

Nandu Mal Girdhari Lal etc. etc

Vs

State of U.P. and others

Civil Appeals Nos. 7356-7360 with 7361-80; 7381-7414 and 7415 of 1983

(M. M. Punchhi, S. Mohan, G. N. Ray JJ)

03.04.1992

JUDGEMENT

MOHAN, J.:-

1. Since common-points of law are involved, all these appeals are dealt with under one judgment.
2. The appellants, commission agents were carrying on trade in the notified market area. The attack is as to the levy of market fee on them in relation to the business of khandsari sugar. To highlight the issue involved we will set out the legal background first.
3. The U. P. Legislature passed an Act called U. P. Krishi Utpadan Mandi Adhiniyam in the year 1964 as Act 25 of 1964. The object of the Act was to regulate the sale and purchase of agricultural produce and for the establishment, superintendence and control of markets in U. P. Section 5 of the Act confers powers on the State Government in relation to regulation of sale and purchase of any agricultural produce in any area wherein such transactions are usually carried on and for that purpose to declare the area as a market area. This declaration is to be by way of a notification. Section 7 empowers even a portion of that market area be specified as a principal market yard, while such other portions could be specified as sub-market yard. The effect of such declaration of market area is spoken to under Section 9. In that, no person shall deal with specified agricultural, produce except in accordance with the conditions of licence granted by the Committee. Sub-section (9)(ii) is specific, while it says the commission agent, trader, or broker will have to carry on the business in accordance with the conditions of licence. Section 10 prohibits realisation of trade purchases from the producers from the sale and purchase of specific. agricultural produce except those which are permitted by the rules or bye-laws.
4. Section 17, about which we will deal with later talks of the powers of the Mandi Samiti. Section 40 confers rule-making power.
5. The commission agents, carrying on business by sale and purchase of gur, rab, shakkar and khandsari questioned the enforcement of the Act in respect of these merchandise. A Division Bench of the Allahabad High Court held that they would not constitute agricultural produce within the meaning of Cl. (A) of Section 2 of the Act. The reason was it involves manufacture changing the nature of agricultural produce.
6. In order to get over this difficulty, the definitioi of agricultural produce was amended by U. P. Act 10 of 1970, and, as a result, gur, rab, shakkar and khandsari and jagg'ery became agricultural produce. The validity of amending Act 10 of 1970 was questioned on various grounds, which, of

course, need not concern us. A Division bench in Special Appeal No. 175 of 1973 constituted 7-9-77 concurring with the learned single Judge repelled the contentions and upheld the validity.

7. It is important to note that pending this Special Appeal No. 175 of 1973, the operation of the notice dated 13-9-73 issued under Section 8 of the Act was suspended in so far as it related to khandsari. However, on 6-9-75 order of stay was modified and the Mandi Samiti was directed to keep the amounts realised by them in a separate account. This order was by agreement between the parties. It has an important bearing since arguments were raised as to the effect of the order of stay, and that is why, we are mentioning at this stage itself.

8. The trader carrying on business within the jurisdiction of several Market Committees challenged the levy of fee before the High Court of Allahabad from time to time. There were several rounds of litigation in which they failed. Thereupon, they came up with an appeal. This Court ultimately gave a direction that the market fee should be regularised and charged in the light of the judgment. Concerning the services whenever rendered by the Market Committee, it was observed at page 1141 (AIR 1980 SC 1124) as follows:

"....We do hope that services are being rendered and will continue to be rendered by the various Market Committees in the light of the judgment of this Court in Kewal Krishan Puri's case (AIR 1980 SC 1008). If in regard to any particular Market Committee it is found that services are not being rendered or in future lapses are made then it will be open to the payers of fees to re-agitate the matter in the High Court in the light of that judgment."

9. The result of the judgment was the validity of U. P. Krishi Utpadan Mandi Act was upheld. Thereafter, the Commission Agents were called upon to submit the account for the period 11-10-73 to 12-8-75 in order to fix the liability of the market fee. An objection was raised by the Traders Association that since no notification has been issued under Section 10, market fee was not leviable. To this, a reply was sent by the Director that as early as 9-10-67, a notification had been issued. Then again, certain other objections were raised. The Mandi Samiti informed the Association that the objections were not tenable and the Samiti need not have recourse to Rule 66 to support the market fee and directed the production of account. Further to this, a demand notice was issued and the appellants were also informed should the market fee be not paid, it would be realised by way of arrear of land revenue. As a result, Writ Petitions were filed challenging the demands for the period 11-10-73 to 12-8-75. A Division Bench of the Allahabad High Court dismissed those Writ Petitions. Hence, these civil appeals by a few of the commission agents.

10. Though several contentions were raised before the High Court, only the following points were raised before us by the appellants:-

(i) The liability to pay market fees was on the seller till 1973. Thereafter, till 1978 the purchasers were made liable. The commission agents are only the collecting agencies from the sellers. The liability of the commission agents is sought to be fixed up to 1978 retrospectively from 12-6-73. The fixation of such a liability is unreasonable. Firstly, the commission agents were unable to realise the said amount from the purchasers who were scattered all over India. After 1980, when the demand was made the relief against such purchaser has become time-barred.

(ii) The retrospective levy would impose a great burden on the commission agents.

The operation of notification of the State Government dated 13-9-73 including definition of agricultural produce under Section 8 was suspended by the High Court on 11- 10-73. The stay was in force till 1975. Hence, no market fee could be charged or paid by anyone for the transaction during that period.

(iii) Admittedly, no notification has been issued under Section 10 read with proviso of Rule 66 providing for trade charges and market fees in respect of khandsari sugar. Therefore, the demand is invalid.

11. In opposition to this, it is argued on behalf of the Samiti as early as 1975, Mandi Samiti, Muzaffarnagar passed a resolution that the market fee would be payable @ 1% with effect from 1-10-73. This resolution was given wide publicity in the market area as well as through newspapers.

12. The fee has been validly imposed and no exception could be taken to the same. It is incorrect to submit that notification under Section 10 has not been issued. Merely because there was a stay, it does not mean the liability disappears. The notification dated 13-9-1973 stood suspended at the instance of other traders. That cannot enure to the benefit of the appellants herein. They were neither the petitioners nor the respondents. Therefore, they cannot take advantage of the stay order and plead inability to pay. Inasmuch as the Act itself has been made retrospectively amended, the appellants cannot disown the liability.

13. In order to appreciate the respective contentions we will now refer to the relevant provisions of law in relation to levy of market fees. Originally (prior to 1978) Section 17 read as follows:-

"A Committee shall, for the purpose of this Act, have the power to -

(i) & (ii).....

(iii) Levy and collect.

(a) Such fees as may be prescribed for the issue or renewal of licences, and

(b) Market fees on transactions of sale or purchase of specified agricultural produce in the principal market yard and sub-market yards from such persons and at such rates as may be prescribed, but not exceeding one half per centum of the price of the specified agricultural produce sold or purchased therein:

Provided that no market fee shall be levied or collected on retail sale of any specified agricultural produce where such sale is made to the consumer.

(iv) to (vii)....."

14. By President's Act No. 13 of 1973, Section 17(iii)(b) was substituted by the following sub-section:-

"17(iii)(b) market fees, which shall be payable by purchasers, on transactions of sale of specified agricultural produce in the principal market yard or a sub-market yard at such rates, being not less than one per centum and not more than 1- 1 / 4 per centum

of the price of the agricultural produce so sold, as the State Govt. may specify by notification in the Gazette."

15. The material change effected by this amendment was to fix the liability on the purchaser instead of the seller. Further, two limits were also prescribed viz. 1 %and 1-1/2% giving the right to the State Govt. to fix any amount in between these limits relating to any Mandi Samiti. This power was exercised by the Market Committees through the bye-laws under the rules.

16. However, by U. P. Act 7 of 1978, a new sub-clause came to be introduced retrospectively with effect from 12-6-73. As a result, the Section reads as under:-

"Power of the Committee - a Committee shall for the purposes of this Act, have the power to:-

(i) & (ii).....

(iii) levy and collect.

(a).....

(b) Market fees which shall be payable on transactions of sale of specified agricultural produce in the market area at such rate, being not less than 1 per centum and not more than 1-1/2 per centum of the price of the agricultural produce so sold as the State Government may specify by notification and such fees shall be realised in the following manner:-

(1) If the produce is sold through a Commission agent, the Commission agent may realise the market fees from the producer and shall be liable to pay the same to the Committee.

(2) If the produce is purchased directly by a trader from a producer the trader shall be liable to pay the market fees to the Committee.

(3) If the produce is purchased by a trader from another trader, the trader selling the produce may realise it from purchaser and shall be liable to pay the market fees to the Committee, and

(4) In any other case of sale of such Produce, the purchaser shall be liable to pay the market fees to the Committee.

(iv).....

(viii)....."

17. Two things are evident from the above - (1) the Section has got retrospective effect w.e.f. 12-6-73 and (2) Commission agents are made liable.

Rule 66 runs to the following effect

"Market fee (Section 17(iii))-(I)The Market Committee shall have the power to levy and collect fees on the specified agricultural produce brought and sold in the Market Yards at such rates as may be specified in the bye-laws but not exceeding one-half to one per centum of the price of the specified agricultural produce:

Provided that the market fee shall be payable by the seller:

Provided further that no market fee shall be levied and charged prior to the date on which provisions of Section 10 of the Act are enforced.

Explanation.- For the purposes of this sub-rule, a sale of specified agricultural produce shall be deemed to have been effected in Market Yard if it has been weighed or measured by 1 a licensed weigh man or measurer in the Market Yard for the purpose of sale, notwithstanding the fact that the proprietorship of such agricultural produce has by reason of such sale passed to a person in a place outside the Market Yard.

(2) No market fee shall be levied more than once on any consignment of the specified agricultural produce brought for sale in the Market Yard if the market fee has already been paid on it in any Market Yard of the same Market Area and in respect of which a declaration has been made and a certificate has been given by the seller in Form No. V.

Notes: Rule 66 cannot be said to be invalid in so far as it sub-delegated the authority to fix the rate of market fee. Mandi Samiti v. L. P. Singh, 1972 All LJ 643 : (1973 Tax LR 2383)."

18. By notification dated 27-10-65, it was declared in exercise of the power under Section 6 of the Act that from 31-1-66 the area of the following Gaon Sabha for purposes of the said Act with regard to (1) Wheat (2) Gram (3) Peas (4) Paddy (5) Rice (6) Arhar (7) Sarson and lahi (8) Potatos (9) Cotton (1 0) All kinds of Gur, Rab and Deshi Shakkar. and their compounds will be the Muzaffarnagar Mandi area."

19. Thus, it would be seen that 10 agricultural produce had come to be included. It also requires to be noted that khandsari sugar did not form part of the notification. On 26-9-67, a notification was issued under Sec. 7 of the Act that from 30-12-67, the principal Mandi area and Sub-Mandi areas of Muzaffarnagar Mandi area came to be specified. Then came the notification dated 9-10-67 issued in exercise of the power under Section 10(1). That notification is reproduced below:-

"October 9, 1967

No. SAM - 1038(Rec) 3812

In exercise of the power delegated by the State Government vide Krishi (kha vibhag Notification No. R.2048/ XII-8-1405-65, dated September 14, 1967, it is hereby notified under sub-section (1) of Section 10 of the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 (U. P. Act No. XXV of 1964), that with effect from December 20, 1969, no person shall, in the Muzaffarnagar Principal Market Yard and the Shahpur

and Budhana Sub-Market Yards of Muzaffarnagar market area levy charge or realise any trade charges other than those prescribed under Rule 79 of the Uttar Pradesh Krishi Utpadan Mandi Niyamavali, 1966, in respect of any transaction of sale or purchase of the agricultural produce specified vide Notification No. H.5353A/XII-B-1047 (2) 65, dated October 27, 1965."

20. The last of the notification is one issued under sub-section (1) of Section 8 on 13-9-73, which is reproduced below:-

"Government of Uttar Pradesh

Agricultural Section-5

No. A-7756 128 (5) 490/72

dated: Lucknow 13, September, 1973

Notification

Under the proviso of sub-section (1) of Section 8, U. P. Krishi Utpadan Mandi Act, 1964, (U. P. Act No. 25 of 1964) in Notification No. H-7372/128-1200(3)/69 dated 16-3-71 issued by the State Government with regard to the Agricultural Production in the Muzaffarnagar Mandi area, District Muzaffarnagar, under Section 6 of the said Act, in notification No. H-5353-A/ 128-1047(2)/65 dated 27-10-65, the Government had made a declaration of its objects including in the specified agricultural production in the list. And objections and suggestions if any with regard to the proposed declaration had to made to the Director of Agriculture within the period specified in the said notification. And with regard to the said object, con'de 'on has been done by the State si rati Government of all objections and suggestions received by the Director of Agriculture within the prescribed time.

Now therefore in exercise of the powers conferred by part (a) of sub-section(1) of Section 8 of the said Act the Governor declares that from 25-9-73 for the purposes of the said Act, the following agriculture products i.e. (1) Khatal Amchur (2) Barseen (seed) (3) Fodder (4) Khandsari will be included in the list of agricultural products as indicated in Section 6 of the said Act with regard to the Muzaffarnagar Mandi area, District Muzaffarnagar.

By Order:

Sd/- A. P. Singh

Deputy Secretary."

21. The effect of the last notification is khandsari gets included to the list of agricultural produce to the notification issued under Section 6 dated 27-10-65.

22. As a matter of fact, Section 8 of the Act clearly postulates such a procedure. Section 8(1)(a) is

reproduced below.-

"Alteration of Market Area and Modification of the List of Agricultural Produce (1)
The State Government, where it considers necessary or expedient in the public interest so to do, may, by notification in the Gazette, and in such other manner as may be prescribed and with effect from the date specified in the notification,-

(a) include any agricultural produce in, or exclude any agricultural produce from, the list of agricultural produce specified in the notification under Section 6;"

The consequence of it will be that w.e.f. December 20, 1969, no person in the Muzaffarnagar principal Market Yard may levy, charge or realise any trade charges other than those prescribed under Rule 79 in respect of sale or purchase of agricultural produce, specified in the notification dated 27th October, 1965.

23. This is apparent from the notification under Section 10 dated 9-10-67 as seen from the above extract.

24. On 24-9-73, acting under S. 17(iii) as amended, the State Government issued a notification providing for realisation of market fee 1% on the price on sale and purchase of specified agricultural produce in the principal Market Yard of Muzaffarnagar w.e.f. 1-10-73.

25. Pursuant to this notification, the U. P Krishi Utpadan Mandi Samiti, Muzaffarnagar informed as follows:-

"..... all the traders and commission agents of the mandi Area, Muzaffarnagar, Dist. Muzaffarnagar, are informed that they will now realise Mandi fee on all agricultural produce at its sale value at the rate of 1% of the total sale or purchase from the purchaser. The amount of Mandi fee realised in this way shall be deposited as ordered earlier in the office of the Samiti by the Commission agent traders within the prescribed period and after this notice no amount will be deducted as Mandi fee from the seller.

Sd. Kanhaiyalal Agarwal

Pergana Officer, Muzaffarnagar

President

Krishi Utpadan Mandi Samiti,

Muzaffarnagar"

26. From the above narration it will be clear that once the Act itself amended retrospectively w.e.f. 12-6-73, we do not know now the Commission agents can escape the liability. It is one of the settled principles that because of plenary powers, the Legislature could pass legislations prospectively as well as retrospectively. This being so, the liability between 11-10-73 to 12-10-75, the period in dispute in these appeals, cannot be avoided.

27. It has already been seen how khandsari has come to be validly included. -Therefore, for dealing

in this commodity the Commission agents will be liable to pay at the rates prescribed.

28. Turning to the stay, it has already been noted that though stay was granted on 11-10-73, it was not at the instance of the appellants herein. As a matter of fact, they never questioned the validity of the amending Act or the notification. Therefore, they cannot take advantage of the same. The said stay also came to be modified on 6-8-75 by agreement. Even to that agreement, the appellants were not the parties. Therefore, neither of the rulings viz. Jang Singh v. Brijlal, (1964) 2 SCR 145: (AIR 1966 SC 1631) and Union Carbide Corporation v. Union of India, (1 991) 4 SCC 584: (AIR 1992 SC 248) would have any application to the facts of the case. Merely because the Commission agents cannot realise the amount from the purchasers at this distance of time or that they are scattered, the statutory liability cannot be avoided.

29. In the result, we hold that they are liable to pay the demands raised by the respondent-Samiti against them. However, if with regard to any particular transaction it is proved that by the Commission agents the purchasers had paid the market fee on such transaction the Samiti will not make them liable once again. Subject to the only qualification the appeals are hereby dismissed. However, there shall be no order as to costs.

Appeals dismissed.

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