

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Mool Chand

Crl.A.No.667 of 1999

(Arijit Pasayat and C.K.Thakker JJ.)

14.10.2004

JUDGMENT

Arijit Pasayat, J.

1. These two appeals involve identical issues and therefore are taken up for disposal together. The judgment impugned in Criminal Appeal No.435 of 2002 was based on the judgment which is the subject matter of challenge in Crl.A.No.667 of 1999.

2. The background facts, so far as Crl.A.No.667 of 1999 is concerned, are as follows:

“The respondent had obtained licence No.55 as trader and commission agent 'A' class from the Krishi Upaj Mandi Samity, Jodhpur (hereinafter referred to as the 'Samity'). On 16.12.1989 records of the respondents were inspected. It was found that the declaration forms issued were not in terms of the *Rajasthan Agricultural Produce Market Act, 1961* (in short the 'Act') and the Rajasthan Agricultural Produce Market Rules, 1963 (in short the 'Rules') as they did not contain actual details and disclosed evasion of payment of market duty amounting to Rs.87,639.90/-. A notice was served on 9.1.1990 on the respondents to deposit the aforesaid amount. On 11.4.1990 another notice was served, when there was no response to the first notice. Since there was no response to the second notice also a complaint being no.115 of 1990 on 16.6.1990 was filed before the appropriate court for commission of offence in not complying with the requirements of Section 17 of the Act, thereby attracting action under Section 28 of the Act. Learned Additional Chief Judicial Magistrate No. 3 at Jodhpur tried the case and found the respondents guilty of alleged offence of evasion of mandi fee and sentenced the respondent no.1 to undergo simple imprisonment for three months and imposed fine of Rs.1,000/- with default stipulation. Further direction was given to the respondents to deposit the evaded amount of Rs.87,639.90/- in court. The respondent questioned legality of the said judgment in Crl.A.No.46 of 1995. The appeal was heard and disposed of by learned Special Judge, SC/ST Act cases, Jodhpur. In the appeal only the State of Rajasthan was impleaded as a party and not the Samity. However the appellate court did not find any merit in the appeal and dismissed the

same. However, the sentence was reduced to imprisonment till rising of the court. The respondents filed S.B. Criminal Revision Petition No.387 of 1995 and questioned correctness of the judgment rendered by the courts below. The High Court allowed the appeal and set aside the conviction recorded by the courts below, and ordered refund of the recovered amount by judgment dated 13.1.1998. The whole basis of the judgment revolves round the judgment of the Court in *Krishi Utpadan Mandi Samiti, Haldwani & Ors. vs. Indian Wood Products Ltd. and Anr.* It was held by the High Court, purportedly following the decision of this Court that the liability to pay the market fee was that of the purchaser and the present respondents had no liability to pay the market fee.”

3. In the connected appeal the said judgment of the High Court was followed in a petition filed by the respondents.

4. In support of the appeals, learned counsel for the appellant-State and the Samity submitted that the provisions under the *U.P. Krishi Utpadan Mandi Adhiniyam, 1964* (hereinafter referred to as the 'U.P.Act') were different. The liability on the traders is clearly stipulated in the Rajasthan Act itself. The position was different under the U.P. Act therefore the decision should not have been relied upon without considering the distinguishing features.

5. In response learned counsel for the respondents submitted that the decision in *Krishi Utpadan's case (supra)* was clearly applicable. The provisions are identical and therefore the High Court was justified in placing reliance on the said judgment.

6. In order to appreciate the rival submission the corresponding provisions of the two Acts i.e. Rajasthan Act and the U.P. Act need to be noted.

7. So far as the U.P. Act is concerned Section 17 reads as follows:

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

(i) Issue or renew licences under this Act on such terms and conditions and subject to such restrictions as may be prescribed, or, after recording reasons therefore, refuse to issue or renew any such licence;

(ii) Suspend or cancel licences issued or renewed under this Act:

Provided that before canceling a licence except on the ground of conduct which has led to the conviction of the licensee under Section 37, the Committee shall afford reasonable opportunity to him to show cause against the action proposed.

(iii) Levy and collect –

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

(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 percentum and not more than two and a half percentum of the price of the agricultural produce so sold as the State Government may specify by notification, and development cess which shall be payable on such transactions of sale at the rate of half percentum of the price of the agricultural produce so sold, and such fee or development cess shall be realized in the following manner:-

(1) if the produce is sold through a commission agent, the commission agent may realize the market fee and the development, case from the purchase 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 and development cess to the Committee;

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

Provided that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, the trader selling the produce shall be liable and be deemed always to have been liable with effect from June 12, 1973 to pay the market fee to the Committee and shall not be absolved from such liability on the ground that he has not realized it from the purchaser;

Provided further that the trader selling the produce shall not be absolved from the liability to pay the development cess on the ground that he has not realized it from the purchaser;

(4) In any other case of sale of such produce, the purchaser shall be liable to pay the market fee and development cess to the Committee."

8. In the Rajasthan Act and Rules Section 17 and Rule 59 are relevant. They read as follows:

"Section 17 - Power to collect market fees:

The market committee shall collect fee from the licensees in prescribed manner on agricultural produce brought or sold by them in market area at such rate as may be specified by the State Government by notification in official Gazette, subject to a maximum of Rs.2/- per rupees one hundred worth of agricultural produce.

Rule 59- Recovery of Cess and fees:

(1) The cess on agricultural produce shall be payable as soon as it is brought and sold in the market area as may be specified in the bye-laws.

(2) The market fee shall be paid by the 'purchaser' in the following manner:-

(i) if the specified agricultural produce is sold through an "A" class broker the "A" class broker shall charge market fee from purchaser and deposit the same with the market committee in accordance with the procedure specified in the bye-laws.

(ii) If the specified agricultural produce is not sold through an "A" class broker, the seller shall charge market fee from the purchaser and deposit the same with the market committee in the manner specified in the bye-laws.

(iii) In case the seller is not a licensee, the market fee shall be deposited by the purchaser in the manner specified in the bye-laws.

Explanation: The word 'purchaser' means and includes a person who as a trader or broker or any other operator has obtained a license for the purchase of agricultural produce in the market area."

9. There is a basic distinction between the Rajasthan Act and the U.P. Act so far as the levy of market fee is concerned. In the U.P. Act there is a specific reference of fixing the liability on the purchaser and in the Rajasthan Act liability is on the licensee.

10. Section 14 of the Act deals with power of market committee to issue licences. It, inter alia, provides that market committee may issue and renew licences in accordance with rules and bye-laws to "traders, brokers, weighmen, measurers, surveyors, warehousemen and other persons". Section 17 deals with power to collect market fees. The levy is on the agricultural produce brought or sold by licensees in the market area. The market committee has the power to collect the market fees from the licensees. It has to be factually determined that the licensee brought or sold "agricultural produce" (as defined in Section 2(1) (i) in the `market area" (as defined in Section 2(1) (viii) i.e. any are declared to be a market area under Section 4). The collection of market fees from the licensee has to be in the prescribed manner. Prescribed as per Section 2(1) (xii) means prescribed by rules under Section 36. A bare reading of Section 17 makes the position crystal clear that liability to pay market fees is of the licensee and the collection has to be in the prescribed manner. There can be no doubt as to who is liable to pay.

11. The basic distinction has been lost sight of by the High Court. The difference is terminological i.e. 'purchasers' in the U.P. Act and 'licensees' in the Rajasthan Act operate in different spheres altogether.

12. The High Court unfortunately did not notice the contextual difference between Section 17 of the Rajasthan Act vis-a-vis Section 17 of the U.P. Act. The logic applied in the U.P. case i.e. Krishi Utpadan's case (supra) cannot be pressed into service so far as the Rajasthan

cases are concerned, because the legal position is different. Unfortunately, the High Court has not given any reason as to why it thought that the U.P. case was applicable to the present appeals without even comparing the various provisions. Though learned counsel for the respondents submitted that in-depth analysis has been done and therefore no further analysis is necessary, on the sole ground that High Court failed to notice the difference in language of the U.P. Act and the Act, this matter requires to be remitted to the High Court. We, therefore, set aside the impugned judgments of the High Court and remit the matter for fresh consideration as in both cases i.e. Criminal Appeals 667 of 1999 and 435 of 2002 legal position is the same. The factual position has to be examined by the High Court. We make it clear that we have not expressed any opinion on the merit of the case.

13. The appeals are allowed.