
(2000) 02 MP CK 0066

In the Madhya Pradesh High Court

Case No : Writ Petition No. 155 of 1995

S.K. Goyal Oil Mill and Another

APPELLANT

Vs

Krishi Upaj Mandi Samiti, Indore and Another

RESPONDENT

Date of Decision : 08-02-2000

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 19

Citation : AIR 2000 MP 212 : (2000) 3 MPHT 372

Hon'ble Judges : Deepak Verma, J

Bench : Single Bench

Advocate : G.M. Chaphekar and R. Saboo, for the Appellant; S.R. Phadnis and J.B. Nirwani, for the Respondent

Judgement

Deepak Verma, J.—This order shall also govern disposal of W.P. No. 922 of 1995 (Anjane Solvent India v. Krishi Upaj Mandi Samiti) and W.P. No. 1671 of 1995 (Laxmi Solvant v. Krishi Upaj Mandi Samiti), as in all these petitions, common questions of law and facts are projected. Thus, all are being heard analagously and are being disposed of by a common order. Even otherwise, vide order dated 15-12-1999, and order dated 18-9-1996. passed respectively in W.P. No. 922 of 1995 and W.P. No. 1671 of 1995, they were directed to be heard along with this petition.

2. Even though, the question posed for consideration in the said petition, appears to have been answered by series of judgments of this Court, as well as by the Apex Court, from time to time, with each one of them, I would be dealing later, but still on account of obdurate attitude of respondent No. 1 Krishi Upaj Mandi Samiti, the petitioners have been constrained to approach this Court again for redressal of their grievances, which, I propose to deal and answer the same accordingly.

3. For the sake of convenience, the facts as extracted in the aforesaid petition are taken into consideration, which, in nutshell are as under :

(i) Petitioner No. 1 being a duly registered partnership Firm, is engaged in business of manufacturing Oil from oil-seeds from its factory situated at Indore. In the course of its business, it buys agricultural produce, i.e. groundnut for use in its factory as raw material for extraction of oil from it. The said seeds are purchased partly in the Mandi area of Indore, partly in other Mandi areas, situated within the State of M.P. and partly from place outside the State of M.P. This petition relates to claims of respondent No. 1-Krishi Upaj Mandi for levy of market fee, on the quantity of agricultural produce purchased by the petitioner from outside State of M.P. i.e. Challa"keri (Karnataka).

(ii) Mandi Committee is authorised to levy market fee on agricultural produce brought for sale in the market yard by virtue of Section 19 of the M.P. Krishi Upaj Mandi Ahniniyam, 1972 (hereinafter shall be referred to as "Adhintyam"). According to the petitioners, market Committee is entitled to levy market fee on the notified agricultural produce under three categories :--

(i) Purchase of notified goods in the market area;

(ii) Sale of notified goods in the market area;

(iii) Bringing of notified goods in the market area for sale.

When the goods are brought in the market area, not for sale, but for self consumption in its own factory, from out of State of M.P., then, in that case, it would not attract levy of market" fee, as no commercial activity of transaction is involved.

(iii) On 20-1-1995. petitioner No. 1 purchased 10 tons of ground-nut from M/s. Nayan Protiens Challakeri (Karnataka). The price thereof was paid at Challakeri. Invoice of this purchase has been filed as An-nexure-B to the petition. The truck carrying the goods reached the border of the Mandi area, which was detained by the Officers of Respondent No. 1 and market fee was demanded. Even though petitioner tried to explain that the consignment has been bought for self use and not for sale, thus it would not be liable for any fee. but. they refused to accept the petitioner"s plea and refused to allow the truck to proceed, unless fee was paid.

(iv) It was also submitted that High Court has granted stay in identical matters, thus, no market fee be charged but they refused to accede to it. Thus, under such compelling circumstances, petitioner had to deposit Rs. 1,990.00 being the market fee on 22-1-1995. Annexure-C is the receipt, issued by respondent No. 1 in this regard, with a note appended thereto that name was not found in the list of Mandi licence and the consignment was brought from out of State of M.P. thus Mandi fee was collected in cash.

(v) After payment of the Mandi fee, as mentioned above, the petitioners have approached this Court, challenging the manner, procedure and competence to levy market fee on such purchases and for its refund.

4. Respondents have submitted their return in opposition. They have justified their action of recovery of market fee on various grounds. They have contended that petitioner No. 1 being a Trader" would be liable to pay the fee. They have also referred to Section 19(1), 19(3), 19(4) and 19(5) and Section 69 of the Adhiniyam to justify the recovery. Initially they admitted that the said consignment has been brought from out of State of M.P., but by way of amendment, they half heartedly disputed this fact. It has further been contended that payment of market fee of Rs. 1.990.00 was made by the petitioners without any objections, protest or demur, which is manifest from Annexure-C. Thus, they have no cause of action for filing this petition. According to them it is nothing but an afterthought and after acceptance of the liability, the same cannot be subject matter of challenge.

5. Apart from the above, respondents have further contended, that the petition, involves disputed questions of facts, which cannot be gone into in the petition filed under Articles 226/227 of the Constitution of India and the petitioners have approached this Court without exhausting the remedy available to them under the Act and the Bye-laws framed by the Samiti. Petitioners did not hold any licence as Traders, processors etc. u/s 32 of the Adhiniyam for this reason also the petition under Articles 226/ 227 of the Constitution of India, would not be maintainable. Petitioners should have first made an appropriate representation before the Samiti, challenging the validity of the levy of the fee and only after decision on it and after availing) of the hierarchy of appeals/revisions as provided under the Adhiniyam, Jurisdiction of this Court could have been invoked. Thus, it has been contended that petition is premature.

6. In the face of the rival contentions of both the parties, I have heard them at length and perused the record.

7. Since the moot question to be considered and decided in this petition is with regard to entitlement of respondents to levy market fee, on the notified agricultural produce, it would be relevant to extract. 19 of the Adhiniyam as it stood then, which authorises the Market Committee to levy market fee. The said Section 19 of the Adhiniyam as it stood then, reads as under :

"19. Power to levy market fee -- (1) Every Market Committee shall levy market fees on notified agricultural produce brought for sale or bought or sold in the market area at such rates as may be fixed by the (State Government) from time to time subject to the minimum rate of 50 paise or minimum rate of (two rupees) for every one hundred rupees of the price in the manner prescribed :

(Provided that no Market Committee other than the one in whose market area notified agricultural produce is brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time shall levy such market fees)

(2) The market fees shall be payable by the buyer of the notified agricultural produce and shall not be deducted from the price payable to the seller;

(Provided that where the buyer of a notified agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area;

Provided further that in case of commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller);

(Provided further also that no fees shall be levied up to 31st March, 1990 on such agricultural produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market yard or sub-market yard by an agriculturist to a co-operative society of which he is a member).

(3) The market fees referred to in subsection (1) shall not be levied on any notified agricultural produce -

(i) in more than one market area, in the State; or

(ii) more than once in the same market area, if it is resold -

(a) in the case of (i) in the market other than the one in which it was brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time and has suffered fee therein; or

(b) in the case of (ii) in the same market area.

In the course of commercial transactions between the traders or to consumers subject to furnishing of declaration, in such form as may be prescribed, by the person concerned to the effect that the notified agricultural produce being so resold has already suffered fee in the other market area of the State).

(4) If any notified agricultural produce is found to have been processed without payment of market fees due on such produce, the market fees shall be levied and recovered (on double the market value) of processed products of such products.

(5) The market functionaries, as the Market Committee may by bye-laws specify, shall maintain account relating to sale and purchase (or processing) in such forms and submit to the Market Committee such periodical returns as may be prescribed."

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8. Certain amendments in Section 19 of the Act have been incorporated w.e.f. 15-6-1997. From this date, even the raw materials which have been purchased from outside State of M.P., have been made exigible for levy of Mandi fee. Learned Sr, Counsel Shri G.M. Chaphekar and Shri R. Saboo, both have informed the Court that there is no dispute after the aforesaid amendments have been incorporated in the Adhiniyam, as petitioners are now paying fee even on the raw materials purchased by them from outside, Since in this petition, there is no dispute with regard to the right of the Mandi Samiti to collect fee, even on

purchases made from outside State of M.P., after the aforesaid amendments dated 15-6-1997, the amendments so made, are not dealt with any further.

9. A perusal of the aforesaid section would show that the charging of Market fee is authorised to Sub-section (1) of the said Section 19. According to the said sub-section, the Market Committee is entitled to levy market fees on the notified agricultural produce in the following circumstances ;

(i) Agricultural produce brought for sale;

(ii) Agricultural produce bought in the market area; or

(iii) Agricultural produce sold in the market area, It is only on fulfillment of the above conditions that market fee can be levied by the Market Committee.

10. Sub-section (4) of Section 19 speaks of processing of agricultural produce without payment of market fee due on such produce. This expression "without payment of market fees due on such produce" necessarily postulates leviability of market fee in accordance will, Sub-section (1) of Section 19 of the Act, if market fee itself is not leviable u/s (1) of Section 19, the question of its becoming due does not arise. Then the charging section itself is not attracted.

11. The question projected in this petition came to be considered by a Division Bench of this High Court for the first time in the matter of Shri Sajjan Mills Limited, Ratlam Vs. Krishi Upaj Mandi Samiti, Ratlam and Others, . The relevant operative part of the order of Division Bench is quoted as under :

"It does not need much argument to say that the respondent No. 1 is not entitled to charge any market fee on the agricultural produce purchased outside the market area and then brought it within that area. This is clear from the language used in Section 19 of the Act itself. Before a buyer of any notified agricultural produce is subject to payment of market fee, it has to be established that the notified agricultural produce was brought for sale or bought or sold in the market area. When the petitioner purchased notified agricultural produce (Cotton) outside the market area and then brought it within the market area for its use in the Mills, it cannot be said that the agricultural produce (Cotton in the present case) was bought for sale or brought and sold in the market area of the Krishi Upaj Mandi, Ratlam. Clearly, therefore, the respondent No. 1, could not recover any fee for such agricultural produce. We hold the petitioner not liable to pay any market fee for the cotton or any other agricultural produce specified in the schedule to the Act which was purchased by it outside the market area and which was not brought for sale or bought or sold in the market area. We further hold that the levy and recovery of market fee on such agricultural produce by the respondent No. 1 is invalid."

12. Reading of the aforesaid Judgment makes it clear that the two undernoted points were decided against the Mandi;

(i) Increase of Mandi fee from Rs. 0.50 paise to Rs. 1.00 per hundred rupees

worth sale with in the market area was held to be invalid as there was no quid pro quo.

(ii) Mandi Committee was not entitled to charge any Mandi fee for the notified agricultural produce purchased outside, the State of M.P, and brought within the State for self-consumption or processing. Such levy was held to be invalid.

13. Krishi Upaj Mandi Samiti Ratlam, feeling aggrieved by the aforesaid order of the High Court, filed C.A. No. 2520 of 1981 in the Supreme Court, which was decided on 20-7-1995. From perusal of the judgment of Supreme Court, it is manifest that Mandi Samiti had challenged only the first aforesaid point, decided by High Court against it. That is to say striking down of the increase from Rs. 0.50 paise to Rs. 1.00 per hundred. Above noted Point No. 2 decided against the Mandi, was not challenged by it before the Apex Court.

14. Supreme Court allowed the appeal holding as under :

"For the above reasons, we allow the appeal, set aside the judgment of the High Court and uphold the increase in the market fee by the Market Committee, Ratlam. No costs."

15. Thus, the question which was neither raised nor challenged by the Market Committee, could not have been considered, nor was decided by the Apex Court. Only that part of the judgment of the High Court was set aside, whereby it had held the increase from 0,50 paise to Rs. 1.00 being valid. The remaining part of the judgment of the High Court, in the matter of Shri Sajjan Mills Limited, Ratlam Vs. Krishi Upaj Mandi Samiti, Ratlam and Others, was kept intact, without disturbing the findings recorded by it. Thus, the Apex Court has put its seal of approval on the other findings, recorded by the High Court.

16. From the narration of aforesaid facts and position of law it emerges and stands concluded, that no market fee was leviable on the agricultural produce brought from outside the State of M.P. for self-consumption, use or for processing. Once the aforesaid legal position was settled, there could not be any justification on the part of the Mandi to recover mandi fee on such consignments.

17. However, similar question cropped up for consideration again before a Division Bench, in Misc. Peth of Shri Satyanarayan Trading Co. v. Krishi Upaj Mandi Samiti decided on 1-9-1995, by the main seat at Jabalpur. The relevant portion may be quoted usefully as under :

"Our attention is invited to a decision of the Division Bench of this Court in Shri Sajjan Mills Limited, Ratlam Vs. Krishi Upaj Mandi Samiti, Ratlam and Others, wherein it has been held that when agricultural produce is purchased outside the market area and thereafter brought within that area for use in the Mills and not for further sale, mandi fees is not leviable. With respect, we agree that this is the correct position emerging from reading of Section 19 of the Act. Annexure-P1, themselves make it clear that the agricultural produces covered by those notices were purchased from outside the State and brought within the local area for the

purpose of being used as raw materials in the mills of the person concerned. That being so, in regard to agricultural produce covered to Annexure-P3, no mandi fee is leviable at all".

18. Even after the aforesaid judgments of this High Court and Supreme Court, the question cropped up again in number of cases. In all the cases, the steady and consistent view has been that no market fee would be leviable or chargeable on the agricultural produce brought from outside State of M.P. for self-consumption and use. The aforesaid reasons and findings have been recorded consistently in the following cases :

(i) SLP (Civil) No. 22698 of 1994 (Krishi Upaj Mandi Samiti Dewas v. Vippy Solvex Products Ltd. decided on 26-4-1996 by the Supreme Court.

19. In the aforesaid judgment, it has been reaffirmed the question that was raised and decided by the Supreme Court in the matter of Sajjan Mills Ltd. It has been held as under :

"As regards the decision in Krishi Upaj Mandi Samiti v. Sajjan Mills Ltd. (C.A. No. 2520 of 1981 decided on July 20, 1995) the only question that was raised before this Court was whether the enhancement of the market fee from 50 paise to one rupee was valid, This Court, after holding that the principle quid pro quo was not applicable, has upheld the increase in the market fee by the Market Committee, Ratlam and has set aside the judgment of the High Court in that regard. The said judgment does not deal with the finding recorded by the High Court that under the Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972, market fee could not be levied in respect of an agricultural produce brought from outside for consumption which was neither bought nor sold within the market area. In view of the Sub-section (1) of Section 19 of the Krishi Upaj Mandi Samiti Adhiniyam, the High court has rightly held that market fee was not payable on Soyabean brought from outside market area into the market area for the purpose of extraction of oil."

20. Few more judgments/orders of this Court on the aforesaid question, have been dealt within the following matters : M.P. No. 1841 of 1995 (Alpine Industries Ltd. v. Krishi Upaj Mandi Samiti Neemuch) decided on 25-8-95; M.P. No. 206 of 1990 (Shri Bajrang Extractions Pvt. Ltd. v. Krishi Upaj Mandi Samiti Dhar) decided on 7-10-1994; M.P. No. 891 of 1991 (The Malwa Vanaspati & Chemical Col. Ltd. Indore v. Krishi Upaj Mandi Samiti Indore) decided on 5-12-1991 and M.P. No. 825 of 1974 (Tilakraj Juneja v. State of M.P.) decided on 25-9-1978 reported in 1979 MPWN (SN) 255. .

21. The matters of M/s. Malwa Vanaspati (supra) and Tilakraj Juneja (supra) were taken to the Supreme Court. In the matter of Tilakraj Juneja, Apex Court had dismissed the appeal of Krishi Upaj Mandi Samiti and confirmed the findings recorded by the Division Bench, wherein it was held that merely by bringing the raw material within Mandi for self-consumption and use, no element of sale and purchase was involved, hence the question of charging of Mandi fee would not

arise. In the case of M/s Malwa Vanaspati, matter was remanded to Mandi Samiti i.e. Market Committee, to determine the question, whether the Soyabean in dispute was purchased from outside the market area and also whether it was being used by the Company concerned for all extraction.

22. However, in the case in hand, the denial of the respondent that the goods were not brought from outside State of M.P, cannot be believed, Documents Annexure-B Invoice & C, respondents' own receipt fully prove to the satisfaction of this Court that the raw material was purchased and bought at Chellakeri and the sale was complete at Chellakeri itself. As has been mentioned earlier, there is only half hearted denial of the respondents to this fact, that too made by way of amendment. There does not appear to be any genuine, bona fide and honest denial of this fact. It appears to have been made on account of orders/judgments of this Court and Supreme Court passed in several matters from time to time. Thus, the said denial is of no consequence and the same cannot be treated at such. Petitioner's pleadings in para 5(g) and 5(h) show that they have pleaded specifically that the consignment of groundnut was purchased at Chellakeri, the payment thereof was also made there only. Thus the transaction of sale was completed there. Apart from the aforesaid pleadings Annexure-B Invoice and Annexure-C respondent's receipt charging Mandi fee on these said consignment fully corroborated the petitioner's pleadings.

23. As against these pleadings and documents, respondent's return in paras 5(g) and 5(h) show that they have said even if the consignment was purchased from Karnataka, Mandi fee would be leviable as the same was not paid to any of the Mandis in M.P. as contemplated under the Adhiniyam. In para 5(h) they have stated that for the reasons mentioned above, the demand of market fee and realisation of the same is in accordance with law as shown above in para 3 and para 5(b) above. Further with regard to petitioner's pleadings contained in para 5-C of the petition the respondents have admitted the said para 5(c) except that the present quantity of groundnut was actually purchased at Indore.

24. That the critical examination of the pleadings of parties show that there was no specific and categorical denial of the fact that petitioners had purchased the groundnut at Chellakeri, which is admittedly out of the State of M.P. Their denial was an afterthought and half hearted. Such denial does not amount to raising of disputed questions of facts. Thus, from the averments of parties, and documents I am of the considered opinion that it is manifestly proved from the same, that the groundnut was purchased by the petitioners from challekari, a place out of the State of M.P.

25. Now I shall deal with the Judgments which have been referred to by Shri S. R. Phadnis learned counsel for the respondent. First case on which the placed reliance is reported In Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, . This was a case where provisions of U.P. Krishi Utpathan Mandi Adhiniyam were considered. While interpreting Section 17(iii)(b) of the aforesaid Adhiniyam, their Lordships have held that "sale of goods in

particular Market Area is a must". Para 29 of the said judgment which deals with this aspect of the matter is reproduced herein below :

"29. This point urged on behalf of the appellants is well founded and "must be accepted as correct. On the very wordings of clause (b) of Section 17(iii) market fee is payable on transactions of sale of specified agricultural produce in the market area and if no transaction of sale takes place in a particular market area no fee can be charged by the Market Committee of that area. If goods are merely brought in any market area no fee can be charged by the Market Committee of that area. If goods are merely brought in any market area and are despatched outside it without any transaction of sale taking place therein, then no market fee can be charged. If the bringing of the goods in a particular market area and their despatch therefrom are as a result of transactions of purchase and sale taking place outside the market area, it is plain that no fee can be levied."

26. He then referred to State of Maharashtra Vs. Kamla Mills Limited and Others, , This was a case with regard to payment of Sales Tax under Bombay Sales Tax Act, 1953. It has been held as under :

"We are of the opinion that the question whether the transactions were assessable to tax under the Act or not, is a question of fact which must be gone into by the appropriate authorities under the Act. It would have been different matter if the High Court had discussed the facts and had recorded a finding thereon, in which situation we would not have been inclined to remit the matter back to the appropriate Authority as we are proposing to do."

As has already been held by me in the earlier paras that the consignment in question was purchased at Chellakari, thus there does not appear to be any dispute in this regard. Thus the said judgment is of no help to the respondents.

27. It was then contended, as has been held in the matter of Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., , that levuy of Market fee was valid by Market Committees, on sale and purchase of Bamboos, Irrespective of the fact whether it was for resale or self-consumption by the purchaser. But admittedly in the aforesaid case, bamboos were purchased within the local areas of different Market Committees, either at one place or several places, but within the State of M.P. Thus, there would not be any dispute with regard to the proposition of law as propounded in the aforesaid judgment, Thus, in the considered opinion of this Court, even this order does not clinch the issue in favour of the respondents.

28. Yet another judgment of the Supreme Court on which reliance has been placed is reported in Himachal Pradesh Marketing Board and Others Vs. Shankar Trading Co. Pvt. Ltd. and Others, . This was a case where respondent company was engaged in manufacturing of "katha" from khairwood and question was with regard to obtaining of licence u/s 4(3) of H.P. Agricultural Produce Markets Act 1969. The Supreme Court held in para 25 as under : "The writ petitioners even though are producing katha, a specified agricultural produce by processing

khairwood, a natural produce grown in the farm, in our view, cannot claim exemption from the requirement of obtaining licence u/s 4(3) and payment of levy u/s 21 because they themselves have not grown the khairwood but have purchased the "agricultural produce" Khairwood grown by others and then processed the same to obtain katha even though katha itself is a specified agricultural produce."

Since the writ petitioners, themselves were not the producers of Khairwood, a natural produce grown in the farm, Court held that it would not be entitled to claim exemption.

29. Lastly learned counsel for respondents cited (1998) 1 N.P.W.N. 50 (Gaurav Traders v. Krishi Upaj Mandi Samiti Pandri) to contend that as alternative remedy under Statutory Provision was available under the Adhiniyam, therefore petition under Article 226 cannot be entertained. This case shall also be of no help to the respondents as alternative remedy is of no avail to the petitioners as ultimately, the question to be decided is with regard to right of the Mandi Committee to recover Mandi fees. Apart from the above all these petitions, were directed to be listed for final hearing and matters have been pending in this Court for last five years. In the considered opinion of this Court, it would be too harsh on the petitioners to throw the petitions now on the ground of availability of alternative remedy.

30. The plea of the respondents that under Bye-Law 29 of the Samiti, remedy provided, should have been exhausted would also be of no help to them. This Bye law does not apply to the facts of the case.

31. Thus considering the matter from all angles I hold that respondent Samiti was not justified in recovering the Mandi fees on the goods purchased by the petitioners from out of the State of M.P. for self-consumption as there was no element of sale or purchase involved within the area of Market Committee. Thus the recovery of Mandi Fees was invalid. As a necessary consequence thereof. It is directed that the amount of Mandi fees collected by the respondents has to be returned back to the petitioners. This has been so directed in the matter of M.P. No. 1561 of 89 Vippy Solvex Products Ltd. v. Krishi Upaj Mandi Samiti decided on 7-10-1994.

32. Supreme Court Has also held in the matter of Salonah Tea Co. Ltd. and Others Vs. Superintendent of Taxes, Nowgong and Others, , where petition is for refund of tax illegally or unauthorisedly collected, Court normally directs refund by way of consequential relief. Since, it has been held that the Mandi fee was collected illegally, by the respondents, as a necessary corollary, the same is to be refunded by the respondents.

33. In the result I allow this and the connected petitions and issue undernoted instructions :

(a) The respondents are held not entitled to recover any market fee for

agricultural produce, when bought from out of State of M.P. for self-consumption.

(b) The respondents shall refund the amount of Rs. 1990.00 collected by them from the petitioners as Market fees and similar amounts Collected by them from other two petitioners.

Parties to bear their own costs. Security amounts be refunded back to the petitioners in all the petitions, subject to its verification.

A copy of this order be kept in each of the connected petitions.