

Adarsh Rice Mill and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-22-2003

Judge : Aftab Alam, J.

Acts : Agricultural Produce Markets Act, 1960 - Sections 27; Bihar Agricultural Produce Markets Rules, 1975 - Rule 82

Appeal No. : CWJC No. 4312 of 2000

Appellant : Adarsh Rice Mill and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Suresh Kumar and Ajay Kumar, Advs.

Advocate for Pet/Ap. : N.K. Agrawal, Sr. Adv., Dhanendra Chaubey and D.K. Tiwary, Advs.S.K. Saraf, Adv.J.N. Sahay and S.K.P. Sinha, Advs.

Disposition : Petition dismissed

Judgement :

Aftab Alam, J.

1. The petitioners sold certain quantities of Rice (Petitioner No. 1,11,695.79 quintals, Petitioner No. 2,7193.57 quintals and Petitioner No. 3,7072.22 quintals) to the Food Corporation of India in the year 1997-98 @ Rs. 708.20 paise per

quintal. It is not denied that though market fee was leviable on the sales of rice by the petitioners, the amounts of fee were not paid to the Agriculture Produce Market Committee, Natwar, Rohtas within whose area the sales took place. The Market Committee has now passed the assessment order, dated 27-3-2000 (Annexure-2) demanding from the three petitioners the market fees payable on the sales of rice made by them.

2. This writ petition is filed challenging the demand. The petitioners challenge the demand not on the ground that no market fee was leviable on the sales in question but on the plea that the fee demanded by the Market Committee was not payable by them. On behalf of the petitioners it is submitted that under the relevant provisions of the Agricultural Produce Markets Act, 1960 the liability to pay market fee lies with the buyer and normally, the petitioners would have collected the amounts of market fee from the Corporation (the buyer) on the respective sales made by them but they did not do so in view of a direction by the State Government that the payment of market fees on the sales in question would be made by the Corporation. Thus denying their own liability the petitioners seek a direction from this Court restraining the Market Committee from realising from them the market fees payable on the sales of rice to the Corporation. Alternatively, they seek a direction to the Corporation to pay the full amount of market fees payable on its purchase of rice from the three petitioners.

3. The petitioners' case against the Market Committee is completely misconceived. The plea that they did not collect the market fees leviable on the sales from the buyer, the Corporation, in view of a Government decision is wholly untenable. The Market Committee is bound to levy and realise market fees in terms of the provisions of the Act and the Rules framed thereunder. A Government direction, even if there was any such direction, would not in any way affect the enforceability of the provisions of the Act and the Rules.

4. Section 27 of the Act provides for the levy of fee and so far as relevant for the present it is as follows:

'27. Power to levy fees.--(1) The Market Committee shall levy and collect market fees on the agricultural produce bought or sold in the market area at the rate of

rupee one per Rs. 100 worth of agricultural produce.' Explanation--xx xx xx xx

(2) The market fee chargeable under Sub-section (1) shall be payable by the buyer, in the manner prescribed.

(3) xx xx xx xx

Sub-section (2) of Section 27 provides that the market fee would be payable by the buyer but its payment is to be made in the manner prescribed under the Rules.

5. Rule 82 of the Bihar Agricultural Produce Markets Rules, 1975 sets out the scheme for levy and collection of fee. In so far as relevant for the present the rule is reproduced below:

(i) The Market Committee shall levy and collect market fee, on agricultural produce bought or sold in the market area at the rate of Re. 1 per Rs. 100 worth of agricultural produce.

(ii) If the buyer is a licensee, he shall within a week of the purchase, deposit the market fee, with the Market Committee.

(iii) If the seller is a licensee and buyer is not a licensee, the seller shall realise the market fee from the buyer and shall within a week deposit the same with the Market Committee.

(iv) If neither the buyer nor the seller is a licensee, the buyer shall deposit the market fee with the Market Committee or to its authorised officer or to staff or any person authorised by the Market Committee.

(v) to (xiii) - xx xx xx

6. It is an admitted position that each of the petitioners is a Licensee and the Corporation, the buyer is not a licensee under the Act. Hence, the sales in question were covered by the provisions of Sub-rule (iii) of Rule 82 and it was the statutory liability of the petitioners to realise the market fee from the Corporation and to deposit it with the Market Committee within a week of the sale. If they omitted to do so for any reason, not sanctioned by the provisions of the Act and

the Rules, that would not release them from their statutory liability to deposit the market fee leviable on the sale.

7. Mr. N.K. Agrawal, Sr. Advocate appearing for the petitioners submitted that though not a licensee, the buyer (i.e., the Corporation) in this case was definitely identifiable and known and since the liability to pay market fee in terms of Section 27(2) of the Act lay with the buyer, the Market Committee ought to have proceeded against the Corporation for realisation of the market fee leviable on the sales. In support of his submission he cited the Supreme Court decision in *Krishi Upaj Mandi Samiti and Ors. v. Orient Paper & Industries Limited*, (1995) 1 SCC 655 and relied upon the observations made in paragraph 32 of the decision.

8. In my view of the submission is quite unacceptable and the decision in *Krishi Upaj Mandi Samiti* has no application to the facts of this case. The observations made in paragraph 32 of the decision at first glance somewhat appear to support Mr. Agrawal's submission but on a closer scrutiny the matter appears to be completely different. In *Krishi Upaj Mandi Samiti* the challenge was to the levy of market fee itself and the issue in that case was not that though the market fee was leviable it could not be realised from the seller. In *Krishi Upaj Mandi Samiti* a paper mill used to purchase in bulk bamboos from the Forest department of the State Government and the levy of market fee on the sale of bamboos was challenged on the ground of constitutional validity of the Act and on the plea that the levy was not justified because the Market Committee did not confer either directly or indirectly any benefit on the purchaser or trader of bamboo as a class. The High Court negated the challenge to the constitutional validity of the Act but upheld the objection against levy of market fee on the plea that the Market Committee did not provide any benefit(s) either to the traders or purchasers of bamboo as a class. In addition to that the High Court held that even if it was accepted for the sake of argument that market fee on sale of bamboos by the State Government to the Mill was leviable, it was not to be paid to the Market Committee by the Mill who were the buyers; but it was to be collected and paid by the Forest Department of the State Government.

9. When the matter came before the Supreme Court, in paragraph 8 of the decision, the question falling for consideration was defined as follows:

'8. We are not concerned in this appeal with the vires of the Act or the levies of the market fees or of the requirement of a licence and of the payment of the licence fees since those contentions are not raised before us on behalf of the Mills and they have been expressly given up. There is also no cross-appeal on the said point. The limited controversy before us is whether the finding of the High Court that the levy of the market fees is not justified because there is no direct or indirect benefit conferred by the market committee either on the purchasers or traders of bamboos as a class, is valid or not.'

10. After the verdict on the issue was given in favour of the appellant, Market Committee the Court made the following observations in the concluding paragraph 32 of the decision:

'32. As regards the reliance placed by the High Court on the second proviso to Sub-section (2) of Section 19 of the Act which provides that in case of a commercial transaction between traders in the market area, the market fee shall be collected and paid by the seller, we are unable to understand as to how the said provision can be pressed into service to negative the levy of the market fee, even assuming that the Forest Department is for the purposes of the said provision, a trader when it sells the bamboos. The Forest Department is required by that provision to collect the fees from the buyers-in the present case, from the respondent-Mills. The market fee has, therefore, in any case, to be paid by the respondent-Mills if not to the Market Committee directly, at least to the Forest Department, and it is to be paid at the time of the purchase of the bamboos. 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. The provision requiring the seller to collect the market fees in such cases is made for the convenience of collection of the fees, as is the similar provision made in the first proviso of the said sub-section where buyers cannot be identified. The collection made by the seller, i.e., the

forest depots in the present case is for and on behalf of the Committee and is eventually to be handed over to the Committee. The provision is enabling and does not prevent the Committee itself from collecting the fee, if it so proposes.'

11. From the opening sentence of the paragraph itself it is clear that the observations made later on in the paragraph were meant to repel the submissions questioning the leviability of market fee itself, pressing into service the statutory responsibility of the seller to collect the market fee.

12. On a careful consideration of the decision I am quite clear in my mind that it has no application to the facts of this case.

13. To me the provisions of Rule 82(iii) are plain and clear. The petitioners, on their own showing, are in default in discharge of their liability under Rule 82(iii) and the Market Committee has, therefore, rightly proceeded against them for realisation of the statutory dues.

14. Coming now to the claim against the Food Corporation it is stated that the petitioners being Rice Millers had purchased paddy. On the purchase of paddy, the petitioners, as buyers, duly paid the leviable market fee. The paddy was de-husked for making rice and the rice thus produced was sold to the Corporation. Rice being a commodity different from paddy, market fee was admittedly leviable on its sale. Normally, the petitioners would have collected market fees on the sales from the Corporation but they did not do so in view of the Government direction that the market fees on the sales should be payable by the Corporation. What is described as the Government's direction is certain passage in the circular letter dated 27-12-1997 issued by the Secretary to the Government in the Department of Food, Supplies and Commerce to the District Magistrates of a number of districts in the State. The 'subject' of the circular letter (loosely translated into English) reads as follows:

'in connection with the payment of sales tax and market fee by the Food Corporation of India on getting rice from the rice mills under the voluntary sale scheme.'

15. The passage in this letter relied upon by the petitioners is as follows:

'ULLEKHNIYE HAI KI CHAWAL MILLO DAWARA KIYE GAYE DHAN KI KHARID PAR BIKRI KAR EWAM BAAZAR SHULK KI RASHI SAMMALIT HAI AUR ISH SAMBANDH MAIN BHARTIYA KHAAD NIGAM DAWARA SAMPUST KIYA GAYA HAI KI CHAWAL MILLO SE ISH YOJNA KE ANTRAGAT KENDRIYA POOL MAIN UPLABDH KARAYE GAYE CHAWAL PAR BIKRI KAR EWAM BAZAR SHULK KA BHUGTAN BHARATIYA KHAAD NIGAM DAWARA KIYA JAYEGA.'

16. In the aforesaid passage I fail to see any direction to the rice millers not to collect the market fee from the Corporation or that the full amount of market fee shall be payable by the Corporation.

17. It appears to me that the petitioners' claim against the Corporation is based on a mis-interpretation of the Government's letter.

18. The position becomes further clear in the light of the stand taken by the Food Corporation. On behalf of the Corporation it is stated that neither there was any direction by the State Government that the entire amount of market fees on the sales of rice would be payable by the Corporation nor the Corporation was bound by a direction by the State Government even if there was any such direction. It is further explained on behalf of the Corporation that normally, it had no reason to purchase from the Rice-Millers rice in such large quantities and those purchases were made under very special circumstances on special prices fixed by the Central Government. It is stated by the Corporation that in 1997-98 the Rice Millers in Bihar, including the three petitioners had accumulated stocks of rice far in excess of the quantity they were able to sell in the open market on desired profits. The Rice Mills had no adequate facility of storage to keep the large stocks till such time as they were able to sell in the open market. The Rice Mills in Bihar, therefore, made demands before the State Government to make arrangement for the sale of their rice. The State Government wrote to the Central Government which agreed that the excess stocks of rice be purchased by the Food Corporation in order to sustain the price of rice in the market. The sale of rice to the Food Corporation was made under voluntary sale scheme for which the Central Government fixed special prices taking into consideration all the material factors.

The letter dated 17-10-1997 from the Ministry of Food and Consumer Affairs, Government of India to the Secretary, Food, Supply and Commerce, Government of Bihar, is brought on record as Annexure-B to the supplementary counter-affidavit filed by the Corporation. By this letter the sale price of common rice was fixed in the following manner:

Rate: Rs/ctl.

Item of Incidentals

Common

Grade A

Cost of Paddy (MSP)*

415.00

445.00

Purchase Tax @ 4% on MSP

16.60

17.80

Market Fee @ 1% on MSP

4.15

4.45

Mandi Labour charges

3.85

3.85

Driage @ 1% on item No. 1

4.15

4.45

Custody and Maintenance charges @ Rs. 1.50 per qtl. per month for 2 months

3.00

3.00

Interest @ 14.6% for 2 months on item 1-3 above

10.60

11.37

Milling charges

12.00

12.00

Cost of 1 qtl. of paddy

469.35

501.92

Out-turn ratio

67%

67%

Sub-total

700.52

749.13

Administrative Charges

7.70

7.70

Cost of 1 qtl. of Raw rice (rounded off)

708.20

764.80

*Market Support Price.19. The price was fixed @ 67% yield from paddy to rice and in fixing the price practically all factors were taken into consideration e.g. purchase tax and market

fee paid by the Rice Mills on the purchase of paddy, Mandi Labour charges, Driage @ 1%, Milling charges, interest on purchase price @ 14.6% and the Millers' profit which was put under the head 'Administrative Charges'.

20. Thus the Corporation was obliged to purchase rice @ Rs. 708.20 per quintal. Further, by letter dated 28-11-1997 from the Ministry of Food and Consumer Affairs, Government of India (Annexure-A) to the counter-affidavit) the Managing Director of the Corporation was advised as follows:

'It is requested that statutory taxes payable at rice stage may please be

paid in addition to the price of rice, subject to necessary adjustment of the

taxes paid at paddy stage. Millers offering rice as per prescribed specifications

may be accepted by FCI at the rates notified.'

21. The case of the Corporation is that it was bound by the price of rice fixed by the Central Government and the direction given in the letter dated 28-11-1997. It is further stated that the market fees paid by the Rice Millers at the stage of purchase of paddy was already factored into the price fixed for rice and following the direction made in the letter dated 28-11-1997 the Corporation was ready to pay to the petitioners the difference between the market fees paid by them on the purchase of paddy and the amount leviable on the sales of rice made by them.

22. The stand of the Corporation appears to me to be perfectly reasonable and consistent with the direction issued by the Central Government and it does not in any way appear to be in violation of any provisions of the Market Act or the Rules made thereunder.

23. At the time of sale it was perfectly open to the petitioners not to sell their rice to the Corporation on the price fixed by the Central Government unless the Corporation also paid or agreed to pay the full amounts of market fees in addition to the sale price of the rice. But having accepted the arrangement that the Corporation would only pay the difference between the market fee paid on paddy and fee payable on rice and having sold their rice on the special price fixed by the Central Government they cannot be allowed to raise the claim against the Corporation after five years of the sale.

24. On hearing counsel for the parties and on going through the writ petition, the counter-affidavit and the reply affidavit filed by the petitioners, I find no merit in the petitioners' claim either against the Market Committee or against the Food Corporation. This writ petition is dismissed. But with no order as to costs.

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