

Mahaluxmi Rice Mills and Others

Vs

State of U.P. and Others

Civil Appeals Nos. 555-557 of 1997 with Nos. 558 to 563 of 1997

(CJI M. M. Punchhi, K. T. Thomas, S. M. Quadri JJ)

19.08.1998

JUDGMENT

THOMAS, J.

The area of dispute in this appeal has now been considerably narrowed down with the decision of a three-Judge Bench of this Court in Food Corporation of India v. State of Kerala (1997) 3 SCC 410). The short question now remains is whether the market fee payable to the Market Committee constituted under the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 (for short "the Act") shall be paid by the seller or purchaser when agricultural produce is sold by a trader to the Government. The aforesaid question arose under the following facts :

The appellants are traders carrying on business in rice-milling within certain areas constituted in the State of U.P. Such areas have been notified as market areas under Section 6 of the Act. Among the business activities a carried on by the appellants, they purchased paddy from cultivators or sellers outside the market area and the paddy so purchased is hulled to make it rice for sale. They are under a duty to sell rice to the State Government as levy by virtue of clause (3) of the U.P. Rice and Paddy (Levy and Regulation of Trade) Order, 1985, which was issued under the Essential Commodities Act, 1955. It will hereinafter be referred to as "the Levy Order".

2. The provisions of the Act envisage the formation of a Market Committee for each market area and the said Committee is empowered to levy and collect fee called "market fee" on transactions of sale of agricultural produce which take place within the market area, at such rates as the State Government may specify by notification. Section 17(iii) of the Act reads thus :

"17. Powers 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 fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one per centum and not more than two per centum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner -

(1) if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser 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 fee to the Committee;

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

(4) in any other case of sale of such produce, the purchaser shall be liable to pay the market fee to the Committee :"

3. The Market Committee concerned made demands on the appellants to remit the market fee as indicated in Section 17(iii)(b)(3) of the Act. The appellants challenged the said demand before the Allahabad High Court on different grounds. The first ground is that when a rice-miller gives rice to the Government as levy under the Levy Order, it does not amount to a "transaction of sale" and hence no market fee can be collected thereon. The second ground is that the State Government is not a "trader" as contemplated in the sub-clause and hence there is no liability to pay market fee. The third ground is that even if it was a sale to a trader, the liability to pay market fee is on the purchaser, i.e., the Government and not the miller who sells it to the Government.

4. The High Court did not accept any of the aforesaid contentions and hence the reliefs prayed for by the appellants in the writ petitions were disallowed. Against the judgment repelling those contentions, special leave petitions have been filed by the appellants and hence these appeals.

5. In the present appeals, the appellants did not contend that the Government is not a trader as envisaged in sub-clause (3) of Section 17(iii)(b) of the Act. However, the appellants persisted with the third contention that the act of selling rice to the Government under the Levy Order is not a transaction of sale. That contention was heard by a three-Judge Bench of this Court along with some other appeals wherein a similar question was involved. It was held by the Bench that the disputed transactions are sales and thus the said contention is put to rest (vide para 35 of Food Corpn. of India v. State of Kerala (1997) 3 SCC 410).

6. However, these appeals were not disposed of by the said Bench since the first ground mentioned above has not been heard. Hence these appeals were delinked from the rest of the appeals and they were posted before a Bench of two Judges of this Court. When the appeals were heard on 22-4-1998, the Bench deemed it necessary to have these appeals heard by a larger Bench due to the following reasons : before the said Bench, counsel for the appellants relied on the decision of another two-Judge Bench of this Court in Krishi Utpadan Mandi Samiti v. Indian Wood Products Ltd. ((1996) 3 SCC 321) in which this Court held thus :

"In a case where the trader selling the produce has realised the market fee from the trader, the seller shall be bound to pay the market fee to the Committee. However, where the selling trader does not realise it from the purchaser he is under no obligation to pay the market fee to the Committee."

On behalf of the Market Committee, it was submitted then that an earlier decision of a Constitution Bench of this Court was not taken note of by the learned Judges in Krishi Utpadan Mandi Samiti v. Indian Wood Products Ltd. ((1996) 3 SCC 321), In view of the aforesaid contentions, the learned Judges felt the need that these appeals should be heard by a larger Bench regarding the remaining

question. Thus the limited question mentioned in the first paragraph alone needs answer for the final disposal of these appeals.

7. Shri O. P. Rana, learned Senior Counsel who argued for the Market Committee, contended that the provisions of the Act are intended to make it feasible and practical for the Market Committee to realise market fee; the Committee looks to the licensed traders doing business within the limits of the market area for realisation of the market fee; if the primary liability to pay market fee is that of a purchaser and not a seller, the Market Committee would find it very difficult to collect the fee from the purchaser who might leave the market area after purchasing the agricultural produce. Mr. B. D. Agrawal, learned Senior Counsel for the appellants, argued that since sub-clause (3) allows the seller to collect fee from the purchaser, the trader's liability must be fastened with the purchaser and when the purchaser is the a Government, the market fee is very often not paid by the Government to the seller and in such a contingency, it would be unjust for the Market Committee to realise the fee from the seller.

8. Sub-clause (3) of Section 17(iii)(b) of the Act which has been extracted above contains the following limbs :

- (1) The right of the Market Committee to collect market fee would arise under the sub-clause only "if the produce is purchased by a trader from another trader".
- (2) In such a case, it is open to the seller to realise the market fee from the purchaser.
- (3) But it is the duty of the seller to pay the fee to the Committee.

9. It is significant to note that the word used for the seller to realise market fee from his purchaser is "may" while the word used for the seller to pay the market fee to the Committee is "shall". Employment of the said two monosyllables of great jurisprudential import in the same clause dealing with two rights regarding the same burden must have two different imports. The legislative intendment can easily be discerned from the frame of the sub-clause that what is conferred on the seller is only an option to collect market fee from his purchaser, but the seller has no such option and it is imperative for him to remit the fee to the Committee. In other words, the Market Committee is entitled to collect market fee from the seller irrespective of whether the seller has realised it from the purchaser or not.

10. In *Krishi Utpadan Mandi Samiti v. Indian Wood Products Ltd.* ((1996) 3 SCC 321) the learned Judges were persuaded by the ratio laid down by this Court in *Krishi Upaj Mandi Samiti v. Orient Paper & Industries Ltd.* ((1995) 1 SCC 655) wherein provisions of a similar Act which is in force in the State of Madhya Pradesh were considered and held that the primary liability to pay the fee is placed upon the buyer. But the corresponding provision in the Madhya Pradesh Act is differently worded and hence the question of the liability to pay market fee as per sub-clause (3) of Section 17(iii) of the Act could not have been solely based on the ratio in the said decision. It is difficult for us to agree with the reasoning that "the use of the word 'shall' in the said clause means that where the selling trader collects fees from a purchasing trader he is under an obligation to make over the fee to the Market Committee and where the selling trader does not collect the fee from the purchasing trader the liability to pay the market fee remains to be that of the purchaser".

11. The Constitution Bench in *Ram Chandra Kailash Kumar and Co. v. State of U.P.* (1980 Supp SCC 27 : (1980) 3 SCR 104) considered the provisions of the Act though in a different context.

Their Lordships, while dealing with Section 17(iii)(b) of the Act looked at the distinction between sub-clause (2) and sub-clause (3) and observed that if paddy is purchased in a particular market area by a rice-miller and the same paddy is converted into rice and then sold, the a rice-miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer, but he cannot be asked to pay market fee over again under sub-clause (3) in relation to the transaction of rice. The Bench then added : (SCC p. 46, para 20)

"If, however, paddy is brought by the rice-miller from another market area, then the Market Committee of the area where paddy is converted into rice and sold will be entitled to charge market fee on the transaction of sale in accordance with sub-clause (3)."

The Constitution Bench then referred to a transaction of sale of ghee and pointed out two types of dealers in such transaction - (1) a dealer who purchases milk or cream from the villagers and others and manufactures ghee in his plant, and (2) a dealer who purchases such ghee from the manufacturer of ghee and sells it to another trader in the same market area. It is held that when the first dealer sells ghee to another dealer, then under sub-clause (3), the manufacturing dealer will be liable to pay market fee to the Market Committee on the transaction of ghee, but he will be entitled to pass on the burden to his purchaser. In that context learned Judges stated thus : (SCC p. 47, para 21)

"Apropos the Market Committee, however, the liability will be of the manufacturing dealer."

12. The aforesaid observations of the Constitution Bench makes the position clear that the Market Committee is fully entitled to collect the market fee from the seller and it is for the seller to pass the burden on the purchaser if he so chooses. It is not the lookout of the Market Committee to see that the seller gets the amount of fee paid by the purchaser. Thus the appellants cannot shirk the responsibility to pay the market fee to the Market Committee when the transaction falls within the purview of sub-clause (3) of Section 17(iii)(b) of the Act and then it would be open to them to recover the same from the purchaser-Government.

13. For the above reasons we dismiss these appeals.