
(1984) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1854 of 1975

Vishwakarma Timber Mart

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 01-05-1984

Acts Referred:

Rajasthan Agricultural Produce Markets Act, 1961 — Section 2(i), 40

Citation : (1984) RLW 680 : (1984) WLN 402

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Judgement

P.K. Banerjee, C.J.—This rule is directed against the Notification dated August 19, 1975 by which amongst "Forest Produce" "Timber" (Imarti Lakdi) was added and sought to be brought into the four-corners of the Rajasthan Agricultural Produce Markets Act, 1961 (hereinafter referred to as "the Act").

2. The argument of Mr. Maloo, on behalf of the petitioner, is limited to one point, i.e. "Imarti Lakdi" is a forest produce and cannot be agricultural produce within the meaning of the Act. "Agricultural produce" has been defined in Section 2(i) of the Act as follows:

agricultural produce" includes all produce whether of agriculture, horticulture, animal husbandry or otherwise as specified in the Schedule.

Mr. Maloo contended that the word "or otherwise" should be read as generis to the words agriculture, horticulture, animal husbandry. A forest produce cannot to used as generis with these wordes. Mr. Khan, on the other hand, however, contended that principle of ejusdem generis has no application in the definition and the definition has a wide import. It is argued by Mr. Khan that this question was decided by this Court in a case when this question was raised in M/s H. Paras Ram & Sons v. The State of Rajasthan and Ors., S.B. Civil Writ Petition No. 1777 of 1975, decided on May 14,1976 by Hon"ble Mr. Justice C.M. Lodha. This particular question whether timber is an agricultural produce or not was

considered and held to be that in view of the exhaustive definition of "agricultural produce", timber comes in the mischief of agricultural produce" as defined in the Act. This case considered all the cases on the point about the meaning of agricultural produce. It considered the decision reported in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, in particular and Zila Parishad Bhandara v. Agricultural Produce Market Committee, Tirora and Ors. RLW 1966 339 as also the case M/s. Raunaq Ram Tara Chand and Ors. v. The State of Punjab and Ors. AIR 1975 SC 1587 . In M/s Raunaq Ram Tara Chand and Ors. v. State of Punjab others (supra) it was observed by the Supreme Court that the appellant's contention that since Gur and Sakkar are manufactured products, they cannot come within the meaning of "agricultural produce" as defined in Section 3(a) of the Punjab Agricultural Produce Markets Act, 1961. Section 2 (a) of the Punjab Act defines agricultural produce to mean "all produce whether processed or not, agriculture or horticulture, animal husbandry or forest as specified in the Schedule of this Act". It has been held further that it was not possible to entertain the argument that the Court will undertake a judicial scrutiny of these items in order to come to a conclusion whether these are agricultural produce or not. In the said case it was held that in view of the definition in Section 2(a) such an enquiry was out of place. We may also note that u/s 40 of the Act the State Government may by Notification in the Official Gazette add to, amend or omit any of the items of agricultural produce specified in the Schedule. On the basis of this judgment, Mr. Maloo contended that from the Notification itself it is quite clear that timber is not an agricultural produce but a forest produce and, therefore. It cannot come within the mischief of the definition. In the case reported in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, it has been held that the term "agriculture" cannot be confined merely to the production of grain and food products for human beings and beasts but must be understood as comprising all the products; of the land, which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu leaves, horranuts etc.

3. In a case reported in Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, , it has been held, the imposition of market fee the seller neither be a producer of agriculture production, nor should be a purchaser of agricultural produce only and in other words this can be done. Anything which comes in the agricultural market and sold will come within the mischief and liable to the payment of market fee. This case was one where U.P. Krishi Utpadan Mandi Act 25 of 1964 was considered. In the said case "agricultural produce has been defined as such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes, admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery.

4. Mr. Maloo, however, argued that because of the fact that in U.P. Krishi Utpadan Mandi Act "agricultural produce" includes forest, it was possible for the Supreme Court to make that distinction, but so far as we are concerned, the forest has not been included. Therefore, this judgment is of no help to the respondents.

5. In a case reported in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, it has been held that if the definition has been given about agriculture in the Act itself, this has to be looked into for the purpose of interpretation of the terms in the Act. If no such definition is given, then of course, dictionary meaning of the term used in common parlance has to be considered, In the present case we have the definition of "agricultural produce" in the Act itself. Mr. Maloo relied upon Ratansi Hirji v. Emperor : AIR 1929 Bom 274 to say that Ghee is not the direct result of milk as defined in Bombay City Municipal Act and Ghee is not included in "other milk products". He has also relied upon for interpretation of the word as generis of this case.

6. Mr. Maloo further relied upon a case reported in M/s. Bhanwarlal Sohanlal v. State: RLW 1966 339, where in it has been held by Division Bench of this Court that the words "otherwise as specified in the Schedule" no doubt widen the scope of the definition, but Section 40 has to be utilised only in keeping with the underlying purposes of the Act. If anything which is wholly unconnected with agricultural produce is sought to be included, then it may be a ground for striking down the item to be so included, but thereby we cannot strike down the section itself.

7. Mr. Maloo further relied upon Eton Rural District Council v. River Thames Conservators ; 1950 (1) All ELR 996 about the meaning of the word "otherwise". It has been held by Hon"ble Mr. Justice Vaisey of Chancery Division:

an easy way of handling the matter to say that the words "or otherwise" in the first of the two contexts in which those words appear in the Sub-section are general application and mean exactly what they say. If that be the proper way of construing the section, there is an end of the matter, and the obligation by way of covenant which rests on the plaintiffs is one which the defendants are bound under the Sub-section to commute.

It is further stated that the words "or otherwise" must be construed according to the ejusdem generis rule.

8. I have already stated that this question is covered by a Single Bench decision of this Court in Mis. H. Paras Ram & Sons v. The State of Rajasthan and Ors., S.B. Civil Writ Petition No. 1777 of 1975, decided on May 14, 1976 by Mr. Justice C.M. Lodha, as he then was, where this judgment of the Division Bench has been fully considered. It is well known if the words are clear, the preamble cannot restrict the connotation of the meaning or artificial meaning and defined as such in the body of legislation. It appears to me that the worlds "agricultural produce" have been defined as agriculture, horticulture, animal husbandry and or otherwise as specified in the Schedule. All these words agriculture, horticulture

animal husbandry should be read separately and not in the principles of ejusdem generis and "or otherwise" has to be notified in the Schedule. Therefore, it is open for the subordinate legislation in view of Section 40 of the Act to notify in the Schedule the commodity or articles which, if sold in the market can be subject to the market fee. While considering this judgment of the Division Bench in M/s. Bhanwarlal Sohanlal v. State (supra) RLW 1966 339, it has been held that it cannot be said that the timber included in the definition is wholly unconnected or foreign to the Rajasthan Agricultural Produce Markets Act, 1961. It is connected with the Agricultural Produce Markets Act in this country. The pith and substance is for marketing agricultural produce and certain other purposes. I am, therefore, of the opinion that it cannot be said that the timber is wholly unconnected with the agricultural produce and, therefore, no ground is made out for striking down this item. In any case the timber (Imarti Lakdi) is a notified item in the Schedule and comes within the legislative competence and is covered by the words "or otherwise in the Schedule" as denned in the definition of "agricultural produce". It is also held in the same judgment, even if my interpretation of the definition is incorrect that timber comes within the meaning of agricultural produce, that a judicial enquiry of the item whether it comes within the agricultural produce or not is out of question.

9. Mr. Maloo, however, contended that no judicial enquiry is needed, because in the Notification itself the timber used for building purposes is stated to be a forest produce I have said that the definition as herein before stated quite clearly may be read in the four Sub-heads (i) agriculture, (ii) animal husbandry, (iii) horticulture, and (iv) or otherwise, or these itmes which may be included in the Schedule by Notification u/s 40 of the Act.

10. In that view of the matter, in my opinion, apart from the reasons already stated by Mr. Iustice C.M. Lodha, as he then was, and for further reasons, which I have stated in my judgment, this rule must stand discharged, which I hereby do. There will be no order as to costs.