

(1992) 09 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 996 of 1892

Sita Ram Motilal Agarwal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-09-1992

Acts Referred:

Rajasthan Agricultural Market Produce Act, 1961 — Section 2(xiv)

Citation : (1992) WLN 229

Hon'ble Judges : R.P. Saxena, J;A.K. Mathur, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Mathur, J.—By this writ petition, the petitioner has prayed that the respondents may be restrained from taking any action against him under the provisions of the Rajasthan Agricultural Market Produce Act, 1961 and Rules framed there under (hereinafter referred to as the Act of 1961) and has also prayed that Bye-law 2(7) framed by the respondent No.2 i.e. Krishi Upaj Mandi Samiti, Shivganj may be declared as ultra vires, of the Act. Lastly, it is prayed that the respondent No. 2 may be directed to release the account books of the petitioner seized by the respondents.

2. Petitioner is carrying on his business as a retail trader in food-grains, oil-seeds, sugar, cloth etc. at village Gohili, Panchayat Samiti, Sirohi for more than the last 40 years. The said village is situated within the area of Panchayat Samiti, Sirohi. By Notification dated 21st April, 1977, which was published in the Rajasthan Rajpatra dated 28th April, 1977, the State of Rajasthan issued a Notification u/s 4 of the Act of 1961 stating therein that the area comprising of Panchayat Samiti, Shivganj & Municipal Board areas of Shivganj and Sirohi shall fall in the market areas of the Krishi Upaj Mandi Samiti, Shivganj. However, by another Notification dated January 2, 1979, which was published on 18th January, 1979 in the Rajasthan Rajpatra, whereby the boundaries of the sub-market yards at Sirohi town and villages Jaiwal, Kalandri and Las was ear-

marked. Petitioner's village was of-course not declared as sub-market yard nor it was included in the principal market yard of submarket yard. It is submitted that the petitioner is a retailer and he is not required to take a license. The petitioner challenges to validity of the Bye-laws 2(6) & 2(7) framed by respondent No.2 as being ultra vires of section 2(xiv) of the Act of 1961. It is also contended that the petitioner is a retailer, therefore, he is not required to take a licence under Explanation to sub-section 2 of Section 4 of the Act.

3. A reply has been filed by the Market Committee traversing the grounds raised by the petitioner. The Market Committee contested the matter and said that the petitioner's village fall in the market area and he is not a retail trader. The market committee seized all the petitioner's account-books showing that the purchases made by the petitioner from time to time are beyond the prescribed quantities, and therefore, he is not a retail trader.

4. We have heard both the learned Counsel for the petitioner and the respondents and also perused the record. In order to resolve the controversy involved in this writ petition, it would be necessary to reproduce the definition of "Retail Sale" as defined in section 2(xiv) of the Act of 1961, which reads as under:

Section 2(xiv)- Retail Sale:

"Retail Sale" means a sale of any agricultural produce not exceeding such quantity as may be determined by bye-laws made u/s 37 or section 38, to be a retail sale in respect of such agricultural produce;

The Bye-laws 2(6) & 2(7) framed by the market Committee also read as under:

mi la- 22? 25? QqVdj fodz; & QqVdj fodz; Is rkRi;Z ,slh d`f`k mit ds fodz; Is gS ftldh ek=k vf/kdre fuEu izdkj gksxh&

1- [kk]kUu o frygu 5 fDoaVy 2- nygu 10 fdyksxzke 3- Qy lCth ?kh o elkys 5 fdyksxzke mifof/k la- 22?25? & QqVdj O;kikjh & QqVdj O;kikjh Is rkRi;Z ,sls O;kikjh Is gS tks e.Mh {ks= esa vuqKk i= /kkjh O;kikjh; ksa Is e.Mh "kqYd Hkqxrku lqnk d`f`k mit dz; djrk gS ,oe~ QqVdj ek=k esa miHkksDrkvksa dks fodz; djrk gSa

5. Mr. Dr. Bhandari, learned Counsel for the petitioner has submitted that the Bye-laws 2(6) & 2(7) are ultra vires of Section 2(xiv) of the Act of 1961.

6. Mr. M. Mridul, learned Counsel for the respondents has seriously contested this position.

7. After considering the matter, we are of the opinion that By-law 2(7) is not ultra vires of Section 2(xiv) of the Act of 1961. Section 2(xiv) only defines the "retail sales" and it means that if any person, who does not sell any agricultural produce beyond the quantity as defined by the By-laws framed u/s 37 or 38 of the Act. The Bye-law 2(6) framed by the Mandi Committee has fixed the quantity about the retail sales that means that any trader, who does not sell, agricultural produces like food-grains, oil-seeds to the extent of five quintals, pulses to the extent of ten kilo grams and fruits, vegetable ghee and spices to the extent of

five kilo grams shall be a retail trader. Therefore, by Bye-law 2(6) the quantity of the retail sale has been laid down by the Market Committee. Bye-law 2(7) defines who is a retailer, it says that a person who purchases the agricultural food-grains after paying the market fee and sells as a retailer to the consumers then such a person can only be a retailer. Therefore, by perusing the Bye-law 2(7) it is clear that it is not inconsistent with the Section 2(xiv) of the Act of 1961. In Section 2(xiv) only the quantity of retail sales has been defined and a person who sells the agricultural produce within that quantity then such a person will be treated as a retail seller. Therefore, by reading Section 2(xiv) of the Act 81 Bye-laws 2(6) & 2(7), it appears that they are consistent and Bye-law 2(7) is not ultra vires of Section 2(xiv) of the Act of 1961.

8. Next question is whether the petitioner is a retailer or not. The petitioner in this writ petition has stated that he is a retailer and the Mandi Committee in support thereof has not produced any documents before us to show that the petitioner has made any sale beyond the quantity as determined in Bye-law 2(6). All the documents produced by the Mandi Committee before us relate to the purchases of food-grains made by the petitioner from the various places. Mr. Bhandari learned Counsel for the petitioner has submitted that even Notice (Ex. 5), only talks about the purchase made by the petitioner and it does not talk about the sales what-so-ever. In fact what is fixed is quantity of the sale of agricultural produce by a trader, who claims himself to be a retailer under Bye-law 2(6). No such document, showing that any sale made by the petitioner beyond the quantity fixed under Bye-law 2(6) has been produced before us.

9. Mr. Bhandari learned Counsel for the petitioner has strenuously urged before us that he has been given a notice of purchases made by him and not sale made beyond the quantified amount as defined under the Bye-law 2(6). In the present case, the submission of Mr. Bhandari is justified. In the Notice (Ex.5), the basis for giving notice is all purchases made by him and not sales. Therefore, the basis on which the notice (Ex.5) is given is also knocked off. It was for the respondents to have shown that petitioner is not a retailer because he has made sale beyond the quantity fixed by Bye-law 2(6). Therefore, so far as Notice (Ex.5) is concerned, it is quashed and the validity of Bye-laws 2(6) & 2(7) is upheld. However, it will be open for the respondents, if they are satisfied that petitioner has made the sales beyond the specified quantity under Bye-law 2(6) and he is not retailer then to prosecute him in accordance with law. The documents which have been seized by the respondents, be returned back to the petitioner.

10. The writ petition is allowed in part.