
(1985) 04 PAT CK 0026

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4432 of 1978

Prabhat Zarda Factory and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 09-04-1985

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 2(1), 27
Constitution of India, 1950 — Article 226

Citation : AIR 1985 Patna 241 : (1985) PLJR 531

Hon'ble Judges : S.H.S. Abidi, J; Hari Lal Agrawal, J

Bench : Division Bench

Advocate : Ram Janam Ojha, Santosh Singh and Jagdish Narain, Shreenath Singh, G.C. Bharuka, Navaniti Prasad Singh and Ramesh Kumar Agarwal, for the Appellant; Balbhadra Prasad Singh, Alakh Raj Pandey, Vishwambhar Sharma and Shivesh Misra, for the Respondent

Final Decision : Allowed

Judgement

Hari Lal Agrawal, J.—Whether Zarda manufactured by the petitioner firm will be covered within the ambit of "tobacco", a notified "agricultural produce" within the meaning of Section 2(1)(a) of the Bihar Agricultural Produce Markets Act, is the short but ticklish question which falls for decision in this case.

2. The petitioner firm manufactures Zafrani Zarda in the town of Muzaffarpur, which is an excisable commodity under the Central Excises and Salt Act. The fact that Zarda is prepared out of tobacco is not in dispute. The petitioners have stated the process of manufacturing Zafrani Zarda and the same is as follows.

At first plain water is sprinkled on the bundles of tobacco. It is allowed to ferment for some days so as to be able to generate heat. The stalks of tobacco are then broken and cleaned, and thereafter treated with permissible colours and compounds, and cut into thin strips by shearing machine. This product is known as "Sada Zarda".

Sada Zarda is then allowed to dry for some days for preparing zafrani zarda by coating it with Zafrani solution. Flavouring essence solution is sprinkled on it; besides various other commodities such as powdered Ilaichi, Long, Dalchini, Menthal, Keshar, silver foils etc. are mixed up and then the same are packed in special wrappers and put into small containers of various weights and sizes for marketing.

3. The petitioner firm imports Sada Zarda from various places such as Varanasi, Delhi etc., and the same is made Zafrani Zarda by processing it as indicated above. It may be stated that Zafrani Zarda prepared by the petitioner firm has got a good market and repute. The price of the end product of the petitioner firm is thus raised by 20 to 25 times of the cost price of Sada Zarda.

4. The petitioner firm was served with a notice dated 29-7-1978 (Annexure 2) from respondent No. 2, the local Agricultural Produce Market Committee, to pay market fee on the sale of Zarda by the petitioner firm, on the ground that it was included in "tobacco", a scheduled item under the Act. The petitioner firm refuted the liability to pay market fee mainly on the ground that Zarda, which was entirely a different commodity, was not covered under the net of "tobacco", but since the Market Committee insisted for payment and issued threatening notices the petitioners filed the writ application.

5. The case was earlier heard in January, 1984 and judgment was reserved. Later on, however, we decided to refer the case to a larger Bench and accordingly by our order dated 8-2-1984 the records were ordered to be placed before the Hon'ble the Chief Justice who, in absence of any conflict in the views of this Court in some of the cases which were since decided, declined to accept the reference and the case was sent back to us for disposal. Accordingly the matter was placed for hearing on 18-3-1985 and although the hearing of the case had been completed earlier, on account of lapse of time learned counsel for both the parties were allowed opportunities to give a resume of the arguments.

6. It may be mentioned that an application was filed by the Bihar Agricultural Produce Marketing Board, the apex body under the Act, to enforce and regulate the provisions thereof, for its intervention. That application was allowed on 30-1-1984 and Mr. Ram Janam Ohja, appearing for the Marketing Board was also heard on both the occasions.

7. The stand of the respondents, on the other hand, is that Zarda being basically a product of tobacco and processed from tobacco, is an "agricultural produce" and the market fee has been rightly demanded on the trade of Zarda.

8. The parties also joined issues regarding the validity of the constitution of the Market Committee and the right to impose market fee etc., in the petition and the counter-affidavit, but since all these questions have been authoritatively settled by this Court as well as by the highest Court in a series of decisions, no argument was addressed on behalf of any of the parties on this question.

I would, therefore, proceed to consider and decide the basic question already indicated, viz., as to whether the Market Committee was entitled to realise market fee from the petitioner firm on the sale of Zafrani Zarda on the basis of tobacco. That necessitates the reference to some of the provisions of the Act.

9. Section 27 empowers the Market Committee to levy and collect market fee on the "agricultural produce" bought or sold in the market area @ Rs. 1/- per Rs. 100/- worth of "agricultural produce". The expression "agricultural produce" has been defined in Section 2(1)(a) as follows :

"'agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified in the Schedule;" The word "schedule" has also been defined in Clause (1) of Section 2 as "a schedule to this Act".

Section 39 of the Act empowers the State Government "by notification to add, amend or cancel any of the items of agricultural produce specified in the schedule". The original schedule, when the Act was enforced has been amended and expanded from time to time by the State Government. I shall now refer to the schedule itself to answer the question.

The schedule, as it stands at present, has classified the various items mentioned therein under 12 categories, namely, (i) Cereals, (ii) Pulses, (iii) oil seeds, (iv) oils, (v) fruits, (vi) vegetables, (vii) fibres, (viii) animal husbandry products, (ix) condiments, spices and others, (x) grass fodder, (xi) narcotic and (xii) miscellaneous. We are concerned in this case with the eleventh category, namely, tobacco, which is the single item of this category.

It is, no doubt, true that definition of "agricultural produce" gives the expression a wider connotation and the inclusive nature of the definition would embrace even the processed or non-processed products of agriculture, horticulture and animal husbandry specified in the schedule.

10. The argument made on behalf of the petitioners in this regard, on the other hand, is that the products of tobacco, namely, Zafrani Zarda, after processing becomes an entirely different commodity in which the element of tobacco is not more than 4% and the rest of its components are other materials such as powders of Ilaichi, Long, Dalchini, Menthol, Kesar, Silver foils, flavouring essence, etc., which are entirely different commercial commodities. The act of manufacturing and processing is also well defined. Whereas "manufacturing" means bringing into existence a new substance from the raw material, "processing" means merely bringing out some changes in the substance.

It is thus obvious that each case of processing cannot be manufacturing; in each case of manufacturing there will be an element of processing. Almost every kind of agricultural produce has to undergo some kind of processing or treatment by the agriculturist himself in his field or farm in the first instance in order to make it transportable and marketable commodity. For example, the two main food

products, namely, paddy and wheat, have to be husked, threshed and subjected to other processes to make them reach the markets. In each case, therefore, the test would be as to whether the processing done to the raw agricultural produce was a necessary concomitant and minimal or it was so cumbersome or long drawn that the end product changed its basic shape and name in common parlance as well as in the market became known to be an entirely different commodity. In that situation its processing takes the shape of manufacturing the commodity into a different item, for example, Suji and flour which are products of wheat become entirely different items. Similarly, Chhena, Khawa, Besan, Sattu, Chura etc. become an entirely different commodity and it is, perhaps, in that view of the matter that in category No. I of the schedule dealing with "cereals," besides paddy and wheat, rice, wheat Atta, Sujji, Maida, Chooria, Murhi etc. have also been separately included as independent items.

11. In the case of Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, it was held that where the definition of a word has not been given it must be construed in its popular sense if it is a word of every day use. "Popular sense" was also clarified to mean that sense which people conversant with the subject matter of the statute would attribute to it.

12. It will be useful to notice that the inclusive definition of "agricultural produce" has simply contemplated the processed or non-processed products and not manufactured products of any item thereof. This definition is well brought about in a passage thus quoted "in Words and Phrases, Vol. 26, from an American judgment noticed by the Supreme Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, as well as later in the case of Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital, . In the former case the question was as to whether the producer of Vanaspathi could be held to manufacture some kind of "non-essential vegetable oil" within item 12 of Schedule I of the Central Excises and Salt Act by applying to the raw material the processes of neutralisation by alkali and bleaching by activated earth or carbon. It was held that the processed raw oil was not covered by the said expression as no new substance known to the market had been brought into existence at that stage.

13. It may be mentioned that Atta, Sujji and Maida were not included in the original schedule until the notification dated 12th Feb. 1972, but this was not notified till 15th May, 1980, although wheat was already a scheduled agricultural produce from before.

A Bench of this Court in the case of Sree Beharaji Mills Ltd v. State of Bihar 1983 BBCJ (HC) 618 : AIR 1983 Pat 311 rejected the claim of the respondent Market Committee for levy of market fee on Atta, Sujji and Maida on the ground of the absence of the notification.

14. In the case of Ashok Industries and Others Vs. State of Bihar and Others, while considering the question of right to levy market fee on pulses in processed

or non-processed from, if gram or Arhar or Masoor had at one stage been subjected to levy of market fee, it was observed by a Bench of this Court that "the matter will certainly be different if in one form a foodgrain is notified as a distinct agricultural produce while in another form after its being processed it is enumerated as another distinct notified agricultural produce".

This observation will apply a fortiori to the case of Zafrani Zarda which also becomes a distinct commodity that "tobacco.

15. Reliance placed on behalf of the respondents on two decisions of this Court also, namely, (1) Mahabir Tea Co. v. State of Bihar, 1979 BLJR 560 where the question was as to whether tea could be included in the schedule as an agricultural produce, and (2) Sahu Mills v. State of Bihar 1977 BBCJ (HC) 484 : 1977 Tax LR 2194 where the question was as to whether stalks of "tobacco" were included in "tobacco", is not of much help in this case.

In the latter case on reference to the case of Amara Purushottam Mamidi Obaih and Co. v. State of Andhra Pradesh (1972) 29 S. T. C. 654 where the following observation was made

"The word "tobacco" therefore connotes the plant going by that name as a whole and not merely its leaves, as sought to be contended for the respondents. Roots, stems, stalks, flowers and seeds are as much parts of the plant as its leaves sine a typical plant consists of all these parts and branches and fruits in addition."

It was held that the "tobacco stalks" were included in "tobacco" which was a scheduled article.

It may be noticed that in common parlance also there is no separate name nor separate use for the stalks of tobacco and leaves of the plant of tobacco.

16. Strong reliance was, however, placed on behalf of the respondents on the case of Dilip Kumar Mukherjee Vs. Commercial Tax Officer and Others, . No doubt, this case apparently gives their case a direct support because it has been held by a learned single Judge that Zarda is "tobacco" of the category of "chewing tobacco" within the meaning of item 9 of the Schedule I of the Central Excises and Salt Act, but no "closer scrutiny of this decision it is entirely distinguishable as item 9 of the said schedule defines "tobacco" as follows;

"Tobacco means any form of Tobacco--, whether cured or uncured and whether manufactured or not, and includes the leaf, Stalks and Stems of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth."

This definition is much more wider than the definition of "tobacco" read with reference to "agricultural produce" in the Act with which we are concerned in this case. In the Salt Act "tobacco" in its manufactured form is sought to be brought within the purview of "tobacco", but I have already indicated that in Markets Act only the processed form has been purported to be included in the basic item. The

same decision in para 18 has said that although "the word "tobacco" refers only to the plant and, primarily, the dried leaves of that plant which are used for purposes of smoking and similar habits", the definition "widens the ordinary meaning of the word to bring in every form of tobacco, whether cured or uncured, whether manufactured or not, to bring in a large number of allied raw and finished products within the fold of the duty imposed by the Act of 1944..... "zarda" is a variety of manufactured tobacco." The expression ""Manufacture" has also been defined in Section 2(f) of the Salt Act and while referring specifically to "tobacco" this definition says that it included "the preparation of cigarettes, cigars, cheroots, biris..... chewing tobacco or snuff."

In that view of the matter the learned judge was but to hold that "chewing tobacco" was covered under item 9 of Schedule I as the said commodity was specifically mentioned. No construction and interpretation of the expression "tobacco" was, therefore, needed in that decision and, therefore, the learned counsel for the respondents is entirely mistaken in his impression that the Calcutta decision has a bearing on the present case, in the absence of that wider definition of agricultural produce" in the Markets Act.

17. Reliance was also placed upon some decisions of the Supreme Court by Mr. Ram Janam. Ojha to bring home the point that Markets Act being a beneficial legislation and not a fiscal statute, a liberal construction to the same should be given.

Although in the case of *Vir Bhan v. State of Bihar* 1977 BBCJ (HC) 339, followed by another Bench of this court in unreported case of *Ranchi Timbers Association v. State of Bihar* iC. W. J. C No. 269 of 1976 (R)] disposed of on 20-9-1977 : (Since reported in ILR (1978) Pat 63 it has been held that this was a fiscal statute, even assuming for the sake of argument that it was not such a statute but was a beneficial legislation, there is no question of giving any other interpretation on that account by any liberal construction or interpretation a commodity shall on the face of it would fall beyond its purview.

18. I may now refer to a few cases strongly relied upon on behalf of the petitioners, namely, (1) *Vir Bhan's* case (supra), (2) *Ranchi Timbers Association's* case (supra) and (3) *State of Madras v. Bell Mark Tobacco Co.* (1967) 19 S. T. C 129 (SC).

The judgment in *Vir Bhan's* case was given by me on behalf of the Bench, where the question was as to whether knitting wool could be included within the ambit of "wool" or "fleece", the two items mentioned in the 8th category of the schedule. On reference to a large number of cases it was held that "knitting wool" was entirely a different commodity and could not be covered by the notified commodity "wool" in the schedule. Discussing the matter I had categorically observed :

".....But I am not prepared to hold that simply because now parent product of either agriculture, horticulture, animal husbandry or forest is specified in the

schedule without any of its species which may be produced after any processing than that by itself would be sufficient to incorporate and include within its womb all those bye products or finished products. Such construction in my opinion, of a fiscal statute would not be a proper and reasonable construction and would amount to reading in the schedule something by considering as what is the substance of the matter, and then substituting other materials by following the rule of intendment and then by implication to read that knitting wool, a commodity which is apparently different, would be covered in the expression "wool".

This decision was followed by another Bench in the unreported decision mentioned above where the question was as to whether the words "bamboo" and "wood", the two scheduled commodities, within their fold would also include bamboo clumps or standing trees in a forest coup or lot. The argument on behalf of the Market Committee was rejected.

19. In the case of *State of Madras v. Bell Mark Tobacco Co.* the question was whether excise duty paid in respect of raw tobacco was liable to be excluded in the computation of the taxable turn over of the dealer with respect to his business in chewing tobacco. It was held that the various processes to which the raw tobacco was subjected, amounted to a manufacturing process and, therefore, the chewing tobacco sold by the respondents was not the same commodity as raw tobacco but was a manufactured product from raw tobacco purchased by the respondent. The process of preparation of chewing tobacco has also been indicated in the judgment and that was jaggery juice was sprinkled on the tobacco which was then cut into thin strips by shearing machine and it was thereafter allowed to dry for some days and then flavouring essence was sprinkled and then packed in special wrappers and packets known as chewing tobacco packets. We have seen that the processing for manufacturing of Zafrani Zarda is more extensive and cumbersome than preparing chewing tobacco. This decision has said (1) that the chewing tobacco was a manufactured item and (2) a different item than tobacco.

20. I have already indicated earlier that even the wider definition of "agricultural produce" in Section 2(1)(a) takes note of processing and not of "manufacturing". The Supreme Court in unequivocal terms in that case has held that chewing tobacco was a manufactured item from raw tobacco, and if that be so, then a fortiori it has got to be held that Zafrani Zarda becomes all the more a different commodity and, as already held by me in *Vir Bhan's case* 1977 BBCJ (HC) 339 (supra), it would not be proper to include within the ambit all bye-products or finished products which become entirely a different commodity and known and understood as such in the market as well" as in the common parlance.

21. Neither *Shri Balbhadra Prasad Singh*, appearing for respondent No. 2, nor *Shri Ram Janam Ojha*, appearing for the intervenor, could make out any point of distinction so as not to apply the above decision to the facts of the present case and the Calcutta decision also must give way in face of this decision of the

Supreme Court apart from the distinguishing feature.

22. From the above discussions I come to the conclusion that Zafrani Zarda cannot be included within the ambit of "tobacco". This application, therefore, must succeed and the notices issued by respondent No. 2 to the petitioners, contained in Annexures 2 and 4, must be quashed. They are accordingly quashed herewith and the respondents are ordered to forbear from enforcing the provisions of the Bihar Agricultural Produce Markets Act against the petitioners.

23. Before parting with the case, however, I would also like to notice a line of argument indicated in the written argument filed on behalf of the intervenor, namely, that the petitioners were not an aggrieved party and thus not entitled to any relief and that they had no locus stand! to invoke the writ jurisdiction. This argument has been noticed simply to be rejected. As, if the petitioners are subjected to the provisions of the Act, then certainly they are bound to suffer in the shape of market fee in huge amounts.

24. The application is accordingly allowed with costs. Hearing fee is, however, assessed at Rs. 500/- only.

S.H.S. Abidi, J.

I agree.