PATNA HIGH COURT

Ashok Industries

Vs

State (Patna)

Civil Writ Jur. Case No. 496 of 1977

(S.K. Jha and Sivanugrah Narain, JJ.)

04.01.1979

JUDGEMENT

S.K. Jha, J.

1. In this application under Articles 226 and 227 of the Constitution of India the petitioners have prayed for appropriate writ/order/direction quashing the communication dated 25-9-76 from the Director Marketing, Bihar State Agricultural Marketing Board, Patna, (respondent No. 2). A copy of the impugned communication has been marked Annexure-'2' to the writ application.

2. The facts are uncontroverted. On the materials on the record the established facts are that petitioners 1, 2 and 3 are the partnership firms owning Dal mills and petitioner Nos. 4 to 6 are the respective partners of the aforesaid firms. The petitioners are carrying on milling business in pulses within the local limits of the Barh Agricultural Produce Market Area. The Agricultural Produce Market Committee, Barh, through its Secretary, has been impleaded as respondent No. 3. The petitioners are all licensees under the provisions of the Bihar Foodgrains Dealer's Licensing Order, 1967, as well as under those of the Bihar Agricultural Produce Markets Act 1960, (hereinafter to be referred to as 'the Act') and the Rules framed thereunder.

3. The petitioners purchase whole pulses (Dalhan), inter alia, from the market area concerned and after processing the same into split Dal they sell the same. In Para. 4 of the petition it has been asserted that the respondent market committee through its Secretary under the threat of penalty, seizure of stocks and books of account, and prosecution, is realising market fee from the petitioners' firms on the purchase of whole pulses (Dalhan) as well as on sale of pulses processed by them, which means the split pulses and after the Dalhan has been processed. On 28-8-75 the petitioners Nos. 2 and 3 along with some other firms of the area in question filed an application before the Chairman of the Market Committee objecting to the realisation of market fee on the whole grains as well as split pulses produced out of whole grains. The matter was heard of length several times by the Chairman but no final decision was given in the matter and the Secretary of the Committee (respondent No. 3) was regularly realising market fee on both whole grains and split grains. Under these circumstances an application was filed on 31-8-76 by the Secretary, Vanijya Parishad, Barh, on behalf of the Dal Mill owners of the area, including the petitioner

firms, before the Chairman of the Bihar State Agricultural Marketing Board, Patna, requesting him to clarify the legal position as to whether market fee is payable both on whole grains as well as on split grains. A copy of the application has been marked Annexure-1. In response thereto by the impugned letter dated 25-9-76 (Annexure-2) respondent No. 2 wrote back saying "if notified agricultural produce like Arhar, Gram, Paddy, Khesari, Masur and oil seeds are purchased within the market area and are processed and even if it is sold in the same market area, market fee is payable on both the points.

4. The grievance of the petitioners is that in view of the provisions of Section 27(3) of the Act read with Section 2(a) thereof and item 2 of the Schedule II appended to the Act, the whole pulses or the whole grains in question once having been subjected to market fee under the Act could not be so subjected to twice over in the same market area on account of the clear inhibition given in Section 27(3) of the Act. That at once necessitates a reference to the relevant provisions of Section 27 of the Act. Section 27, which is the charging Section, lays down in Sub-section (1) that the market committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at a certain rate. Sub-section (2) enjoins that the market fee chargeable under Sub-section (1) shall be payable by the buyer, in the manner prescribed, by the Rules. Sub-section (3), which is the most relevant for our purpose in the instant case, runs thus :-

> "The fee chargeable under Sub-section (1) shall not be levied more than once on a notified agricultural produce in the same notified area."

The language of Sub-section (3) is plain enough and there can be no other inference but that the fee chargeable under Sub-section (1) on a notified agricultural produce cannot be levied more than once in the same notified area. This then brings us to the definition of the expression "agricultural produce" first. The term "agricultural produce" has been defined in Section 2(1)(a) of the Act, which reads as follows :-

> " 'agricultural produce' includes all produce, whether processed or non-processed of agriculture, horticulture, animal husbandry and forest specified the Schedule."

It is not in dispute that the notified agricultural produce, referred to in Section 27(3) of the Act means an agricultural produce as defined in Section 2(1)(a) of the Act, which, in its turn, means "in a form of processed or non-processed agricultural produce specified in the Schedule." So far as the Schedule is concerned, item No. II captioned 'Pulses' enumerates the pulses which can be treated as notified agricultural produce in so far as the pulses are concerned. The objects enumerated under the caption 'Pulses' in item II of the Schedule are (1) Gram (2) Arhar (3) Masur (4) Urd or Kalai (5) Khesari (6) Mung (7) Dry peas (Matar or Karao) (8) Kulthi (9) Cowpea seed (dry). In so far as the Schedule is concerned, under the heading 'pulses' no distinction has been drawn between whole pulses, namely, Dalhan and the split pulses, which, we ordinarily treat as the objects for direct human consumption. From the definition of 'agricultural produce' in Section 2(1)(a) of the Act, already extracted above, it is clear that all the pulses enumerated under item II referred to above, whether whole or processed must be treated a form a foodgrain is notified as a distinct as notified agricultural produce. To give concrete example, when the item 'gram' Ss mentioned at serial No. I of item No. II in the Schedule it means gram as a whole with its shells which will be merely a form of Daihan. It will also mean processed gram,

which we ordinarily call 'gram pulse' or 'Chana Dal'. Both the objects - gram as a whole or split gram after being processed and made fit direct for human consumption as an item of pulse - are covered under the same notified agricultural produce, namely, gram; so also with regard to the other pulses enumerated under the caption 'Pulses' like Arhar, Masur, etc. There can be no doubt, therefore, that the market committee is vested with the power under the charging Section 27 of the Act to levy and collect market fees within the same notified area only once for any of the pulses enumerated under item II of the Schedule If, for instance, Arhar in its original shape with its shells is already subjected to levy of market fee in a market area, after its being processed into Arhar Dal it remains the same notified agricultural produce within the meaning of Section 2(1)(a) of the Act. Manifestly, therefore, Section 27(3) of the Act is a clear bar to the charging or levying of any market fee chargeable under Sub-section (1) more than once in the same notified area. The stand of respondent No. 2 or for that matter, the market committee that "if notified agricultural produce like Arhar, Gram, Paddy, Khesari, Masur and oil seeds are purchased within the market area and are processed and even if it is sold in the same market area, market fee is payable on both the points" cannot, therefore, be countenanced in law. Such a construction will be in clear contravention of the express statutory provision contained in Section 27(3) of the Act, Annexure-'2' therefore, has to be held to be illegal and based on a wrong construction of the relevant statutory provisions.

5. The Government Advocate, who appears for all the three respondents, could not combat the position in law that any of the pulses or grains, as distinct agricultural produce, enumerated in the Schedule, if once charged to market fee, which has been levied thereon at one stage or the other within a market area, cannot be subjected to levy of market fee twice over in the same market area even if the same has undergone a change after processing. The matter will certainly be different if in one agricultural produce while in another form, after its being processed, it is enumerated as another distinct notified agricultural produce. For instance, under the heading 'Cereals' in Caption I of the Schedule we find paddy, rice and Chura as having been specified as three distinct agricultural produces; so also wheat, wheat Ata and Maida, have been distinctly enumerated and so notified Similar is the case with the gram Besan, gram Sattu, etc. But that is not the question here. The petitioners have asserted that the same notified agricultural produce, which has been subjected to levy of market fee within the Barh Market Area, has been and is being sought to be subjected to levy of market fee twice over after it has been processed, although in the processed form if is not identified in the Schedule as a distinct agricultural produce. There can thus be no scope for the argument that if gram or Arhar or Masur, etc. falling under the caption 'pulses', be it either in the processed or non-processed form, at one stage has been subjected to levy of market fee, merely its undergoing a change after processing will make it liable to a further charge of the market fee within the same market area.

6. The learned Government Advocate raised a technical objection to the maintainability of this application. He submitted, rather half-heartedly, that the petitioners should not be given any relief in this writ application since they have not produced any illegal assessment order passed by the market Committee. This is a point stated merely to be rejected. As already referred to earlier, in para. 4 of the petition there is a clear statement and assertion by the petitioners that the market committee under the threat of penalty, seizure of stocks and books of account and prosecution is realizing market fee from the petitioners on the purchase of whole grains as well as on sale of pulses processed by them. There is no counter-affidavit controverting this fact. Furthermore, the Director Marketing, Bihar State Agricultural Marketing Board, Patna, has already laid the

guideline, which, I am sure, cannot be overruled by the market committee which makes the assessment. The test in such cases is not to see as to whether any illegal assessment order has been passed before the writ jurisdiction of this Court can be invoked, but, as to whether the foundation on which the jurisdiction of the assessing authority rests, is to be found in the statute or not, and, if that is not so, then was there is real or imminent threat to the petitioners' deprivation of right to property under part III of the Constitution, the writ jurisdiction of this Court will not be shut to such a person aggrieved for the purpose of going into protracted litigation, suffering harassment and then coming to this Court for redressal of the wrong done to him. It is well settled that though a writ of prohibition or *certiorari* would not issue against an executive authority at all, the High Court has power to issue, in a fit case, an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction is likely to subject a person to lengthy proceeding and unnecessary harassment, the High Court would issue appropriate writ or direction to prevent such consequences by way of a writ. It cannot be doubted that the market committee while assessing market fee is acting quasi-judicially. It also cannot be doubted that it performs executive functions and the performance of such executive functions far outweighs the judicial approach in the matter of assessment, only more so in the instant case, since no less a person than the Director of the Bihar State Agricultural Marketing Board seems to have laid down a clear but illegal guideline for the market committees to follow. If such guideline on a clearly wrong interpretation of the provisions of the statute is to be sustained it would be subjecting the petitioners to suffer by way of wrong assessment, harassment and protracted litigation, and then only permit them to invoke the writ jurisdiction of this Court. The petitioners have been subjected in past and are being subjected in the present, and as Annexure-2 would show, they are likely to be deprived of their property without any authority of law in future. This Court, in my view, shall not sit idle to watch the harassment to which the petitioners or persons of that category are put before this Court can come to the rescue of such aggrieved persons whose fundamental rights are in jeopardy both in substance and in reality as well as in imminence.

7. For the foregoing reasons, I think, the petitioners' application is well merited and it must succeed and it is, accordingly, allowed, and the correspondence, issued to the petitioners by Respondent No. 2, as contained in Annexure-'2' giving a wrong exposition of the charging Section of the Act is quashed, and the respondents are hereby commanded to forbear from levying or charging marked fee twice over on a distinct identifiable notified agricultural produce as given in the Schedule. If once levy has already been made on such a commodity in one form or the other, then the respondents are directed not to do so over again after such agricultural produce although having undergone a change by being processed, still falls within the same category of the distinct notified agricultural produce as pulses as enumerated in Caption II of the Schedule. There shall, however, be no order as to costs.

S. Narain, J.

8. I agree. But as the question of law raised is one of first impression, I wish to add few words of my own. Sub-section (3) of Section 27 of the Bihar Agricultural Produce Markets Act 1960, (hereinafter to be referred to as 'the Act') in clear and unambiguous terms prohibits the levy of fee chargeable under Sub-section (1) thereof "more than once on a notified agricultural produce in the same notified area." There is no doubt that if the averments in the question, which are not controverted, are accepted, the fee chargeable under Sub-section (1) has been levied or is

threatened to be levied more than once in the same notified area. The crucial question, therefore, is whether it is being levied more than once on a notified agricultural produce within the meaning of the expression as used in Section 27(3) of the Act. It is obvious that a notified agricultural produce in Sub-section (3) means the same notified agricultural produce. What has, therefore, to be determined in the present case is whether pulses, like gram, Arhar, etc. in its original state are the same pulse after being processed into split pulse is the same agricultural produce. In my opinion, the answer must be in the affirmative. The words used are 'agricultural produce'. There can be no doubt that considered as agricultural produce, pulse in the natural state and the same pulse split after being processed are the same agricultural produce. This conclusion is re-enforced by the provisions of the Act itself, which, as has been pointed out by my learned brother, merely mentions the different kinds of pulses in Item II of the Schedule to the Act and the expression 'gram, Arhar, etc. in that Schedule, include gram, Arhar, etc. either whole or split after processing.

9. As regards the preliminary objection raised, that also is completely untenable. It is true that so far as the fee assessed is concerned, the petitioners could have taken recourse to the procedure provided in the Act itself. But it is well settled that a threat to realise a tax without authority of law from a person is a sufficient infringement of his fundamental right under Article 19 of the Constitution and gives him a right to invoke the jurisdiction of this Court under Article 226 of the Constitution. See the decision in *Himmatlal Harilal Mehta v. State of Madhya Pradesh*[1] in which the Supreme Court reversing the judgement of the Nagpur High Court directed the issue of an appropriate writ restraining the authorities from imposing or authorising imposition of sales tax on the appellant in exercise of its authority under the provisions of the taxing statute, which was *ultra vires* the Constitution even though no proceeding for assessment had been initiated. A similar view was expressed in *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras*[2] in which it was observed that demand of tax not backed by valid law is a threat to property and this gives rise to a right to move the Supreme Court under Article 32 and the person threatened is not compelled to wait or go through the lengthy procedure of appeals,
reference, etc. In the present case on the averments in the petition, which have to be accepted as they have not been controverted, the petitioners have been compelled to pay market fee twice on the same notified agricultural produce within the same market area. And in view of the letter (Annex.-2 to the writ petition) of the Director, Bihar State Agricultural Marketing Board, Patna, upholding the right of the market committee to levy such fee, it must be held that there is a real and imminent threat of levy of market fee more than once on the same notified agricultural produce in the same market area. It is true that the proceedings for assessment have not yet been initiated but that they will be is not in doubt and in view of the exposition of law given by the Director of the Bihar State Agricultural Marketing Board, in response to the letter addressed by the Vanijya Parishad to the Chairman, Bihar State Agricultural Marketing Board, who under Section 27C of the Act is vested with the plenary powers of revision of the order passed by any authority under the Act, it will be idle to expect the assessment sub-committee to refuse to make assessment in accordance with the exposition of law contained in that letter, which, in essence, may be said to represent the opinion of the Chairman of the Board also, as the exposition was given in reply to the letter addressed to the Chairman of the Board itself.
Petition allowed.

Cases Referred.

[1](AIR 1954 SC 403)
[2](AIR 1971 SC 870)