture, forest, animal husbandry, agriculture, horticulture and pisciculture as are specified in the Schedule. The schedule specified u/s 2(1)(i)(II) deals with Cereals. Under Clause-II it includes "paddy (husked or un-husked". In exercise of powers conferred u/s 26 of the Act, the Government issued the notification published in Official Gazette on 25.11.1988, wherein the State Government added further items as "agricultural produce" specified in the schedule to the said Act. Under the item headings as specified in Col. 2 of the table annexed thereto and item headings under Clause-II, ''Cereals'' has been included and against Sl. No. 8 rice has been notified. FCI having been purchasing ''rice'' from the RMC from the market, market area and market yard is liable to pay the fees on both ''rice'' and ''paddy'' as both are two different items and two different entries, consequent upon the notification dated 25.11.1988 vide Annexure-1. But the Government in Civil Supplies Department after obtaining clarification from the Law Department issued instruction not to impose double taxation as it is not permissible and accordingly, vide Annexure-4, the Collector, Sambalpur issued a memo on 24.10.1992 to the Sub-Collector, Bargarh/Sadar/Jharsuguda requesting them not to collect RMC fees on rice from the purchasers pending clarification by the Government. Therefore, the petitioners have filed this writ application assailing such instruction issued by the Collector, Sambalpur by issuing memo to the Sub-Collector, Bargarh/Sadar/ Jharsuguda.

2. While entertaining this writ application, this Court issued notice to the opposite parties and by order dated 7.4.1994 in Misc. Case No. 2028 of 1994 directed stay of the direction given by the Collector, Sambalpur by his order dated 24.10.1992 under Annexure-4 until further orders. Pursuant to such notice, opposite parties 3, 4 and 5 have entered appearance and opposite party No. 5, State of Orissa through the Civil Supplies Department has filed its counter affidavit stating that when the millers of Sambalpur district raised objection on the levy of market fee once on ''paddy'' and again on ''rice'', Law Department were requested to give their views in the matter and accordingly, the Law Department opined that market fee may be levied and collected on ''paddy'' only once either at the stage when it is "husked or de-husked". The views of the Law Department were sent to the Agriculture Department vide letter No. 19055 dated 3.6.1992 and copy to all the Collectors vide memo No. 19056 dated 3.6.1992 for action. The Collector, Sambalpur in his message No. 1702 dated 22.10.1992 had sought for clarification as to whether the market fees is chargeable on ''rice'' being delivered to FCI and if so, the fees is to be paid by producer or purchaser and the Civil Supplies Department vide letter No. 36848 dated 9.11.1992 addressed to the Collector clarified that the instruction issued by the Cooperation Department in their Memo No. 19072 dated 22.9.1992 being based on the latest opinion of the Law Department, the same be strictly followed.

3. Mr. Dayananda Mohapatra, learned counsel appearing for the petitioner has stated that the instruction so issued by the Govt. to the Collector is absolutely misconceived one and the same is contrary to the provisions of law. It is further stated that by virtue of the notification dated 25.11.1998 vide Annexure-1 published in exercise of the power u/s 26 of Act, ''rice'' has been included as item No. 8 of entry No. II in the schedule attached to the Act. Earlier under sub-item No. II "paddy (husked and un-husked)" was available in the schedule, but subsequently by virtue of the notification ''rice'' having been specifically included

it cannot be treated as independent item. Therefore, R.M.C. fees can be leviable on ''rice'' as ''paddy'' and ''rice'' are two separate items and independent entries have been made in the schedule. In support of his contention he has relied upon the judgment of the Supreme Court in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others,

4. Mr. S. Dash, learned Additional Standing Counsel appearing for opposite party No. 5 relying upon paragraph 3 of the counter affidavit states that on obtaining permission from the Law Department it was instructed not to collect R.M.C. fees on rice.

5. In view of the aforesaid facts and circumstances, it is to be considered whether R.M.C. fees can be leviable both on "paddy (husked or un-husked)" and ''rice'' which have been considered as "agricultural produce" within the meaning of Section 2(1)(i) of the Act, which is being collected from the market, market area and market yard as defined u/s 2(vi)(vii) and (ix) of the Act.

6. The Orissa Agricultural Produce Markets Act, 1956 has been enacted for the better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State of Orissa for the reasons that agricultural producer has been victim of the unfair practice and undue exactions of a host of middlemen on whom he has to depend for marketing his surplus produce. It has been estimated that the Agricultural Produce is able to get only 5 to 19 annas in the rupee paid for his produce by the ultimate consumer. Unless the Agricultural Producer is assured of his legitimate share of the price paid by the consumer for his produce, it will not be possible to bring about any improvement in the standard of living of the cultivators and sustain the progress achieved in expanding agricultural production. The unfair practices that are commonly practiced by the wholesale traders in the course of their transactions with the agricultural producers are unfair deductions, non-use of standard weights and measures, unfair manipulation of weighing and measurement, taking very large quantities of free samples, levy of excessive market charges etc. The producer is also not in possession of market intelligence and is at the mercy of the brokers and commission agents who are always on the side of the wholesale traders. The Planning Commission have laid legal emphasis repeatedly on the need for regulating markets to rectify the above defects by enacting a special legislation as has been done in other places of the country. Therefore, to bring about the regulation of market it was decided to constitute market committees in the selected areas and for selected commodities to be notified by the Government and in such areas the traders and the commission agents will be licensed by the Committees who will exercise strict supervision over their operations and also fixed market charges etc. The market Committees will maintain separate staff for ensuring that the traders and other market functionaries act strictly according to the condition of their licences and correct weighment is done with standard Weights and Measures. The Committee will be a democratic body consisting of elected representatives of traders, agricultural

producers, local bodies officials nominated by the Government. Any dispute will be subject to the arbitration of the Committee and the Committee will also make up-to-date market intelligence available to the producers. As a result of such regulation, the agricultural producers will be able to get a fair deal in the market. In order to achieve the said objectives, market Committees have been established for protecting the interest of the agricultural producers. Therefore, Food Corporation of India having purchased "paddy (husked or un-husked)", was liable to pay the market fees as per the provisions contained in the Act before the notification was issued under Annexure-1. After issuance of notification since ''rice'' has been included as a separate item under entry-8 to the schedule of the Act, "paddy (husked or un-husked)" and ''rice'' are two separate independent "agricultural produce" on which R.M.C. fees can be leviable.

7. In Sreenivasa General Traders (Supra) the apex Court has held as follows:

"5. Some of the petitioners challenged the increase in the rate of levy of market fee from 50 paisa to rupee one by filing petitions under Art. 226 of the Constitution before the Andhra Pradesh High Court. All these writ petitions were disposed of by the High Court by its judgment in Sri Vijaya Cotton Traders and Others Vs. State of Andhra Pradesh and Others, by which it negatived many of the submissions advanced before us. Aggrieved by the decision of the High Court, the petitioners applied to this Court for grant of special leave under Art. 136. After hearing learned counsel appearing for them at considerable length, the Court dismissed the special leave petitions by its order dated May 1, 1981. Undaunted by the dismissal of the special leave petitions, these petitioners along with others have now filed petitions under Art. 32 of the Constitution and secured a rule nisi on the pretext that similar questions were involved in Civil Appeal No. 2108 of 1972 and Writ Petition No. 1286 of 1973.

6. The pattern of working of the market committees in the State is more or less the same although the circumstances in which each market committee is placed may differ. Facts as far as they can be gleaned from some of the writ petitions where counters have been filed may be briefly stated. The Malakpet Agricultural Market Committee, Hyderabad has in its counter in Writ Petition No. 2911 of 1981 furnished sufficient material to show the nature of services rendered by the Market Committee. It has established and has under its control various markets in the twin cities of Hyderabad and Secunderabad viz. (i) Osmanganj Market for the purchase and sale of food grains and other notified agricultural produce, (ii) Jambagh Market for sale of fruits, (iii) Miralam Mandi and Sabzi Mandi for the sale of vegetables in Hyderabad, and Hissamgunj Market in Secunderabad for the purchase and sale of food grains and vegetables. In all those markets, the Committee is providing necessary facilities to the traders and producers of agricultural produce. The Market Committee during the financial year 1981-82 incurred an expenditure of Rs. 8.28 crores for the construction of godowns, shops, platforms, formation of internal roads, approach roads, construction of press building etc. So far as the Malakept area is concerned, the Osmangang

Market was not sufficient for regulating the transactions of sale 853 and purchase of agricultural produce. The Market Committee therefore permitted the traders of Malakept to carry on their business from their respective licensed premises, subject to the supervision and control of the functionaries of the Market Committee. Due to the location of the present markets in busy and congested places, it was not possible to extend the market areas any further. The Committee therefore acquired an area of 41 acres 22 guntas at Malakpet on a permanent lease from the Andhra Pradesh Housing Board in April 1980. It also applied for acquisition of 20 acres 20 guntas at Bahadurpura, 70 acres at Mansoorabad and 50 acres at Kukatpally. The aforesaid construction work for expansion of the markets was in progress when the writ petitions were filed. It appears from the statement of income and expenditure for the years 1978-79, 1979-80 and 1980-81 that the income from the market fee even after its increase from 50 paisa to rupee one is not sufficient to meet the expenditure of the Market Committee.

11. The object and purpose of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 as reflected in the long title is to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock, and products of livestock and the establishment of markets in connection therewith. The legislation is designed to eliminate middlemen in notified agricultural produce, livestock and products of livestock, to protect the producers of such agricultural produce, livestock and products of livestock from exploitation and to ensure to them a fair price for their produce. The material provisions of the Act may be referred to s. 2 is the definition clause and defines the expression ''agricultural produce'' in cl. (i) to mean anything produced from land in the course of agriculture or horticulture and includes forest produce or any produce of like nature either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of this Act. The term ''market'' as defined in Section 2(vi) means a market established under sub-s. (3) of Section 4 and includes market yard and any building therein. The expression ''notified area'' as defined in Section 2(xi) means any area notified u/s 3, and ''notified market area'' in clause (xii) means any area declared to be a market area by notification u/s 4. u/s 3 of the Act, the State Government is empowered to declare their intention or regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notifications. After considering the objections and suggestions, if any, the State Government is authorized to publish a final notification under sub-s. (3) thereof declaring such area to be a notified area. By sub-s. (1) of Section 4, the State Government is empowered to constitute a market committee for every notified area which shall be a body corporate having perpetual succession and a common seal. The duty of enforcing the provisions of the Act and the rules and bye-laws is entrusted to a market committee under sub-s. (2) thereof. Sub-s. (3) of Section 4 empowers the market committee to establish such number of markets as the State Government may, from time to

time, direct for the purchase and sale of any notified agricultural produce, livestock or products of livestock. Sub-s. (3) of Section 4 provides such facilities in the market as may be specified by the Government from time to time by a general or special order. Sub-s. (4) provides that the State Government shall, after the establishment of a market under sub-s. (3), declare, by notification the market area and such other area adjoining thereto a as may be specified in the notification, to be a notified market area for the purposes of the Act. Section 7 insofar as material provides as follows:

"7. Trading etc., in notified agricultural produce, livestock and products of livestock in the notified area: (1) No person shall, within a notified area, set up, establish or use, or continue or allow to continued, any place for the purchase, sale, storage, weighment, curing, pressing or processing of any notified agricultural produce or products of livestock or for the purchase or sale of livestock except under and in accordance with the conditions of a licence granted to him by the market committee.

(2) Nothing in sub-section (1) shall apply to a person purchasing notified agricultural produce, livestock or products of livestock for his own domestic consumption.

(5) A person to whom a licence is granted under sub-section (1) shall comply with the provisions of this Act, the rules and the bye-laws made thereunder and the conditions specified in the licence.

(6) Notwithstanding anything in sub-section (1), no person shall purchase or sell any notified agricultural produce, livestock and products of livestock in a notified market area, outside the market in that area."

Section 12 of the Act which provides for the levy of market fee ant as an important bearing, reads:

"12 Levy of fees by the market committees:

(1) The market committee shall levy fees on any notified agricultural produce, livestock or products of live stock purchased or sold in the notified market area at such rate, not exceeding one rupee, as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Explanation 1: For the purposes of this section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock:

Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

8. The same view has been reiterated by the apex court in Amar Nath Om Prakash and Others Vs. State of Punjab and Others, wherein the apex Court referred to the decision of Andhra Pradesh High Court in Immedisetti Ramkrishnaiah Sons, Anakapalli and Others Vs. State of Andhra Pradesh and Another,

9. In Immedisetti Ramkrishnaiah Sons (supra), the Andhra Pradesh High Court has explained the nature of the duties of a Market Committee in the following manner:

"Another unfounded assumption of the learned counsel was that the activities of the Market Committee and the facilities provided by it were confined by the Act to the market area only. The establishment, maintenance and improvement of the market is one of the purposes for which the Market Committee Fund might be expended under Sec. 15 of the Act. The other services such as the pro vision and maintenance of standard weights and measures, the collection and dissemination of information regarding all matters relating to crop statistics and marketing in respect of noticed agricultural produce, livestock and pro ducts of livestock schemes for the extension or cultural improvement of notified agricultural produce including the grant of financial aid to scheme for such extension on improvement within such area undertaken by other bodies or individuals, propaganda for the improvement of agriculture, livestock and products of livestock and thrift, the promotion of grading services, measures for the preservation of the foodgrains, etc. are not services which are confined to the market area only. They area services which are required to be performed by the Market Committee and which may be rendered throughout the notified market area without being confined to the market. Further, the facilities provided in the market are available for the use of every grower of agricultural produce and owner of live stock within the notified market area. It is too much to expect the Market Committee to provide the same facilities as are available in the market area in every nook and corner of the notified market area. It is up to the growers of agricultural produce and owners of livestock to avail themselves of the facilities afforded in the market. None can complain against the levy of licence fees on the ground that some may not avail themselves of the facilities available in the market."

10. Immedisetti Ramakrishnayya Sons (supra) was approved by the apex Court in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, where it was observed:

"It is obviously in the interests of the producers of agricultural produce that they can get the best competitive prices in an open market and that they have not to pay the middlemen. Sale or purchase of agricultural produce in such a market under the supervision and control of the market committee is likely to be in ready cash and there fore advantageous to the producers and the use of standard weights must eliminate the possibility of his being victimized by malpractices. Supervision of the operations in the notified market area can be more conveniently done if business is carried on in a specified area or areas intended for that purpose. The Act is an integrated one and it regulates the buying and selling of notified agricultural produce, livestock and products of livestock from a centralized place."

"The contention that there is no liability cast on the petitioners to pay market fee on transactions of sale and purchase of notified agricultural produce, livestock and product of livestock proceeds on a wrongful assumption that they can still carry on such trade from their premises in the notified market area, but outside the market in that area. In view of the express prohibition contained in sub-section (6) of Sec. 7, the petitioners cannot carry on such trade by not resorting to the market proper."

"There is a fallacy underlying the argument that since the services are rendered by market committees within the market proper, there is no liability to pay a market fee on purchase or sale taking place in the notified market area but outside the market. The contention does not take note of the fact that establishment of a regulated market for the purchase or sale of notified agricultural produce, livestock or products of live stock is itself a service rendered to persons engaged in the business of purchase or sale of such commodities. The duty of a market committee constituted under sub-section (1) of sec. 4 of the Act does not end with establishing such number of markets in the notified market area under the first part of sub-section (3) but also extends to the providing of such facilities in the market as the Government may from time to time by general or special order specify under the second part of sub-section (3). In exercise of their powers under sec. 33 of the Act, the State Government have framed the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969. Chapter V relates to ''Regulation of trading''. It would appear that Rules 48 to 53 are the machinery provisions for controlling the trade in notified agricultural produce, livestock and products of livestock in a notified area while Rules 54 to 73 impose restrictions on the carrying on of all such trade in such area. It is clear from the provisions of sec. 15 of the Act that the services to be rendered by the market committee and facilities to be provided are not confined to the market proper but extend throughout the notified area."

11. It is no more res integra that there is distinction between "paddy (husked or un-husked)", and ''rice'' and although paddy is milled into rice by process of de-husking, they are two separate and distinct commercial commodities and have been separately specified and notified under the agricultural produce and the schedule as item Nos. 2 and 8 respectively. Therefore, the market fees is leviable on purchase of both "paddy (husked or un-husked)", by the rice miller from producer and also on purchase and sale of ''rice'' by the miller to a trader or by a trader to a trader because there is service rendered by the Market Committee at each of the stages. The ratio of the judgments in Sreenivasa General Traders

(supra) and M/s. Amar Nath Om Prakash (supra) has not been taken into consideration when the Collector issued such instruction in Annexure-4. In view of the entry made in the schedule of the Act read with the ratio decided in Sreenivasa General Traders (supra) as "paddy (husked or un-husked)" and ''rice'' are two separate "agricultural produces", the RMC has jurisdiction to collect fees on both the items for their services rendered at each stage within the market, market area and market yard as defined under the Act. In view of such position, the direction issued by the Collector, Sambalpur in memo No. 41450/CS dated 24.10.1992 under Annexure-4 to the Sub-Collector, Bargarh/Sadar/Jharsuguda not to collect R.M.C. fees on rice from the purchaser pending receipt of the clarification from the Government is not in accordance with law and therefore, the same has to be quashed and is accordingly quashed. The writ application is accordingly allowed. No cost.