

AGRICULTURAL PRODUCE MARKET COMMITTEE

v.

BIOTOR INDUSTRIES LTD. & ANR.

(Civil Appeal No. 4860 of 2009)

NOVEMBER 29, 2013

[G.S. SINGHVI AND V. GOPALA GOWDA, JJ.]

Gujarat Agricultural Produce Markets Act, 1963 – ss.28A and 59 – Gujarat Agricultural Produce Markets Rules, 1965 – r.48(2) – Gujarat Agricultural Produce Markets (Amendment) Act, 2007 – Entitlement to levy market fee on the respondent-Company for purchase of castor seeds – Held: On facts, demand for market fee by the APMC for castor seeds was justified since the castor seeds were bought in the market area and not brought into the market area – Order of the Division Bench of the High Court in LPA setting aside the order of the single Judge and affirming the order of the Revisional Authority, without examining the correctness of r.48(2) and applying the Division Bench Judgment rendered in another LPA in connected matters, without considering the factual matrix, is liable to be set aside – Matter remanded to High Court to place the matter before the Single Judge to examine the validity of r.48(2), as questioned with reference to s.28A of the amended provision of Act No. 17 of 2007 and the impugned order of the Revisional Authority – Appellant may also approach the State Government to amend the Rules by deleting r.48(2) – Interim order of the single Judge directing deposit of 50% of the demanded amount towards the market fee, restored – Constitution of India, 1950 – Arts. 14, 19, 21 and 226.

The appellant-APMC filed Special Civil Application under Articles 14, 19, 21 and 226 of the Constitution before the High Court, seeking relief for the issue of a writ of certiorari or any other appropriate writ, order or

- A direction, to set aside order passed in Revision Application by respondent No.2—the State (Revisional Authority) and further seeking declaratory relief to declare that the APMC is entitled to levy market fee on the respondent-Company for purchase of castor seeds as per the demand notices given to the respondent-Company. Further, the appellant-APMC sought for declaratory relief to declare Rule 48(2) of the Gujarat Agricultural Produce Markets Rules, 1965 as ultra vires of Sections 28A and 59 of the Gujarat Agricultural Produce Markets Act, 1963.

- The single Judge of the High Court passed interim order issuing Rule to examine the correctness of Rule 48(2) in view of the amendment to the Act incorporating Section 2(a) to Section 28 of the Act and also granted interim relief directing respondent-Company to deposit 50% of the demanded amount towards the market fee.

- The correctness of this interim order was challenged by the respondent-Company by filing LPA. The Division Bench dismissed the Special Civil Application holding that the same lacks merit and also vacated interim relief granted by the single Judge of High Court. Aggrieved, the APMC filed the instant appeal.

- Allowing the appeal, the Court

- HELD: The demand for the market fee made by the APMC for castor seeds is justified as per the reasoning given by this Court in its judgment in the connected Civil Appeal No. 3130 of 2008, that the castor seeds were bought in the market area and not brought into the market area. The order of the Division Bench of the High Court in LPA setting aside the order of the single Judge in Special Civil Application and affirming the order of the Revisional Authority, without examining the correctness of Rule 48(2) of the Rules and applying the Division

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Bench Judgment rendered in another LPA in connected matters without considering the factual matrix and therefore, the same is liable to be set aside. Accordingly, the same is set aside and the matter is remanded to the High Court to place the matter before the roster of single Judge to examine the validity of Rule 48(2) of the Rules, as questioned with reference to Section 28A of the amended provision of Act No. 17 of 2007 and the impugned order of the Revisional Authority. The appellant may also approach the State Government to amend the Rules by deleting Rule 48(2) of the Rules. It is open for the appellant to either press the Special Civil Application to be decided on merits with regard to the validity of Rule 48(2) and also examine the impugned order of levying market fees on the goods purchased by the respondent-Company on the basis of facts and material evidence or to make revision application to the State Government seeking for the deletion of Rule 48(2) by amending the Rules. The interim directions given by the single Judge by way of interim order directing to deposit 50% of the demanded amount towards the market fee is restored. If the company has not complied with that interim order, it shall comply with the same within two weeks from the date of receipt of the copy of this judgment. [Paras 6, 7] [977-G-H; 978-A-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4860 of 2009.

From the Judgment and Order dated 10.02.2009 of the High Court of Gujarat at Ahmedabad in LPA No. 1383 of 2008.

B. K. Satija for the Appellant.

Sanjay Bhatt, Hemantika Wahi for the Respondents.

The Judgment of the Court was delivered by

A **V. GOPALA GOWDA, J.** 1. This matter is connected to the Civil Appeal Nos. 3130-3131 of 2008 upon which we have pronounced the judgment today.

B 2. The appellant-APMC herein challenged the correctness of the judgment dated 10.2.2009 passed by the Division Bench of Gujarat High Court in Letters Patent Appeal No. 1383 of 2008 in Special Civil Application No. 9705 of 2008 with Civil Application No. 13651 of 2008 whereby it has dismissed the Special Civil Application holding that the same lacks merit and also vacated interim relief granted by the learned single Judge of High Court. Being aggrieved, the APMC filed this Civil Appeal framing certain questions of law and urging grounds in support of the same, praying to set aside the impugned judgment and order and to pass such other order as may be deemed fit and proper in the circumstances of the case.

D 3. The brief necessary facts for the purpose of examining the legality and validity of the impugned order are stated herein:-

E The appellant-APMC had filed Special Civil Application No. 9705 of 2008 under Articles 14, 19, 21 and 226 of the Constitution of India before the learned single Judge of the High Court impleading the respondent-Company and the State of Gujarat as parties, seeking relief for the issue of writ of certiorari or any other appropriate writ, order or direction, to set aside order dated 30.6.2008 passed in Revision Application F No. 69 of 2008 by respondent No.2—the State (Revisional Authority) and further sought for declaratory relief to declare that the APMC is entitled to levy market fee on the respondent-Company for purchase of castor seeds as per the demand notices dated 5.3.2008 and 15.4.2008 given to the respondent- G Company. Further, by way of amendment to the prayer column, it has sought for declaratory relief to declare Rule 48(2) of the Gujarat Agricultural Produce Markets Rules, 1965 (for short “Rules”) as ultra vires of Sections 28A and 59 of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to H as “the Act”) urging various facts and legal grounds. The

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amended Sections were added to the Act vide the Gujarat
Agricultural Produce Markets (Amendment) Act, 2007.

4. The learned single Judge of the High Court after hearing
the learned counsel for the parties passed an interim order on
13.11.2008 in Special Civil Application No. 9705 of 2008
referring to Section 28(1) of the Act and amended Section
28(2)(a),(b),(c),(d) & (e) of the Act and issued Rule to examine
the correctness of Rule 48(2) in view of the amendment to the
Act incorporating Section 2(a) to Section 28 of the Act and
directed the respondent-Company by giving directions,
particularly direction Nos. 2 and 3 which are extracted
hereunder :-

“(2) Respondent No.2 deposits 50% of the outstanding
market fees with this Court and furnishes an undertaking
before this Court for the remaining 50% of the amount to
the effect that they shall pay up the remaining market fees
with interest as and when it is so ordered by this Court.
Such amount shall be invested, if deposited, by the
Registrar in the FDR initially for a period of two years,
renewable further with the State Bank of India, Gujarat
High Court Branch, Ahmedabad.

(3) Respondent No.2 shall be at liberty to comply with either
of the conditions within two months from the date of
intimation and calculation of the Market Fees recoverable
by the Market Committee from respondent No.2.”

Further, at paras 14 and 15 of the order dated 13.11.2008
of learned Single Judge, certain observations were made,
which read thus:-

“14. It is also observed and directed that it would be open
to the petitioner to make representation to the State
Government, which is Rule Making Authority, for
amendment of the Rule 48 in light of the amended
provisions of Section 28 of the Agriculture Produce Market

A Committee. If such representation is made, the pendency of this petition, shall not operate as a bar to the Rule Making Authority for bringing about amendment, as may be permissible in law.

B 15. It would be open to either side to move this Court for final hearing if the rules are amended or the matter before the Apex Court is finally decided, whichever is earlier.”

The correctness of this interim order dated 13.11.2008 was challenged by the respondent-Company by filing Letters Patent Appeal No. 1383 of 2008 urging various legal contentions. The Division Bench examined whether sub-section (2)(a) added to Section 28 of the Act by amendment Act No. 17 of 2007 has the effect of taking away the substratum of the Division Bench judgment dated 24.4.2007 passed in Letters Patent Appeal No. 139 of 2006 in connected matters. The Division Bench after referring to certain relevant facts and Rule 48(2) of the Rules, came to its conclusion on the basis of the judgment rendered by the Division Bench of High Court in the Letters Patent Appeal No. 139 of 2006 and connected matters for the interpretation of Section 28 of the Act read with Rule 48(2) of the Rules. The relevant paragraph 8 from the Division Bench judgment rendered in the aforesaid Letters Patent Appeal filed by the respondent-Company is extracted hereunder:-

F “8. Section 28 of the Act empowers the Market Committee to levy and collect fees on notified agricultural produce bought or sold in the market area, subject to the provisions of the Rules and at the rate maxima and minima, from time to time prescribed. Thus, the power of the Market Committee to levy prescribed fees is envisaged in the above section. In juxtaposition to the above section, it is necessary to refer to Rule 48 of the Rules, and more particularly Rules 48 and 49, placed in Part VI with heading ‘Fees, Levy and Collections’, pertaining to market fees. Rule 48, sub-rule (1) and the explanation is highlighted by the learned Single Judge and discussion has taken place

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on the basis of certain material available on record with regard to sale of castor seeds by one Manish Trader of Ahmedabad to the Company and after relying upon Sections 19 to 22 of the Sale of Goods Act, the learned Single Judge found that sale does take place within the market area and, therefore, the Company is liable to pay market fees. However, sub-rule (2) of Rule 48 of Part VI of the Rules clearly prescribes that no fee shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and, in respect of which declaration has been made and a certificate has been obtained in Form V. Thus, the above sub-rule (2) of Rule 48 nowhere prescribes that agricultural produce brought from outside the area of market committee has to be by the industrial concern itself. The preceding word is 'brought' and not 'bought'. Even the facts of the present case are examined, nowhere it is mentioned that purchase took place within the area of the market committee. In the affidavit in reply filed by the Company, it is clearly mentioned that purchase of castor seeds did take place outside the market area and no sale takes place within the market area. Even, weightment, etc. is also done outside the market area and bills are prepared accordingly and, that too, after selection by the representative of the Company. Not only that, but, the Company has produced bills of one Manish Traders at page 109 of Letters Patent Appeal No.195 of 2006, having numbered as Bill No.93, dated 3rd May 2004, is clearly indicative of the fact that sale does not take place within the area of Market Committee, Baroda. Besides, the octroi paid to the Baroda Municipal Corporation on the goods, namely, castor seeds imported and produced at page 107 is also suggestive of the fact that sale does not take place within the area of market committee. Even, the Company has produced number of forms prescribed under Rule 48, sub rule (2) from page 79 to 86, the fact not denied by the

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- A Market Committee, which also establishes the case of the Company with sufficient declaration and a certificate that the abovementioned agricultural produce, namely, castor seeds, has been brought from outside the limits of the market area and brought within the limits of market area
- B for industrial purpose, and for production of castor oil and other byproducts. Thus, the Company fully complied with the requirement of Rule 48 of the Rules and is entitled for exemption from payment of market fees. Therefore, exercise undertaken by the learned Single Judge to find out the place of sale, so as to bring the case of the
- C Company under Rule 48, subrule (1) of the Rules, is of no help and the finding, on that basis, arrived at by the learned Single Judge, will have to be quashed and set aside in the backdrop of the above discussion and the fact situation.”
- D 5. Thereafter the amended provisions of Sections 28A and 31D of the Act are referred to by the Division Bench along with Section 28(1) of the Act and Rule 48(2) of the Rules as well as sub-sections 2(a) and (b) of Section 28 of the amended provisions of the Act to come to the conclusion, that in view of
- E the factual legal situation, the Revisional Authority had rightly interfered with the demand notices issued by the APMC and therefore held that Civil Appeal filed by the APMC lacks merit and dismissed the same and the interim relief granted was set aside and consequently Rule was also discharged. The
- F correctness of the same is challenged here by urging various questions of law and grounds in support of the same. The same need not be adverted to in this judgment for the reason that the learned Division Bench of the Gujarat High Court while examining the directions in interim order dated 13.11.2008 given in Special Civil Application No. 9705 of 2008 filed by the
- G APMC has gone into the merits of the case. Considerable reliance was placed upon the Division Bench Judgment in Letters Patent Appeal No. 139 of 2006 by the counsel for the respondent-Company, contending that the amendment Act has not brought any change to Section 28 of the Act and further
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submitted that the Revisional Authority has rightly held that the APMC has no legal right to levy market fee on the respondent-Company. The appellant-APMC in this appeal has submitted that the Division Bench of the High Court, instead of examining the correctness of the discretionary powers exercised by the learned single Judge in Special Civil Application No. 9705 of 2008 and passing the interim order with certain observations, has passed the orders on merits of the civil application without advertent and examining the grounds urged in the petition, which approach of the Division Bench is not correct and it should not have pronounced decision on the merits of the Special Civil Application while examining the correctness of the interim order passed by the learned single Judge. The APMC has also sought declaratory relief to declare Rule 48(2) as *ultra vires* to Section 28A of the amended provision of the Act and submitted that the Division Bench of the High Court failed to appreciate the same and also that Section 28 of the Act deals with levy of market fee which is a mandatory provision that does not give any exemption to respondent-Company and as such a Rule cannot override provisions of the Act. The Division Bench of the High Court has simply affirmed the order of the Revisional Authority by setting aside the assessment order passed by the APMC vide notices dated 5.03.2008 and 15.4.2008 without awaiting the decision to be rendered by the learned single Judge on the legality and validity of the Rule 48(2) in the backdrop of Section 28, of the amended provision.

6. After hearing learned counsel for the parties, we have pronounced the judgment today in Civil Appeal No. 3130 of 2008 on similar demand notices demanding the market fee from the respondent-Company on the castor seeds bought in the market area for the purpose of manufacturing of oil. We hold that the demand for the market fee made by the APMC for castor seeds is justified as per the reasoning given in our judgment in the connected Civil Appeal No. 3130 of 2008, that the castor seeds were bought in the market area and not brought into the market area. It would suffice to say that the order dated 10.02.2009 of the Division Bench of the High Court

- A in Letters Patent Appeal No. 1383 of 2008 setting aside the order dated 13.11.2008 of the learned single Judge in Special Civil Application No. 9705 of 2008 and affirming the order dated 30.06.2008 of the Revisional Authority in Revision Application No.69 of 2008, without examining the correctness of Rule 48(2) of the Rules and applying the Division Bench Judgment rendered in Letters Patent Appeal No 139 of 2006 without considering the factual matrix and therefore, the same is liable to be set aside. Accordingly, we set aside the same and remand the matter to the High Court to place the matter before the roster of learned single Judge to examine the validity of Rule 48(2) of the Rules, as questioned with reference to Section 28A of the amended provision of Act No. 17 of 2007 and the impugned order of the Revisional Authority. The appellant may also approach the State Government to amend the Rules by deleting Rule 48(2) of the Rules. It is open for the appellant to either press the Special Civil Application to be decided on merits with regard to the validity of Rule 48(2) and also examine the impugned order of levying market fees on the goods purchased by the respondent-Company on the basis of facts and material evidence or to make revision application to the State Government seeking for the deletion of Rule 48(2) by amending the Rules with the above said observation.

7. This Civil Appeal is accordingly allowed in the above terms by setting aside the impugned order of the Division Bench and remanding the matter to the High Court to place the same before the roster of learned single Judge with a request to him to examine the validity of the impugned Rule if the APMC so desires and the impugned order passed by the Revisional Authority and decide the same on merits. The interim directions given by the learned single Judge by way of interim order dated 13.11.2008 directing to deposit 50% of the demanded amount towards the market fee is restored. If the company has not complied with that interim order, it shall comply with the same within two weeks from the date of receipt of the copy of this judgment.