Pf
C.A.No. 32 OF 1998

ITEM No. 105 Court No. 8 SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 32 of 1998

BIHAR STATE AGRL. MKT. BOARD Appellant (s)

VERSUS

ANIL PRASANT & ANR. Respondent (s)

With Civil Appeal No. 31 of 1998

Date : 25/09/2003 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. Ashwani Kumar,Sr.Adv.
Mr. S.R. Setia,Adv.
Mr. Anurag Dubey,Adv.
Mr. Aditya Dubey,Adv.
Ms. Upasana Dubey,Adv.
Mr. Devrat,Adv.

For Respondent (s)Mr. Jeevan Prakash,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 12.05 p.m. to 2.20 p.m.

The civil appeals are allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 32 OF 1998

Bihar State Agrl. Mkt. Board ...Appellant(s)

Versus

Anil Prasant & Anr. ...Respondent(s)

With Civil Appeal No. 31 of 1998

O R D E R

The validity of Notification dated 27th December, 1995 issued by the order of the Governor of Bihar in exercise of powers under Section 39 of the Bihar Agricultural Produce Markets Act, 1960 [for short, 'the Act'] was questioned by the respondents in the writ petitions before the High Court raising contentions that issuing of a Notification under Section 39 of the Act including "Chura" as an agricultural produce was not enough to levy market fee thereon without issuing Notifications under Sections 3 and 4 of the Act; and issuing of a Notification under Section 39 of the Act so as to include "Chura" as an agricultural produce without giving opportunity of hearing to the respondents was bad.

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The High Court, after hearing the learned counsel for the parties and relying on its earlier decision in Delhi Cloth and General Mills Company Limited vs. A.T.M.C. (1992 (2) P.L.J.R. 253), accepted the contentions advanced on behalf of the writ petitioners and allowed the writ petitions declaring that merely on the basis of the impugned Notification dated 27th December, 1995 and in the absence of any fresh notifications in respect of "Chura" under Sections 3 and 4 of the Act, it cannot be deemed to be within the regulatory measures of the Act and no market fee under Section 27 of the Act can be realised on its sale and purchase. Aggrieved by the said order of the High Court made in the writ petitions, these appeals have been filed.

Mr. Ashwani Kumar, learned senior counsel appearing for the appellant, contended that the impugned order was passed by the High Court on 4th July, 1996. A review petition was filed by the appellant having regard to a subsequent judgement of this Court in the case of Sasa Musa Sugar Works & Ors. vs. State of Bihar & Ors. (1996 (9) S.C.C. 681), but the review petition was rejected. He submitted that appeal has been filed against the said order rejecting the review petition as well. According to the learned counsel, the judgement in Sasa Musa Sugar Works & Ors. (supra) fully covers the case in favour of the appellant. The impugned order was passed on the basis of the judgement of a Division Bench of that High Court in Delhi Cloth and General Mills Company Limited (supra), a reference to which is made in the judgement of this Court in Sasa Musa Sugar Works & Ors. (supra). The position is made very clear in paragraph (30) of the judgement of this Court in Sasa Musa Sugar Works & Ors. (supra) that in order to

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give effect to the Notification issued under Section 39 of the Act including "Chura" as an agricultural produce, no independent and separate notifications under Sections 3 and 4 of the Act were required. The learned counsel invited our attention to few paragraphs in the said judgement in support of his submissions.

Per contra, the learned counsel representing the respondents submitted that the case of Sasa Musa Sugar Works & Ors. (supra) requires re-consideration; at any rate, hearing ought to have been given to the respondents before a Notification was issued under Section 39 of the Act including "Chura" as an agricultural produce. In support of his submissions, he cited few decisions on the question of giving of opportunity of hearing rendered under different circumstances and different sets of the facts of the case.

Having considered the respective contentions and having regard to the undisputed facts, we do not think that the case of Sasa Musa Sugar Works & Ors. (supra) requires re-consideration. As to the question of hearing, in the said judgement in paragraph (38), it is specifically stated that for inclusion of an item in a Notification issued under Section 39 of the Act, no hearing has been contemplated. When the provisions of the very Act are interpreted dealing with a similar situation, we do not think it necessary to consider any further, as to whether any hearing was required to be given. In paragraph (30), having considered all aspects of the matter, this Court has held thus:

"30. After giving our careful consideration to the facts and circumstances of the case and th

e submissions made by the learned
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counsel for the parties, it appears to us that unless agricultural produce is included in the Schedule to the Markets Act, the provisions of the Act have no application to such produce. A n agricultural produce may find its place in the Schedule to the Markets Act as originally inc luded by the legislature, or it may subsequently be added to the Schedule under Section 39 of the Act. Section 39 is the only provision in the Act which authorises the State Government to add any item to the Schedule of the Act or delete any item therefrom. Section 39 being an in dependent provision, it does not require sustenance from other sections. It operates on its o wn strength."

Further, the position has been made clear in paragraphs (36), (37), (38), (41) and (43), which read:

"36. It may be noted here that the invalidity of the deletion of sugar on the basis of the sai d Notification dated 2-5-1977 is not alleged by the sugar mills. As a matter of fact, they ac cept that by the said notification sugar stood deleted from the Schedule. But when such delet ion is sought to be negatived by issuing Notification dated 21-5-1977 rescinding the earlier N otification dated 2-5-1977, challenge as to the validity of the later notification was made by filing writ petitions before the High Court. In the judgment in DCM's case (1992 (2) Pat LJR 253) such notification dated 21-5-1977 rescinding earlier notification has been held invalid by the High Court on the ground that once control has been effected in respect of a scheduled goods by following provision under Sections 3 and 4, reintroduction of an item in the Schedule is not permissible without following the provisions of Sections 3 and 4. In our view, such d ecision cannot be sustained for the reasons indicated hereafter. Inclusion or deletion of an item in selecting the
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field of control is to be made in exercise of power under Section 39 of the Markets Act and St ate Government is clothed with such power which can be exercised without any aid of the provis ions of Sections 3 and 4 of the Act. It should also be noted that since deletion of sugar fro m the Schedule was made in exercise of power under Section 39, and such deletion was not a del etion under Section 4(1) of the Act, the procedure prescribed in Sections 3 and 4 of the Act, was not required to be followed. Section 4(3) does not contemplate includion or exclusion of produce under Section 39 of the Act but is applicable only to the inclusion or exclusion of an y area from the area of market or any produce specified therein as have been notified for cont rol in a specified market already by notification issued under Sections 3 and 4 of the Act.

37. Since the decision in DCM case that by the Notification of 21-5-1977 rescinding the earli er Notification of 2-5-1977 was invalid and the said subsequent notification had not the effec t of introducing sugar in the Schedule for want of compliance of Sections 3 and 4 was binding on the State Government, although appeal before this Court against the judgment was pending, t he State Government intended to remove the hurdles or fetters in deleting or including items u nder Section 39 without following the provisions of Sections 3 and 4 by introducing Sections 4 -A and 4-B by the validating/amending Act of 1993.

38. Sub-section (1) of Section 4-A makes Sections 3 and 4 of the Act non-applicable in the ma tter of exercise of the powers by the State Government under Section 39 of the Act to amend th e Schedule by addition of any item of agricultural produce not specified therein. Sub-section (2) of Section 4-A provides that the State shall not order the deletion of any of the items w ithout giving an opportunity for hearing to the affected
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parties. It is apparent that the legislature has given a chance of hearing to the parties to be affected if deletion of an item already included in the Schedule is to be effected. But fo r addition of an item of agricultural produce in the Schedule in the exercise of power under S ection 39, no hearing has been contemplated.

41. Even if it is held that the decision in DCM case, though erroneous, was binding inter pa rtes, the requirement of following the procedure under Sections 3 and 4 of the Act in the matt er of inclusion or deletion of an agricultural produce as held in DCM case by the High Court, has been expressly removed by introducing Section 4-A. In our view, the amending/Validation A ct does not intend to overrule or annul any decision of the Court, but the Amending Act has br ought in a change in the requirement of following the procedure under Sections 3 and 4 of the Act while amending the Schedule under Section 39 of the Act. Hence, the basis of the decision

in DCM case has undergone a legislative change. Therefore, Section 4-A does not suffer from encroachment of judicial power of the State.

43. First part of Section 4-B contemplates validation of market fee levied and collected by tr eating such levy and collection under the Act as amended. Second part of Section 4-B legislat ively annuls the Notification dated 2-5-1977. The other parts relate to consequential actions flowing from the first two parts. Levy of market fee was held invalid for an item like sugar which was excluded from the Schedule by Notification dated 2-5-1977 on the ground that once d eleted from the Schedule, its reintroduction can take effect only after complying with Section s 3 and 4 of the Act. It should be noted that in view of Section 4-A, which has been inserted in the Markets Act by specifically indicating in Section 2

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of the Amending Act that the said section 'shall always be deemed to have been inserted', de letion of an item and subsequent inclusion of the same under Section 39 is to be made in accordance with Section 39 read with Section 4-A. Sub-section (2) of Section 4-A makes it imperative that del etion can be made after hearing objection. Hence, even if Notification dated 21-5-1977 purpor ting to rescind the Notification dated 2-5-1977, by which sugar was deleted from the Schedule, is held invalid for the reasons indicated by the High Court, such deletion stands invalidated under sub-section (2) of Section 4-A. Hence, declaration of annulment of Notification dated 2-5-1977 flows from Section 4-A(2). The result is that sugar must be deemed to be always in t he Schedule in respect of which controls have been operative. Both the parts of Schedule 4-B therefore, do not suffer from any infirmity, even otherwise. If deletion is non est, annulmen t of Notification dated 2-5-1977 is a matter of course. Similarly, levy and realisation of ma rket fee on the items which were included in the Schedule, but exclusion of which was of no co nsequence, cannot be held invalid. In a sense, the first two parts of Section 4-B are declara tion of the consequence of invalidation of deletion notification. We, therefore, find no diff iculty in upholding the vires of both Sections 4-A and 4-B of the Markets Act."

In our view, the judgement of this Court in the case of Sasa Musa Sugar Works & Ors. (supra) f ully covers the case of the appellant. Hence, the appeals are entitled to succeed. According ly, they are allowed. The impugned orders are set aside.
No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
September 25, 2003.