Kishan Lal

Vs

State of Rajasthan.

Om Prakash and Others

Vs

State of Rajasthan and Others.

Writ Petition No. 1555 of 1979 With Writ Petitions Nos. 31 to 33, 227 to 231, 256, 316 and 317, 422, 476, 761 and 1488 of 1980 and 999, 1574, 3204, 7080, 3482 and 3483 of 1982

(K. Jagannatha Shetty, R. M. Sahai JJ)

23.03.1990

JUDGMENT

SAHAI J. –

The validity of the Rajasthan Agricultural Produce Marketing Act, 1961 (for brevity, "the Act"), levying market fee on sale and purchase of agricultural produce in a market-yard or sub- market-yard was challenged by dealers for lack of legislative competence, violation of articles 14, 19, 301 and 304 of the Constitution, absence of any quid pro quo in the fee paid and service rendered, illegal and arbitrary inclusion of manufactured articles such as khandsari, shakkar, gur and sugar as agricultural produce in the Schedule, etc.

The Acts of other States, for instance, Punjab and Haryana and U. P., were also assailed for similar infirmities. Whether these petitions which appear to be identical are reproductions of any of those petitions which were pending in this court from before is not relevant but various groups of petitions of Punjab and Haryana dealers challenging the constitutionality and legality of the Act and its provisions including gur, khandsari and shakkar as agricultural produce in the Schedule to the Punjab Act have been dismissed by different Benches presumably because of the decisions in Kewal Krishan Puri v. State of Punjab [1979] 3 SCR 1217; Ramesh Chandra v. State of U. P. [1980] 3 SCR 104; Rathi Khandsari Udyog v. State of U. P. [1985] 2 SCR 966 and Sreenivasa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1246.

Despite these decisions spelling out the basic principles for determining the validity of marketing legislation dealing with agricultural produce, the petitioners were not willing to take it lying down probably because none of these decisions dealt with sugar. It was urged that inclusion of sugar in the Schedule to the Act was arbitrary, primarily because it being a declared commodity of public importance under entry 52 of List 1 of Schedule VII, the State Legislature was precluded from legislating on it. Its inclusion in the Schedule was also assailed as it being a mill or factory produce, it could not be deemed to be agricultural produce which is basically confined to produce of, or from, soil.

Sugar is one of the items which was included in the Schedule to the Act, statutorily, right from its inception. Such inclusion is found in Maharashtra, Gujarat, West Bengal, Bihar, etc. Whether it was subsequently deleted or re-included or re-grouped or it was added later was in material as section 40 of the Act empowered the State Government to amend or include any item in the Schedule of agricultural produce. Existence of such delegated power is a usual feature of the statutes. No illegality or infirmity could be pointed out in it. Any challenge, therefore, founded on excessive delegation of legislative power, was misconceived.

Inclusion of sugar in the Schedule was urged to be arbitrary as it was not produced out of soil, the basic ingredient of agricultural produce. The fallacy of the submission is apparent as it was in complete disregard of the definition of the word "agricultural produce" in the Act which includes all produce whether agricultural, horticultural, animal husbandry or other-wise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive neither excludes any item produced in mills or factories nor does it confine its width only to produce from soil. If that be the construction, then all items of animal husbandry shall stand excluded. It further overlooks the expanse of the expression "or otherwise as specified in the Schedule". Nor the switch over from the indigenous method of producing anything to scientific or mechanical method change it character. Khandsari sugar which is produced by open pan process and is not different from sugar produced by vacuum pan process except in composition, filterability and conductivity as held in Rathi Khandsari Udyog, [1985] 2 SCR 966, was held to be agricultural produce in some decisions. No distinction was made on the method of production, namely, by modern plant and machinery. To say, therefore, that sugar being produced in mills or factories could not be deemed to be agricultural produce is both against the statutory language and judicial interpretation of similar provisions of the Act in the statutes of other States. Rice or dal produced in mills have been held to be agricultural produce in Ramesh Chandra v. State of U. P. [1980] 3 SCR 104 and State of U. P. (Krishi Utpadan Mandi Samiti) v. Ganga Dal Mill and Co. [1985] 1 SCR 787. Even in Halsbury's Laws of England, volume 1, the word "agricultural produce", for purposes of agricultural marketing schemes, is understood as, "including any product of agriculture or horticulture and any article of food or drink, wholy or partly manufactured or derived from any such product, and fleeces (including all kinds of wool) and the skins of animals". In the same volume, products covered by the provisions of the EEC Treaty as to agriculture (classified according to the Brussels Nomenclature of 1965) are mentioned in paragraph 1845. Sugar is one of them.

Another legalistic challenge regarding inhibition of the State to legislate on sugar or the oft-repeated argument of occupied filed was more attractive than of any substance. Reliance on article 246 of the Constitution was academic only. As far back as 1956, a Constitution Bench of this court in Choudhary Tika Ramji v. State of U. P. [1956] SCR 393, examined the matter in detail and held sugar legislation to be within the scope of entry 33 of the concurrent list. It was observed that (at page 695 of 1956 AIR) all the "Acts and the notifications issued thereunder by the Center in regard to sugar and sugarcane were enacted in exercise of concurrent jurisdiction". The effect of it was described thus (at page 695): "The Provincial Legislatures as well as the Central Legislature would be competent to enact such pieces of legislation and no question of legislative competence would arise". Any further discussion on clash between entry 52 of List I of the Seventh Schedule with entry 28 of List II, in the circumstances, is unnecessary. As regards the submission of occupied filed, suffice it to say that there is no repugnance in the Central and State legislation. At leas none was made out. Even if there would have been any, the Act having received the assent of the President, it is fully protected by article 254(2).

For these reasons, these petitions fail and are dismissed with costs.

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