

(2014) 11 AP CK 0053

Andhra Pradesh High Court

Case No: Writ Petition No. 13097 of 2005

Sree Ramanjaneya Rice Mill

APPELLANT

Vs

The Govt. of Andhra Pradesh

RESPONDENT

Date of Decision: Nov. 11, 2014

Acts Referred:

- Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 - Section 12, 12(1), 2

Citation: AIR 2015 AP 13 : (2015) 2 ALD 705 : (2015) 2 ALT 456

Hon'ble Judges: A. Ramalingeswara Rao, J

Bench: Single Bench

Advocate: Potti Venkata Ramana Rao, Advocate for the Appellant; K. Madhava Reddy (SC for Agricultural Market Committee), K. Lalitha (SC for Agricultural Market Committee), Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Ramalingeswara Rao, J.

Heard the learned Counsel for the petitioners and Smt. K. Lalitha, learned Standing Counsel for the Agricultural Market Committee (Andhra Area).

2. The short point that arises for consideration in the present Writ Petition is the demand of market fee on rice when market fee was paid on paddy in the same market area.

3. The petitioners are rice millers. They state that they purchase paddy from the growers as well as traders and subject the paddy to de-husking to convert the same into rice and sell the resultant rice to traders. They state that they are all sellers of rice to well identified purchasers through bills on which the names of the purchasers are clearly mentioned and therefore levy of market fee on rice from the petitioners is contrary to the proviso to Section 12 of the Andhra Pradesh

(Agricultural Produce and Livestock) Markets Act, 1966 (for short, the Act). The respondents are also stopping the vehicles and lorries carrying rice destined to the purchasers and illegally detaining them by demanding market fee as a condition to allow the vehicles or lorries to pass. This is in violation of Section 12 of the Act and its proviso. They also state that the action of the respondents is contrary to the law laid down by the Supreme Court in [Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others,](#). They state that the primary responsibility lies on the purchaser and when the purchaser is not identified or identifiable the liability can be shifted to the seller. There is a time period of one month for filing the returns by the assesseees and the respondents cannot demand and collect the market fee immediately while the commodities are in transit. Their action of demanding market fee without determining the persons liable to pay the same is illegal. They also relied on Rule 74 of the Rules issued under G.O. Ms. No. 459, Agriculture and Cooperation (MKTG-II), dated 23.12.2002, wherein it was declared that if the fee is paid to a market committee, then another market committee shall not collect the market fee in the State when the proof of payment is produced.

4. Though no counter affidavit was filed by the respondents, since the point involved is based on the Rules and the provisions of the Act, Smt. K. Lalitha, learned Standing Counsel for the respondents addressed on the basis of law applicable to the case. She submits that paddy and rice are two different items which are included in the Schedule to the Act at serial Nos. 33 and 13 respectively. She submits that under Section 2 of the Act, Agricultural Produce means anything produced from land in the course of agriculture either processed or unprocessed and declared by the Government by notification to be agricultural produce for the purposes of the Act.

5. There is no dispute with regard to the liability to pay the market fee both on paddy and rice. But, the dispute relates to payment of the market fee on the paddy when it is brought to another market area for the purpose of processing, pressing, packing, storage, export etc., from the market area where the market fee was already paid.

6. Rule 74(1) of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Rules, 1969 (for short, the Rules), reads as follows:

"74. Market fees:- (1) The fees leviable under Sub-section (1) of Section 12 on notified agricultural produce, livestock and products of livestock if paid to a market committee within the State shall not be collected by another Market Committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another market committee for the purpose of processing, pressing, packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders, and the licensed trades and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought."

Provided that the fees shall be levied on notified agricultural produce, livestock or products of livestock when such agricultural produce, livestock or products of livestock are sold in auction or in other manner prescribed in the bye-laws in the market either directly or through commission agents even though purchased already in the same market or some other market or place within the State.

7. The said Rule was considered by the Supreme Court in Sreenivasa General Traders case (supra). Strangely, in this case both the learned Counsel relied on the same judgment in support of their own case. Learned Counsel for the petitioners relies on the observations of the Supreme Court in paragraphs 39 to 41 of the said decision, which read as follows:

39. There still remains the question that if purchase or sale of paddy has suffered market fee in the hands of a rice miller, whether subsequent purchase or sale of rice by a miller to a trader or by a trader to a trader should again be subjected to payment of market fee. The contention is that under Rule 74(1) of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969 no such market fee is payable on rice produced from paddy. The same is the contention with regard to cotton seed extracted from cotton. Rule 74(1) of the rules reads as follows:

"74. Market Fees: (1) The fees leviable under Sub-section (1) of section 12 on notified agricultural produce, livestock and products of livestock, if paid to a Market Committee within the State shall not be collected by another Market Committee when such notified agricultural produce, livestock or products of livestock are brought into the notified market area of another Market Committee for the purpose of processing, pressing packing, storage, export and on sales effected in the course of commercial transactions between the licensed traders, and the licensed traders and consumers subject to production of such evidence as may be prescribed in the bye-laws about the payment of market fees from where it was brought:

Provided that the fees shall be levied on notified agricultural produce, livestock or products of livestock when such agricultural produce, livestock or products of livestock are sold in auction or in any other manner prescribed in the bye-laws in the Market either directly or through Commission Agents even though purchased already in the same market or same other market or place within the State."

It is contended that the whole object and purpose behind Rule 74(1) is to prevent multi-point levy of market fee on the same commodity. The submission that no such fee is payable on rice is also based on the following observations of Untwalia, J., speaking for the Court in [Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another, :](#)

"If paddy is purchased in a particular market area by a rice miller and the same paddy is converted into rice and sold then the rice miller will be liable to pay market fee on his purchase of paddy from the agriculturist-producer under sub-clause (2) of section 17(iii)(b). He cannot be asked to pay market fee over again under sub-clause

(3) in relation to the transaction of rice."

40. The learned Judge then went on to say:

"If, however, paddy is brought by the rice- miller from another market area, then the Market Committee of the area where paddy is converted into rice and sold will be entitled to charge market fee on the transaction of sale in accordance with sub-clause (3)."

41. The view that the market fee is payable on purchase or sale of rice stems from the premise that since paddy is de-husked into rice there cannot be levy of market fee at both the stages i.e., on purchase of paddy by a rice miller from a producer and again on purchase or sale of rice by a rice miller to a trader or by a trader to a trader. The question is whether the fee is payable at both the stages? It would all depend upon the scheme of each Act. The decision in Ramesh Chandra's case, *supra*, turned on a construction of sub-clause (2) of section 17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, as amended by U.P. Act 7 of 1978. It was conceded in that case on behalf of the State Government and the market committees that there cannot be any multi-point levy of market fee in the same market area. Under, sub-clause (2) of s. 17(iii)(b) of that Act if in agricultural produce is purchased from a producer directly, the trader is liable to pay market fee but when the trader sells the same produce or any products of the same produce to another trader, neither the seller nor the purchaser can be made to pay the market fee under sub-clause (3). The scheme of the Act with which we are concerned appears to be entirely different. Under Sub-section (1) of section 12 of the Act, a market committee is empowered to levy market fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. It would appear that every purchase or sale of any notified agricultural produce, livestock or products of livestock attracts the levy of market fee. One is apt to think that rice and paddy are the same commodity and therefore there is double taxation but, in reality, it is not so. There is distinction between "paddy" and "rice" and although paddy is milled into rice by the process of de- husking, they are two separate and distinct commercial commodities and have both been separately specified as notified agricultural produce in Schedule II of the Rules as items 1 and 2 respectively. On the plain language of sub-s. (1) of s. 12 of the Act, the market fee is leviable on both on purchase paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by a market committee at each of the stages.

8. In the above decision, the Supreme Court categorically held that paddy and rice are two separate and distinct commercial commodities and both have been separately specified in the schedule. The market fee is leviable both on purchase of paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by market committee at each of the stages. After the above judgment, Rule 74 of the

Rules was substituted by G.O. Ms. No. 459, Agriculture and Cooperation (MKTGII) dated 23-12-2002 as follows:

"74. Market Fees:--(1) The fees leviable under sub-section (1) of Section 12 on notified agricultural produce, livestock and products of livestock if paid to a market committee within the State shall not be collected by another Market Committee, subject to production of proof of payment of fees if already paid once.

(2) The fees payable by a licensed trader shall be paid by submitting such returns as may be prescribed under Rule 70 of the rules.

(3) Any trader claiming exemption from payment of fees shall produce proof of payment in the form of declaration issued by the seller if the sale and purchase is within the same market area and by production of transport permit issued by the market committee in whose area such notified products of livestock was purchased or processed or resold as the case may be. The Director of Marketing shall prescribe the forms required for exemption.

(4) The market committee may collect market fees through its licensed Commission agents.

(a) The traders shall pay market fee to the market committee on the notified agricultural produce, livestock or products of livestock not later than 25th of the succeeding month.

(b) Any contravention of this sub-rule shall be punishable with fine which may extend to five thousand rupees."

9. Now by virtue of the above substitution, the words processing, pressing, packing, storage, export are deleted and the position was made simple. Under the present Rule, if the market fee is paid on an agricultural produce in a market committee, then it shall not be collected by another market committee, provided proof of payment is produced.

10. In W.P. No. 18977 of 2002 and batch, dated 21.12.2004, a Division Bench of this Court considered the contention of the learned Counsel for the petitioners that notifying the rice as agricultural produce for the purpose of the Act was arbitrary and illegal. The submission of the learned Counsel for the petitioners was that the processed and unprocessed product, which is produced from the land, cannot be subjected to levy of market fee under the Act. When paddy was notified as an agricultural produce, the processed rice cannot be notified as an agricultural produce. The Division Bench rejected the said argument by stating that it is the choice for the Government to declare any produce which may be processed or may be unprocessed as an agriculture produce. Hence, both processed and unprocessed agricultural produce can be agricultural produce provided it is notified in terms of the Act for the purposes of the Act by the Government.

11. In [Kurnool Dist. Rice Millers Association and Others Vs. Agricultural Market Committee, Amtakur and Others,](#) , Amtakur when the petitioners complained that they are being harassed and subjected to pay market fee again and again even though there is no sale or purchase within the area of market committee, the decision in Sreenivasa General Traders case (supra) was considered, and the Division Bench noted the observations of the Supreme Court and held as follows:

"Dealing with Section 12(1) of the Act and also proviso to Rule 74(1) of A.P. (Agricultural Produce and Livestock) Markets Rules, it was held by the Supreme Court that Rule 74(1) read with the proviso means that if the notified agricultural produce, livestock or products of livestock is sold within the market maintained by a market committee, it is liable to pay market fees on each such sale made within the market yard, but Market Committee is not entitled to levy market fees for the second time, if the agricultural produce, livestock or products of livestock had already suffered market fees elsewhere regardless of the second sale in the market area, but outside the market yard."

Ultimately, the batch of Writ Petitions was disposed of with the following observations:

"In view of the rule position and the interpretation of the same by the Supreme court, the legal position with regard to liability to pay market fees is clear to the effect that:

(i) that if there is a sale or purchase of agricultural produce, livestock or products of livestock within a market area for the first time, the market fees is liable to be paid;

(ii) it is the purchaser who is liable to pay the market fees and only if the purchaser cannot be identified, then the seller can be obligated to pay the said market fees;

(iii) the agricultural produce, livestock and products of livestock which are carried by any means and entering into the area of a Market Committee, cannot be subject to pay the market fees for the second time if proof is produced before the Officers of the Market Committee of the market fees having been paid in another Market Committee; and

(iv) even at the check-posts, the same procedure has to be followed as referred to above in clause (iii)."

12. A learned single Judge of this Court was interpreting Rule 74 of the Rules in [Kurnool Dist. Rice Millers Association and Others Vs. Agricultural Market Committee, Amtakur and Others,](#) , Kurnool and held as follows:

"When the licensee claims exemption under Rule 74 of the Rules, he is entitled thereto only when the notified agricultural produce, livestock or products of livestock are brought into that notified market area only for the purpose of (i) processing, pressing, packing, storage and export; (ii) on sales effected during the

course of the commercial transactions between the licensed dealers and the consumers. But after bringing within the same notified area of such agricultural produce etc., if such produce is resold by a licensee in auction or on tender system or in any other manner prescribed by the bye-laws in the market either directly or through commission agents under the supervision of the supervisor of the Market Committee, even though such agricultural produce has already suffered market fee in the same market or some other market or any place within the State, it is liable to levy of market fee. The burden does lie on the licensee who claim exemption and it is mandatory that he shall produce as evidence a cash receipt, issued by the Market Committee which received the market fee or Export permit issued under byelaw No. 24(8) or a letter of payment of market fee from the Market Committee that received market-fee to the satisfaction of the Market Committee. On adduction of such evidence, the Market Committee shall consider the same. On accepting such proof, the licensee shall be entitled to the exemption from the levy of the market fee to the extent he paid to other Market Committees."

13. The exigibility of market fee on the sale of seeds, which are inedible and meant for germination under the provisions of the Act came up for consideration before the Division Bench of this Court in *ITC Zeneca Limited, Secunderabad v. Government of Andhra Pradesh* 1986 (1) ALT (NOC) 86, and the Division Bench, after considering the entire law held as follows:

16. In view of what is stated supra, we hold:

(1) That all such items like paddy, wheat, maize, bajra, cotton seed, sunflower, safflower, jowar etc., covered by this Batch of writ petitions, which are specified in the Schedule-II appended to the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 whether sold in original form i.e., edible or converted form i.e., chemically processed into non-edible form (seeds for germination purposes), within the precincts of notified market area/ market yard, are exigible to the levy of market fee.

(2) That such seeds like Tomato and castor seeds, which are derivatives of the main produce, but are sold separately and which are not specified in the Schedule-11 annexed to A.P. (Agricultural Produce and Livestock) Markets Act, 1966, cannot be made liable to the levy and collection of market fee.

(3) That such items specified in Schedule II referred to above which suffered the payment of market fee in an Agricultural Market Committee, shall not again be subjected to payment of market fee in any other Agricultural Market Committee within the State of Andhra Pradesh, if the proof of such payment is furnished to the authority concerned.

(4) That the petitioners shall now submit the accounts to the respective committees within a period of one month from today, whereupon the respective Agricultural Market Committees shall make assessment of the market fee payable and within one month of the service of the said assessment orders, the petitioners shall pay off

the said amounts; and

(5) That henceforth, the petitioners shall be liable to comply the provisions of A.P. (Agricultural Produce and Livestock) Markets Act, 1966 in their dealings in items covered by para 16(1) above, within the market areas/market yards and failure to do so will render them liable for the consequences under the said Act.

14. The Supreme Court had an occasion to consider the act of the respondents in checking the vehicles of the sellers at various check posts set up by the market committee and collection of market fee on the agricultural produce at such check posts in [ITC Zeneca Limited, Sec"bad Vs. Govt. of A.P. and others,](#) . While considering that matter the Supreme Court also considered the levy of market fee on paddy as well as rice and it was held as follows:

"13. Then coming to the other question advanced by the Appellants, whether market fee would be chargeable on the same goods twice over that is to say, once on the paddy and after de-husking, again on the rice. The said question may not detain us any further in the light of the three-Judge Bench decision of this Court in [Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others,](#) . Para 42 of the said judgment puts a quietus to the controversy that has been projected in these appeals:

42. The view that no market fee is payable on purchase or sale of rice stems from the premise that since paddy is de- husked into rice there cannot be levy of market fee at both the stages i.e. on purchase of paddy by a rice miller from a producer and again on purchase or sale of rice by a rice miller to a trader or by a traded to a trader. The question is whether the fee is payable at both the stages? It would all depend upon the scheme of each Act. The decision in Ramesh Chandra's case, supra, turned on a construction of sub-clause (2) of s. 17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964, as amended by U.P. Act 7 of 1978. It was conceded in that case on behalf of the State Government and the market committees that there cannot be any multi-point levy of market fee in the same market area. Under, sub-clause (2) of s. 17(iii)(b) of that Act if in agricultural produce is purchased from a producer directly, the trader is liable to pay market fee but when the trader sells the same produce or any products of the same produce to another trader, neither the seller nor the purchaser can be made to pay the market fee under sub-clause (3). The scheme of the Act with which we are concerned appears to be entirely different. Under Sub-s. (1) of s. 12 of the Act, a market committee is empowered to levy market fee on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area. It would appear that every purchase or sale of any notified agricultural produce, livestock or products of livestock attracts the levy of market fee. One is apt to think that rice and paddy are the same commodity and therefore there is double taxation but, in reality, it is not so. There is distinction between "paddy" and "rice" and although paddy is milled into rice by the process of de-husking, they are two

separate and distinct commercial commodities and have both been separately specified as notified agricultural produce in Schedule II of the Rules as items 1 and 2 respectively. On the plain language of Sub-section (1) of s. 12 of the Act, the market fee is leviable on both on purchase paddy by a rice miller from a producer and also on purchase or sale of rice by a miller to a trader or by a trader to a trader because there is service rendered by a market committee at each of the stages."

15. It is also pertinent to mention here that in *Sreenivas General Traders (supra)*, this Court was considering provisions of this very Act. Thus, the direction as contained in the aforesaid judgment reflected in para 42 hereinabove would be binding on the Appellants as well. This judgment clearly shows that traders would be liable to first pay market fee on the paddy, and then after de-husking, market fee would be liable to be paid on rice. Both the agricultural produce are different from each other and definition of agricultural produce is wide enough to take both into its ambit. In our opinion, in any case the levy of market fee first on the paddy and then again on the rice after dehusking would not amount to a double taxation.

16. In view of the above, what emerges from the above decisions is:

(i) That all such items like paddy, rice, wheat, maize, bajra, cotton seed, sunflower, safflower, jowar etc., which are specified in the Schedule-II appended to the A.P. (Agricultural Produce and Livestock) Markets Act, 1966 sold within the precincts of notified market area/ market yard, are exigible to the levy of market fee.

(ii) That such seeds like Tomato and castor seeds, which are derivatives of the main produce, but are sold separately and which are not specified in the Schedule-II annexed to A.P. (Agricultural Produce and Livestock) Markets Act, 1966, cannot be made liable to the levy and collection of market fee.

(iii) That such items specified in Schedule II referred to above which suffered the payment of market fee in an Agricultural Market Committee, shall not again be subjected to payment of market fee in any other Agricultural Market Committee within the State of Andhra Pradesh, if the proof of such payment is furnished to the authority concerned.

(iv) That the agricultural produce, livestock and products of livestock which are carried by any means and entering into the area of a Market Committee, cannot be subject to pay the market fees for the second time if proof is produced before the Officers of the Market Committee of the market fees having been paid in another Market Committee; and

(v) That even at the check-posts, the same procedure has to be followed as referred to above in clause (iv).

17. The Writ Petition is accordingly disposed of in terms of the above. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.