(1994) 05 AHC CK 0007

In the Allahabad High Court

Case No : Writ Petition No''s. 16154, 16155, 16156, 16157, 16158, 16159, 16160, 16161, 16162 and 16163 of 1993

Ram Karan — APPELLANT

Vs

Krishi Utpadan Mandi Samiti — RESPONDENT

Date of Decision : 05-05-1994

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 20, 25, 26A, 32
Uttar Pradesh Krishi Utpadan Mandi Niyamawali, 1965 — Rule 36, 38, 56

Citation : (1994) 3 AWC 1269 : (1994) 2 UPLBEC 1405

Hon'ble Judges : A.P. Misra, J;A.N. Gupta, J

Bench : Division Bench

Advocate : Sunil Ambwani, for the Appellant;

Final Decision : Allowed

Judgement

A.N. Gupta, J.—Since common questions are involved for decision in this bunch of 12 writ petitions, they are being disposed of by one judgment.

2. The Petitioners in all t fosse writ petitions ace rice millers of Saharanpur in the State of Uttar Pradesh and the sole opposite party is Krishi Utpadan Mandi Samiti, Saharanpur (hereinafter referred to as ''Mandi Samiti). These rice millers purchase paddy from inside as well as outside the market area of the Mandi Samiti after paying market fee. Rice is produced by the Petitioners out of the paddy so purchased Sixty per cent of the rice so produced is given by the Petitioners to the State Govt. as levy in accordance with the provisions of IL P. Rice & Paddy (Levy & Regulations of Trade) Order, 1985 and the remaining 40%, retained by them called the ''released share'' is sold by the Petitioners in the open market. In accordance with the decision given by the Supreme Court in the case of Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, market fee is not payable by the Petitioners on the said rice sold by them in the market area of the Mandi Samiti as it was held in that case that the market fee is a single point levy in one market area. In the said case it has

further been held that in case paddy is purchased from outside the market area and if the rice produced out of it is sold within the market area of the Mandi Samiti, the traders shall be liable to pay the market fee to the Mandi Samiti It is not disputed that in case the paddy is purchased from outside the market area and the rice produced out of it is also sold OP sent outside the market area of the Mandi Samiti, no market fee would be payable to it. The dispute in these petitions is confined to that part of the rice which was produced out of the paddy purchased by the Petitioners front outside the market area of the Mandi Samiti and its sale or despatch, according to the Petitioners, was made outside the market area of the Mandi Samiti.

3. The contention of the Petitioners is that out of the paddy purchased by them from outside the market area of the Mandi Samiti, they produced rice some of which was sent or sold by them outside market area of the Mandi Samiti and, therefore, no market fee u payable by them to it on the said despatches/sales. On the other hand, the contention of the Mandi Samiti is that since the Petitioners failed to furnish the proof of despatch or sale of rice outside its market area, it shall be presumed that they sold the said rice within its market area according to the provisions contained in Explanation to Section 17 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter called the ''Adhiniyam) which may be extracted here:

Explanation--For the purpose of Clause (iii), unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licenced trader shall be presumed to have been sold within such area and in such case, the, price of such produce presumed to be sold shall bj deemed to be such reasonable price as may be ascertained in the manner prescribed.

4. This explanation lays down a presumption that unless the contrary is proved, any specified agricultural produce (rice is also one of the specified agricultural produce) taken out of the market area shall be presumed to have been told within such area. The vires of this explanation was challenged through a writ petition in this Court in the case of Sri Mahalaxmi Sugar Works, Farid Nagar, v. State of U.P. 1987 UP LB EC 957 but this Court did not declare the said explanation as ultra vires but instead of doing so issued following directions in order to mitigate the hardship caused to the traders and to safeguard payment of market fee to Mandi Samiti in accordance with law.

(1) Every trader proposing to take out the goods manufactured or produced in the market area shall be entitled to issue of gate passes from the Mandi Samiti if he produces documents to establish that the goods were being taken out of the market area. Necessary entries shall be made by Mandi Samiti in records maintained by it;

(2) A trader taking out goods shall file a statement before the Mandi Samiti within six weeks indicating therein that the goods were sold by the Commission

agent or by the Petitioners themselves inside or outside the market area;

(3) In case the traders do not file the statement the Mandi shall issue notice to the traders after expiry of six weeks to file the statement within 10 days of receipt of notice;

(4) If the return is filed the same shall be scrutinised by the Mandi Samiti and if it is satisfied about its correctness, then it shall pass appropriate orders levying fee. If the sale has bean made in the market area and exempting in case, it has been made outside the market, area;

(5) In case the return of trader is found to be incorrect or he omits to file his return despite notice by Mandi Samiti then the Mandi Samiti shall levy market fee on trader on the good; which had been taken out and for which gate pass had been issued.

5. It is common case of the parties that ever since the aforesaid directions were given by this Court, the traders as well as all the Mandi Samiti in the State have been acting in accordance wish the said directions. In accordance with the aforesaid direction No. (2) some of the Petitioners in respect of the years 1988-89 to 1991-92 furnished statements to the Mandi Samiti on the proforma prescribed by it. In the said statement quality and quantity of paddy purchased from outside and Inside the market area of the Mandi Samiti quantity of rice produced out of it, quantity of rice given in levy, quantity of released rice left with the Petitioners, quantity of rice sold inside the market area of the Samiti and quantity of rice despatched outside the market area of the Mandi Samiti were given. Some of the Petitioners, who did not voluntarily furnish the said satemeats, furnished the same on the notice given to it by the Mandi Samiti. An official of the Mandi Samiti verified some of these statements. Thereafter Secretary of the Mandi Samiti sent communication to the Petitioners levying market fee. In the said communication sent in the year 1990-91 in respect of the said assessment years, it was mentioned that after mixing the paddy purchased from inside the market area with the paddy purchased from outside the market area and after giving levy rice, market fee is being levied on the local sales of the rice in accordance with the decision given by the Supreme Court/High Court. The Petitioners were called upon to deposit the market fee within three days otherwise a threat was given to realise the same as arreans of land revenue u/s 20 of the Adhiniyam. The Petitioners paid the said market fee. However, after change of the Secretary communications in January and February, 1993 were sent to the Petitioners by the, new Secretary of the Samiti alleging that the Petitioners after mixing the paddy purchased inside the market area with the paddy purchased outside the market area and after giving levy rice to the Govt. the Petitioners ''possibly'' would have sold the released rice but market fee has not been paid by them on the sale, of the vice. The Petitioners were called upon to furnish the statements in the prescribed proforma for the years, 1988-89 to 1991-92 within ten days. These communications were duly replied to on behalf of the Petitioners by this Association called Foodgrains Dealers & Rice Millers

Association, Saharanpur vide their letter dated 22-3-1993 contending, inter alia, that the assessment of market fee had already been made which was paid accordingly add, therefore, reassessment cannot be made. It was, further mentioned that the required documents and proofs were now not available in respect of the subject years and in case it was necessary, the same can be traced out if time of three months was given. At the end, a request was made for discharging the notice. Thereafter, the Secretary of the Mandi Samiti sent a communication in March, 1993 to the Petitioners informing them that they failed to produce the required evidence and documents within ten days as required to prove that the sale of rice as alleged by the Petitioners, was made outsides the market area and, therefore, the Petitioners were liable to pay the market fee as if the sales were made inside the market area and market fee was levied therein which is considerable. The Petitioners wore called upon to pay the market fee within three days otherwise action, according to law, including suspension of licence and realisation as arrears of land revenue shall be initiated. After receipt of the said notices the Petitioners have filed these writ petitions with the prayers that the second demand notices be quaffed and to declare reassessment of market fee as illegal.

6. Before proceeding further it may be mentioned that Sub-clause (b) of Clause (iii) of Section 17 of the Adhiniyara which lays down powers of the Committee, empowers the Mandi Samiti to ''levy and collect'' market fee which runs as follows:

17. Powers of the Committee--A Committee shall, foe the purpose of this Act, have the power to-

(i)... .

(ii)... .

(iii) levy and collect;

(a) such fees as may be prescribed for the issue or renewal of licenses and

(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than (two) percentiles of the price of the agricultural produce so said, as the State Govt. may specify by notification, and such fee shall be realised in the following manner-

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;

(2) if the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fee to the Committee;

(3) if the produce is purchased by a trader from another trader, the tender selling the produce may realise it from the purchaser and shall be liable to pay the

market fee to the Committee; and

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee;

Provided that no market fee shall be levied or collected on the retail late of any specified agricultural produce where such sale a made to the consumer for his domestic consumption only;...

7. Explanation to Section 17 has already been extracted which release a presumption of all the sales having been made within the market area unless contrary is proved. Although Sub-clause (b) to Clause (iii) of Section Writ the Adhiaiyam empowers the Mandi Samiti to levy and collect market fee but no procedure for taking out the goods out of the market area for sale or otherwise, filing of return, for hearing at the time of assessment* limitation for completion or assessment, power of re-assessment and the like, has been laid down either in the Adhiniyam or in the Rules framed thereunder. It appears that even bye-laws as provided u/s 39 of the Adhiniyam, have neither been framed by Mandi Samiti nor by the State Agricultural Produce Markets Boards constituted u/s 26-A of the Adhiniyam (thereinafter called the ''Board'') which is apex body of the entire setup, This is despite the fact that the Supreme Court as early as in the year 1960 a the case of M/s. Ram Chandra Kailash Kumar (Supra) had drawn direction of the State Government to this aspect of the matter and suggested incorporation of machinery provisions in the Adhiniyam. When, inspite of the said observations of the Supreme Court, the State Government took no steps In this behalf, this Court was compelled to issue directions in the year 1987 m the case of Shri Mahalakshmi Sugar Works (Supra). Inspite of sereral amendments having been incorporated in the meantime in the Adhiniyam no provisions as indicated above have been enacted. Had this been done, there would have been no need to file these writ petitions and the traders would have been spared of undue harassment caused to them thereby. It is high time that the State Govt. takes appropriate steps to provide full machinery for levy and collection of fees under the Adhiniyam.

8. It is significant that u/s 17(iii)(a) of the Adhiniyam every Mandi Samiti has been empowered to ''levy and collects fees. The SttprNia Court in the case of Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., , has interpreted the word ''levy'' to include both Imposition of tax as well as Assessment. According to the said decision the word ''levy'' does not include Collection but, as observed above, Mandi Sam it is have been empowered u/s 17(iii)(a) to collect fees also. Similarly, the Supreme Court in the ease of Bharat Steel Tubes Ltd. and Another Vs. State of Haryana and Another, , has laid down that where no period of limitation is prescribed under the Statute, assessment should be completed expeditiously within a reasonable time which would depend upon the circumstances of each case. In these circumstances, it is imperative that adequate provisions should be made in this behalf for hearting and redressal of the grievances etc. of the persons who are required to pay the

fees.

9. It is no doubt true that u/s 32 of the Adhiniyam the Board "has been vested with the powers of revision so as to satisfy itself as to the legality and propriety of any decision or order passed by the Mandi Samiti -but this provision in isolation Is insufficient. Undoubtedly, there is a provision Of appeal before the Board u/s 25 of the Adhiniyam but this power of appeal relates to Section 17(ii) and not to Section 17(iii) which empowers the mandi Samiti to levy and collect fees and therefore, power of appeal u/s 25 is not available to the traders on Whom fees 1$ imposed. The Board consists of 16 persons but it may delegate its powers to any sub-committee appointed by it or to the Director or to the Member Secretary or any other officer of the Board. Similarly, u/s 33 of the Adhiniyam, the Board may delegate any of its powers subject to such conditions and restrictions and in such manner as may be specified therein, by regulations to the Director. Till the full machinery provisions are provided by the State Government, the Board will be well advised to delegate its powers for adjudication of disputes arising out of levy and collection of fees as provided u/s 26-1 or Section 33 of the Adhlniyam.

10. The Mandi Samiti also consists of several persons and it is not possible for it to assemble, hear the traders regarding levy and collection of fees and pass orders thereon. u/s 17(vii) a Mandi Samiti is empowered to appoint sub-committees, each consisting of two or more of its members, for exercising such powers, performing such duties and discharging such functions as may be assigned to them by it. It may also require Secretary to perform its functions regarding levy and collection of fees. Under Rule 56 there is a provision of constitution of only one sub-committee called ''Disputes Sub-committee'' but it does not pertain to the disputes arising out of levy and collection of Mandi fees. The only provision regarding levy and collection of fees are contained in Rules 36 and 38 which lay down no detailed procedure and are totally Insufficient for the purpose. In these circumstances the Mandi Samitl may act as mentioned above in order to mitigate the hardship caused to the traders and in order to have better collection of fees.

11. It was argued by learned Counsel for the Petitioners that once the Mandi Samiti had made assessment it was not open to it to make re-assessment of the fees in the absence of any provision in the Adhiniyam for re-assessment. On the other hand, it was urged by learned Counsel for the Mandi Samiti that what was done initially, was assessment of fees in respect of the rice sold within the market area of the Samiti and subsequently, fees was imposed in respect of the rice which was sold by Petitioners outside the market area. We are not Impressed with the argument of the learned Counsel for the Mandi Samiti because in the returns (statements) filed by the Petitioners they had given full details of the entire purchases of paddy made by them from inside and/or outside the market area and the sale or despatch by them of the rice manufactured out of it. In fact, the assessment order passed by the then

Secretary of the Mandi Samiti also clearly speaks of the entire assessment Since there Is no provision for re-assessment and as the Mandi Samiti is not empowered to do so under the provisions of the Adhiniyam, it cannot be permitted to make re-assessment. It was pointed out by the learned Counsel for the Mandi Samiti that if this view is taken by this Court, the traders in connivance with the staff of the Mandi Samiti may evade payment of fees and thereby the very purpose of the Adhinlyam shall be frustrated. On the other hand, learned Counsel for the Petitioners urged that with the experience gained and considering the change of times, some amendments are required in the directions issued by this Court in 1987 in the case of Shrl Mahalaksbml Sugar Works (Supra).

12. We have given our anxious consideration to ''these matters. We find that the State Government has failed to provide full machinery provisions in the Adhiniyam inspite of the observations made by the Supreme Court in the case of Ram Chandra Kailash Kumar (supra) and by this Court in the case of Shri Mahalakshmi Sugar Works (supra). We are also conscious of the fact that unscrupulous persons should not be permitted to get away from the liability of the fees if it is due. In these circumstances, while allowing these writ petitions in so far as they relate to re-assessment of the market fees in respect of the years 1988-89 to 1991-92, and quash the assessments and the demand notices issued in that behalf, modify the directions given by this Court in the case of Shri Mahalakshmi Sugar Works and issue additional directions which shall be applicable to all the Mandi Samitis situated in the State which cumulatively would read as follows:

(1) Every trader proposing to take out the goods manufactured or produced in the market area shall be entitled to issue of gate passes from the Mandi Samiti If he produces documents to establish that the goods were being taken out of the market area. Necessary entries shall be made by Mandi Samiti in records maintained by it;

(2) A trader taking out goods shall file a statement before the Mandi Samiti within twelve weeks Indicating therein that the goods were sold by the Commission agent or by the Petitioners themselves inside or outside the market area;

(3) In case the traders do not file the statement, the Mandi Samiti shall Issue notice to the traders after expiry of twelve weeks to file the statement within 10 days of receipt of notice;

(4) If the return Is filed, the same shall be scrutinised by the Mandi Samiti within 3 months of its filing and if it is satisfied about its correctness, then it shall pass appropriate orders levying fee. If the sale has been made in the market area and exempting in case, it has been made outside the market area;

(5) In ease the return of trader is found to be incorrect or he omits to file his return despite notice by Mandi Samiti then the Mandi Samiti shall levy market

fee on trades on the goods which had been taken out and foe which gate-pass had been issued;

(6) A Mandi Samiti shall have a right to make re-assessment In ease some material comes Into its possession after assessment within six months of passing of the order of assessment for which it shall issue a show cause notice mentioning the grounds therein on the basis of which re-assessment is proposed to be made.

13. The writ petitions are allowed In part with the directions given hereinabove. In the circumstances of the case, we make no orders as to costs.