(1985) 04 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Appeal No''s. 153 and 154 of 1982

Sri Lakshmi Dry Fish Traders and — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 10-04-1985

Acts Referred:

Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 — Section 2, 3(3), 7(1)

Citation : AIR 1986 AP 330

Hon'ble Judges : P. Chennakesav Reddy, Acting C.J.;Sardar Ali Khan, J

Bench : Division Bench

Advocate : K. Jwala, for the Appellant; Govt. Pleader for F. and A. and M.S. Prasad for AMC, for the Respondent

Judgement

P. Chennakesav Reddy, Actg. C.J.

1. In these writ appeals a question of general interest and frequent occurrence is raised for decision. The question is whether the definition of ''livestock'' in S.2(v) of the A. P. Agricultural Produce and Livestock Markets Act, 1966 (hereinafter referred to as the Act) takes within its scope and ambit also ''dry fish'' as and the declaration made by the Government under S. 3(3) of the Act specifying ''dry fish'' as ''livestock'' in Schedule II to the notification of the State Government published notification of the State Government published in the A. P. Gazette dt. 7-11-1978 is valid.

2. The writ petitioners are dealers i dry fish. A notice was issued to the petitioners by the Agricultural Market Committees, Itchpuram, asking them to obtain necessary licence by paying the necessary fee under S. (91) (7(1)?) of the Act on the ground that they were carrying on business of purchase and sale in agricultural produce. But the petitioners did not obtain the necessary licence and carried on their business in 1980. The petitioner sent a reply to the Agricultural Market Committee informing them that the business in dry fish does not come within the purview of the Act and therefore there was not necessity to obtain any

licence. As the petitioners continued to carry on their business without obtaining any licence under S. 7(1) of the Act, criminal cases were instituted against the petitioners and some others. Aggrieved against the prosecution the petitioners filed the writ petitions. The learned single Judge (Raghuvir, J., dismissed the writ petitions) holding that the word ''fish in S.2(v) of the Act includes ''dry fish'' also and so the notifications was valid. This indeed, is the genesis of the writ appeals.

3. The only question for decision is whether ''dry fish'' is livestock falling within the definition of livestock in S.2(v) of the Act. It is, therefore, necessary to read the definition of ''livestock'' in S.2(v) of the Act.

"2(V) ''Livestock'' means cows, buffaloes, bullocks, bulls, goats and sheep and includes poultry, fish and such other animals as may be declared by the Government by notification to be livestock for the purposes of this Act."

It would be useful also to read the definition of ''products of livestock'' in S.2(xv) of the Act.

"2(Xv) ''Products of livestock'' means such products of livestock as may be declared by the Government by notification, to be products of livestock for the purposes of this Act."

4. In the Impugned notification dt. 7-11-1978 in the group-V the livestock ''fish'' is not included. What are included in that group are : 1) Bull, 2) Bullock, 3) Cow, 4) Beifer, 5) Buffalo (Bull), 6) He Buffalo, () Sheep and 10) Goats. In group VI of the Livestock Product what are include are : 1) Raw Hides, 2) Raw skins 3) Bones, 4) Horn and Hoof, 5) Hair and wool and 6) Ghee, ''Fish'' group is separated from ''livestock'' group and in this group what are included are : 1) Live Fish including fish with or without life in any form (inserted by G. O. Ms. No. 406 F & A, dt. 21-7-1980), 2) Dry fish and 3) live Prawn including Prawn with or without life in any form. Again under the group of ''poultry'' (group VII) only Hens, Ducks, and Cocks are included.

5. A close look at the definition of ''Livestock'' would at once make it clear that the definition takes within its scope and ambit only animals with life. The meaning of the ''livestock'' given in the Concise Oxford Dictionary also is, animals kept or dealt in for use of profit. In the Chambers 20th Century Dictionary the meaning given for ''livestock'' is "domestic animals, esp., horses, cattle, sheep and pigs." The definition of ''livestock'' is widened under the Act to include ''poultry'' ''fish'' and such other animals as may be declared by the Government by its notification as ''livestock'' for the purpose of the Act. Even if ''fish'' is considered to be an ''animals'' the ''dry fish'' in our opinion, cannot fall within the sweep of the definition of ''Livestock'' is also made clear by the impugned notification itself (extracted above) where ''dry fish'' is not included in the ''livestock'' group. It is now well settled that, in construing the word in a taxing or penal statute, it should be understood as in common parlance and not in any technical sense nor from any botanical point of view. We cannot read into the definition words which are not found in it. The definition of ''Livestock'' includes

''fish'' and such other animals as may be declared by the Government by its notification as livestock. The Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , while construing the word ''vegetables'' observed after referring to several decided cases, that "the word ''vegetables'' in taxing statues is to be understood as in common parlance, i.e., denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table." We find it difficult to hold that in common parlance when a customer asks for ''fish'' he means dry fish also. ''Fish'' is understood in common parlance only as ''wet fish'' with or without life.

6. The learned Government Pleader, however, invited our attention to the decision of the Supreme Court reported in Chimanlal Premchand Vs. The State of Bombay, and attempted to garner support from the observations contained therein to the effect that "cotton, ginned or unginned, continued to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any the less ''cotton'' specified in the Schedule to the Act". Therefore the Supreme Court was only concerned with the question whether cotton ginned or unginned, continues to be cotton till it loses its identity by some chemical or industrial process. As observed by the Supreme Court, cotton there had not undergone any change, but in the case on hand ''fish'' is undoubtedly a different product from the ''dry fish''. Fish has undergone a change, i.e., fish with or without life and after change alone whether due to exposure to the sun or any other chemical treatment becomes dry fish. In our opinion the decision of the Supreme Court far from lending any support to the learned Government Pleader fortifies our conclusion.

7. In the result the writ appeals are allowed and the impugned notification in so far as the inclusion of the ''dry fish'' in Schedule II to the said notification is concerned is quashed. No costs. Advocates'' fee Rs. 150/- in each.

8. The learned Government Pleader as well as the learned Standing Counsel of the Agricultural Market Committee make oral applications for leave to appeal to the Supreme Court. In our opinion no substantial question of law of general importance which requires to be considered by the Supreme Court arises in these cases. The oral request, is therefore rejected.

9. Appeals allowed.

