

VIRENDRA KUMAR & ORS.

v.

KRISHI UTPADAN MANDI SAMITI & ORS.

SEPTEMBER 23, 1987

B [RANGANATH MISRA AND MURARI MOHON DUTT, JJ.]

*U.P. Utpadan Mandi Adhiniyam, 1964: ss. 2(y), 5, 9(1) proviso & 17(iii)(b)—Producers of Khandsari sugar—Owners of Khandsari Units—Selling produce in the market area—Whether liable to take out licence and pay market fee—Such producer—Whether a trader.*

C Section 9(1) of the U.P. Utpadan Mandi Adhiniyam, 1964 prohibits local body or other person from setting up within the market area any place for the sale-purchase of the specified agricultural produce, except under a licence granted by the Committee concerned. A proviso thereto, however, exempts a producer in respect of agricultural produce produced, reared, caught or processed by him or any person who purchases or stores any agricultural produce for his domestic consumption. Clause (b) s. 17(iii) empowers a Committee to levy and collect market fee payable on transactions of sale of specified agricultural produce. Where such produce is sold through a commission agent, sub-cl. (1) of cl. (b) makes him liable to collect the market fee and pay the same to the Committee.

F The petitioners, who are producers of Khandsari sugar, claimed that as they were only 'producers' in respect of agricultural produce in the market area they were not required to take out any licence or to pay the market fee under the Act, that the expression "for his domestic consumption" in the proviso to s. 9(1) does not refer to a producer of agricultural produce but to a person who purchases or stores any agricultural produce, and that sub-s.(1) of s. 9 would apply only to a producer who was a trader and the petitioners were not 'traders' within the definition of the term under s. 2(y) and also as contemplated by sub-s. (1) of s. 9.

G Dismissing the writ petition,

H HELD: 1. It is not the intention of the Legislature that a 'producer' of an agricultural produce within the Market Area should be exempted from taking out any licence even though he sells his produce in the Market Area. [311G-H]

2. Sub-section (1) of s. 9 of the U.P. Utpadan Mandi Adhiniyam, 1964 will not apply to the two categories of persons mentioned in the proviso thereto, namely, (1) a producer who produces, rears, catches or processes agricultural produce for his domestic consumption, and (2) any person who purchases or stores any agricultural produce for his domestic consumption. If, however, the producer produces, rears, catches or processes agricultural produces not for his domestic consumption but for the sale thereof in the Market Area such a producer will not come within the purview of the proviso and he will have to take out a licence under s. 9(1). [312B-C; F]

Since the petitioners in the instant case are producing Khandsari for sale in the Market Area they will have to take out a licence under sub-s. (1) of s. 9. They are thus also liable to pay market fee to the Committee on their transactions of sale, under s. 17(iii)(b). [313D]

3. The expression "for his domestic consumption" in the proviso to s. 9(1) refers to a producer of agricultural produce. The proviso should be interpreted in a manner which would be in conformity with the intention of the legislature and also the object of the Act, i.e., the regulation of sale and purchase of agricultural produce and establishment, superintendence and control of market therefor. If the proviso is interpreted to mean that the producer of agricultural produce is exempt from taking out a licence under s. 9(1), even though he produces, rears, catches or processes not for his domestic consumption but for selling them in the Market Area, it would defeat the very object of the Act. [312C-D]

4. The petitioners by producing Khandsari sugar and selling it within the market area are also 'traders' within the meaning of s. 2(y) and also as contemplated by sub-s. (1) of s. 9. [313B]

*Ramesh Chandra v. State of U.P.*, [1980] 3 SCR 104, referred to.

ORIGINAL JURISDICTION: Writ Petition No. 766 of 1987.

(Under Article 32 of the Constitution of India).

Soli J. Sorabjee and Pramod Swarup for the Petitioners.

Dr. Y.S. Chitale, Mrs. S. Dikshit and Pradeep Mishra for the Respondents.

The Judgment of the Court was delivered by

A **DUTT, J.** In this writ petition under Article 32 of the Constitution of India the petitioners have prayed for issuance of the writ in the nature of *mandamus* directing the respondents not to compel the petitioners to take out licences and to pay market fee under the U.P. Utpadan Mandi Adhiniyam, 1964, hereinafter referred to as 'the Act'.

B The petitioners are the producers of *khandsari* sugar and are the owners of *Khandsari* Sugar Units which they operate with the aid of power crushers for the production of *khandsari* sugar. The petitioners claim that as they are only producers of *khandsari* sugar, they are not liable to take out any licence or to pay the market fee under the Act as illegally demanded by the respondents Mandi Samitis.

C It appears from the Preamble that the Act provides for the regulation of sale and purchase of agricultural produce and for the establishment, superintendence and control of market therefor in Uttar Pradesh. Section 5 of the Act provides for the declaration of intention of the State Government to regulate and control sale and purchase of agricultural produce in any area to be declared as a Market Area. Under section 6, the Market Area will be declared by the State Government by a notification in the Gazette after considering the objections received within the period referred to in section 5 of the Act. Section 9(1) of the Act provides as follows:-

E "S. 9(1).—As from the date of declaration of an area as Market Area no Local Body or other person shall, within the Market Area, set up, establish or continue, or allow to be set up, established or continued, any place for the sale-purchase, storage, weighment or processing of the specified agricultural produce, except under and in accordance with the condition of a licence granted by the Committee concerned, anything to the contrary contained in any other law, custom, usage or agreement notwithstanding:

G Provided that the provisions of this sub-section shall not apply to a producer in respect of agricultural produce produced, reared, caught or processed by him or to any person who purchases or stores any agricultural produce for his domestic consumption."

H Section 17 lays down the powers of the Committee constituted under section 13 of the Act. Clause (iii)(b)(1) of section 17 provides as follows:-

“S.17—A Committee shall, for the purpose of this Act, have the power to—

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(iii) levy and collect:

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(b) market fee, which shall be payable on transactions of sale of specified agricultural produce in the market area at such rates, being not less than one percentum and not more than one and half percentum of the price of the agricultural produce so sold, as the State Government may specify by notification, and such fee shall be realised in the following manner—

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(1) If the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee;”

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It is urged by Mr. Sorabjee, learned Counsel appearing on behalf of the petitioners, that as the petitioners are only producers in respect of agricultural produce, they are not required to take out any licence in view of the proviso to section 9(1) of the Act. Counsel submits that under the proviso, sub-section (1) of section 9 will not apply to two categories of persons, namely, (1) the producer in respect of agricultural produce and (2) any person who purchases or stores any agricultural produce for his domestic consumption. In other words, according to the learned Counsel, a producer who produces the agricultural produce in the Market Area and sells them will not have to take out a licence under sub-section (1) of section 9. We are unable to accept the contention. In our view, it is not the intention of the Legislature that a producer of an agricultural produce within the Market Area would be exempt from taking out any licence, even though he sells his produce in the Market Area. We have already noticed that the Preamble of the Act shows that it is for the regulation of sale and purchase of agricultural produce and for establishment, superintend-

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A ence and control of market therefor. The very object of the Act, as indicated in the Preamble, will be defeated, if a producer of an agricultural produce within the Market Area is exempted from taking out a licence merely because he is a producer of an agricultural produce. It is true that under the proviso, sub-section (1) of section 9 will not be applicable to a producer of agricultural produce. But such a producer must be a producer of agricultural produce processed, reared, caught or processed by him for his domestic consumption. If, however, the producer produces, rears, catches or processes the agricultural produce not for his domestic consumption, but for the sale thereof in the Market Area, such a producer will not come within the purview of the proviso and he will have to take out a licence under sub-section (1) of section 9 of the Act. We are unable to accept the contention of the learned Counsel for the petitioners that the expression "for his domestic consumption" in the proviso does not refer to a producer of agricultural produce, but to a person who purchases or stores any agricultural produce. As has been stated already, if the proviso is interpreted to mean that a producer of agricultural produce is exempt from taking out a licence under sub-section (1) of section (9) of the Act, even though he produces, rears, catches or processes not for his domestic consumption but for selling them in the Market Area, it would defeat the very object of the Act. The proviso, in our opinion, should be interpreted in a manner which would be in conformity with the intention of the Legislature and also the object of the Act. Therefore, in our view, there can be no doubt that a producer who produces, rears, catches, or processes agricultural produce for his domestic consumption and also any person who purchases or stores any agricultural produce for his domestic consumption are exempt under the proviso from taking out any licence. In other words, sub-section (1) of section 9 will not apply to these two categories of persons as mentioned in the proviso.

It is, however, urged on behalf of the petitioners that sub-section (1) of section 9 would apply only to a producer who is a trader. Our attention has been drawn to the definition of the word 'trader' under section 2(y) of the Act as meaning a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorised agent of one or more principals and includes a person, engaged in processing of agricultural produce. It is submitted that the petitioners are not 'traders' within the meaning of the said definition and also as contemplated by sub-section (1) of section 9 of the Act. In support of this contention, the learned Counsel for the petitioners has placed much reliance upon a decision of this

Court in *Ramesh Chandra v. State of U.P.*, [1980] 3 SCR 104 which also relates to the Act with which we are concerned. In that case, it has been observed that a producer-trader will be required to take out a licence and the expression 'producer-trader' has been explained to be a person who is both a producer of agricultural produce and himself trades in it. We do not think that the decision at all supports the contention of the petitioners. The petitioners, in our opinion, by producing *khandsari* sugar and selling it within the Market Area are also 'traders' within the meaning of section 2(y) and also as contemplated by sub-section (1) of section 9. The petitioners are, therefore, 'producer-traders' as explained in the above decision of this Court.

The next question that falls for consideration is whether the petitioners are liable to pay market fee. We have already extracted above the provision of section 17(iii)(b)(1) which has been relied upon by the learned Counsel for the petitioners in support of his contention that the petitioners are not liable to pay market fee. Section 17(iii)(b)(1), *inter alia*, provides that if the produce is sold through a commission agent, the commission agent may realise the market fee from the purchaser and shall be liable to pay the same to the Committee. It is argued on behalf of the petitioners that as they sell their produce through a commission agent, it is only the commission agent who is liable to pay the market fee and not the petitioners. It has, however, been frankly conceded by Mr. Sorabjee on behalf of the petitioners that there is no averment in the petition that the petitioners sell their produce through a commission agent. In the absence of any such averment, we are afraid, such a contention is not available to the petitioners. There is, therefore, no substance in the contention that the petitioners are not liable to pay market fee.

No other point has been urged on behalf of the petitioners.

For the reasons aforesaid, the writ petition is dismissed. There will, however, be no order as to costs.

P.S.S.

Petition dismissed.