

(2003) 09 AHC CK 0294**Allahabad High Court****Case No:** Civil Miscellaneous Writ Petition No. 1568 of 1989

Devendra Bahadur Singh

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and
Another

RESPONDENT

Date of Decision: Sept. 23, 2003**Acts Referred:**

- Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 - Section 17(3), 2

Citation: (2003) 6 AWC 5043 : (2003) 95 RD 572 : (2003) 3 UPLBEC 2626**Hon'ble Judges:** Umeshwar Pandey, J; M. Katju, J**Bench:** Division Bench**Advocate:** V.K. Singh, for the Appellant; B.D. Mandhyan, for the Respondent

Judgement

M. Katju, J.

This writ petition has been filed for a mandamus restraining the respondents from realizing market fee from the petitioner in respect of Tendu leaves purchased by the petitioner from the U.P. Forest Corporation. The petitioner has also prayed for a mandamus restraining the respondents from detaining the trucks or stopping the movement of the petitioner's vehicles in which the petitioner carries Tendu leaves purchased from the godowns of the U.P. Forest Corporation and to restrain the respondents from interfering with the business of the petitioner of purchasing Tendu leaves from the U.P. Forest Corporation.

2. Heard learned Counsel for the parties.

3. The petitioner carries on the business of purchasing Tendu leaves from the U.P. Forest Corporation from its godowns situate at Mirzapur, Duddhi, Renukoot and other places within the jurisdiction of the respondents Krishi Utpadan Mandi Samiti, Mirzapur and Krishi Utpadan Mandi Samiti, Duddhi. The petitioner transports the same for sale to the States of Bihar and West Bengal where it is used for manufacture of Bidis.

4. It may be mentioned that Tendu leaves have been notified as agricultural produce under the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred as the Act).

5. It is alleged in Paragraph 2 of the writ petition that the petitioner is simply a trader and not a manufacturer of Bidis. He purchases Tendu leaves from the U.P. Forest Corporation and sells it to the manufacturers or other traders.

6. In Paragraph 7 of the writ petition it is alleged that the petitioner was compelled to obtain a licence from the respondents under the Act to carry on his business of purchasing Tendu leaves, and the petitioner was also compelled to pay market fee to the respondents on Tendu leaves purchased from the U.P. Forest Corporation at the godowns which are situated within the market area of the Mandi Samiti and also the other Mandi Samitis which are on the route from the godown to the places where the petitioner transports the Tendu leaves. The petitioner transports the same from the different godowns to the States of Bihar and West Bengal.

7. In Paragraph 10 of the writ petition it is alleged that the first transaction takes place between the UP. forest Corporation which is the seller and the petitioner which is the purchaser. It is alleged that in view of Section 17(iii)(b)(3) of the Act it is only the seller which is liable to pay market fee and not the purchaser.

8. Section 17(iii)(b)(3) states :

"If the produce is purchased by a trader from another trader, the trader selling the produce may realize it from the purchaser and shall be liable to pay the market fee to the Committee."

9. It is alleged in Paragraph 10 of the writ petition that both U.P. Forest Corporation as well as the petitioner are traders of Tendu leaves. The Corporation is the selling trader and the petitioner is the purchasing trader and hence Section 17(iii)(b)(3) applies. Hence it is alleged in Paragraph 11 of the writ petition that the liability of paying the fee is on the U.P. Forest Corporation and the respondents have no authority to realize it from the petitioner. The Mandi Samiti which has jurisdiction over the godowns of the U.P. Forest Corporation can realize fee from the U.P. Forest Corporation and not from the petitioner and the petitioner is not liable to pay any fee to the Mandi Samitis intervening on the route of transportation of Tendu leaves from the Forest Corporation godowns to their destination in Bihar and West Bengal.

10. It is alleged in Paragraphs 14 and 15 of the writ petition that no service is rendered by the Mandi Samiti to the petitioner and hence no Mandi fee can be charged. The godowns of the U.P. Forest Corporation are situate in private buildings managed by private individuals, and the godown of the petitioner where the Tendu leaves are kept after purchase from the Forest Corporation belong to the petitioner and are managed by him and no service is rendered by the Mandi Samiti. The Tendu leaves after purchase by the petitioner are transported through the roads

maintained by the State Government and Central Government and the respondent Mandi Samitis do not provide any facility for the transportation. The Mandi Samitis where the godown of the petitioner/Corporation are situated has created barriers on the routes and when the petitioner carries the purchased Tendu leaves from the Forest Corporation godown by trucks the employees of the Mandi Samiti stop these trucks at the barriers and ask for the receipts of payment of the market fee and the gate pass issued by the Mandi Samiti. The petitioner does not possess these documents as neither market fee is payable by him nor any gate pass is issued or given to him by the Forest Corporation. The petitioner however possesses the certificate and challan paravanna issued by the Forest Corporation in respect of Tendu leaves purchased by him.

11. In Paragraph 19 of the writ petition it is stated that apart from the Mandi Samiti of the area where the godowns of the U.P. Forest Corporation are situated the other Mandi Samitis whose areas fall on the route to the transportation destination also demand market fee and gate pass issued by their own Mandi Samiti while the petitioner crosses the territorial limits of those Mandi Samitis. On refusal of the petitioner to produce such document, the vehicles are detained by the men of the Mandi Samitis who are posted on the barriers for this purpose and they do not allow the vehicles to move to their destination unless market fee is paid. Aggrieved this writ petition has been filed.

12. A counter-affidavit has been filed by the Mandi Samiti. In Paragraph 3 of the same it is stated that the petitioner is not carrying on any business at Duddhi. It is not admitted that the petitioner is selling the Tendu leaves in Bihar and West Bengal, rather he purchases Tendu leaves for manufacturing Bidis and, therefore, he is a consumer and not a trader. In Paragraph 4 it is alleged that petitioner is only purchaser/consumer as he purchases Tendu leaves for manufacturing Bidis. In Paragraph 9 it is stated that the respondents are not concerned about the intervening Mandi Samitis on the route and they have no concern with the same. The petitioner had not furnished any proof of transport of Tendu leaves to Bihar and West Bengal and hence he is a purchaser/consumer. It is immaterial that the godowns of Forest Corporation are in their own building. Since the godowns are in the market area of the respondent the transactions are subject to the payment of market fee. It is stated in Paragraph 15 that the Mandi Samiti is rendering service to the petitioner.

13. The petitioner has relied on the judgment of this Court in Writ Petition No. 8589 of 1986 which was allowed on 18.10.1989. He has also relied on the decision of this Court in U.P. Forest Corporation v. State of U.P. 1985 UPLBEC 1192.

14. The word "trader" has been defined in Section 2(y) of the Act which states :

" "trader" means a person who in the ordinary course of business is engaged in buying or selling agricultural produce as a principal or as a duly authorized agent of

one or more principals and includes a person, engaged in processing of agricultural produce."

15. In M/S. Mahaluxmi Rice Mills and Others Vs. State of U.P. and Others , the Supreme Court has clearly held that when Section 17(iii)(b)(3) applies the market fee can be collected by the Mandi Samiti only from the seller irrespective of whether the seller has realised it from the purchaser or not.

16. Following the judgment of the Supreme Court a Division Bench of this Court in M/s. Ram Kishan Daya Ram & Company v. The Director, Krishi Utpadan Mandi Samiti, Civil Misc. Writ Petition No. 32828 of 1991, decided on 3.2.2000, held that the Mandi Samiti cannot levy and collect market fee from the purchaser who purchases the Tendu leaves from the Forest Corporation.

17. The respondents have disputed that the petitioner is a trader of Tendu leaves and they have contended that the petitioner is a consumer as he himself utilizes Tendu leaves for manufacture of Bidis. It is not necessary for us to go into this disputed question of fact. However, we direct that if the petitioner can demonstrate to the Market Committee that he is only a trader as defined in Section 2(y) of the Act then market fee would not be charged from him.

18. For this purpose the petitioner can produce before the respondent Market Committees the necessary documents to show that he is not himself consuming the Tendu leaves by manufacturing Bidis but is transporting the same to other traders or manufacturers. If the petitioner can do this the respondent shall not harass the petitioner and shall not demand market fee from him.

19. The petition is disposed off accordingly.