

SUPREME COURT OF INDIA

Krishi Utpadan Mandi Samiti

Vs.

Baidyanath Ayurved

C.A.No.8963 of 2003

(P.Sathasivam and B.S.Chauhan,JJ.,)

11.08.2011

JUDGMENT

Dr. B.S.Chauhan,J.,

1. This appeal has been preferred against the judgment and order dated 14.7.2003 passed by the High Court of Judicature at Allahabad in C.M.W.P. No. 12372 of 2003 by which the High Court allowed the writ petition holding that respondent no.1 was not required to take licence under Section 9 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter called 'the Act 1964').

2. Facts and circumstances giving rise to present appeal are as under:

“A. Respondent no. 1 is a company registered under the Indian Companies Act, 1956 and manufactures Ayurvedic medicines including Chawanprash at Naini, Allahabad. For that purpose, the respondent no. 1 has obtained a licence under the Drugs and Cosmetics Act, 1940. For manufacturing Chawanprash the said respondent purchases certain agricultural produce e.g. Gur, Amala and Ghee etc. and use the same as raw material.

B. The appellants served a notice dated 17.3.1999 calling upon the respondent no. 1 for taking a licence under section 9 of the Act 1964 as it was purchasing and processing the aforesaid agricultural produce in its ordinary course of business. Respondent no. 1 submitted reply to the said notice on 31.3.1999 pleading that it was not required to take licence as the said respondent was not doing any business in the sale or purchase of agricultural produce. The appellant found the explanation furnished by respondent no. 1 unsatisfactory and, thus, sent another notice dated 2.12.2000 calling upon respondent no.1 to take a licence failing which legal proceedings could be initiated against it. Similar notices were subsequently sent to respondent no. 1 on 3.12.2000 and 16.12.2000 but respondent no. 1 did not pay any heed to the said notices. The appellant issued notice dated 14.2.2001 to respondent

no. 1 for personal appearance and furnishing the explanation as to why the licence under Section 9 of the Act 1964 was not required. The respondent no. 1 did not comply with the said notice, thus the appellant filed complaint Case No. 480 of 2002 in the court of Special Judicial Magistrate, Allahabad against the respondent no. 1, alleging violation of the statutory provisions of the Act 1964.

C. Being aggrieved, the respondent no. 1 approached the High Court by filing Writ Petition No. 12372 of 2003 for quashing of the complaint Case No. 480 of 2002. The High Court vide impugned judgment and order dated 14.7.2003 allowed the writ petition holding that the said respondent had been using the agricultural produces after buying for internal purpose i.e. for consumption in its factory for manufacturing the end product and not for further transferring the agricultural produces to someone else and thus, the respondent no. 1 was not required to take licence under Section 9 of the Act 1964. Hence, this appeal.

3. Smt. Shobha Dikshit, learned senior counsel appearing for the appellant, has submitted that respondent no. 1 is manufacturing Ayurvedic medicines and purchases Amla, Gur and Ghee etc. from the market area established under the Act 1964, which are admittedly agricultural produce. Therefore, being a trader, the respondent no. 1 is required to take a licence so far as the purchase of specified agricultural produce from the market area is concerned and also pay requisite market fee and any violation of the provisions of the Act 1964 would attract penal consequences i.e. prosecution under Section 37 of the Act 1964. The use of the aforesaid agricultural produce for manufacturing of the medicines cannot be termed as domestic consumption. The word 'domestic' means required for personal use of the family and this term cannot be interpreted in such wide terms as to include manufacturing of a different commodity at commercial level in an industry. The High Court erred in defining the term 'domestic' giving a very wide interpretation i.e. meant for supplying the end product in the country and not for export. Even otherwise, in view of the fact that an adequate and efficacious remedy provided under the Act 1964 was available to the respondent, the High Court ought not to have entertained the Writ Petition. Thus, the appeal deserves to be allowed.

4. Per contra, Shri Subramonium Prasad, learned counsel appearing for the respondents, has submitted that as per the statutory provisions of the Act 1964, the respondent no. 1 cannot be held to be the buyer or seller of the agricultural produce nor it is engaged in processing of agricultural produce, therefore, the provisions of the Act 1964 are not applicable. The respondent-company purchases agricultural produce only as raw material for manufacturing of Chawanprash in its factory. Thus, in such a fact-situation, the respondent no. 1 is not required to take a licence under Section 9(2) of the Act 1964 read with Rule 70 of the U.P. Krishi Utpadan Mandi Niyamavali, 1965 (hereinafter called the 'Rules 1965'). The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

6. In *Star Paper Mills Ltd. v. State of U.P. & Ors^l*, this Court while dealing with the same statutory provisions accepted the submissions made on behalf of the State that in view of the fact that adequate and efficacious statutory remedy was available to the person aggrieved, the High Court ought not to have entertained the writ petition without the statutory remedy being exhausted. While deciding the said case, this Court placed reliance upon large number of earlier judgments of this Court under the Act 1964. Be that as it may, as the matter has been dealt by the High Court on merit and a period of more than 8 years has elapsed, it is not desirable to entertain the issue of availability of alternative remedy or exhaustion of statutory remedy. The matter requires to be considered on merit.

7. The appeal raises the following substantial question of law:

“Whether the specified agriculture produce purchased by the Respondent No. 1 within the market area and used in manufacturing a commercial product could be held to be for domestic consumption and thereby would exempt it from obtaining licence under Section 9(2) as also from levy and payment of market fee under Section 17(iii)(b) of the Act 1964?”

8. The Act 1964 has been enacted with the object to regulate the sale and purchase of the specified agricultural produce in market area and to curb down the unfair trade practices prevalent in the old market system within the State of Uttar Pradesh. The object of the Act has been to reduce the multiple trade charges, levies and exactions charged from the producer-seller; to provide for the verification of accurate weights and scales and to ensure that the producer-seller is not denied his legitimate dues. Further to provide amenities to the producer-seller in the market and for providing better storage facilities, to stop inequalities and unauthorised charges and levies from the producer- seller and to make adequate arrangements for market intelligence with a view to posting the agricultural producer with the latest position in respect of the markets dealing with a particular agricultural produce.

9. For adjudication of the aforesaid issue, it may be necessary to refer to some of the statutory provisions of the Act 1964.

“(a) Section 2(a) of the Act, 1964 defines "agricultural produce" as under:

"Agricultural produce" means such items of produce of agriculture, horticulture, viticulture, apiculture, sericulture, pisciculture, animal husbandry or forest as are specified in the Schedule, and includes admixture of two or more of such items, and also includes any such item in processed form, and further includes gur, rab, shakkar, khandsari and jaggery."

(b) "Trader" is defined under Clause (y) of the Section 2 as under: "Trader" means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly

authorised agent of one or more principals and includes a person, engaged in processing of agricultural produce."

(c) Section 9 of the Act 1964 excludes the application of the Act on purchase of agricultural produce for "domestic consumption":

"(1) As from the date of declaration of an area as Market Area no local body or other person shall, within the Market Area, set up, establish or continue, or allow to be set up, established or continued, any place for the sale purchase, storage, weighment or processing of the specified agricultural produce, except under and in accordance with the conditions of a licence granted by the Committee concerned, anything to the contrary contained in any other law, custom usage or agreement notwithstanding: Provided that the provisions of this sub-section shall not apply to a producer in respect of agricultural produce produced, reared, caught or processed by him or to any person who purchases or stores any agricultural produce for his domestic consumption.

(2) No person shall, in a Principal market Yard or any Sub-Market Yard, carry on business or work as a trader, broker, commission agent, warehouseman, weighman, palledar or in such other capacity as may be prescribed, in respect of any specified agricultural produce except under and in accordance with the conditions of a licence obtained therefore from the Committee concerned."

(d) Section 17 of the Act 1964 empowers the Committee to issue, renew, suspend or cancel a licence, and to levy and collect market fee. However, the proviso thereto reads as under:

"Provided that no market fee or development cess shall be levied or collected on the retail sale of any specified agricultural produce where such sale is made to the consumer for his domestic consumption only."

(Emphasis added)

(e) Section 37 of the Act, 1964 further empowers the Committee to impose penalty on a person who contravenes any of the provision contained in Section 9 of the Act 1964 or the Rules 1965.

(f) Rule 70 of the Rules 1965 reads as under:

"Licensing by the Market Committee (Section 17(i) - (1) The Market Committee shallcall upon all Local Bodies and other persons wishing to set up, establish or continue any place for the sale, purchase, storage, weighment or processing of the specified agricultural produce, in the Market Area, and shall likewise call upon all Traders, Commission Agents, Brokers, Warehouseman, Weighmen, Measures, Palledars and other persons handling or dealing in specified agricultural produce, in

the Market Yards, to apply for a licence under sub Section (1) of Section 9 or Sub Section (2) of Section 9 of the Act, as the case may be, in such form as may be specified by the Market Committee in its bye-laws, within a period of fifteen days from the date of publication of the said notice. Provided that the provisions of this sub-rule shall not apply to a producer in respect of agricultural produce produced, reared, caught or processed by him and to any person who purchases or stores any agricultural produce for his domestic consumption."

10. The cumulative effect of combined reading of the aforesaid statutory provisions comes to the effect that sale of the specified agricultural produce from any place in the market area is prohibited unless the person concerned has a licence. The statute provides for an exception of having a licence or from paying the market fee if the sale of an agricultural produce is made to a person for his "domestic consumption" in "retail sale".

11. Indisputably, the aforesaid produce purchased by respondent company are agricultural produce. In view of the circular dated 18.4.1988, issued by the appellant, a retail trader cannot sell any specified agricultural produce to any person more than the prescribed limit therein. The said circular fixed the maximum quantity of an agricultural produce which the retail dealer can sell to an individual for domestic consumption. The Circular issued under the Rules 1965 prescribes the limit of sale to an individual and storage of the agricultural produces, by the retailer: Retailer could sell to an individual Gur- 20 Kg. Gur- 10 Quintals Amla- 5 Kg. Amla-1 Quintal Ghee- 4 Kg. Ghee- 50 Kg.

12. In *G. Giridhar Prabhu & Ors. v. Agricultural Produce Market Committee*², this Court considered similar provisions under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, wherein the Court was concerned with the term "trader" contained therein. After considering earlier judgments of this Court, particularly, in *H.P. Marketing Board & Ors. v. Shankar Trading Co. Pvt. Ltd. & Ors.*³, and *Vijayalaxmi Cashew Co. & Ors. v. Dy. CTO & Anr.*⁴, etc., the Court held that transaction by a "trader" includes processing, manufacturing and selling. Therefore, a trader who buys a particular agricultural produce, subjects it to selling or manufacturing process and brings into existence a different agricultural produce would cease to be a trader. The Court held as under:

".....The definition of the term "trader" is not a restrictive definition. It is not restricted to a person who only buys. If a person buys for domestic or personal consumption, then he would not be a trader. It is only when a person buys for the purpose of selling or processing or manufacturing that he would become a trader. Thus a person may buy, process or manufacture and then sell. When he processes or manufactures notified agricultural produce which he had bought, it may change its character and become another notified agricultural produce. Thus, by way of examples, a person may buy milk and through processes make them into butter and/or cheese or a person may buy hides and skins and by a process make it into leather. However, merely because a distinct and separate notified agricultural produce comes into existence does not mean that the person who bought, processed and sold ceases to be a trader. The term "trader"

encumbrances (sic embraces) not just the purchase transaction but the entire transaction of purchase, processing, manufacturing and selling."

(Emphasis supplied)

13. In *The State of A.P. v. M/s. H. Abdul Bakhi and Bros.*⁵, while dealing with a similar issue, i.e. defining 'Dealer' under the provisions of Andhra Pradesh General Sales Tax Act, 1950, held that a person who buys goods for consumption in a process of manufacturing is also a dealer. The Court held that a person who consumes a commodity purchased by him in the course of his trade, or use in manufacturing another commodity for sale, could be regarded as a 'Dealer'.

14. In *Krishi Upaj Mandi Samiti & Ors. v. Orient Paper & Industries Ltd.*⁶, the similar provisions of M.P. Krishi Upaj Mandi Adhiniyam, 1973, were considered by this Court. In the said case, the question arose as to whether the market fee can be levied on agricultural produce brought for sale or sold in the market area in case the mill did not produce the agricultural produce for sale but produce them for use as its raw material for manufacturing the end product. That was a case where the bamboos were purchased for manufacturing of paper. The Court held that once the agricultural produce is brought in the market area and sold therein, it becomes liable to be levied with market fee, as no person can be permitted for sale or purchase of the agricultural produce within the market area without a licence even a raw material for manufacturing some other product. The Court further held as under:

".....It is immaterial for this purpose whether the bamboos are purchased by the respondent-Mills for selling them or for using them as their raw material in the manufacture of paper. The liability of the respondent-Mills to pay the market fees is in no way negated on that account...."

(Emphasis added)

15. This case stands squarely covered by the judgment of Constitution Bench of this Court in *Ram Chandra Kailash Kumar & Co. & Ors. v. State of U.P. & Anr.*⁷, wherein the provision of the Act 1964, which is involved in the instant case was considered and the Court held as under:

"If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub- clause (2) of Section 17 (iii) (b). He cannot be asked to pay market fee over again under sub- clause (3) in relation to the transaction of rice. Nor will it be open to the Market Committee to choose between either of the two in the example just given. Market fee has to be levied and collected in relation to the transaction of paddy alone."

16. In *Virendra Kumar & Ors. v. Krishi Utpadan Mandi Samiti & Ors.*⁸, this Court considered a case where it was claimed that petitioners had been producers in respect of

agricultural produce (khandsari), and thus they were not required to take out any license under Section 9(1) of the Act 1964. This court rejected the argument observing that Section 9(1) would not be applicable to a producer of agricultural produce only in case the producer processed, reared, or caught for domestic consumption. In case the agricultural produce is not for domestic consumption, but for sale thereafter in the market area, such a producer will not come within the exception of Section 9(1) of the Act 1964.

17. In view of the above, we are of the considered opinion that as the retail trader cannot sell the agricultural produce in quantity more than prescribed in the circular and also such retailer himself cannot purchase and store more than prescribed in the circular, therefore, the meaning of "domestic consumption" has to be understood in such restricted sense. Thus, meaning thereby for personal use i.e. for the use of family members of the purchaser and not for any production activity, otherwise prescribing the limits of purchase and storage by the retail trader becomes redundant. The parties could not bring to the notice of the High Court the relevant provisions of the Act 1964 which were necessary to be considered to adjudicate upon the issue in controversy. Purchase of agricultural produce in bulk cannot be termed to have been made for "domestic consumption." The Court cannot travel beyond the pleadings. The meaning of "domestic trade" and "foreign trade", had not been in issue in the instant case. The "domestic consumption" under the Act 1964 has to be given a very restricted and limited meaning i.e. for personal use of the purchaser, i.e. for the consumption by the family and not for commercial and industrial activities.

18. Shri Subramonium Prasad, learned counsel appearing for the respondents, has placed very heavy reliance upon the judgment of this Court in *M/s. Kesarwani Zarda Bhandar v. State of Uttar Pradesh & Ors.*⁹, wherein it has been held that market fee is leviable on specified agricultural produce and not on agricultural produce simplicitor. Zarda, the end product of the manufacturing process is not a specified agricultural produce and it can be subjected to payment of market fee provided it is held to be "Tobacco". Zafrani Zarda, does not answer the description of specified agricultural produce as defined under Section 2(a) of the Act. If it is held that Zafrani Zarda is merely a processed form of "Tobacco", it could be subjected to levy of market fee, but if it is manufactured it would not. The aforesaid judgment has no application in the instant case for the reason that issue involved in this case is relating to requirement of having a license under Section 9(2) of the Act 1964 for the purchase of a specified agricultural produce from the market area. The appellants have never asked the respondent company to pay market fee on the end product Chawanprash.

19. In view of the above, we are of the considered opinion that as the respondent-company buys specified agricultural produce from the market area and it is not meant for domestic consumption, the company is required to take license under Section 9(2) of the Act 1964.

20. In such a fact-situation, appeal is allowed. The impugned judgment and order dated 14.7.2003 passed by the High Court of Allahabad in Writ Petition No.12372 of 2003 is hereby set aside. No costs.

Judgment Referred.

¹(2006) 10 SCC 0201

²AIR 2001 SC 1363

³(1997) 2 SCC 0496

⁴(1996) 1 SCC 0468

⁵AIR 1965 SC 0531

⁶(1995) 1 SCC 0655

⁷AIR 1980 SC 1124

⁸(1987) 4 SCC 0454

⁹AIR 2008 SC 2733