

M/s. Khedut Sahakari Ginning and Pressing Society Ltd.

Vs

The State of Gujarat

Civil Appeal No. 2418 of 1968

(K.S. Hegde, A.N. Grover JJ)

14.09.1971

JUDGMENT

HEGDE, J. -

1. This is an appeal by special leave. It arises from the decision of the High Court of Gujarat in a reference under Section 61(1) of the Bombay Sales Tax Act, 1959. That reference was made by the Gujarat Sales Tax Tribunal at Ahmedabad. After stating the case, the Tribunal submitted the question :

"Whether on the facts and in the circumstances of the case, the transactions are purchases of cotton by the society from its members."

to the High Court for its opinion.

2. The High Court has answered that question in the affirmative. Aggrieved by that decision, the assessee has brought this appeal.

3. The material facts are these :

"The assessee is a co-operative society registered under the Bombay Co-operative Societies Act, 1925 (to be hereinafter referred) to as the Act. The assessee will hereinafter be referred to as the 'Society'. It carries on the business of ginning and pressing cotton brought by its members. During the assessment period, viz. November 1, 1960 to October 31, 1961, the assessee received large quantity of cotton from its members and the same was sold by it either after ginning and pressing or without ginning and pressing. The society is a registered dealer under the Bombay Sales Tax Act, 1959. It filed its return for sales-tax for the year in question. But therein it did not show any purchase turnover. The Sales Tax Officer accepted the return submitted by it, and assessed it on the basis of that return as per his order, dated May 31, 1963. He did not levy any purchase tax on the society. The Assistant Commissioner of Sales Tax, Range III, Baroda, however, issued a notice, dated August 6, 1963, under Section 57 of the Bombay Sales Tax Act, 1959, proposing to revise the assessment of the society by levying purchase tax in respect of 200 bales of cotton sent by the society to Bombay for sale and also in respect of cotton and cotton seeds worth Rs. 3,56,105/-, sold after six months from the date on which the cotton was received by the society on the ground that the society purchased the said cotton from its members."

4. Aggrieved by that order the society moved the Gujarat Sales Tax Tribunal in revision. The Tribunal by its judgment, dated July 1, 1964, dismissed the revision petition. Relying on the bye-laws of the society particularly on bye-laws Nos. 37(7), 37(18), 37(19), 48, 49, 52, 53 and 55, the Tribunal came to the conclusion that the society had purchased the cotton and cotton seeds in question from its members. It rejected the contention of the society that it was merely functioning as the agent of its members while selling the cotton and cotton seeds referred to earlier. At the instance of the society, the Tribunal submitted the question referred to earlier to the High Court for its opinion.

5. Whether a particular agreement is an agency agreement or an agreement of sale depends upon the terms of the agreement. For deciding that question, the terms of the agreement have got to be examined. The true nature of a transaction evidenced by a written agreement has to be ascertained from the covenants and not merely from what the parties choose to call it. The terms of agreement be carefully scrutinised in the light of the surrounding circumstances - see the decision of this Court in *Rohtas Industries Ltd. v. State of Bihar*. (12 STC 615.) In that decision, this Court further held that for considering whether a particular transaction is a sale or not, what the Court has to consider is whether as a result of the transaction, the property in the goods passed to the assessee in return for price and whether the assessee sold those goods as its own. Bearing in mind these principles, we shall now proceed to examine the provisions of the Act as well as the relevant bye-laws which take the place of agreement between the parties. It is not the case of the State that the society had in any manner acted in contravention of the bye-laws. Therefore all that we have to find out is the true effect of the bye-laws.

6. In this case we are dealing with a case of a "producers society." "Producers Society" is defined in Section 3(h)(2) of the Act. That definition reads :

"'Producers' Society' means a society formed with the object of producing and disposing of goods as the collective property of its members and includes a society formed with the object of the collective disposal of the labour of the members of such society."

7. The society with which we are concerned in this case was evidently formed primarily with the object of selling the produce of its members as their collective produce. The preamble to that Act says "whereas it is expedient further to facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among agriculturists and other persons with common economic needs so as to bring about better living, better business and better methods of production and for that purpose to consolidate and amend the law relating to co-operative societies in the Presidency of Bombay..." Hence two of the objectives intended to be achieved by the Act were to provide for self-help by the members of the society and for mutual aid amongst its members.

8. We must examine the bye-laws in this case in the background of the preamble to the Act as well as the definition of "Producer's Society."

9. We shall now refer to the relevant bye-laws of the society. Those bye-laws are in Gujarathi. They had been got translated into English by the High Court. But as the appellant did not agree with that translation in respect of bye-laws 45 to 49, it got those bye-laws translated officially in this Court. Counsel for the respondent has not challenged the correctness of that translation.

10. The society is known as Khedut Sahakari Ginning and Pressing Society, Ltd., Etola. From this it is clear that the society is a co-operative society of the farmers primarily constituted for the purpose of ginning and pressing cotton. The objects of the society are mentioned in bye-law 2. That bye-law reads :

"The object of the society are as under :

(1) To gin and get ginned unginced cotton, to press or get pressed cotton into bales within the area of work of the society for the society and individual members and other customers and to use machinery for any work useful to other members.

(2) To advance money against goods come in the possession of the society, to get unginced cotton, cotton and cotton seeds sold, to supply goods and if possible to get other agricultural produce sold and if required to make arrangements for storing other agricultural produce.

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(5) To make arrangement for advancing amounts to its members for necessary capital, to raise agricultural produce to come for sale through the society and for manure and seeds, etc.

(6) To distribute profits to its members in proportion to the amount paid by its members for ginning and pressing of their goods according to the bye-laws and to use the whole portion or certain portion of the profit for works of social interest according to conditions laid down in bye-laws.

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11. From the above provisions, it is clear that the object of the society is not to purchase or sell any cotton seeds on its own behalf. The membership of the society is confined to farmers of the villages mentioned in bye-law 7(a) and to co-operative societies of the Taluks mentioned therein. Bye-law 37 deals with the powers of the managing committee. For our present purpose only Clauses 7, 14, 16 and 18 of that bye-law are relevant.

Clause (7) says :

"To fix the rates for ginning, pressing and for other work that may be carried out according to the regulations and resolutions to sell, purchase and get baled goods other than unginced cotton according to the instructions that may be given and to give facilities of every other kind."

Clause (14) reads :

"To lend money against the security of goods come in possession of the society according to the convenience and if possible subject to the rules."

Clause (16) reads :

"To get goods managed through the society and the machinery, building, etc., of the

society insured."

Clause (18) says :

"To arrange to sell agricultural produce other than cotton, unginced cotton and cotton seeds of the members and produce village industries which may have been brought for sale through the society and to make arrangements to purchase goods according to the requirements of the members on a request being made by the members."

12. These provisions clearly go to indicate that the society was selling the produce of other and not its own goods. Its duty is to arrange to sell the agricultural produce of its members.

13. Bye-law 45(1) to the extent necessary for our present purpose reads thus :

"An amount not more than 75 per cent. of the estimated value at the market-rate from time to time of the goods insured and entrusted to the society will be advanced against security of goods, if it will be convenient to do so. The rate of interest on advance will be as fixed by the managing committee from time to time...."

14. This bye-law clearly indicates that the members of the society are merely entrusting their goods to the society and not selling them to the society. That is made further clear by the fact that the society may advance loans up to 75 per cent. of the estimated value of the goods entrusted to it on the security of those goods and those advances will carry interest. If those goods are sold to the society then there can be no question of any entrustment nor can the society advance any money on the security of its own goods. If the transactions are sales in favour of the society then the amounts to be paid by the society would be purchase price. Such a payment cannot be made on the security of goods nor can that payment carry any interest.

15. Some reliance was placed on behalf of the State on bye-law 45(2) which says :

"This society shall have authority to borrow money against the goods which come in its hands for sale or for its management through the society by pledging them with a bank."

16. We fail to see how this bye-law can lend any assistance in support of the case pleaded by the State. That bye-law makes it clear that the goods in question come into the hands of the society for sale or for their management through the society. But the person who entrusts those goods because of this bye-law is deemed to have empowered the society to pledge the same. Now we come to bye-law 49 which reads :

"The unginced cotton, cotton and cotton seeds to be sold through the society shall be graded in the manner fixed by the general body and the society will get the same insured."

17. This bye-law refers to goods to be sold through the society and not to sale of society's goods.

Bye-law 48 is extremely important. That bye-law says :

"The goods of all the members will be gathered together either by grading according to the grades fixed by the general body or without grading and then sold either

ginned or unginned. At the end of the season after making up the accounts the society will pay in full to all the members according to average rates grade-wise or if grades are not made then generally after deducting the dues of the society and the charges for ginning, pressing the goods and expenses for sale, etc."

18. This bye-law refers to the goods of the members of the society and not the goods of the society. Because of that bye-law the members of the society, who are bound by that bye-law must be deemed to have authorised the society to pool their goods, grade them, if necessary and sell them either after ginning or without ginning. That bye-law also prescribe the mode in which the price fetched should be distributed amongst the persons whose goods are sold. The society is the agent of all its members. Its principals are many. Because of the various bye-laws, the several principals must be deemed to have appointed a common agent - the society for disposing of their goods in the manner most advantageous to them. To achieve that object they must be held to have empowered the society to pool their goods, grade them if necessary, and sell them either after ginning or without ginning. Such an authority in our opinion does not violate the law of agency.

19. A person can be an agent for more than one principal and if all his principals jointly authorise him to pool their goods and sell them and pay the sale price to them in the manner prescribed by them, he does not cease to be an agent. The question whether when an agent with the authority of his principals pools together the goods of its principals, grades them and sells them, ceases to be an agent and becomes a purchaser was considered by the Mysore High Court in *Sherule Fazle and Co. v. Commercial Tax Officer, Additional Circle S. Kanara, Mangalore and Another.* (14 STC 4.) Therein the High Court held that he does cease to be an agent. We agree with the ration of that decision.

Bye-law 52 says :

"When it will be found proper to sell goods in other market or at other places outside the local market the manager will do the said work according to the order of the managing committee through the agent selected by the society of the union. A regular writing to the effect that the agent may get the possession of the goods thus sent for sale to other markets or at other places should be kept in the record of the society."

20. Because of this bye-law, authority is conferred on the society by its members to sell their goods in outside markets as well. Bye-law 54 empowers the society to hedge goods by making forward sales against the balance goods that may have remained to be sold out of the goods that may have come in its possession. This power again must be deemed to have been conferred on the society by its members. The only other bye-laws to which reference has been made at the bar are 72 and 73. Bye-law 72 prescribes :

"The gross profit made in the last year will be declared in the annual meeting and the amounts as mentioned hereunder will be deducted therefrom -

(1) Interest to be paid on borrowing and deposits.

(2) Expenses of the working of the society including the amounts of honorarium.

(3) The amounts not less than five per cent. of the total amount spent on building and not less than ten per cent. on machinery and not less than five per cent. on other

depreciating property will be carried to depreciation fund.

(4) If there be no balance in profit fund then the written off dues sanctioned by the managing committee.

(5) Loss

The amount remaining over after deducting all the above mentioned amounts will be considered as net profit."

21. Bye-law 73 provides for the distribution of the net profits. Both bye-laws 72 and 73 deal with the profits of the society and not any profits arising by the sale of goods entrusted to it by its members. Society has got its own sources of income. It charges for ginning and pressing. It has also other sources of income. It is that income that is dealt with in bye-laws 72 and 73.

22. Our attention has not been drawn to any other bye-law from which we could conclude that the society had purchased either cotton or cotton seeds from its members.

23. We have earlier seen that the Tribunal had placed reliance on bye-laws 37(7), 37(18), 37(19), 48, 49, 52, 53 and 55 for arriving at the conclusion that the society had purchased cotton and cotton seeds from its members. We have already examined bye-laws 37(7), 37(18), 48 and 52. We have not been able to see how those bye-laws lend any support to the conclusion reached by the Tribunal and High Court.

24. Bye-law 37(19) empowers the society to levy "Haksai" on unginning cotton received from members up to Rs. 2/- per bhar (load). This bye-law merely provides for the collection of ginning charges. Bye-law 49 authorises the society to grade the unginning cotton and cotton seeds in the manner specified by the general body. It also authorises the society to get the goods insured. This bye-law again does not in any manner indicate that the cotton or cotton seeds had been purchased by the society. Bye-law 53 says that :

"If there may be some time for the season to start the managing committee can estimate the produce and make forward sale of the goods not more than 1/4 portion of it before the season starts."

25. This again is an authority given by the members to the society. Bye-law 55 provides :

"If it is found necessary and beneficial to sell goods which may be in stock by only other system which may be having connection with the forward market except the hedge system described in the above clause the managing committee can sell goods by the said system by making discussion with the officer of the union effecting the sale."

26. This is also an authority given to the society by its members to deal with their goods in a specified manner.

27. It must be remembered that by and large the farmers are illiterate. They do not know the ways of business. The general belief is that taking advantage of the ignorance and illiteracy of the farmers, businessmen exploit them. To avoid such exploitation, the Act authorised the formation of co-operative societies of the farmers through which they can sell their goods. Those societies merely

function as agent for the farmers who are their members. By becoming members of those societies and subscribing to their bye-laws, they had given large powers to their agents so that their produce may be sold in the best possible manner. None of the bye-laws of the society goes to show that the society had purchased the goods entrusted to it by its members.

28. The High Court has referred to a number of decisions for coming to the conclusion that under the bye-laws of the society, the society must be held to have purchased the cotton and cotton seeds sold by it. We see no basis for that conclusion. The question whether a particular agreement of agency has to be decided on the basis of the terms of that agreement. Decisions rendered on the basis of other agreements may be useful for finding out the principles to be applied in finding out the true character of an agreement but those decisions cannot conclude the question before the court as no two agreements are likely to be similar. The nature of each agreement has to be decided on its own terms.

29. The Tribunal, the High Court as well as the Counsel for the State have placed great deal of reliance on the decision of this Court in Rohtas Industries Ltd.'s case (supra). Therein the assessee was a limited liability company manufacturing cement. The assessee and some other cement manufacturing companies entered into an agreement with the Cement Marketing Company of India Ltd., whereby the marketing company was appointed as the 'sole and exclusive sales manager' for the sale of cement manufactured by the manufacturing companies and the manufacturing companies agreed not to sell directly or indirectly any cement to any person save and except through the marketing company. The manufacturing companies were entitled to be paid a certain sum per ton of cement supplied by them or at such other rate as might be decided upon by the directors of the marketing company. The marketing company was authorised to sell cement at such price or prices and no such terms as it might in its sole discretion think fit and it agree to distribute to the manufacturing companies, in proportion to the number of tons of cement of every variety and kind supplied by the manufacturing companies, the whole of its net profit less 6 per cent., on its paid up capital. The question was whether the transactions between the assessee and the marketing company were sales or their relationship was that of agent and principal. The court held that the cement delivered, despatched or consigned by the assessee to the marketing company or to its orders or in accordance with its directions was sold by the assessee to the marketing company and the same was therefore liable to be taxed under the Bihar Sales Tax Act, 1944. This Court came to that conclusion on the basis of the various clauses in the agreement. One of the clauses in the agreement relied on by this Court for coming to the conclusion that the agreement in question was an agreement of sale was that the marketing company had to pay certain price for the cement supplied to its and that price was ordinarily required to be fixed having regard to the cost of production. Further the marketing company was entitled to fix price at which the cement was to be sold and such price could be even less than the cost of manufacture. It is true that some of the clauses in that agreement are similar to those we are considering in this case yet no clause in that agreement mentioned that the cement manufacturing companies were merely entrusting their cement to the marketing company nor was there any provision in that agreement for the marketing company to advance loans to the manufacturers on the security of the cement entrusted to it. Further the manufacturing companies were not required to pay any interest on the amount paid to them by the marketing company. Hence we are unable to agree with the High Court and the Tribunal that the ratio of the decision in Rohtas Industries Ltd.'s case (supra) governs the facts of this case.

30. The decision of this Court in Hafiz Din Mohd. Haji Abdulla v. State of Maharashtra, (12 STC 292.) does not support the contention of the State. Therein this Court on an examination of various clauses in the agreement held that the relationship between the assessee and its representatives was

that of agent and principal and not of vendors and purchasers. Therefore the State can seek no assistance from that decision.

31. Counsel for the State relied on the decision of the High Court of Madhya Pradesh in Ramachandra Rathore and Bros. v. Commissioner of Sales Tax, Madhya Pradesh, (8 STC 845.) and the decision of the Bombay High Court in Varsova Koli Sahakari Vahatuk Sangh Ltd. v. State of Maharashtra, (22 STC 116.) in support of the State's case. In our opinion the agreements considered in those decisions are wholly different in nature than the bye-laws with which we are concerned in this case.

32. For the reasons mentioned above, we allow this appeal, set aside the judgment of the High Court and discharge the answer given by the High Court and answer the question referred to the High Court in the negative and in favour of the assessee. The appellant-assessee is entitled to its costs both in this Court as well as in the High Court.

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