

## Western India Cashew Company Private Limited Vs The Government of Tamil Nadu and Others

**Court:** Madras High Court (Madurai Bench)

**Date of Decision:** Aug. 10, 2011

**Acts Referred:** Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 â€” Section 24, 24(1), 30

**Hon'ble Judges:** Vinod K. Sharma, J

**Bench:** Single Bench

**Advocate:** K.N. Thambi, for the Appellant; S. Bharathi, Government Advocate for Respondent 1, Pala Ramasamy, for Respondents 3 and 4 and R. Janakiramulu, for Respondent 5, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner prays for issuance of a writ in the nature of prohibition, restraining the Respondents from levying any market fee on the Petitioner on any other notified agricultural produce brought into any notified market area for the purpose of processing and for

export only in terms of Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987.

2. The impleaded parties to the Writ Petition are:

1. The Government of Tamil Nadu, represented by its Secretary, Department of Agriculture, Fort.St. George, Chennai - 600 009.

2. The Commissioner, Agricultural Marketing and Agri Business, Guindy, Chennai - 600 032.

3. The Kanyakumari District Marketing Committee, Vadasery, Nagercoil, Kanyakumari District, represented by its Secretary.

4. The Regulated Market, Monday Market, Kanyakumari District, represented by its Superintendent.

5. The Trichy Marketing Committee, Trichy -20, represented by its Secretary.

6. The Regulated Market, Jayankondam, Perambalur District, represented by its Superintendent.

7. The Cuddalore Market Committee, Cuddalore, Cuddalore District, represented by its Secretary.

8. The Regulated Market, Panruti, Cuddalore District, represented by its Superintendent.

3. The un-controverted pleadings in the Writ Petition are that the petitioner/company is doing business of processing and export of cashew kernels.

The units of the Petitioner are located within the territorial jurisdiction of Respondent No. 3 to 8 for processing and export of cashew-nuts. The

Petitioner imports cashew-nuts from foreign countries for processing in its units and exports the processed cashew kernels to foreign countries.

4. The case of the Petitioner is that it is not buying or selling any notified agricultural produce within the notified market area or anywhere else in

Tamil Nadu. It is also pleaded that though the industry of processing of cashew nuts is a seasonal one, the availability of the cashew nuts being

seasonal, the Petitioner is running the industry throughout the year with the available cashew nuts with a view to give job to its employees

throughout the year.

5. Section 24 of the Tamil Nadu Agricultural Produce Marketing (Regulation) Act, 1987 reads as under:

24. Levy of fee by market committee.--(1) The market committee shall levy a fee on any notified agricultural produce brought or sold in the

notified market area at a rate not less than one rupee but not exceeding two rupees for every hundred rupees of the aggregate amount for which

the notified agricultural produce is brought or sold whether for cash or for deferred payment or other valuable consideration.

Provided that when any agricultural produce brought into any notified market area for the purpose of processing only, or for export is not

processed or exported therefrom within thirty days from the date of its arrival therein, it shall, until the contrary is proved, be presumed to have

been brought into such notified market area for buying and selling and shall be subject to the levy of fee under this section on the value of the

agricultural produce, as if it had been brought and sold therein.

Explanation I.-- For the purpose of this Sub-section, all notified agricultural produces taken out or proposed to be taken out of a notified market

area, shall, unless the contrary is proved, be presumed to be bought or sold within such area.

Explanation II.-- In the determination of the amount of the fee payable under this Act, any fraction of ten paise less than five paise shall be

disregarded and any fraction of ten paise equal to or exceeding five paise shall be regarded as ten paise.

Notes

It must be pointed out that the levy of market fee under Sub-section (1) of Section 24 is correlated to the purposes mentioned in Section 30 of the

Act. Increase in the market fee levied under Sub-section (1) of 24 from 45 paise to one rupee is not invalid and illegal. W.P. No. 2429 of 1992

dated 28.4.1994. Proviso is perfectly valid *ibid*.

(2) The fee referred to in Sub-section (1) shall be paid by the purchaser of the notified agricultural produce concerned.

Provided that where the purchaser of a notified agricultural produce cannot be identified the fee shall be paid by the seller.

Notes

Beedi and Tobacco when purchased outside State and brought into notified area, they cannot be treated as purchasers fee. Fee and cess u/s is not

payable when first purchaser from them is identified. Scope of -See 1989 Writ L.R 345

Contract between seed producer and ryot-Transaction whether sale attracting levy of cess see E.I.D. Parry (India) Limited Vs. The Secy.,

Thanjavur Marketing Committee and Another, . Non-payment of fee levied by market committee whether continuing offence see 1994 MLJ (cr)

257, see also 1989 MLJ(Cr)225, 1986 Cr.L.J 485. Bye law fixing the single point in series of sales whether authorised see Mahendrakumar

Iswarlal and Co., Tirupattur Vs. Commercial Tax Officer, North Arcot and Another,

(3) If any notified agricultural produce liable to payment of fee under Sub-section(1) is found to have been processed without payment of fee

payable in respect of that produce, the fee shall be levied and recovered on the equivalent quantity of the notified agricultural produce

notwithstanding such process.

(4) (A) The fee payable under Sub-section (1) shall be determined and collected in such manner as may be prescribed.

(b) the burden of proving that any notified agricultural produce is not liable for the levy of the fee or the fee payable has already been paid under

this section shall lie on the person claiming such exemption or non-liability and till it is established with sufficient records to the satisfaction of the

market committee that the notified agricultural produce has already suffered the liability, the fee due on such produce shall be paid.

(5) Any notified agricultural produce taken or proposed to be taken out of a notified market area exceeding such quantity as may be prescribed

shall be accompanied by a permit issued by the secretary of the market committee subject to the by-laws made in this behalf by the market

committee.

6. The Petitioner submits that the Respondents are demanding market fee from the Petitioner without giving an opportunity to show cause that

cashew nuts brought into the jurisdiction of Respondents 2 to 8 are not for sale or purchase but only for processing which could not be subject to

market fee.

7. No order has been placed on record passed by any of the Respondents showing that the Petitioner has been asked to pay the market fee.

8. The contention of the Learned Counsel for the Petitioner is, that the Respondents are acting malafide and demanding market fee without passing

any order. This contention be accepted even though no counter has been filed, as the Respondents 1 to 5 are only legal identities, which in absence

of written order cannot demand the fee. The un-rebutted averments also cannot be looked into in absence a person being a party who is said to

have demanded the fee. The legal authority can only speak through the orders. But for the reasons best known to the Petitioner, it has neither

named anybody in the petition or impleaded any person as party in the writ petition.

9. It is also pleaded that without issuing any order, the Respondents are blocking the vehicles of the Petitioner. This again is vague assertion as no

vehicle number, date and place has been mentioned which is said to have been blocked nor the name of the person who blocked the vehicle has

not been mentioned.

10. No other material has also been placed on record showing, if any complaint against illegal acts of any person has been filed to the police or any

higher authority.

11. It is now well-settled, that no order in exercise of writ jurisdiction can be passed on the vague and bald allegations not supported by material

particulars.

12. The prayer made in the Writ petition itself is misconceived, as no directions can be issued to the Respondents to follow the law, as every

citizen or authority is bound to follow the law of the land and no such directions of the High Court are required to be issued

13. If the law is violated, the person/legal body has a remedy in accordance with law against violation of law.

14. In absence of any order of imposition of market fee, it is not possible for this Court to look into the validity of it, to find out whether it has been

passed in violation of Section 24 of the Act.

15. Similarly, in absence of any material particulars of vehicle which is said to be illegally stopped, no directions are called for from this Court,

because if any person commits any irregularity or violates the law, it is always open to the party to take appropriate proceedings in accordance

with law i.e., by moving the civil or criminal court by proving the facts showing commission of an offence. As observed above, the averments made

in support of prayer are not only vague but also lack material particular, for which explanation can be called from Respondent.

16. For the reasons stated, no ground is made out to interfere in exercise of writ jurisdiction.

17. No merit. Dismissed.

18. No costs.