

(1990) 12 MAD CK 0012
In the Madras High Court

South Arcot Market Committee and Another	APPELLANT
Vs	
The South Arcot District Co-operative Spinning Mills Ltd.	RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 1 MLJ 202

Hon'ble Judges : Raju, J

Bench : Division Bench

Judgement

Raju, J.—These three writ appeals are dealt with together since common issues, both on facts and law, are involved for consideration. The

above appeals have been filed against the common order of the learned single Judge, dated 25.3.1983 made in W.P. Nos. 3684 of 1977, 5006

and 5007 of 1978 which were disposed of along with a batch of similar cases.

2. The respondent herein, which is a Co-operative Spinning Mills, started functioning from 15.8.1964 and commenced commercial production on

5.2.1966. The respondent has been engaged in the manufacture of fine count yarn used in Handloom Industry and effects supply of its product

mainly to handloom weavers which is the primary object of the respondent functioning under the provisions of Tamil Nadu Co-operative Societies

Act and the Rules made there under. The only raw material required for the manufacture of fine count yarn is cotton and the respondent purchased

the required cotton lint both from the local producers in the State as well as from various producers outside the State, viz., the State of

Maharashtra, Gujarat and Karnataka. A sizable quantity of their required raw materials is also imported from foreign countries like Sudan, Russia

etc., through the cotton Corporation of India. The cotton lint purchased from other States is popularly known in commercial parlance as upcountry cotton lint.

3. The appellants are the authorities functioning under and concerned with the enforcement of the provisions of the Tamil. Nadu Agricultural

Produce Markets Act, (Tamil Nadu Act XXIII of 1959,) hereinafter referred to as the Act and the Rules made thereunder. The said Act had been

enacted to provide for the better regulation of buying and selling of agricultural produce and the establishment and proper administration of markets

for agricultural produce in the State of Tamil Nadu with the avowed object of enabling the agricultural producer to secure a fair price for his

produce and to regulate the buying and selling of commercial crops by providing suitable and regulated market by eliminating middlemen and

bringing face to face the producer and buyer so that they may meet on equal terms thereby eradicating the scope for exploitation in dealings. Under

the provisions of the Act, the Government establishes a market committee for every notified area and the said authority is entrusted with the

exercise of powers and obligations to perform the duties imposed under the provisions of the Act and the Rules made thereunder. It may not be

necessary to deal with in detail the provisions of the Act and the Rules made thereunder except to refer to Section 18 which is the provision

empowering the market committee ""to levy a fee on any notified agricultural produce bought or sold in the notified market area at a rate not

exceeding forty-five paise and subject to a minimum of twenty-five paise for every hundred rupees of the aggregate amount, for which the notified

agricultural produce is bought or sold whether for cash or for deferred payment or other valuable consideration."" Explanation 1 to the said section

provides that for the purposes of the said provision ""all notified agricultural produce taken out or proposed to be taken out of a notified market

area shall, unless the contrary is proved, be presumed to be bought or sold within such area."" It is worthwhile mentioning at this stage itself that the

charge is on the event of buying or selling in the notified market area and a rebut-table presumption has been enacted to presume a notified

agricultural produce which is taken out or proposed to be taken out of the notified market area to have been bought or sold within such area. So

far as the case on hand is concerned, there is no dispute that the cotton is a notified agricultural produce in the market area in question.

4. The respondent invoked the jurisdiction of this Court under Article 226 of the Constitution of India in the following circumstances. According to

the respondent from the inception, they have been purchasing cotton both from the producers inside the State as well as from outside the State and

from abroad, that though cotton was a notified produce in the area from 1972 onwards, no fee was collected on the upcountry cotton lint

purchased from an outside State Producer and from abroad till 1974 and on 9.8.1974 the second appellant for the first time required particulars

from the reasonable regarding the cotton imported from abroad as well as purchased from other States for the period from 1.4.1972 onwards and

consequently on 23.4.1975 raised a demand against the respondent for a sum of Rs. 48,898.20 purporting to be the fee due under the provisions

of the Act in respect of cotton lint purchased by the respondent from the producers outside the State of Tamil Nadu. The respondent questioned

the authority of the appellants and also made representations to the Government which after getting some reports from the first appellant behind the

back of the respondent, appears to have passed an order on 16.5.1977 that the payment of the levy to the market committee in respect of

purchases made outside the State of Tamil Nadu would depend upon the facts of the case. Thereupon, the appellants appear to have instituted

proceedings for prosecution invoking powers u/s 8(1) read with Section 25(a) and (b) of the Act which made the respondent to approach this

Court with the writ petition in question. The levy in respect of the transactions in question was challenged on several grounds involving

interpretation of Section 18 of the Act and also contentions based on Articles 301 and 304 of the Constitution of India. It was also the contention

of the respondent that the Market committees functioning in the places of the origin of the goods outside the State of Tamil Nadu , have charged

and collected the fee due under the respective Acts in force in those States and that inspite of time sought for to produce the receipts to evidence

such payment, the second appellant, without complying with the reasonable request of the respondent, rushed to the Court with criminal

prosecution.

5. W.P. No. 3684 of 1977 against which W.A. No. 856 of 1988 has been filed was for a mandamus restraining the second appellant from making any demand of market levy against the respondent in respect of purchase of upcountry cotton lint pursuant to the notice dated 14.9.1977 for the period between 1.6.1975 and 30.6.1977. Likewise, W.P. No. 5006 of 1978 against which W.A. No. 866 of 1988 has been filed was for a writ of mandamus restraining the appellants from demanding market levy in respect of upcountry cotton pursuant to the notice dated 26.8.1978 for the period from 1.4.1977 to 31.3.1978. W.P.No.5007 of 1978 against which W.A. No. 857 of 1988 has been filed was for a writ of mandamus to restrain the appellants from demanding market levy in respect of upcountry cotton lint pursuant to the notice dated 27.5.1977 for the period between 1.4.1972 to 31.5.1975.

6. The first respondent has filed a counter affidavit and additional counter affidavit in W.P.No.3684 of 1977 contending that the impugned levy of fee is quite in accordance with the provisions of the Act and the Rules made thereunder, that the notified produce bought or sold within the notified area was subject to levy irrespective of the origin of the goods, that the levy has been made only in respect of purchase or sale made within the notified area and not on sales concluded outside the notified area, that since no fee has been levied or collected on the produce which is not sold or purchased within the notified market area, there was no illegality in levying the fee in question and that unless the respondent proves that the sale had taken place outside the market area, the notified agricultural produce is subject to levy of fee and there has been no violation of either the provisions of Section 18(1) of the Act or the provisions of the Constitution of India. That apart even at the time of arguments before the learned single Judge, as could be seen from the judgment under appeal, the learned Counsel for the appellant, apparently in line with the stand taken in the counter affidavit, referred to the above, is said to have candidly stated ""if the court comes to the conclusion that the sale transaction under which the petitioner purchased the upcountry cotton lint took place in the State of Maharashtra, then, no fee would be leviable under the Act against the petitioner on the upcountry cotton lint purchased by the petitioner"".

7. After Considering the submissions of the learned Counsel appearing on either

side, the learned single Judge allowed the writ petition as prayed for holding that the sales in question took place in the State of Maharashtra where the property in the goods passed to the respondent and the fact that the respondent was to take delivery at Chidambaram after obtaining the railway receipt on payment of money to the bankers could not in any way prevent the passing of the property on the date of the contract of sale at Maharashtra in view of the provisions of Section 20 of the Sale of Goods Act, 1930. At the same time, the learned single Judge repelled the submission of the respondent on the question of competency of the State legislature to provide for such a levy and held that the State Legislature had power to authorise the levy of fee under Entries 14 and 28 read with Entry 66 of List II of the Seventh Schedule to the Constitution of India. The appellants, aggrieved against the same, have filed the above appeals.

8. Before us, Mr. B. Lakshminarayana Reddy, learned Counsel appearing for the appellant submitted that the learned single Judge ought to have applied the provisions of Section 22 of the Sale of Goods Act instead of Section 20 and arrived at the conclusion that the sale of goods bought by the respondent was concluded only within the notified area. Though a plea has been raised questioning the legality of the action of the learned Judge entering into a decision on factual issues, while exercising Jurisdiction under Article 226 of the Constitution of India, in our view, the same has not been rightly pursued with the required effectiveness. There was no dispute on the facts and circumstances of the case about the nature of the dealings. As could be seen from the order of the learned single Judge, the relevant and the required factual details were not in controversy and were almost admitted. What remained to be done by the learned single Judge was only to arrive at a conclusion in the light of governing principles of law appropriate to the case on hand and the parties have also chosen to go into those controversies by making relevant submissions. That being the position, we consider that no exception could be validly taken to either the legality or the propriety of the learned single Judge entering upon any adjudication of the issues regarding the status of sale raised before him. We see, therefore, no force in the hesitant submission in this regard which requires a reference to be, merely rejected.

9. On the question as to whether the dutiable event under the Act, namely,

buying or selling happened within the notified area under the Act warranting the levy of fee, it has been contended on behalf of the appellants that in the light of the provisions contained in Section 22 of the Sale of Goods Act, the sale should be considered to have been concluded only within the notified area, Mr. Vijayanarayanan, learned Counsel appearing for the respondent reiterated the submissions made before and the reasoning of the learned single Judge to plead that the order of the learned single Judge does not call for any interference. Before proceeding with the consideration of the issue as to whether the nature of the transactions have to be determined in the light of Section 20 or 22 of the Sale of Goods Act, 1930, it is necessary to refer to certain common points of fact over which there was no controversy between parties either before the learned single Judge or before us.

10. The fact that on the date on which the contract with regard to sale of the upcountry cotton was entered into between the respondent and his vendor at Maharashtra, the upcountry cotton lint was in the State of Maharashtra and that the said commodity constituted specific goods in a deliverable state within the meaning of the Sale of Goods Act was beyond controversy. Further, the sale note indicated the sale of the commodity as on the date of the document subject to certain conditions and the railway receipt was taken in the name of the respondent-purchaser as consignee and the goods were despatched to the respondent at their risk and not at the risk of the seller. The price was already ascertained and determined and did not depend upon any subsequent activities like weighing, measuring, testing or doing some other thing with reference to the ascertainment of the price thereby resulting in postponement of the transfer of property in the goods until Such act or thing is done and the buyer had notice thereof. In our view, the learned single Judge meticulously considered the issue with reference to the relevant and appropriate provisions of the Sale of Goods Act as the case law on the subject and arrived at a finding in the following terms:

It is therefore clear that Section 22 will not be attracted unless the measurement, weighment, test or any other act has to be done by the seller for the purpose of ascertaining the price. In this case the sale note dated 4.2.1974 entered into by the petitioner with Jairamdas Bhahchand, has fixed

the quantity, the quality, and the price for the cotton to be sold. It clearly shows that the property is in a deliverable State. Merely because it is

stated that selection and weighment will be at Mills will not prevent the property in the goods passing to the petitioner on the date of the contract of

sale. It is not stated and it could not be stated that the selection and weighment at Mills have to be done for the purpose of determining the price,

since the price has already been determined. Similar is the case with regard to the contract of sale entered into by the petitioner with Rallis India

Limited. Clause 3 of the Special Terms merely states: "Final weights and tares to be ascertained conjointly within three days of the arrival of the

goods at Chidambaram claims for quality, weight and tare will not be valid unless made within 10 days from the arrival of the goods." This

condition also does not say that weights and tares to be ascertained by the seller for the purpose of determining the price. The price, quality and

quantity have already been fixed. Therefore, Clause 3 of the special terms and conditions is just for the purpose of the satisfaction of the buyer viz.,

the petitioner. Merely because, it is stated that the final weights and tares have to be ascertained conjointly, it does not in any way lead to the

inference that such ascertainment of weights and tares have to be made for the purpose of determining the price. I, therefore, reject the contention

that Section 22 of the Sale of Goods Act is attracted to the facts of this case. I have therefore no hesitation in holding that the property in the

goods passed to the buyer in the State of Maharashtra. The fact that the petitioner was to take delivery at Chidambaram after obtaining the railway

receipt on payment of money to the bankers could not in any way prevent the passing of the property on the date of the contract for sale at

Maharashtra.

The learned single Judge to arrive at the said conclusion also found justification in certain admissions made in the counter affidavit as well as the

communication dated 21.8.1979.

11. The learned Counsel for the appellants sought to challenge the above conclusions of the learned single Judge by relying upon the decisions

reported in Carona Sahu Co. Ltd. Vs. State Maharashtra, , Seth Pushalal Mansinghka (P.) Ltd. Vs. Commissioner of Income Tax, Delhi,

Rajasthan and Madhya Pradesh, , British India Corporation Ltd. Vs. Market

Committee, Dhariwal and Another, and General Papers Limited Vs.

A.P.A. Pakkir Mohideen and Brothers, . The learned Counsel for the respondent referred to the decisions considered by the learned single Judge

in his order under appeal. The decision in Carona Sahu Co. Ltd. Vs. State Maharashtra, , has no relevance to the case on hand, since it

considered a case relating to a contract for sale of unascertained goods and the scope of Section 23 and 25 of the Sale of Goods Act. The

decision in Seth Pushalal Mansinghka (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, Rajasthan and Madhya Pradesh, , though dealt with the

question of situs of sale, in determining the question of liability of tax under the Income Tax Act, 1922 and the Part B States (Taxation Concession)

Order, 1960, turned upon the peculiar facts and circumstances of the case where the goods were despatched consigned to self by the seller and

the seller was found to reserve to himself and retain the right of disposal so as to prevent the property passing to the purchaser. The decision in

British India Corporation Ltd. Vs. Market Committee, Dhariwal and Another, , also turned on the specific provision contained in Rule 29(7) which

deemed certain transactions to have been bought or sold in a notified market area and there is no such plea in the case on hand either before the

learned single Judge or before us. The decision of a Division Bench of this Court reported in General Papers Ltd. v. Fakkir Mohideen AIR 1968

Mad. 482 is also one relating to the transfer of property is unascertained goods and with reference to the scope of Section 23 of the Sale of

Goods Act for purposes of Section 20(e) of the CPC 1908 in determining the territorial jurisdiction of Courts. On the other hand, we are of the

view that the decisions considered by the learned single Judge including the one reported in Badriprasad v. State of M.P. AIR 1966 S.C. 586

were the relevant and appropriate one for the case on hand and the correct legal principles have been applied to the facts of the case by the

learned single Judge in arriving at a conclusion on the situs of the sale in question by applying the provisions of Section 20 of the Sale of Goods

Act. On a careful consideration of the materials placed before us, we are of the view that the findings of the learned single Judge were not only

appropriate but unexceptionable and recorded correctly and we have not been persuaded to come to any different conclusion than the one arrived

at by the learned single Judge on the indisputable factual position in the present case. We, therefore, see nothing wrong in the said findings warranting our interference.

12. Having regard to the conclusion of ours that the sale was completed outside the State of Tamil Nadu, it should inevitably follow that the fee

cannot be levied u/s 18(1) of the Act and the rules made thereunder. The dutiable event under the Act which only can be said to attract liability to

pay the fee being not bringing the notified Product into the notified area but on account of such goods being ""bought or sold in the notified market

area..." which has been held to be conspicuously absent in the case on hand, the respondents are not liable to pay any fee in respect of such

transactions concluded outside the State of Tamil Nadu and outside the notified area. The statute in question has enacted a rebut table presumption

only in respect of goods leaving out of the notified market areas and not those coming into the market area. The appellants have been conferred

with the authority to levy the fee in question only on notified agricultural produce bought or sold in the notified market area and not those merely

brought into such area. The event of buying or selling, unless is established to have occurred within the notified market area, there is no authority in

the appellants to impose any levy of fee u/s 18(1) of the Act. That apart in the present case, the respondent specifically pleaded that having regard

to the fact that the sales or purchases were effected in the State of Maharashtra, the relevant duty due under the similar enactment in force in

Maharashtra has been paid to the Market Committee of the said area and given sufficient time the records and receipts may be produced by them.

This position was never disputed in the counter affidavit and the same was not also in issue before the learned single Judge and consequently we

find no error in the order of the learned single Judge allowing the writ petitions.

13. For what all has been stated above, we see no reason to interfere with the order of the learned single Judge. The writ appeals fail and are

dismissed. But the circumstances, there will be no order as to costs.