ITC Agro-Tech incorporated provisions of I of 1956 and Mr. K. Hari Haranath Vs The State of Maharashtra and The Bombay Agricultural Produce Market Committee
 IPV Limited and Bhishmadeb Mallik a Shareholder and Director of IVP Limited Vs The State of Maharashtra, The Mumbai Agricultrual Produce Marketing Committee and The Dy. Secretary, Mumbai Agricultural Produce Market Committee

Court: Bombay High Court

Date of Decision: June 16, 2006

Acts Referred: Essential Commodities Act, 1955 â€" Section 3
Maharashtra Agricultural Produce Marketing (Development and Regulation) Rules, 1967 â€" Rule 5(1)
Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 â€" Section 17(2), 2, 2(1), 31, 31(3)

Citation: (2006) 4 BomCR 620 : (2006) 5 MhLj 539

Hon'ble Judges: D.B. Bhosale, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: Hiralal Thacker and K. Belani, instructed by Eventa A. Gonsalves, for the Appellant; P.M. Patil, AGP for Respondent No. 1, K.K. Singhvi, Y.R. Naik and Prashant Naik for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

B.H. Marlapalle, J.
In Writ Petition No.3278 of 1991, the first petitioner is a public limited company incorporated under the Companies

Act, 1956 with its registered office at 31, Sarojini Devi Road, Secunderabad - 003 and is engaged, inter alia, in the business of manufacture and

sale of edible oils, including refined Sunflower Oil and refined Groundnut Oil. It has its refineries/factories at two places in the State of Andhra

Pradesh and it purchases oil seeds from various sources, including the Agricultural Produce Marketing Committees, Farmers and other agencies in

the State of Andhra Pradesh and Karnataka. These oil seeds are subsequently crushed/processed and refined oil is produced in the

factories/refineries in Andhra Pradesh and are sold as refined edible oils in packages of 15 kg., 5 kg., 2 kg., and 1 kg. containers in the brand

names of ""Sundrop"", Crystal"" and ""Sudham"" respectively. The Company has various sales outlets in many parts of the country and in the State of

Maharashtra as well, where it has been carrying on its activities of marketing the refined Sunflower and Groundnut oils, namely, through its C & F

agents located at Chunilal Compound Retiwala Industrial Estate, Anant Ganpat Pawar Cross Lane No.2, Byculla, Bombay -400 027 and also

through other agents. The Company claims that the activity of selling edible oils is only an ancillary activity of manufacture of refined edible oils

which commenced in the year 1989. The company also sells its products to the wholesale bulk purchasers either in loose form in the city of

Mumbai on principal to principal basis and all these products are transported from the factories/refineries to Mumbai. The second petitioner is the

share holder of the first petitioner-company.

2. The respondent No.1 is the State of Maharashtra and respondent No.3 is a statutory body established under the Bombay Agricultural Produce

Regulation Marketing Act, 1939 and subsequently it was deemed to be established under the Maharashtra Agricultural Produce Marketing

(Regulation) Act, 1963 (for short ""the Act""). The respondent No. 2 is the Director of Agricultural Marketing within the meaning of Section 2(f) of

the Act. The respondent No. 1 State of Maharashtra by exercising its powers u/s 62 of the Act issued a Notification dated 27/9/1987 amending

the entries in the Schedule to the said Act, as follows:

(1) In Item III, the following entry shall be added, namely:-

(14) Splits (Dal) of pulses"";

(2) In item VI, after the word ""Gul"", the word ""Sugar"" shall be inserted; ""Sugar"" shall be inserted;

(3) In item IX, the following entry shall be added, namely:-

(11) Ghee;

(4) after item ""XVI"" the following items shall be added, namely:

XVII, Wheat flour. XVIII, Dry fruits. XIX, Edible Oils.

Consequently, the respondent No. 2 issued a notification dated 20/6/1988 in exercise of his powers u/s 4(1) of the Act read with the notification

dated 21/8/1976 declaring that the agricultural produce stated in the said notification shall be regulated in the market area of the respondent No. 3-

Committee with effect from 1/7/1988 and the agricultural produce so incorporated, included edible oils. The respondent No. 3, therefore, called

upon the petitioner-company to obtain a licence u/s 7 of the Act vide notice dated 6/12/1990. By its reply dated 7/8/1991, the petitioner-company

took a stand that the Act was not applicable to it and the demand made by the respondent No. 3 for payment of market fees and supervision

charges was illegal. The Company has, therefore, challenged the notifications dated 27/9/1987 and 20/6/1988 and prayed for setting aside both

the notifications. It has further prayed for a declaration that the commodity ""refined edible oil"" does not come within the purview of the Act and that

the respondent No. 3 has no authority or jurisdiction to call upon the petitioner-company to take out any licence or demand any levy or guarantee

of any nature whatsoever from the petitioners and that the petitioner No. 1 being the seller of its own industrial products, namely, refined edible oil

is not liable to take out any licence or pay any fees or charges as contemplated by any of the provisions of the Act, Rules and Bye-laws.

3. The challenge to the notifications and the demands made by the respondent No. 3 for payment of market fees and supervision charges are

mainly based on the following grounds:

(a) The amendment made by the notification dated 27/9/1987 adding ""edible oils"" not being an agricultural produce and the inclusion of the said

commodity is, therefore, contrary to the objects of the Act.

(b) The edible oil is a manufactured commodity from oil seeds and though the oil seeds are agricultural produce, the refined edible oils

manufactured out of mechanical process by the company cannot have the characteristics of an agricultural produce, more so it is a manufactured

and not a processed product from the oil seeds.

(c) When the oil seeds are procured from the Market Committees located in the State of Andhra Pradesh as well as Karnataka, the company has

been paying market fees on such agricultural produce and, therefore, the product ""refined edible oil"" produced from the oil seeds cannot be further

subjected to the payment of market fees by the respondent No. 3 and in any case in the entire transaction of the Company in so far as the refined

edible oils are concerned, nowhere is an agriculturist involved when the transactions that take place between the oil millers, wholesale dealers,

commission agents, are all from the business community and none from the agricultural sector.

(d) There is no service rendered by the respondent No. 3 and, therefore, it cannot claim fees as also supervision charges so far as transaction of

the sale of company''s product under the market area of respondent No. 3 is concerned. In short, the doctrine of ""quid pro quo"" is not satisfied

and, therefore, the respondent No. 3 has no right to demand the payment of market fees and supervision charges even if the company''s product

refined edible oil"" is validly included in the schedule to the Act.

(e) The petitioner No. 1-company is not a trader and, therefore, it is not liable to pay market fees and supervision charges in view of the decision

of this Court in the case of Chaware Oil Industries and Others Vs. State of Maharashtra and Others, .

4. There is no doubt that the process of producing ""refined edible oil"" from the oil seeds involves the following stages/activites:

(a) Decortication

(b) Drying and cleaning of seeds

(c) Crushing seeds in the mechanically operated Expellers running on electric power.

(d) Filtering of Expeller Oils.

The crude oil so produced is then subjected to the further processes of benumbing and refining and thus the final product of refined edible oil

comes from the oil seeds/groundnuts. In the processes of decolourisation, deodourisation, benumbing etc. application of chemical substances is

involved. It is the contention of the company that the solvent extraction carried out by it requires a licence under the Solvent Extracted Oil, De-

oiled meal and Edible flour (control) order 1967 as promulgated u/s 3 of the Essential Commodities Act, 1955 by the Central Government. The

solvent extracted oil is either used by the Vanaspati manufacturers or can be directly used as cooking medium after being refined and thus the final

product for all commercial purposes ceases to be an agricultural produce either in its original form or in its processed form as envisaged u/s 2(1)(a)

of the Act. The demand thus raised by the respondent No. 3 for collection of market fees and supervision charges is, therefore, illegal. In short, it is

the contention of the company that the edible oil manufactured from the oil seeds of various types cannot be termed as an agricultural produce

within the meaning of Section 2(1)(a) of the Act as the original seeds which are an agricultural produce cease to exist. The petitioners have also

adopted the arguments advanced in support of W.P. Nos.353/98 and 1341/98 (Original Side) in support of its challenge to the inclusion of ""edible

oil"" in the schedule to the Act by the impugned notification dated 27/9/1987.

5. Writ Petition No.6270 of 1996 has been filed by I.V.P. Limited and anr. raising the very same challenge as raised in Writ Petition No.3278 of

1991. M/s. I.V.P. Ltd. is also a public limited company incorporated under the Companies Act, 1956 and is engaged in the manufacture of edible

oils and vanaspati etc. So far as vanaspati is concerned, the respondent No. 3-Committee had called upon it to pay the market fees and

supervision charges and the said demand has been challenged by M/s. I.V.P. Ltd. in Writ Petition No.353 of 1998 and the same petition has been

decided today along with Writ Petition No.1341 of by us holding that vanaspati is an agricultural produce, the challenge to the notification dated

27/9/1987 is unsustainable, the doctrine of quid pro quo is not applicable for the statutory claim of market fees demanded u/s 31 of the Act. We

have also held that the petitioners who are the sellers of vanaspati are traders within the meaning of Section 2(t) and read with Section 31(3) of the

Act. We further noted that the decision of this Court in the case of Chaware Oil Industries (Supra) is not applicable after Section 31 of the Act

came to be amended by Maharashtra Act No.27 of 1987. We have also held that the levy of supervision charges as contemplated under Chapter

IV-A (Section 34A to 34C) of the Act is not per se recoverable and it is the payment made to the State Government in lieu of the staff appointed

by the State Government and, therefore, the demand of supervision charges made by the respondent No. 3 has been held to be illegal, for the

present. In short, we have upheld the validity of the notification dated 27/9/1987. In Writ Petition No. 6270 of 1996, the petitioner-Company has

also challenged the demand for supervision charges and the power of Respondent No.3 to recover interest on the payment of market fees etc., by

relying upon its bye-law No.14(A). The grounds of challenge to the impugned notifications and the orders in Writ Petition No.6270 of 1996 are

almost the same as have been set out by the very same petitioner in Writ Petition No.353 of 1998 (for vanaspati). Our findings recorded in the

common judgment in Writ Petition Nos.353/98 and 1341/98 (Original Side) are applicable in the instant petitions as well.

6. So far as the petitioners challenge to the notification dated 20/6/1988 issued by the respondent No. 2 is concerned, the same challenge is no

more res integra in view of the decision of this Court (DB) in the case of M/s. Daulatram Tikamdas Vs. State of Maharashtra (Writ Petition

No.139 of 1990 decided on 17/6/2005) by relying upon the earlier decision of this Court dated 10/8/1978 in the case of Popatlal Kisandas Kaga

and ors. vs. State of Maharashtra and anr. (Special Civil Application Nos.1477/1972 and 124/1975). The challenge to the notification dated

20/6/1988 issued u/s 4(1) of the Act by the respondent No. 2 was rejected by this Court in the case of M/s. Daulatram Tikamdas (Supra) and,

therefore, the same challenge in these petitions is required to be dismissed.

7. While deciding Writ Petition Nos.353/98 and 1341/98 we have referred to the law laid down by the Apex Court in the case of M/s.

Tungabhadra Industries Ltd. vs. Commercial Tax Officer (AIR 1961 SC 412). We may usefully reproduce the following observations relating to

edible oils"", in the said case;

...When raw groundnut oil is converted into refined oil, there is no doubt processing, but this consists merely in removing from raw groundnut oil

that constituent part of the raw oil which is not really oil. The elements removed in the refining process consist of free fatty acids, phosphotides and

unsaponifiable matter. After the removal of this non-oleic matter therefore the oil continues to be groundnut oil and nothing more. The matter

removed from the raw groundnut oil not being oil cannot be used, after separation, as oil or for any purpose for which oil could be used. In other

words, the processing consists in the non-oily content of the raw oil being separated and removed, rendering the oily content of the oil 100 per

cent. For this reason refined oil continues to be groundnut oil within the meaning of Rule 5(1)(k) and 18(2) notwithstanding that such oil does not

possess the characteristic colour, or taste, odour, etc. of the raw groundnut oil.

Having regards to the process stages in the production of refined edible oil from the oil seeds as noted hereinabove and the fact that the oil seeds

are subjected to undergo these processes so as to produce edible oils, we do not have any hesitation in our mind to hold that edible oils are

agricultural produce. There is no doubt that oil seeds which are agricultural produce are listed separately in the notification dated 20/6/1988 as well

as in the schedule to the Act but that does not mean that once the oil seeds are subjected to payment of market fees, no demand for market fees

can be made on the edible oils produced from such seeds, unless of course it is the case of the petitioners that the oil seeds so procured were

subjected to the recovery of market fees by the respondent No. 3-Committee and not by any other APMCs either in the State of Maharashtra or

in the State of Andhra Pradesh and Karnataka. By following our view in Writ Petition Nos.353/98 and 1341/98 we reject the challenge to the

notifications dated 27/9/1987 and 20/6/1988, in the instant petitions.

8. In the case of The Belsund Sugar Co. Ltd. Vs. The State of Bihar and Others Etc., the following observations of the Constitution Bench also

support our view:

So far as the alternative contention is concerned, he submitted that even though wheat is an agricultural produce, atta, maida, suzi manufactured out

of the same cannot be said to be agricultural produce as it is a produce of the factory and not of an agriculturist. This contention of Shri Ranjit

Kumar also cannot be sustained for the simple reason that agricultural produce as defined by Section 2(1), as already noted earlier, would include

all agricultural produce whether processed, non-processed or manufactured out of any primary agricultural produce. Wheat is a produce of

agriculture, therefore, any product resulting after processing such basic raw material or which results after process of manufacture is carried on qua

such basic raw material would remain agricultural produce....

We have already noted that the oil seeds are subjected to the different processes so as to produce ""refined edible oils"" or ""edible oils"" and,

therefore, the edible oils, in whatever form, are agricultural produce within the meaning of Section 2(1)(a) of the Act.

9. While opposing the contentions of the petitioners that the market fees having been paid in the State of Andhra Pradesh or Karnataka, the

respondent No. 3 cannot demand the same on the sale of refined edible oils, Mr. Singhvi, the learned Sr. Counsel appearing for the respondents

rightly relied upon the following decisions:

(a) AIR 1981 1127 (SC)

(b) Ram Chandra Kailash Kumar and Company and Others Vs. State of U.P. and Another,

(c) M/S. Mahaluxmi Rice Mills and Others Vs. State of U.P. and Others,

We may usefully reproduce the following observations made by the Constitution Bench in the case of Ram Chandra Kailash Kumar (Supra):

...We shall particular market levied both in purchase and sale produced from the charged only on support from the wherein it is show hereinafter

that in a area market fee cannot be relation to the transaction of paddy and the rice same paddy. Fee can be one transaction. This find sun

amended Rules as they are, to be found Sub-rule (2) of Rule 66. But we find nothing in the provisions of the Act or the Rules to warrant the taking

of the view that in another market area the Market Committee of that area cannot levy fee on a fresh transaction of sale and purchase taking place

in that area. Supposing the Wheat is purchased in market area X by a trader from a producer, fee will be chargeable u/s 17(iii)(b)(2). If the same

Wheat is taken to another market area say Y and another transaction of sale and purchase takes place there between a trader and a trader the

market fee will be leviable under sub-clause (3). It is also not correct to say that the agricultural produce must have been produced in the market

area in which the first levy is made. It might have been produced in another market area or even outside the State of Uttar Pradesh but if a

transaction of sale and purchase takes place of an agricultural produce as defined in the Act and covered by the notification within a particular

market area then fee can be charged in relation to the said transaction.

10. In the premises and for the reasons set out in our judgment in Writ Petition Nos.353/98 and 1341/98 we reject the challenge to the impugned

notifications and hold that the demand of market fees made by respondent No. 3 from the petitioner No. 1-company is valid in law and, therefore,

the petitions stand dismissed to that extent. However, we hold that the respondent No. 3 has no power to charge supervision charges as well as

interest on the amount of market fees and/or supervision charges for the time being. We further hold that the product ""refined edible oil"" is an

agricultural produce as defined u/s 2(1)(a) of the Act and, therefore, the petitioners are required to pay market fees on the marketing of the said

product within the market area of respondent No.3. So far as the future arrangements are concerned, we reiterate our observations in para 18 of

our judgment in Writ Petition Nos.353/98 and 1341/98 and once it is shown by the respondent No. 3-Committee that Government staff or its own

staff has been engaged for the supervision of the marketing of edible oil produced/marketed by the petitioners-company by deputing them in the

premises/depots of the company located anywhere under the market area of respondent No. 3 henceforth, the Committee has the right to levy

supervision charges as well on the marketing of ""refined edible oils"" or ""edible oils"" at the rates prescribed by the State Government from time to

time. The Respondent No.3 shall issue fresh orders of demand for the recovery of market fees within a period of two months but after hearing the

petitioners.