

Himachal Pradesh Marketing Board and Others

Vs

Shankar Trading Co. Pvt. Ltd. and Others

Civil Appeal No. 11464 of 1996

(G. T. Nanavati, G. N. Ray JJ)

04.09.1996

JUDGMENT

G. N. RAY, J. -

1. Leave granted. Heard learned counsel for the parties.
2. The questions raised for decision in the appeal are as to whether Respondents 1 to 3 who purchased khairwood and processed the same and manufactured "katha" are "producers" within the meaning of the Himachal Pradesh Agricultural Produce Markets Act, 1969 (9 of 1970) (hereinafter referred to as "the Marketing Act") and whether the said respondents are also "dealers" within the meaning of the Marketing Act and therefore they are required to obtain licence for their trading activities under the said Marketing Act.
3. Respondent 1, Shanker Trading Co. Pvt. Ltd., is a private limited company which has established its sale depot at Una which is within the jurisdiction of the Marketing Committee at Una within the State of Himachal Pradesh. The respondents purchased khairwood and processed the said khairwood by subjecting the wood to various physical and chemical processes and converted the Khairwood into "katha". Appellant 1, Himachal Pradesh Marketing Board, and Appellant 2, Marketing Committee, Una, constituted by the Himachal Pradesh Marketing Board under the Marketing Act, required Respondent 1 Shanker Trading Co. Pvt. Ltd., to obtain licence and pay the requisite market fee @ 1% on the sale of Katha which are processed by the said respondent during the marketing year. The said demand for obtaining licence and to pay the requisite market fee was made on the footing that the respondents who produce katha are "manufacturers" and as they also act as dealers of "katha" under the Marketing Act, they were required to obtain licence for the trading activities within the market area and to pay the requisite market fee for trading activity.
4. Respondents 1 to 3 challenged the appellants' demand for levy of market fee and also the direction of the appellants asking the respondents to obtain licence under the Marketing Act in the High Court of Himachal Pradesh by filing a writ petition being Writ Petition No. 238 of 1989. The said respondents contended that they were manufacturers of katha from khairwood. Accordingly, they were not producers. In any even, the producers selling their manufactured products which is also an agricultural produce are not required to obtain a licence under the Marketing Act either for the purpose of producing or for selling. The appellants contested the said writ petition by filing a counter to the writ petition. It was contended inter alia by the appellants that Section 2(h) of the said Marketing Act only protects actual producers like the farmers but such protection was not extended to the companies like Respondent 1. It was further contended that the purpose of exemption of the "producers" within the meaning of Section 2(h) of the Marketing Act was that such farmers who

were producers of agricultural produce within the meaning of the Marketing Act were not required to obtain any licence for the purpose of selling their own agricultural produce but the persons who purchase the raw material from outside and produce end products from such raw materials are not exempted from obtaining the licence under the Marketing Act. The Marketing Act only envisages exemption of the farmers who manufacture their agricultural produce but no such exemption is available to a non-agriculturist engaged in the manufacture of end produce from the agricultural produce.

5. The said writ petition was, however, allowed by the impugned judgment dated 30-11-1994. The High Court inter alia has come to the finding that the manufacturing processes required to be undertaken for obtaining the end product katha from the khairwood as alleged in the writ petition should be accepted in the absence of indicating any other process by the respondents in the writ petition (the appellants herein) for obtaining the end product katha from the khairwood. The High Court has indicated that katha is not grown and produced in the farms or by any agricultural process. Though it is obtained from khairwood grown in the farms but without restoring to manufacturing processes, the end product katha cannot be obtained from the khairwood. The High Court has held that in view of such manufacturing process, the manufactures of a forest produce as defined in Section 2(h) of the Marketing Act are not dealers of katha within the meaning of Section 2(i) of the Marketing Act.

6. The High Court has held that the distinction between the producer and the dealer is that a producer grows, manufacture, rears or produces the agricultural produce besides disposing of the same but a dealer only sets up or establishes a place for such purchase or storage or processing of agricultural produce. A dealer does not produce "agricultural produce". Accordingly, the writ petitioners cannot be held dealers within the meaning of Section 2(i) of the Marketing Act. The High Court has further held that the writ petitioners are not dealers but in fact producers of katha and Section 4(3) of the Marketing Act is not attracted. Hence, they are not required to take any licence under the Marketing Act. The High Court has further held that as the writ petitioners are not required to obtain any licence, Section 21 of the Marketing Act is also not attracted and the writ petitioners therefore are not required to pay market fee under the provisions of Section 21 of the Marketing Act. The direction of the respondents in the writ petition requiring the writ petitioners to obtain a licence and to pay market fee, therefore, cannot be sustained. Such directions were, therefore, quashed by the High Court. In the impugned order, the High Court has restrained the appellants from requiring the writ petitioners from taking licence or paying fee under the Marketing Act. The High Court has further directed that the amount of fee, if collected, would be refunded to the writ petitioners.

7. It will be appropriate at this stage to refer to some of the provisions of the Marketing Act :

"2. (a) 'Agricultural produce' means all produce whether processed or not, of agriculture, horticulture, animal husbandry or forest as specified in the Schedule to this Act;

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2. (h) 'producer' means a person who, in his normal course of avocation, grows, manufactures, rears or produces, as the case may be, agricultural produce personally, through tenants or otherwise, but does not include a person who works as a dealer or a broker or who is a partner of a firm of dealers or brokers or is otherwise engaged in

the business of disposal firm of dealers or brokers or is otherwise engaged in the business of disposal storage of agricultural produce other than that grown, manufactured, reared or produced by himself, through his tenants or otherwise. If a question arises as to whether any person is a producer or not for the purposes of this Act, the decision of the Deputy Commissioner of the district in which the person carries on his business or profession shall be final :

* *

2. (i) 'dealer' means any person who, within the notified market area, sets up, established or continues or allows to be continued any place for the purchase, sale, storage or processing of agricultural produce notified under sub-section (1) of Section 4 or purchase, sells, stores or processes such agricultural produce;

* *

4. (3) After the date of issue of such notification or from such later date as may be specified therein, no person, unless exempted by rules framed under this Act, shall, either for himself or on behalf of another person, or of the Government within the notified market area, set up, establish or continue or allow to be set up, established or continued any place for the purchase, sale, storage and processing of the agricultural produce so notified, or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence :

Provided that a licence shall not be required by a producer who sells himself or through a bona fide agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

* *

21. The market committee shall levy, on ad valorem basis, fees on agricultural produce bought or sold by licensees in the notified market area at the rate not exceeding one rupee for every one hundred rupees as may be fixed by the Board :

Provided that -

(a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made."

8. Mr. M. C. Agarwal, learned counsel appearing for the appellants, namely, Himachal Pradesh Marketing Board and the Marketing Committee, Una, has contended that the writ petitioner-respondents cannot claim exemption from obtaining a licence under the said Marketing Act or from paying levy for trading in katha within the market area, Una, as notified under the Marketing Act. Mr. Agarwal has contended that the writ petitioners-respondents are not admittedly farmers or growers of agricultural produce. It is not the case of the said respondents that they sell within the

market area their own agricultural produce which as farmers they grow. Admittedly, the said respondents purchase khairwood which are agricultural produce within the meaning of the Marketing Act and then subject such agricultural produce to the manufacturing processes for obtaining the end product "katha". According to Mr. Agarwala, the "producer" as defined in Section 2(h) of the Marketing Act means a person who manufactures agricultural produce personally but it does not include a farm or a company or other persons engaged in the business of disposal of such agricultural produce after processing, when they do not grow the agricultural produce subjected to manufacturing process for obtaining the end product. It has been submitted by Mr. Agarwala that the Marketing Act has been enacted to ensure that the actual growers agricultural produce as defined in the Act get a fair price of such agricultural produce without being exploited by the middlemen or traders by selling such agricultural produce in the regulated market constituted under the Marketing Act. The said Marketing Act is not intended to give exemption to the dealers of agricultural produce or the manufacturers of end products obtained from the agricultural produce not grown by the farmers.

9. Mr. Agarwala has also contended that, in any event, the said writ petitioners must be held to be "dealers" within the meaning of Section 2(i) of the Marketing Act because they have established or set up a place of business within the market area as notified under the Marketing Act where the said writ petitioners purchase, sell, store and process agricultural produce and also the end products obtained from such agricultural produce. Mr. Agarwala has submitted that "katha" is admittedly processed from the khairwood. The said "katha" is therefore an agricultural produce within the meaning of Section 2(a) as specified in Schedule I of the Marketing Act. Mr. Agarwala has further submitted that the expression process has been used in the definition of agricultural produce and also in the definition of "dealer", but such expression as process of agricultural produce has not been used in the definition of "produce". Processing of goods has not also been brought within the purview of proviso to Section 4(3) of the Marketing Act although in Section 4(3) the word process has been used.

10. Mr. Agarwala has submitted that the expression processing used in the proviso to sub-section (3) does not envisage that the person who processes the goods for getting end product like the writ petitioners are exempted from the obligation of obtaining licence under the Marketing Act. Mr. Agarwala has also submitted that the writ petitioners after manufacturing katha from the khairwood, sell such manufactured product in the market area. Accordingly, the said writ petitioners must be held to be dealers of the said end product katha even if the said end product has been manufactured by the said dealers from khairwood.

11. Mr. Agarwala has also submitted that if an agriculturist is engaged in the business of disposing of his own agricultural produce, he ceases to be an agricultural produce. In support of such contention, Mr. Agarwala has referred to a decision of this Court in *Ram Chandra Kailash Kumar and Co. v. State of U.P.* [1980 Supp SCC 27 : (1980) 3 SCR 104]

12. Mr. Agarwala has lastly contended that the writ petitioners are not exempted from the obligation of obtaining licence for the purpose of selling the said katha in the market area because company or association of persons are not exempted under the Marketing Act; only the individual agricultural producer gets such exemption if he sells his own produce. Mr. Agarwala has, therefore, submitted that the impugned decision of the High Court is not sustainable and should be set aside.

13. Mr. P. P. Rao, learned counsel appearing for Respondents 1 to 3, has disputed the contentions made by Mr. Agarwala. It has been contended by Mr. Rao that the Marketing Act exempts producers

of the specified agricultural produce from the liability to obtain a licence and to pay market fee in respect of the transactions effected pertaining to such produce. Katha is a specified agricultural produce. It is made out of khairwood. The respondents manufacture katha and sell the same outside the State of Himachal Pradesh. The said respondents are also not storing katha so as to render such producers liable to be treated as dealers. Mr. Rao has submitted that the High Court, in the facts of the case, has considered this aspect and has held that the respondents are not dealers.

14. Mr. Rao has also submitted that the definitions of producer and dealer make it quite clear that a dealer is one who does not carry on the manufacturing activities and whose incidental activity of processing is in a minimal sense of rendering the article fit for sale or use of consumption. Such activity does not amount to or is equated with the activities of a producer. Manufacturing of katha is a complete process involving several stages. The respondents do more than mere processing of khairwood and they do not purchase katha, as such, from the markets situated in Himachal Pradesh (sic) from out of khairwood. Hence, the said respondents are not dealers.

15. Mr. Rao has also contended that the appellants are attempting to treat Respondent 1-Company as processor of katha. Such attempt is made on the assumption that the said company processes katha which is an agricultural produce and accordingly they fall within the definition of dealer because the respondents are alleged to have set up a place for sale and storage of katha. Mr. Rao has submitted that such approach as made by the appellants, is clearly contrary to and not supported by the express terms of various provisions of the Marketing Act and the Rules framed thereunder. In this connection, attention of the Court was drawn to the definition of "Agricultural Produce" [Section 2(a)], "Dealer" [Section 2(i)], "Producer" [Section 2(h)], "Commission Agent" [Rule 2(iv) of the Rules framed under the Marketing Act], "Seller" [Rule 2(xiii)], and the provision relating to exemption [Section 4(3)], "Market fee" to be levied [Section 21], and Rule 80(7) dealing with the meaning of terms "bought and sold". Mr. Rao has submitted that the harmonious reading of the said provisions indicates that the definition of producer relates to and includes all those who manufacture or process any of the specified agricultural produce. The proviso to sub-section (3) of Section 4 of the Marketing Act exempts the producer who sells his own agricultural produce which includes an agricultural produce as such or in the processed form. It has been contended by Mr. Rao that by no stretch of reasoning, a manufacturer or producer of agricultural produce (a scheduled item) can be treated as a mere processor of an agricultural produce since the definition of producer includes those who manufacture the produce which covers all activities of processing. Any other interpretation of manufacturer or producer of agricultural produce will amount to rewriting the provisions of the Marketing Act and such rewriting is not permissible.

16. Mr. Rao has also submitted that the definition of dealer means those persons who merely undertake or engage in the activities of purchase, storage and sale within the market area. Respondent 1-Company manufactures katha from khairwood and the end produce so obtained being the scheduled item i.e. agricultural produce is disposed of by the company itself. It is not the case that Respondent 1-Company purchases katha for storage and then sells the same within the market area. It is not the case that Respondent 1-Company purchases katha for reprocessing for its storage and sale. Mr. Rao submitted that in the aforesaid facts, it is quite evident that the respondents are outside the purview of the Marketing Act like any other agriculturist.

17. It has been contended by Mr. Rao that a legislature which imposes tax or levy must be construed strictly. Mr. Rao has also submitted that the stand taken by the appellants that the katha is not produced by the respondent-Company but is obtained only by processing khairwood, is also not factually correct. Mr. Rao has submitted that katha is obtained from khairwood as a result of a series

of manufacturing activities. It is not merely a matter of processing of khairwood. "Khairwood" and "katha" are not only distinct commercial commodities but they are different in physical and chemical properties as well as their respective end use. The manufacturing process leading to the end product katha has been clearly indicated in paragraph 8 of the writ petition to the following effect :

"8. Katha (Catechu) is extracted from wood of trees known as khair (Acacia Catechu/Acacia Sundra). Khair trees are grown in forest and in fact these trees and their wood can be termed as agricultural produce for the purpose of the definition of the Act. Standing khair trees in the form of wood become the essential and basic raw material for the manufacture of katha (Catechu). The said wood is not used in manufacturing of katha alone but is also used and utilised for the manufacturing of forest medicines. In order to obtain katha (Catechu), khairwood is processed through various physical and chemical processes to obtain the end product katha.

9. The method of manufacturing process for the manufacture of katha (Catechu) is as follows :

- (a) Long logs of khairwood are converted into small logs in sawmills.
- (b) In order to remove the bark and sapwood either manual process is adopted or khair logs are peeled through peeling machine.
- (c) The khairwood so peeled/debarked is know as heartwood.
- (d) Heartwood is again converted in small pieces in sawmill.
- (e) Small pieces of wood are converted into small chips in chipping machine.
- (f) Standard size chips are removed/separated from odd size chips.
- (g) Odd size chips are converted into standard chips in disintegrator machine.
- (h) Standard size chips are boiled in closed vats.
- (i) Mother liquor so obtained is concentrated in pan with steam.
- (j) Thick liquor obtained is allowed for fermentation with treatment with chemicals.
- (k) The fermented material is allowed to cool in cold storage. Cold storage is operated with the help of compressor and other allied machinery. This process is know as crystallization.
- (l) The crystallized material is allowed to filter through hydraulic press and/or vacuum filter press to obtain paste and also remove the cutch (Tannin).
- (m) Filtered product is converted into small blocks with the help of machine or manually.
- (n) Small blocks are converted into tablets of different sizes. These tablets so

obtained are allowed to dry in drying chamber. Drying chamber is operated with humidifier and other machinery.

(o) Dry product is known as katha."

18. Mr. Rao has also submitted that there is a clear distinction between the producer and dealer. There is also a distinction between the activity of manufacturing and the activity of processing. The Marketing Act does not define process, processing and processor. Mr. Rao has submitted that the fundamental principle of interpretation of statutes is that the statute is to be expounded according to the intention that makes the statute meaningful and purposeful. In support of this contention, Mr. Rao has relied on the decision of the Court made in CIT v. Sodra Devi [1958 SCR 1 : AIR 1957 SC 832 : (1957) 32 ITR 615]. Mr. Rao has submitted that if the meaning of manufacture or manufacturing is taken as excluding process or processing, it would lead to repugnancy with a consequence result that the construction of the word manufacture as processing would be arbitrary and mischievous. Mr. Rao has also submitted that the High Court, in the impugned decision, has rightly held that the necessary distinction between the producer and the dealer is that a producer also grows, manufactures, rears or produces the notified agricultural produce besides disposing of the same but the dealer only sets or establishes a place for purchase, sale or storage or processing of agricultural produce. Mr. Rao has submitted that a dealer does not produce agricultural produce. In this connection, he has referred to a decision of this Court in State of M.P. v. Hardeo Shrinath [(1994) 4 SCC 707 : AIR 1994 SC 2538]. Mr. Rao has further submitted that the words "processed or otherwise" used in Section 2(a) dealing with the definition of agricultural produce has not been used in the context as being projected by the appellants. He has submitted that a series of action contemplated in manufacturing an item does not exclude the series of action contemplated in processing the same item before it is used as a raw material in manufacturing. Manufacture includes any process incidental or ancillary to completion of manufacturing a product. Mr. Rao has also submitted that the word "process" used in Section 2(a) has to be interpreted in the light to Section 2(h) in the context in which the said word appears in Section 3(a). Mr. Rao has also submitted that the word process has to be assigned its natural meaning i.e. an item subjected to such handling/treatment to make it fit for use or consumption of an item as it is. The dictionary meaning of the word "storage" is to be keep goods in godown/warehouse for charges. It cannot be held that a person by keeping a manufactured item on completion of manufacturing process undertaken by him in the business premises till its sale is effected is indulging in activity of carrying on an independent business of storage. The Marketing Act does not deal with charging the market fee on storage of scheduled item by a manufacturer of such scheduled item. The word "storage" appearing in Section 2(i) dealing with definition of dealer must be construed in the context of definition of "godownkeeper". According to Section 2(f), godownkeeper is a person other than a producer who stores the scheduled item in lieu of charges for sale. The storage of a scheduled item is an independent business activity and only a person who indulges in such activity per se is liable to obtain a licence under Section 11(2) read with Rules 45, 46, 63 and 83 of the Rules framed under the Marketing Act. Any other storage activity of a producer of agricultural produce which is incidental to manufacturing/processing of the said agricultural produce does not attract Section 4 of the Act.

19. Mr. Rao has therefore submitted that the impugned judgment of the High Court does not require any interference by this Court and the appeal should be dismissed.

20. After giving our careful consideration to the facts of the case and the contentions raised by the learned counsel for the parties, it appears to us that the writ petitioner-respondents cannot claim

exemption from the requirement of obtaining licence for processing khairwood for production of katha within the specified "market" under the Marketing Act, which are ultimately sold by them.

21. "Katha" has been included as an agricultural produce by the amendment of the Schedule to the Marketing Act on 2-3-1987. If a farmer growing "khairwood" in his farm undertakes the manufacturing processes as indicated by the writ petitioners and obtains the end product "katha" and then stores the same for selling within the specified market under the Marketing Act and ultimately sells the katha, there would have been no necessity for such farmer to obtain licence for such storing and selling katha.

22. Under the scheme of the Marketing Act, it is only the actual producer of an "agricultural produce", obtained by various activities of agricultural, horticulture etc. as indicated in Section 2(a) of the Marketing Act, who is exempted from the requirement of obtaining a licence for processing or storing his "agricultural produce" in a place within the specified market. Such producer is also not liable to pay levy under Section 21 of the Marketing Act if he sells the "agricultural produce" since grown or reared by him after processing. Although "katha" has been specified as an "agricultural produce" after the amendment of the Schedule to the Marketing Act, the writ petitioners are not producing the said agricultural produce namely katha by processing the agricultural produce grown by them in their farm. They, in fact, are purchasing khairwood, agricultural produce grown by others, and then subject such khairwood to various physical and chemical processes for obtaining an end product "katha".

23. Some "agricultural produce" which is obtained in its natural form requires processing for being used as an item for consumption. Such processing may, in some case, be quite simple e.g. pulses from the grains. In some case, a delicate processing is required entailing some physical and chemical processing e.g. hide from the raw skin of an animal.

24. Under the scheme of the Marketing Act, which is primarily intended to benefit the actual growers of "agricultural produce", the producer or grower of "agricultural produce", even when required to undertake some processing whether simple or otherwise, of the natural "agricultural produce" to make its consumption worthy, does not cease to be a producer of the "agricultural produce" because the natural produce even after being subjected to processing, remains "agricultural produce" within the meaning of Section 2(a) of the Marketing Act. That apart, the definition of "producer" under Section 2(h) has taken care of such processing activity. So far as "katha" is concerned, it is scheduled agricultural produce. It will, therefore, be immaterial if for obtaining katha from natural agricultural produce as grown in the farm namely khairwood, some detailed and delicate manufacturing process are to be undertaken. In our view, in view of inclusion of "katha" as a specified agricultural produce, there is no scope to contend that katha is not such an agricultural produce which may be obtained from the khairwood after some processing as commonly understood, but katha can be obtained by subjecting the natural produce khairwood to a series of delicate physical and chemical processing and the end product "katha" has not only a distinct identity but has also physical characteristic and chemical composition, different from khairwood so that a farmer producing katha from khairwood grown by him does not get the benefit which a farmer or grower would have otherwise got under the Marketing Act. The fine distinction between simple processing to make natural agricultural produce fit for consumption and delicate manufacturing process required for obtaining katha, a completely separate end product as south to be made by the writ petitioners cannot be accepted because of inclusion of katha in the Schedule.

25. The writ petitioners even though are producing katha, a specified agricultural produce by

processing khairwood, a natural product grown in the farm, in our view, cannot claim exemption from the requirement of obtaining a licence under Section 4(3) and payment of levy under Section 21 because they themselves have not grown the khairwood but have purchased the "agricultural produce" khairwood grown by others and then processed the same to obtain katha even though katha itself is a specified agricultural produce.

26. Under the scheme of the Act, primary agricultural produce as obtained in the natural process of agricultural, horticulture, pisciculture, poultry, cattle breeding etc. when processed by growers of such agricultural produce to make it consumption worthy and for such processing of growers' own produce, it is stored within a specified market and processed in such area and ultimately the processed item is sold by the grower of such produce, the grower is entitled to exemption from the requirement of obtaining licence for storing and processing and selling such produce, and paying levy for such activities taken within the specified market.

27. Despite the niceties of arguments made on behalf of the writ petitioners-respondents, it appears to us that as the writ petitioners do not fulfil the basic requirement of being growers of khairwood, an agricultural produce, to be grown in the farm by the agricultural activity contemplated under Section 2(a) of the Marketing Act, they cannot claim exemption from the requirement of obtaining licence under Section 4(3) of the Marketing Act for bringing or storing khairwood within the specified market for subjecting such khairwood to processing for obtaining the end product katha for the purpose of selling such katha. For the same reason, the writ petitioners cannot escape the liability of levy for selling katha after processing khairwood within the specified market. The appeal is, therefore, allowed. The impugned judgment of the High Court is set aside. There will be no order as to costs.