

(2008) 09 CAL CK 0056

Calcutta High Court

Case No: F.M.A. No. 144 of 2008

Southern Cooling Towers Pvt.
Ltd.

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: Sept. 15, 2008

Acts Referred:

- West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 - Section 13, 2, 2(1)

Citation: (2008) 4 CALLT 334 : (2009) 1 CHN 16

Hon'ble Judges: Tapas Kumar Giri, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Hirak Mitra, Ashok Gupta and Bijan Datta, for the Appellant; Amalesh Roy, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

The appellant is engaged in manufacturing of cooling towers, commonly used in various industrial sectors. For the purpose of manufacturing cooling towers the appellant uses imported pine wood being one of the main ingredients of the cooling tower. Appellant imported pine wood through a Gujarat Importer. On the perusal of the sale documents it appears that the entire sale took place at Gujarat outside State of West Bengal. The appellant after bringing the pine wood logs from Gujarat manufactures cooling towers in its factory situated at Dhakuria, within the jurisdiction of Alipore Sadar Regulated Market Committee. The appellant applied for a licence before the said Market Committee. The Market Committee also granted them licence to deal with such agricultural produce. Xerox copy of the relevant licence would appear from page 26-27 of the paper book.

2. In 1998 the Market Committee asked the appellant to submit return for the purpose of calculation of levy payable on the agricultural produce. The Market

Committee was also not sure whether the appellant would be obliged to pay levy on the finished products or on the pine wood logs which are brought from Gujarat. Appellant refused to submit return as according to them the Market Committee was not entitled to ask for such return. Since the Market Committee was insisting upon return to be submitted the appellant filed a writ petition before this Court being W.P. No. 1076(w)/1999, inter alia, praying for the following reliefs:

a) An order or orders and/or direction or directions declaring that "cooling tower components and accessories" which are being manufactured by the petitioners' firm from imported pine wood do not fall within the meaning of "agricultural produce" as defined u/s 2(1)(a) of the said Act, 1972;

b) A writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from collecting levy fees on "cooling tower components and accessories" which are being manufactured by the petitioners' firm from imported "pine wood" in purview of the provision of the said Act, 1972;

c) A writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from giving effect to and/or further effect to and/or cancel, rescind, recall, set aside the impugned notice dated October 14, 1998 issued by the Secretary, Alipore Sadar Regulated Market Committee, the respondent No. 4, being annexure "C" to the writ application or any subsequent action in relation thereto;

d) A writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from collecting levy fees on pine round logs which are being purchased by the petitioners' firm from the timber importers at any place outside the area of the said Market Committee and brought at its factory premises for manufacture of "cooling tower components and accessories".

On perusal of the said prayers it appears that the appellant approached the learned single Judge on two fold grounds:

i) The finished products being the cooling tower components and accessories did not fall within the meaning of agricultural produce and as such the Market Committee had no business to collect levy or to ask for return.

ii) The Market Committee was also not entitled to collect levy on pine wood logs which were admittedly purchased by the appellant from the timber importers outside the State and brought within the factory premises for manufacture of cooling towers.

3. The learned single Judge after calling for affidavits heard the parties and disposed of the writ petition. The learned single Judge categorically held that the petitioner was buying pine wood being timber. Hence they should be called as a trader within

the meaning of West Bengal Agricultural Produce Marketing (Regulation) Act, 1972. Besides he was engaged in the business of processing the agricultural produce within the market area and as such they were obliged to obtain licence u/s 13.

The relevant observations of His Lordship are quoted below:

The petitioner buys pine wood which falls within the ambit of "timber" and is, therefore, a trader within the meaning of Section 2(t) of the Act. Besides he is engaged in the business of processing of notified agricultural produce (Timber) within the notified market area. Therefore, u/s 13, petitioner is required to obtain a licence.

In my view, on the authority of the judgment of Supreme Court in G. Giridhar Prabhu's case (supra), it must be held that the petitioner is a trader and, therefore, the petitioner is liable to comply with the provisions of the Act and submit returns in relation to his turnover in the manner prescribed. No legal infirmity can, therefore, be found with the impugned notice calling upon the petitioner to submit return on fortnightly basis. The petitioner is thus not entitled to the reliefs as prayed for in prayers (a), (b) and (c) and the writ application in relation to the said prayers is liable to be dismissed.

4. His Lordship refused to pass any order in terms of prayers (a), (b) and (c) above. His Lordship, however, asked the authority to consider the representation of the appellant on prayer (d). The appellant accepted the said order. They not only did not prefer any appeal but also acted in terms of the said order by making representation before the Secretary, Regulated Market Committee. The Secretary thereafter passed a reasoned order by giving personal hearing to the parties. The order of the Secretary, appearing at pages 62-63 of the paper book, inter alia, depicts that the Secretary was of the opinion that the appellant was obliged to obtain licence and pay necessary fee in respect of the pine wood logs.

5. Being aggrieved and dissatisfied with the reasoned decision of the Secretary the appellant filed a second writ petition, inter alia, praying for the following reliefs:

a) An order or orders and/or direction or directions declaring that "cooling tower components and accessories" which are being manufactured by the petitioners' firm from imported pine wood do not fall within the meaning of "agricultural produce" as defined u/s 2(1) (a) of the said Act 1972;

b) A writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from collecting levy fees on "cooling tower components and accessories" which are being manufactured by the petitioners' firm from imported "Pine Wood" in purview of the provision of the said Act, 1972;

c) A Writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from giving effect to and/or

further effect to and/or cancel, rescind, recall, set aside the impugned order dated 3.5.2002 passed by the Secretary, Alipore Sadar Regulated Market Committee being annexure "P-10" to this writ petition;

d) A Writ and/or order or orders and/or directions in the nature of Mandamus directing the respondents and each of them to forbear from collecting levy fees on pine wood round logs which are being purchased by the petitioners' firm from the timber importers at any place out side the area of the said Market Committee and brought at its factory premises for manufacture of "cooling tower components and accessories";

e) A Writ and/or order or orders and/or directions in the nature of Certiorari commending the respondents and each of them to transmit and certify the record of the case so that conscionable justice may be done by quashing the order or orders, documents and/or records, if any, in relation to collection of levy fees by the respondents authorities on "cooling tower components and accessories" being manufactured by the petitioners' firm from pine wood;

6. On perusal of the prayers quoted (supra) it appears that the appellant reagitated issues which stood resolved by the learned single Judge in the earlier writ petition. In addition, the appellant challenged the reasoned order passed by the Secretary on pine wood logs.

7. The learned single Judge by judgment and order dated August 24, 2004 appearing at pages 89 - 96 of the paper book held that the controversy with regard to the prayers (a),(b) and (d) stood resolved in earlier writ petition. Challenge to the same was hit by principles of res judicata. On the reasoned order the learned single Judge was of the view that since there was provision for appeal the appellant should avail such remedy. Hence this appeal by the appellant.

8. Mr. Hirak Mitra, learned senior counsel, appearing on behalf of the appellant, not only stressed his argument on the issue of applicability of the provisions of the said Act of 1972, in case of purchase of pine wood logs, but also strenuously argued on the issue of res judicata. Mr. Mitra has relied upon two Apex Court decisions in the case of [Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy](#), and in the case of [Management of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh](#), .

9. Citing the aforesaid two decisions Mr. Mitra has contended that once the Jurisdiction of the Court and/or the authority is under challenge such challenge goes to the root of the matter and principles of res judicata would not be applicable and would not stand in the way in deciding such jurisdictional aspect.

10. On the issue of pine wood logs Mr. Mitra contends that since the goods were sold by the importer and purchased by the appellant at Gujarat outside the State of West Bengal the said Act of 1972 could not have any application. Since the authority had no jurisdiction to impose any levy or insist on taking of licence for bringing pine

wood logs within its factory within the market area such issue was fundamental and the learned Judge could not have relegated the parties to the appellate forum.

11. Mr. Amallesh Roy, learned Counsel, appearing for the Regulated Market Committee, on the first issue contends that once the issue stood resolved by the learned single Judge and such judgment attained finality such issue could not be reopened. Learned Judge was right in refusing to reopen such issue. In support of his contention Mr. Roy relies on [Vijayabai and Others Vs. Shriram Tukaram and Others](#), .

12. Mr. Roy, however, in his usual fairness concedes on the other issue. He contends that Mr. Mitra is perhaps right when he makes submission that the Market Committee was not entitled to insist upon issuance of licence and imposition of fee for bringing imported pine wood logs from Gujarat within the factory situated within the jurisdiction of Market Committee.

13. In view of the concession made by Mr. Roy we need not go in detail into the controversy with regard to the applicability of the said Act of 1972 or imposition of levy thereunder on pine wood logs.

14. Let us address the other issue so raised by Mr. Mitra. Mr. Mitra heavily relies on the case of State of Punjab in the case of Management of Sonapat Co-operative Sugar Mills Ltd.(supra). In the said decision a practicing advocate working as legal assistant under the management was declared as workman by the Labour Court. Such decision was upheld by High Court. Subsequently Apex Court permitted reopening of the said issue, inter alia, observing that the High Court relied on earlier decision which was not a good law as it overlooked the subsequent decision of the Apex Court. The Apex Court observed, "The principles of res judicata belongs to the domain of procedure. When the decision relates to jurisdiction of a Court to try an earlier proceeding, the principles of res judicata would not come into play."

15. Pine wood is one kind of timber. This perhaps is universally true. There cannot be any second opinion on that score. Moreover, we find a certificate declaring, inter alia, that the timber would be considered as an agricultural produce within the meaning of the said Act of 1972. Hence dealing with pine wood or making any finished products of pine wood would come within the meaning of agricultural produce under the said Act of 1972 so held by the learned single Judge in the first writ petition. Learned single Judge held so after considering the rival contentions of the parties. On that score there could be no dispute. It is true that principles of res judicata is a procedural law which makes a judgment of Court of law final. We have perused the judgment and order of the learned single Judge in the first writ petition. His Lordship categorically held that the appellant was a trader within the meaning of Section 2(t). His Lordship also held that the cooling tower components manufactured and sold by the appellant was an agricultural produce within the meaning of the said Act of 1972. After holding as such His Lordship dismissed the

writ petition in respect of prayers (a), (b) and (c) quoted above. His Lordship thereafter asked the Secretary, Market Committee to consider the representation of the appellant on the pine wood logs. The appellant not only did not prefer appeal from the said decision but also submitted to the jurisdiction of the Secretary and made representation for his consideration on the other issue. Taking a sum total of the above we do not have any hesitation to hold that the first issue attained finality and the same could not be reopened in the second writ petition. The learned Judge held so, in our view, rightly.

16. We, however, feel that the learned Judge should not have relegated the parties to the appellate forum in respect of the other issue. As recorded hereinbefore Mr. Roy in his usual fairness concedes that since the pine wood logs are imported from the outside the State and brought within the factory premises the Market Committee was not entitled to either insist the appellant for obtaining any licence for importing such timber or demand any levy on the issue of purchase of pine wood logs. The reasoned order so passed by the Secretary appearing at pages 62 of the paper book cannot thus be sustained.

17. Judgment and order of the learned single Judge to that extent is liable to be set aside and the writ petition filed by the appellant must succeed on the said issue.

18. The appeal thus succeeds in part. The order of the learned single Judge refusing to interfere with the reasoned order appearing at pages 62-63 of the paper book is set aside. The reasoned order dated May 03, 2002 is set aside.

19. The concerned Market Committee is perpetually restrained from insisting upon obtaining any licence on the issue of importing pine wood logs from outside the State of West Bengal. The concerned Market Committee is also perpetually restrained from insisting on payment of levy for the purpose of importing pine wood logs from outside the State to the factory premises situated within the Jurisdiction of the concerned market area.

20. The rest of the order of the learned single Judge stands affirmed.

The appeal is disposed of accordingly without any order as to costs.

Urgent xerox certified copy of this order, if applied for. may be given to the parties.

Tapas Kumar Giri, J.

21. I agree.