

Frontier Eggs Stores Vs. State of J. and K. and ors.

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Court : Jammu and Kashmir

Decided On : May-21-1992

Judge : B.A. Khan, J.

Acts : Jammu and Kashmir Kahcharai Act, 2011 Svt.

Appeal No. : C.S.A. No. 8 of 1983

Appellant : Frontier Eggs Stores

Respondent : State of J. and K. and ors.

Advocate for Def. : A.K. Kapoor, Adv.

Advocate for Pet/Ap. : R.P. Badshi, Adv.

Disposition : Appeal allowed

Judgement :

B.A. Khan, J.

1. The fate of this appeal turns on the interpretation of Section 2(iv) of Schedule II of J. & K. 'Kahcharai' Act of 2011 (hereinafter called the Act). The relevant provision reads as follows:--

'(2) The following livestock shall be exempted so long as conditions indicated, are satisfied:-- (iv) goats and sheep brought by butchers or other persons within

Municipal or Town Area limits for purposes of slaughter.'

The appellant is a contractor engaged in supplying dressed meat to Army authorities at Supply Point at Jammu. He filed a suit before sub-Judge, Jammu seeking declaration that he was entitled to exemption from payment of 'Kahcharai' in terms of Section 2(iv) of Schedule II of the Act. His suit was dismissed and so was his appeal vide judgment and decree dated Dec. 17, 1982. He is aggrieved of the judgments of the two Courts below and his case is that like butchers he is entitled to exemption from payment of 'Kahcharai' as he brings in goats and sheep for slaughter and supply of dressed meat to his customers.

2. The short question that falls for determination is whether he is entitled to exemption from payment of 'Kahcharai' under Section 2(iv) of Schedule II of the Act?

3. Section 4 of the Act empowers authorities to prescribe rates at which 'Kahacharia' shall be levied upon live-stock. These rates are prescribed in Schedule I of the Act. Under Section 6 of the Act, Government has been given the power to grant exemption from payment of 'Kahacharia' and the exemptions already granted are contained in Schedule II of the Act.

4. Mr. Bakshi, LC for the appellant, contended that so long as the purpose of bringing in goats and sheep within the Town area limits was salughtering, any person including a butcher engaged in this business was entitled to exemption under Section 2(iv) of Schedule II of the Act. According to him, it was immaterial whether goats and sheep were brought from out side the territorial limits of the State into the Town area limits or were so brought in within the State.

5. Mr. Kapoor, AAG on the other hand, pleaded that exemption was liable to be granted only in those cases where goats and sheep were brought within the Town area limits and from within the territorial limits of the State. He tried to derive support for this from the definitions of 'Barrier' and 'Check Posts', contained in the Act.

6. In my opinion, the relevant provision containing grant of exemption is capable of only one interpretation and does not admit of any ambiguity. On its plain reading, it is manifest that goats and sheep brought in by the butchers and other persons within the Municipal and Town area limits for purposes of slaughter are exempted from levy of 'Kahcharai'. Therefore, so long the purpose is slaughtering any person engaged in the activity would be entitled to exemption from levy of 'Kahcharai'. The interpretation placed on the provision by the Court below does not appear to be in peace with the spirit and intent of the provision. It cannot be said that if the goats and sheep are brought in within the Municipal and Town area limit for 'immediate' slaughter then only exemption can be claimed because word 'immediate' does not figure in the provision at all and introducing it would be as good as re-writing the provision.

7. I am also not persuaded by the contention of Mr. Kapoor that the exemption is liable to be granted only where goats and sheep are brought into Municipal and Town area limits from within the territorial limits of the State and not out-side. Had that been so, nothing prevented the legislature in saying so in appropriate words.

8. Having said so, it still requires to be determined as to who should determine the purpose. Obviously it is not the province of that Court to do so. It is the job of concerned authorities who are entrusted with the task of charging 'Kahcharai'. Therefore, any person who claims exemption under Section 2(iv) of Schedule II from payment of 'Kahcharai' will have to show to the satisfaction of the concerned authority that his purpose for bringing in any goat and sheep within the Municipal and Town area limits is slaughtering. If he satisfies the competent authority, he is liable to be exempted from levy of 'Kahcharai', otherwise not.

9. In this case also, appellant shall have to set up his case before the competent authority. It is for that authority to derive requisite satisfaction and to grant or refuse any exemption.

10. For the reasons stated, I allow this appeal and set aside the judgment and decree passed by the Court below. This, however, shall not be construed to mean that appellant stands exempted from payment of 'Kahcharai'. He shall present his case before the competent authorities and it is for them to decide. Record be

returned.

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