(1985) 07 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 2623 of 1983

Vyapari Association Shirpur — APPELLANT

Vs

State of Maharashtra and Others — RESPONDENT

Date of Decision : 11-07-1985

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(6)
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 — Section 2, 30A, 31, 34A

Citation : AIR 1986 Bom 302 : (1985) 2 BomCR 603 : (1986) ILR (Bom) 158

Hon'ble Judges : Kantharia, J;Dharmadhikari, J

Bench : Division Bench

Advocate : Atul Setalvad and G.R. Rege, for the Appellant; N.D. Bhatkar, Addl. Govt. Pleader for Nos. 1 and 2 and R.M. Agrawal, for No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—This Writ Petition is filed by the petitioners, which is an Association of Merchants at Shirpur in Dhule District. The Writ Petition is filed on behalf of the members of the Association, who are Licence-holders of the Shirpur Agricultural Produce Market Committee, Shirpur, respondent 3, and are carrying on business as commission agents. The main challenge in this petition is to the provisions of Section 48A of the Maharashtra Co-operative Societies Act, Section 30A of the Maharashtra Agricultural Produce Marketing (Regulation) Act and the sub-rule framed under bye-law 46 by the Market Committee.

2. Shri Setalvad and Shri Rege, the learned counsel appearing for the petitioners, contended before us that the commission agents operating within the Market Area of the respondent 3 Market Committee cannot be compelled to deduct the amount due to the Co-operative Societies. The provisions of Section 48A of the Maharashtra Co-operative Societies Act and the sub-rule framed under Bye-law 46 are wholly violative of the petitioners'' fundamental right under Article 19(1)(g) of the Constitution of India since they impose an unreasonable restriction.

Similar is the position with Section 30A of the Marketing Act. It is not open to any authority, to compel a person to act as its collecting agent; more so when there is no payment or remuneration paid for the said services. The said restriction is not only unreasonable, but it has no nexus with the object sought to be achieved. No amount is paid to the commission agent for this service, but the amount is recovered by the Market Committee by charging a commission. It was then contended that in any case the sub-rule framed under the said Bye-law is beyond the scope of the Act, and the rules or even the said Bye-law since no collecting centres have been opened in that behalf. The provisions also do not contemplate any discharge qua the commission agent after the recovery of the amount. Thus, though the commission agent is obliged to deduct the amount payable to a Co-operative Society, no discharge is granted to him, nor any remuneration is being paid for the said services. Thus, in substance, it amounts to casting an onerous burden upon the commission agent which is wholly unreasonable and has no nexus with the object sought to be achieved by the Marketing Act or the Co-operative Societies Act.

3. On the other hand, it is contended by the respondents that the sub-rule framed under Bye-law 46 is in tune with the scheme of the Act as well as the provisions of Section 48A of the Maharashtra Co-operative Societies Act and Section 30A of the Maharashtra Agricultural Produce Marketing (Regulation) Act. Sections 48A and 30A are enacted in the interest of the general public so as to provide a machinery for the recovery of the dues of the Co-operative Societies, namely the loans advanced to agriculturists for carrying out agricultural operations. If such a provision is not made in the Act, then the recovery of the loan amount becomes impossible and, therefore, this salutary provision has been made in the Act. The sub-rule framed under Bye-law No. 46 is in tune with these provisions. The duty cast upon the commission agent is part and parcel of the conditions of his licence. Even if it is assumed that there is a restriction on his right to carry on business, the said restriction is reasonable and has been imposed in the public interest. It is also contended by the respondents that the said sub-rule has been framed in consultation with the representatives of the traders and commission agents and, therefore, the petitioners are also parties to the said decision and hence it is not open for them to challenge the same in this Writ Petition. Even otherwise since the duty is cast in consultation with the representatives of the traders and commission agents, it is quite clear that the restriction imposed is reasonable and has been imposed in the public interest.

4. Section 30A of the Marketing Act deals with the power of the Market Committee to open collection centres for marketing of notified produce. It also makes provision for receipt and payment by the purchaser. Section 48A of the Maharashtra Co-operative Societies Act also deals with the deductions from sale price of certain agricultural produce to meet the society''s dues. Therefore, both these sections are supplementary in nature. These sections were inserted on the statute book by amending Act No. II of 1972.

5. The Maharashtra Co-operative Societies Act, 1960 came to be amended by Act No. II of 1972 by which Section 48A was inserted in the statute book. The Statement of Objects and Reasons to the said section reads as under : --

"Clauses 4, 5 and 12 : The dues of agricultural credit primary co-operative societies which advance loans to agriculturists for growing agricultural produce are increasing year by year. On analysis of the problem it is noticed that one of the main causes for the mounting over dues is that there is no linking of credit with marketing. Again, the traders who purchase the agricultural produce from agriculturists do not make prompt payment for the same. In order to secure both these objectives, provision has been made for empowering the State Government to notify from time to time agricultural produce where all trade in the produce is to be carried on exclusively by the State Government or where for the growing of such produce a loan has been advanced by a co-operative society under the Maharashtra Co-operative Societies Act, 1960. It is then provided that all such notified produce shall be marketed through collection centres established for the purpose. Where any notified produce is tendered at a collection centre, provision is made for weighing it and for requiring the Market Committee to issue a receipt therefore and for the payment to the person tendering such produce after making deductions as provided in new Section 30A proposed to be inserted in the principal Act.

Provision has been made in the Maharashtra Co-operative Societies Act, 1960 authorizing Market Committees to make deductions from the sale price of notified agricultural produce, and payment of the same to societies which have advanced loans to agriculturists selling such produce."

Section 30A of the Marketing Act was also inserted by the said enactment. Therefore, so as to solve the problem of mounting over dues qua the credit co-operative societies, which advanced loans to the agriculturists for growing agricultural produce and to link the credit with marketing, the said provisions were enacted one in the Co-operative Societies Act and another in the Marketing Act. Therefore, it is quite obvious to us that the provisions were inserted in these, enactments in the interest of agricultural credit primary co-operative societies as well as the agriculturists themselves. It is common knowledge that if the credit facility is extended to agriculturists for growing agricultural produce, then repayment of the loan could be from the sale of the agricultural produce itself. If linking of credit with marketing is not achieved, then recovery of the dues of agricultural credit primary co-operative societies, which advance loans to agriculturists for growing agricultural produce, will become an uphill task. To solve this problem, these two sections were inserted in the respective enactments.

6. With an intention to achieve the said object, by subsequent amendment Section 30-A and Section 48-A came to be amended. The Statement of Objects and Reasons qua the subsequent amendment reads as under :--

"2. u/s 30-A of the Agricultural Produce Marketing Act and Section 48-A of the Co-operative Societies Act, the responsibility of making deductions towards the dues of the societies is that of the purchaser. It is noticed that in the case of private traders most of the purchasing transactions on the market-yards are effected through their commission agents. It is necessary to make a specific provision to cast the responsibility of making deductions for co-operative dues on the commission agents and other persons also, who make payment of the price on behalf of other persons. It is, therefore, proposed to extend the scope of the expression "purchase" used in Section 30-A and in Sections 31 and 34-A of the Marketing Act and Section 48-A of the Co-operative Societies Act, to a commission agent or other person, who pays the purchase price to the seller on behalf of the purchaser, so that he should while purchasing any agricultural produce make deductions for cooperative dues at specified rates and pay the amount deducted to the market committee, along with the dues of the market committee.

3. u/s 48-A of the Co-operative Societies Act, the amount of the deduction on account of loans advanced by the societies shall not exceed 60 per cent of the total amount to be paid by the purchaser, if the produce tendered for sale is ''kapas'' and certain other percentages in the case of other articles. However, the dual percentage rate of recovery under the monopoly scheme has been lower. It is proposed to amend Section 48-A to take power to Government to notify within the existing maximum limits a specific rate at which purchasers should make deductions on account of co-operative dues. Since it is necessary to make such recovery from the price of cotton, whether ginned or unginned, the word ''kapas'' in Section 48-A is being replaced by the word "cotton"."

In our view, since both these amendments are made for linking of credit with marketing and to facilitate payment of dues of the agricultural credit primary co-operative societies qua the loans advanced to the agriculturists for growing agricultural produce, they can safely be termed to be in the interest of co-operative societies and the agriculturists. Therefore, in our view, even if it is assumed that the said sections impose some restrictions upon the commission agents, the said restriction is reasonable and has been imposed in the interest of general public and hence is wholly saved by Article 19(6) of the Constitution. It is not disputed, nor it could be disputed, that the legislature was competent to enact the said provisions. Once it is held that the legislature was competent to enact the said provisions and they are also reasonable and have been enacted in the interest of the general public, then the challenge to the said provisions must fail.

7. What is then challenged before us is the sub-rule framed by the Market Committee under Bye-law 46 of the Bye-laws. The English translation of the said bye-law reads as under

(Duty of the agriculturist)

Sub-rule under Bye-law 46

The person who brings for sale any agricultural produce, the marketing of which is exclusively done by the State Government or cotton of the notified agricultural produce u/s 29(g1)(i) & (ii) shall bring with him the Green Card as directed by the Government and present the said card to the concerned commission agent, purchaser or market committee in relation to the recovery of arrears of co-operative society from the purchase amount of the cotton sale.

The person who brings or the person on whose behalf notified agricultural produce other than the cotton is brought for sale, must bring along with him the loan recovery card issued by the concerned co-operative society, showing required information regarding the dues to be paid to the co-operative society by the agriculturist. The said card must be presented to the commission agent, purchaser or Market Committee and the required amount out of the dues payable shall be deducted from the total amount of sale price.

Duties of the Commission Agent and Purchaser :

The Commission Agent or the Purchaser shall demand the green card as directed by the Government from the person who brings any agricultural produce the marketing of which is exclusively done by the Government or cotton out of the notified agricultural produce as required u/s 29(g1)(i) and (ii) of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 and shall recover the amount of arrears due to the co-operative society as directed by the market committee.

The concerned Commission Agent, or purchaser shall demand the loan Recovery Card from the person who tenders or on whose behalf the notified produce is tendered for sale, to check whether the said tenderer is liable to pay any arrears of loan taken from the co-operative society. As also he shall make inquiry from the Marketing Committee regarding the same and as per the instructions of the Marketing Committee shall be deducted such amount from the amount of sale price of the agricultural produce.

5. For the amounts for deductions made hereinabove and for amounts mentioned in Section 30-A(6) shall be paid by drawing two cheques, one in favour of the Market Committee and another in favour of the agriculturist immediately after the weighing and measuring of the agricultural produce is completed."

It will not be correct to say that the commission agent being a purchaser, could not be fastened with the duty of deducting the dues qua a cooperative society. By Explanation to Section 30-A, the legislature has made it clear that for the purposes of Section 30-A, Section 31 and Section 34-A of the Marketing Act, ''purchaser'' shall include any person who pays the purchase price of any notified produce or agricultural produce, as the case may be, tendered for sale, or by whom payment of such price is made, whether on his own account, or as an agent or on behalf of another person. The expression "commission agent" is also defined by Section 2(e) of the Act, which reads as under : --

"(e) ''Commission agent'' means a person who by himself or through his servants buys and sells agricultural produce for another person, keeps it in his custody and controls it during the process of its sale or purchase, and collects payment therefore from the buyer and pays it to the seller, and receives by way of remuneration a commission or percentage upon the amount involved in each transaction."

Therefore, if the said definition is read with Explanation then in terms a commission agent will become a purchaser for the purposes of Sections 30-A, 31 and 34-A of the Marketing Act. Admittedly, a duty is cast upon the commission agent to deduct the amount by framing a sub-rule in exercise of the powers conferred on the Market Committee under Bye-law 46. Section 6 of the Marketing Act deals with the regulation of marketing of agricultural produce. Section 7 empowers the Market Committee to grant licences. Section 29 deals with the powers and duties of the Market Committee. Sub-clauses (g) and (gl), which are relevant to the controversy raised before us, read as follows : --

"29(2) Without prejudice to the generality of the foregoing provision, a Market Committee may--

.. ..

(g) regulate marketing of agricultural produce in the market area of the market, and the payment to be made in respect thereof, weighment or delivery of the agricultural produce:

(gl) arrange for the collection--

(i) of such agricultural produce in the market area in which all trade therein is to be carried on exclusively by the State Government by or under any law in force for that purpose, or

(ii) of such other agricultural produce in the market area.

as the State Government may, from time to time, notify in the Official Gazette (hereinafter referred to as the ''notified produce'')."

Section 61 confers power upon the Market Committee to frame bye-laws, including laying down the conditions of trading in the market area. Rule 6 of the Maharashtra Agricultural Produce Marketing (Regulation) Rules, 1967 deals with the licensed trader, broker and commission agent. Section 13 of the Marketing Act, which deals with the constitution of the Market Committee, provides that there shall be three elected representatives of the traders and commission agents holding licences to operate as such in the market area on the Market Committee. The said section contemplates representation to various interests, including that of agriculturists and the trader and commission agents. Bye-laws and sub-rules under the bye-laws are framed by the Market Committee. Therefore, in substance, the representatives of the commission agents have a say in the framing of the bye-laws and the sub-rules.

8. However, the main contention raised before us is that unless the State Government by an order in writing opens collecting centres, no obligation could be cast upon the commission agents to deduct the dues payable to the co-operative societies since the office of the commission agent cannot be equated with that of a collecting centre. If Section 30A is read as a whole and harmoniously, it is quite clear that there is no compulsion on the State Government to open collecting centres. The word is "may". Therefore, an inference cannot be drawn that, only because the collecting centres are not opened, the obligation qua the commission agents cannot be enforced. The proviso to Sub-section (2) of Section 30A makes this position very clear. It provides that agricultural produce notified under Sub-clause (ii) of Clause (g1) of Sub-section (2) of Section 29 may be tendered through a commission agent. Under the Explanation to Section 30A, for the purposes of Sections 30A, 31 and 34A of the Act, the term ''purchaser'' will take in its import a person who pays the price of any notified produce or agricultural produce, as the case may be, tendered for sale or by whom payment of such price is made, whether on his own account, or as an agent or on behalf of another person. If the definition of the term ''commission agent'' is read with this Explanation, then in our view, the term ''purchaser'' must take in its import a commission agent. Therefore, for all practical purposes, a commission agent becomes a purchaser. If this is so, then he is obliged to deduct the amount payable to the co-operative society in view of the provision''s of Section 30A of the Marketing Act read with Section 48A of the Cooperative Societies Act. Such a conclusion is inevitable. If the construction put forward by the Counsel for the petitioners is accepted, then the very intention of the legislature in enacting Section 30A of the Marketing Act and Section 48A of the Co-operative Societies Act will be defeated. It is no doubt true that no remuneration is paid to the commission agent for recovery of these dues. But the Act itself provides as to how the transaction within the market area is to take place. Section 30A(3) of the Marketing Act provides about weighment etc. Section 30A(4)(ix) in terms makes a reference to the amount of dues to be paid by the tenderer to a co-operative society u/s 48A of the Maharashtra Co-operative Societies Act, 1960. Under Sub-clause (xi) the amount is to be paid to the tenderer after deducting the amounts, if any, falling under entries (vii), (viii), (ix) and (x). The amount is to be paid by drawing two cheques -- one in favour of the Market Committee and another in favour of the tenderer. Therefore, Section 30A is practically a complete Code in itself. If a commission agent wants to carry on his business in a market area which is controlled by the Market Committee and seeks a licence in that behalf, then as a term of the licence he is obliged to carry out the duties imposed upon him under the terms and conditions of the licence. For carrying out the business of commission agent, he gets a commission. Therefore, he is not carrying on his business as a charity. As a part and parcel of the duties under the licence he is obliged to deduct this amount. Therefore, it is not necessary that he should get separate and independent

remuneration for the said services, which is a term of his licence and is a statutory duty under the provisions of Section 30A of the Marketing Act and Section 48A of the Maharashtra Co-operative Societies Act.

9. The Marketing Act has been enacted to regulate the marketing of the agricultural and certain other produce in the market area. This became necessary to see that the agriculturists, when they are required to sell their produce, are not duped by unscrupulous traders by resorting to underhand dealings. It is open to the Market Committee to prescribe the terms and conditions of licences; and while laying down such terms and conditions the Market Committee can lay down that the commission agent, who is a purchaser for the purposes of Section 30A, shall collect or deduct the dues of a co-operative credit society. All these are parts of a correlated scheme meant for the benefit of the agricultural producers. A commission agent who wants to carry on business within the market area under a licence issued by the Market Committee, cannot be heard to say that he is not bound by the terms and conditions of the licence.

10. In this context it is worthwhile to note that even the petitioners in para 15 of their petition initially thought that this was their social duty, which is imposed under the terms of the licence. If it is a social and a statutory duty, then in our view, only because no separate remuneration is paid for it, it cannot be termed to be an unreasonable restriction upon the fundamental right of the petitioners to carry on their business. To say the least, it is one of the terms and conditions of the licence. Such a term in the licence is authorised by Section 30A of the Act itself. The restriction, if any, is not only reasonable but is also in the public interest and, therefore, we do not find any substance in this contention also. Nobody is compelled to become an agent of a co-operative society, but the commission agent is only expected to carry out a duty imposed upon him by the terms and conditions of the licence which is supported by the statutory provisions. To say the least, it is the statutory duty of a commission agent and, therefore, it will not be correct to say that he is being asked to do something which is foreign to the scheme of the Act or the terms and conditions of the licence: Therefore, we do not find any substance in this writ petition.

11. In the result, the Rule is discharged with costs.

