BHOPAL SUGAR INDUSTRIES LTD.

v.

STATE OF M.P. & OTHERS

March 23, 1982

[V.D. TULZAPURKAR AND AMARENDRA NATH SEN, JJ.]

Madhya Pradesh Sugar Cane (Regulation of Supply & Purchase) Act, 1958—S. 21—Levy of commission on purchase of cane from outside 'reserved area' or through Cane-growers' Cooperative Society—Whether legal?

Section 21 (1) of the Madhya Pradesh Sugar Cane (Regulation of Supply & Purchase) Act, 1958, imposes an obligation upon an occupier of a factory to pay commission at prescribed rates on all its purchases of sugarcane. While in respect of purchases made through a Cane-growers' Cooperative Society the commission is payable to that Society and the Cane Development Council under s. 21 (1) (a), in respect of purchases made directly from the cane growers the commission is payable to the Cane Development Council under s. 21 (1) (b).

The appellant, a company which crushes sugar cane in its factory, purchased cane directly from the cultivators of 'reserved area' as well as of 'non-reserved area'. Respondent No. 2, the Cane Development Council, demanded commission in respect of purchases made from both 'reserved' as well as 'non-reserved' areas. The appellant also purchased cane from or through respondent No. 3, a Cane-growers' Cooperative Society and in respect of those purchases, the demand for commission was made by that Society.

The demands for payment of commission were challenged by the appellant by a petition under Art. 226 which was dismissed by the High Court.

In appeal to this Court it was contended on behalf of the appellant that since the Cane Development Council had been established for the 'reserved area' of the appellant's factory so declared under s. 15 of the Act and its statutory functions and duties were confined to that area under s. 6 of the Act, its demand for commission on purchases made from 'non-reserved area' was illegal, there being no *quid pro quo* in the shape of rendering services in respect of purchases made from 'non-reserved area'. As regards the demand of the Cane-growers' Cooperative Society for commission in respect of purchases made through it, the contention was that in everything being done by it, the Society was rendering services to its own members and since no services resulting in any special benefit to the appellant were being rendered by it in terms of the decision of this Court in *Kewal Krishan Puri's* case, [1979] 3 SCR 1217, there was no *quid pro quo* and therefore no commission was legally recoverable by the Society.

A Dismissing the appeal,

HELD : 1. The levy under s. 21 of the Act though called 'commission' is really in the nature of a fee and its imposition is supportable only on the basis of *quid pro quo* in the shape of rendition of services to a factory in the matter of cane purchased by it. [548 C-D]

B *Jaora Sugar Mills (P) Ltd.* v. *State of Madhya Pradesh and Ors.* [1966] 1 SCR 523, referred to.

2. The imposition of commission by the Cane Development Council on purchases of cane from 'non-reserved area' was proper and justified as there was *quid pro quo* in the form of rendering services in the matter of better cane production, distribution and supply thereof. The area of operation or the 'zone' of
C the Council could include areas outside the 'reserved area' of the factory as a Council could be established for a larger or smaller area "than the reserved area of a factory" under s. 5 of the Act, and its functions and duties under cls. (a) to (g) of s. 6(1) included functions like considering and approving development programmes for the zone, devising ways and means for execution of development plan in all its essentials such as cane varieties, cane seed, sowing programme,
D fertilizers and manures, taking steps for prevention of diseases and pests and rendering all help in soil extension work, etc. Some of these functions mentioned in cls. (b), (d) and (e) of s. 6(1) are of general character and not confined to even the zone of the Council. Further, s. 21 of the Act does not contain any qualifying words limiting the imposition of commission to purchases of cane made by a factory from 'reserved area' only; the imposition is on every maund of cane purchased by a factory irrespective of the area from where such purchases might
E have been made. [549 A-F]

3. The contention that in respect of purchases of cane made through the Cane-growers' Cooperative Society there was no element of *quid pro quo* cannot be accepted having regard to the scheme of the Act and the activities undertaken by the Society in the discharge of its normal functions. The scheme of the Act, particularly in ss. 15, 16 and 19, contemplated situations where the appellant's
F factory might have had to purchase cane from within reserved or assigned areas, only through the Society. The Society had been established to develop scientific methods of sugar cane growing and it had called upon its members to introduce modern means of implements for cultivating sugarcane which unquestionably made for assured bulk supply of uniformly good quality cane through its members to the appellant's factory. It could not, therefore, be said that no services conferring special benefit on the appellant's factory in the matter of purchases of cane were being rendered by the Society to the appellant's factory.
G [551 A-H; 552 A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 504 (N) of 1971.

H Appeal from the Judgment and Order dated the 24th Apri 1970 of the Madhya Pradesh High Court in Misc. Petition No. 246 of 1967.

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R.P. Bhatt, Ashok Mehta, J.B. Dadachanji and *D.N. Misra* for the appellant.

Gopal Subramanium and *S.A. Shroff* for the respondents.

The Judgment of the Court was delivered by

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TULZAPURKAR, J. Two questions were raised for our determination in this appeal by a certificate :

(a) Whether the Sugarcane Development Council, Sehore (respondent No. 2) can charge commission under section 21 (1) of the Madhya Pradesh Sugar Cane (Regulation of Supply & Purchase) Act, 1958 on purchases of sugarcane made by the appellant-company from outside the "reserved area" ? and

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(b) Whether the Sugar Cane-Growers Development Co-operative Union Ltd., Sehore (respondent No. 3: the concerned Cane Growers Co-operative Society) can charge commission under section 21 (1) (a) of the Act in respect of the purchases of sugarcane made by the appellant through the Union when there is no *quid pro quo* by way of rendering any services by Union to the appellant-company ?

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The short facts giving rise to the above questions may be stated : The appellant-company crushes sugarcane in its factory at Sehore in Madhya Pradesh. For its business it purchases sugarcane from "reserved area" as well as from outside both directly from the cane-growers as well as through respondent No. 3, a Cane-growers Co-operative Society, Sehore. Section 21 of the Act imposes an obligation upon the appellant-company to pay commission on all its purchases of cane at prescribed rates and it has to pay such commission in respect of purchases made through the Society to the Society and the Development Council and in respect of purchases made directly from the cane-growers to the Development Council. According to the appellant-company judicial decisions rendered by Madhya Pradesh High Court as well as this Court have settled the position that the commission chargeable under s. 21 of the Act is in the nature of a fee the imposition of which is supported on the basis of *quid pro quo* in the shape of services rendered by the Development

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Council to a factory (vide : *Jaora Sugar Mills (P) Ltd.* v. *State of Madhya Pradesh and Others.*(1) It appears that during the seasons 1960-61 to 1964-65 the appellant-company purchased cane directly from the cultivators of "reserved area" as well as from the cultivators of "non-reserved area" and respondent No. 2 (Development Council, Sehore) made a demand of commission from the appellant-company in respect of such purchases both from "reserved area" as well as from "non-reserved area." Similarly, during the crushing seasons 1963-64 to 1966-67 the appellant-company made purchases of cane from or through respondent No. 3 (Co-operative Society) in respect whereof a demand of commission was made by respondent No. 3 from the appellant-company. By a writ petition (being Misc. Petition No. 246 of 1967) filed in the Madhya Pradesh High Court at Jabalpur the apppellant-company challenged the validity of the demand made by respondent No. 2 insofar as it related to purchases made from non-reserved area on the ground that it (Council) was established for the reserved area of the appellant-company's factory and its functions were confined to that area and as such no commission (fee) could be recovered by it in respect of purchases made by appellant-company from non-reserved area; similarly, the demand made by respondent No. 3 (Co-operative Society) was challenged on the ground that no services of any kind whatsoever were rendered by it to the appellant-company, and the charge would be invalid in the absence of any *quid pro quo*. The High Court negatived both the contentions and dismissed the petition. It is this decision of the High Court that is challenged before us in the appeal and counsel for the appellant-company raised the two questions mentioned at the commencement of the judgment.

Section 21, which deals with commission on purchase of cane, runs thus :

"(1) There shall be paid by the occupier a commission for every one maund of cane purchased by the factory—

(a) where the purchase is made through a Cane-growers' Co-operative Society, the commission shall be payable to the Cane-growers' Cooperative

(1) [1966] 1 S.C.R. 523.

Society and the Council in such proportion as the State Government may declare ; and

(b) where the purchase is made directly from the cane-grower, the commission shall be payable to the Council.

(2) The Commission payable under clauses (a) and (b) of sub-section (1) shall be at such rates as may be prescribed provided, however, that the rate fixed under clause (b) shall not exceed the rate at which the commission may be payable to the Council under clause (a)."

Section 30 confers power on the State Government to make rules for the purpose of carrying into effect the provisions of the Act and under cl. (j) of sub-s. (2) such Rules may provide for "the rate at which and the manner in which commission shall be paid to the Cane-growers' Co-operative Society on the supply of cane by them." Under the aforesaid provisions certain rules called the Madhya Pradesh Sugar Cane (Regulation of Supply and Purchase) Rules, 1959 have been framed by the State Government. Rules 45 and 46 occurring in Chapter X of the Rules are material and they are as follows :

"45. The occupier of factory shall pay a commission for the cane purchased at the following rates namely :—

(i) Where the purchase is made through a Cane-growers' Co-operative Society, at the rate of 5 Naya Paise per maund out of which 2 Naya Paise shall be payable to the Society and 3 Naya Paise to the Council;

(ii) Where the purchase is made directly from the cane-growers, at the rate of 3 Naya Paise per maund, payable to the Council.

46. In determining the proportion to which payments out of commission shall be made to the Council and the Cane-growers' Co-operative Society of an area the State Government may take into consideration the

financial resources and the working requirements of the Council and the Cane-growers' Co-operative Society."

It is thus clear from the aforesaid statutory provisions that every factory is under an obligation to pay commission on all its purchases of cane at the prescribed rates and it has to pay such commission at the rate of 2 Naya Paise per maund to the Society and 3 Naya Paise to the Council in respect of purchases made through a Cane-growers' Co-operative Society and at the rate of 3 Naya Paise per maund to the Council where the purchases are made directly from the cultivators or cane-growers. It cannot be and was not disputed by Counsel on behalf of the respondents that the levy under s. 21 of the Act though called "commission" is really in the nature of a fee, the imposition of which is supportable only on the basis of *quid pro quo* in the shape of rendition of services to the factory in the matter of cane purchased by it and Counsel accepted this position as emerging from this Court's decision in *Jaora Sugar Mills'* case (supra).

Now, turning to the first question raised before us Counsel for the appellant-company contended that respondent No. 2 Council has been established for the "reserved area" of the appellant's factory so declared under s. 15 of the Act, that respondent No. 2 Council is required to discharge its statutory functions and duties under s. 6 of the Act confined to the "reserved area" meant for the appellant's factory and as such the demand for commission (fee) in respect of purchases of cane made by the appellant-factory from non-reserved areas (which it is entitled to make alongwith its purchases from the "reserved area") would be illegal and without any authority of law because in respect of such purchases there is no *quid pro quo* in the shape of rendering of services by respondent No. 2 to the appellant-factory. It is not possible to accept this contention for more than one reason. In the first place there are no qualifying words to be found in s. 21 of the Act which limit the imposition of commission (fee) to purchases of cane made by a factory from reserved area only; the imposition is on every maund of cane purchased by factory irrespective of the area from where such purchases may have been made. Secondly, and this is important, if the relevant provisions of ss. 5 and 6 of the Act are carefully examined it will appear that the functions and duties of the Development Council are not confined to the "reserved area" of a factory as

urged by the Counsel for the appellant-company. Under s. 5 "there shall be established, by notification, for the reserved area of a factory a Cane Development Council which shall be a body corporate.... provided that where the Cane Commissioner so directs, the Council may be established for a larger or smaller area "than the reserved area of a factory" and sub-s. (2) provides that "the area for which a council is established shall be called a Zone". In other words, the Zone (area of operation) of a Council could be larger than the "reserved area" of a factory i.e. would, include areas outside the reserved area of the factory. Further, the functions and duties of the Council are indicated seriatim in cls. (a) to (g) of sub-s. (1) of s. 6 and these include functions like considering and approving development programmes for the Zone, devising ways and means for execution of development plan in all its essentials such as cane varieties, cane-seed, sowing programme, fertilizers and manures, taking steps for the prevention of diseases and pests and rendering all help in soil extension work, etc. etc. and it will be noticed that some of these functions under cl. (b), (d) and (e) are of general character and not confined even to the Zone of the Council. In other words, the functions and duties of the Council which are in the nature of rendering services in the matter of better cane production, distribution and supply thereof to the factory are not confined to the "reserved area" so declared for a factory under sec. 15 of the Act. If that be so it is difficult to accept the contention that in the matter of cane purchases made by the appellant's factory from non-reserved areas no services are rendered by the respondent No. 2 Council to the appellant's factory. The *quid pro quo* being there the imposition of a fee on such purchases from non-reserved areas would be proper and justified.

As regards the demand and recovery of commission (fee) by respondent No. 3 under s. 21(1)(a) in respect of purchases of sugarcane made by the appellant's factory through it, the contention of Counsel for the appellant-company has been that respondent No. 3 is the concerned Cane-growers' Co-operative Society in the area, one of the objects of which is to sell cane grown by its members to the appellant's factory, that the said Society does not render any services to the appellant's factory under the Act or otherwise and hence is not entitled to recover any fee from the appellant-company. It is pointed out that respondent No. 3 is meant for helping its members and in fact renders various types of services to its cultivator-members

so that they are not exploited. In fact in the matter of supplies of cane made through the respondent No. 3 it is the Society which deals with its members who receive their price from the Society. Counsel pointed out that even in the return filed by respondent No. 3 to the writ petition, respondent No. 3 enumerated four types of services which it claimed was rendering to the appellant's factory, namely, (a) it made arrangements for lumpsum cane supply on lumpsum demand from the factory; apart from convenience this resulted in economy to the factory as it had to maintain less staff; (b) it undertook equitable distribution of quota and the factory had not to undertake this function; (c) it undertook the maintenance of the records of individual growers for cane supplies and the factory had not to undertake this function and (d) it made payment to the suppliers though the factory is required to make payments for supplies effected immediately and, in actual practice mostly the factory made payments late at its convenience but the Society made payments to the suppliers regularly according to the programme drawn by it; the appellant's factory thus benefited by the existence of this Society. But according to Counsel for the appellant-company none of these items referred to above really amounts to rendering any service to the appellant's factory by way of conferring on it some special benefit having a direct, close or reasonable correlation to its transactions of purchase of cane and, if at all, all these items referred to in the Return are really for the benefit of cultivator-members of the Society and in this behalf, Counsel relied upon a decision of this Court in *Kewal Krishan Puri's*[1] case where in the context of enhanced market fee levied under Punjab Agricultural Produce Market Act, 1961 this Court has observed that the *quid pro quo* by way of rendering services must result in the conferal of some special benefits to the persons charged which have a direct, close and reasonable correlation between such persons and their transactions and that any indirect or remote benefit to them would in no sense be such benefit. Counsel for the appellant-company, therefore, urged that since in everything that is being done by it respondent No. 3 is rendering services to its own members and no services resulting in any special benefit to the appellant's factory are rendered, no charge by way of any fee would be legally recoverable by respondent No. 3 from the appellant's factory.

(2) [1979] 3 S.C.R. 1217.

In our view having regard to the scheme of the Act and the activities which respondent No. 3 has been undertaking in the discharge of its normal functions it will be difficult to accept the contention urged by Counsel for the appellant's factory that no services of any kind whatsoever resulting in conferal of special benefits on the appellant's factory in regard to its transactions of purchases of cane are rendered by respondent No. 3 to the appellant's factory. The scheme of the Act is that under sections 15 and 16 a declaration of reserved and assigned areas for purchase and supply of sugarcane is made by the Cane Commissioner for every factory after consulting in the manner prescribed the occupier of the factory and the Cane-growers' Co-operative Society, if any, in that area and upon declaration of such areas an obligation is cast upon the occupier of the factory, in the case of "reserved area", to purchase all cane grown in such area which is offered for sale and in respect of "assigned area" to purchase such quantity of cane grown therein and offered for sale for the factory as may be determined by the Cane Commissioner. Further, under s. 19 the State Government can by order regulate the distribution, sale and purchase of cane within any "reserved and assigned area" as also from areas other than "reserved and asssigned areas" and under cl. (b) of sub-sec. (2) such order made by the State Government may provide for the manner in which cane grown in the "reserved area" or the "assigned area" shall be purchased by the factory and the cane grown by a cane-grower shall not be purchased except through a Cane-growers' Co-operative Society. In other words the scheme of Act contemplates situations where the appellant's factory may have to purchase cane from within reserved or assigned areas only through the respondent No. 3 Society. Moreover in its Return the respondent No. 3 has averred that under its bye-laws the Society is established to develop scientific methods of sugar cane growing and calls on its members to introduce modern means of implements for cultivating sugarcane which unquestionably makes for assured bulk supply of uniformly good quality cane through its members to the appellant's factory. In other words this function undertaken by respondent No. 3 is of a nature or kind similar to that undertaken by the council and therefore it cannot be said that no services conferring special benefit on the appellant's factory in the matter of its purchases of cane are rendered by respondent No. 3 to the appellant's factory. Having regard to the aforesaid position it is not possible to accept the contention that in respect of purchases of cane made through the respondent No. 3 Society there is no

A element of *quid pro quo* in the shape of rendering services by respondent No. 3 to the appellant's factory.

In the result both the questions are answered against the appellant-company and the appeal is dismissed with costs.

B H.L.C. *Appeal dismissed.*