

(1996) 10 AP CK 0069

Andhra Pradesh High Court

Case No: Writ Appeal No. 1056 of 1996

Modern Nutrition Company

APPELLANT

Vs

The Agricultural Market
Committee and Others

RESPONDENT

Date of Decision: Oct. 1, 1996

Acts Referred:

- Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 - Section 12
- Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 - Rule 75

Citation: (1996) 4 ALT 1060 : (1996) 2 APLJ 506 : (1996) 1 APLJ 506

Hon'ble Judges: P.S. Mishra, C.J; V. Rajagopala Reddy, J

Bench: Division Bench

Advocate: T.S. Haranath, for the Appellant; Nanda Ramachandra Rao, S.C. for Respondent Nos. 1, 2 and 3 and Government Pleader for Co-operation, for the Respondent

Final Decision: Allowed

Judgement

P.S. Mishra, C.J.

Heard.

2. Since facts in all connected cases are identical and a decision on the questions involved in one of them will determine finally the relief which the Court can grant, we propose to take up for consideration Writ Appeal No. 1056 of 1996.

3. Writ petitioner-appellant has moved this Court under Article 226 of the Constitution of India seeking, inter alia, an order to restrain the respondents from realising any market fee en route at check-post on the goods in transit where the goods have not been purchased or sold within the State of Andhra Pradesh and for refund of such amount of fee already collected from the writ petitioner-appellant.

4. Facts in brief are that writ petitioner-appellant is a company with its office at Hyderabad and is having an industry manufacturing wheat products like atta, ravva,

maida, etc. For the purposes of its products, it purchases wheat from Punjab, Maharashtra, etc. and also from the Food Corporation of India. It is alleged, while the wheat (an agricultural product) was being brought for being used as input for the manufacture of atta, rava, maida, etc., servants and agents of the first respondent detained the lorries on the way and demanded for production of purchase receipts for payment of market fee, etc., and on failure of such production, detained the lorries of the writ petitioner-appellant until the market fee was paid. According to the writ petitioner-appellant, when any purchase of any agricultural produce is effected within the notified market area, receipt is granted of payment of market fee. In case, however, such purchase is made outside the notified market area, there is no reason how the respondents would be entitled to demand fee under the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966. Respondents allegedly detained the lorries of the writ petitioner-appellant and released them only after payment of market fee. Hence the petition.

5. A brief examination of the provisions of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 would reveal that anything produced from land in the course of agriculture or horticulture including forest produce or any produce of like nature, either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of the Act, and the livestock such as cows, buffaloes, bullocks, bulls, goats and sheep including poultry, fish and such other animals as may be declared by the Government by notification to be livestock for the purposes of the Act, if purchased or sold in the notified market area, shall be liable to payment of market fee as levied by the Market Committee in terms of Section 12 of the Act. Section 12 reads as follows:

"Levy of fees by the Market Committee:- (1) The market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding two rupees as may be specified in the bye-laws for every hundred rupees of the aggregate amount of which the notified agricultural produce, livestock or products of livestock is purchased or sold whether for cash or deferred payment or other valuable consideration.

Explanation I:- For the purposes of this Section, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall, unless the contrary is proved, be presumed to have been purchased or sold within such area.

Explanation II :- In the determination of the amount of fees payable under this Act, fractions of ten paise equal to or exceeding five paise shall be counted as ten paise and other fractions of ten paise shall be disregarded.

(2) The fees referred to in sub-section (1) shall be paid by the purchaser of the notified agricultural produce, livestock or products of livestock: Provided that where the purchaser cannot be identified, the fees shall be paid by the seller."

6. Section 12 of the Act thus provides - for the levy of fee there must be a purchase or sale of (1) the notified agricultural produce, etc. and (2) the purchase or sale must be within the notified market area. Explanation - I, however, says, all notified agricultural produce, livestock or products of livestock taken out of a notified market area shall be presumed to have been purchased or sold within such area and the disputant will have to prove that the agricultural produce, livestock or products of livestock taken out of a notified market area is not sold or purchased in the notified market area. Condition, however, for levy of fee by the market committee, notwithstanding the presumption above, is that the agricultural produce, livestock or products of livestock were/are purchased or sold in the notified market area. The expression "taken out of a notified market area" has thus been introduced for creating the explanation that the agricultural produce, livestock or products of livestock were available for sale and purchase in the market area and were/are taken out of the market area, the presumption being, in such a situation, in favour of the levy unless contrary is proved. In case, however, of a dispute, even though the law is silent, one has to assume that the concerned authorities would satisfy themselves of the fact that the agricultural produce or livestock, etc., are such that they have been either purchased or sold in the notified market area and the satisfaction cannot obviously be subjective and uninformed of fairness. It must in all circumstances be informed by the rules of fairness which require a fair opportunity of showing that the levy is not realisable from the agricultural produce or the livestock in the hands of the person who is called upon to pay the levy.

7. It is no one's case before the Court that writ petitioner-appellant is though a licensee and is a trader in agricultural produce or livestock or products of livestock within the notified market area, he had brought the commodity concerned for sale in the market area. There is also no material for such inference. There is also no material to show that the agricultural produce or livestock concerned was within the limits of market area not merely for transit purposes in the sense that it was in a carrier coming from outside of the notified market area and was brought to a destination within the market area but for the purpose other than sale or purchase.

8. In the counter affidavit on behalf of the respondents it is stated that the commodity was purchased by the writ petitioner in other State, "but since the same was being transported through the notified market area of this respondent without proper evidence of having paid market fee there for to any market committee within the State, the staff of this respondent have stopped the vehicles of the petitioner and collected market fees as per the rules."

9. Dealing, however, with the Control Order related to the sale and purchase of pulses, edible oil seeds and edible oils (storage) and provisions under Sections 3(2) (a) and (d) and Sections 7 and 8 of the Essential Commodities Act, 1955, a Division Bench of this Court in [Vinayaka Agro Products Vs. Inspector of Police, VC CSD, Khammam and Another](#), has held as follows:

"The control order merely prohibits and commands that no person shall carry on business as a dealer in pulses and edible oils or in edible oil seeds except under and in accordance with the terms and conditions of a licence granted under a State Control Order and also shall not possess in excess of the quantities specified thereunder. Admittedly, the petitioner is not a dealer within the meaning of the said control orders. There is no evidence whatsoever that the petitioner was actually selling or dealing in palmoline oil, admittedly a controlled commodity in this State. At the time of seizure, tanker was merely stationed near Khammam town and it is rather difficult to appreciate as to how the respondents came to the conclusion that the petitioner herein was selling the palmoline oil without licence or otherwise. By no stretch of imagination, the petitioner could be said to be a dealer within the meaning of the Control Order within the State of Andhra Pradesh. Such an unnecessary restriction of movements of the vehicular traffic and seizure of the vehicles would convey wrong signals not only to the businessmen but to the citizens residing outside the State of Andhra Pradesh. The State and its officers are required to exercise utmost restraint and act strictly in accordance with law. It should not appear as if no vehicle with essential commodities can pass through the territory of Andhra Pradesh. Such an impression to the businessmen of the other States would not be conducive to the growth and economic development of the State itself."

10. Above observations are made, in our view, only to emphasise that any person in authority, who has a duty to implement a law to realise a fee or to effect seizure, etc., of certain commodities, must not forget that his duties do not permit him to overstep the limitations prescribed by law and whatever he does must conform strictly to the requirements of law. If they become over-zealous and do things which they alone think are appropriate, without exercising necessary restraint, they do create alarm and give wrong signals to others. Those who evade the fee and are found doing it, must however, be dealt with strictly, but in either case no recklessness can ever be approved.

11. Adverting to the provision of Section 12 of the Act, we have no manner of doubt that in the case of the writ petitioner - appellant, respondents have acted rather carelessly and assumed beyond the scope of Section 12 of the Act, that any goods purchased or sold anywhere but brought within the market area are liable to payment of fee. The condition for the payment of fee is that the agricultural produce, livestock or products of livestock are purchased or sold in the notified market area. Explanation -I of Section 12 of the Act can only give rise to a presumption that such articles falling under the definition of "agricultural produce", etc., which are subjected to levy u/s 12, if found within the limits of the notified market area or seen being taken out of the notified market area, are liable to fee, but it shall be open to the owner of the goods concerned to dispute the claim and once he disputed/disputes the claim, unless there is an enquiry, the presumption would not entitle the market committee concerned to realise the fee.

12. Our attention has been drawn, however, to Rule 75 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, which reads as follows:

"75. Check-post:- (1) No person shall transport any notified agricultural produce, livestock, or products of livestock purchased or sold in the notified market area, from the limits thereof, except on production of the receipt for the payment of prescribed fees in respect of such notified agricultural produce, livestock or products of livestock to the market committee concerned.

(2) Any employee of the Market Committee authorised by it in this behalf shall have power at any time and without notice to stop and check any vehicle suspected to carry unauthorisedly any notified agricultural produce, livestock or products of livestock from any place within the limits of any notified market area.

(3) Any person who fails to stop the vehicle when required to do so under sub-rule (2), shall be punishable with fine which may extend to Rs. 500/-."

13. The important expression, to attract action at the check-post in case of transport of any agricultural produce, livestock or products of livestock, is, "purchased or sold in the notified market area". The condition that the agricultural produce, livestock or products of livestock were purchased or sold in the notified market area, do not in any manner change beyond the presumption in Explanation- I of Section 12 of the Act merely because a check- post is contemplated at which production of the receipt for the payment of prescribed fee in respect of notified agricultural produce, livestock or products of livestock to the market committee is contemplated. The expressions, following the above expression "purchased or sold in the notified market area", "in respect of such notified agricultural produce to the market committee concerned" clearly envisage that fee shall be realisable by the concerned market committee only if the agricultural produce, livestock or products of livestock are purchased or sold in the notified market area. The above, in our view, are good enough reasons for interference with the impugned judgment as well as the action of the respondents in enforcing upon the writ petitioner-appellant levy u/s 12 of the Act.

14. For the reasons aforementioned, the appeal is allowed. The impugned judgment is set aside, consequentially the writ petition is allowed and it is declared that respondents are not entitled to realise any market fee from any person at the check-post, who is not shown to have purchased or sold any agricultural produce, etc., upon which fee is leviable u/s 12 of the Act. Any fee already realised in the absence of the above being established in the case of the writ petitioner-appellant shall be refunded to it.