

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1088 OF 2016**

**Plywood Association
(Dhanbad-Bokaro)**

Appellant(s)

Versus

The State of Jharkhand and Others

Respondent(s)

W I T H

CIVIL APPEAL NO.1089 OF 2016

O R D E R

The challenge in these appeals is to a common order of the High Court of Jharkhand by which the contention of the appellant that the exercise of power under Section 39 of the Bihar Agricultural Produce Markets Act, 1960 (for short, 'the Act') to include an item in the schedule would require a separate notification to be issued under Sections 3 and 4 of the Act, was repelled.

Section 2(a) of the Act defines 'agricultural produce' in the following terms:-

"2(a) "Agricultural produce" means all produce whether processed or non-processed, manufactured or not, of Agriculture, Horticulture, Plantation, Animal Husbandry, Forest, Sericulture, Pisciculture and includes livestock or poultry as specified in the Schedule."

Section 3 requires the State Government to issue a notification expressing its intent to declare a particular area as a local/market area and particular produces as notified produces. Section 4 of the Act contemplates the issuance of notification to the above effect. Section 4-A of the Act is in the following terms:-

"4-A. Sections 3 and 4 not to apply to section 39.- (1) The provisions of sections 3 and 4 shall not apply to the exercise of powers by the State Government under section 39 to amend the schedule by addition of any item of agricultural produce not specified therein.

(2) The State shall not order the deletion of any item in exercise of its power under section 39 without giving an opportunity for hearing to the affected parties."

Section 4-A was introduced by an ammendment of 1993. Its constitutional validity was doubted by the High Court of Patna which has been set at rest by this Court in Sasa Musa Sugar Works and Others vs. State of Bihar and Others¹, a judgment which according to the learned counsel buttresses his point that notwithstanding Section 4-A of the Act, a separate notification under Sections 3 and 4 would be required in case of exercise of power under Section 39 of the Act.

We have considered the judgment of this Court in Sasa Musa Sugar Works (supra), where the validity of Section 4-A was upheld. The reference order dated 10th February, 2016, has referred to paragraph 33 of this judgment which appears

to give an imprimatur to the submission made by the senior counsel appearing for the Marketing Board. In defending the validity of Section 4-A of the Act, an argument was advanced that in case of amendment to the schedule, the market area where the control will operate and where controlled products would have to be sold are left to the judgment of the State Government, subject to the statutory conditions imposed by Sections 3(1) and 4(1) of the Act. The reference order states that this paragraph appears not to have been taken note of in Bihar State Agrl. Mkt. Board vs. Anil Prasant and Another², even though a reference was made to the judgment in Sasa Musa Sugar Works (supra).

On examination of the issue, we are of the view that the judgment in Sasa Musa Sugar Works (supra) would have to be read as a whole. In paragraph 41 of the said judgment, it was clearly held as follows:-

“Even if it is held that the decision in *DCM* case, though erroneous, was binding inter partes, the requirement of following the procedure under Sections 3 and 4 of the Act in the matter 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....”

We find that the ratio of Sasa Musa Sugar Works (supra) is not that in cases of inclusion in the schedule in exercise of power under Section 39 of the Act, a separate

notification under Sections 3 and 4 will have to be issued. The observations in paragraph 33 were only in the context of the challenge laid to provision of Section 4-A and the contention advanced by the senior counsel for the Marketing Board to justify its validity on one such ground.

In Bihar State Agrl. Mkt. Board (*supra*), the declaration of law laid down in Sasa Musa Sugar Works (*supra*) was followed and the contention that view expressed in Sasa Musa Sugar Works (*supra*) would require reconsideration was expressly negated. In paragraph 3 of the report in Bihar State Agrl. Mkt. Board (*supra*), this Court has observed as follows:-

"Mr. Ashwani Kumar, learned senior counsel appearing for the appellant contended that the impugned order was passed by the High Court on 4-7-1996. A review petition was filed by the appellant having regard to a subsequent judgment of this Court in the case of *Sasa Musa Sugar Works v. State of Bihar* 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 judgment in *Sasa Musa Sugar Works* fully covers the case in favour of the appellant. The impugned order was passed on the basis of the judgment of a Division Bench of that High Court in *Delhi Cloth and General Mills Co. Ltd.* a reference to which is made in the judgment of this court in *Sasa Musa Sugar Works*. The position is made very clear in paragraph 30 of the judgment of this Court in *Sasa Musa Sugar Works* that in order to 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 a few paragraphs in the said judgment in support of his

submissions.”

We are thus of the view that correct reading of the two opinions would be that in case of an amendment to the schedule, Section 39 of the Act negates the requirement of compliance of Sections 3 and 4(1) of the said Act. In our considered view also, that would be the correct position in law.

Consequently, the appeals are dismissed and the order of the High Court is restored.

.....CJI.
[Ranjan Gogoi]

.....J.
[Sanjay Kishan Kaul]

.....J.
[K.M. Joseph]

New Delhi
November 15, 2018.

ITEM NO.101

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.1088/2016

PLYWOOD ASSOCIATION (DHANBAD-BOKARAO)

Appellant(s)

VERSUS

THE STATE OF JHARKHAND & ORS.

Respondent(s)

(With appln.(s) for stay and exemption from filing O.T.)

WITH C.A. No.1089/2016 (XVII)

Date : 15-11-2018 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE K.M. JOSEPH

For Appellant(s) Mr. Harshvardhan Jha, Adv.
Mrs. Yugandhara Pawar Jha, Adv.
Mr. Abhishek Chaudhary, AOR
Ms. Mayuri Shukla, Adv.

Mr. Devashish Bharuka, AOR
Mr. Shankar Lal Agarwal, Adv.
Mr. Ravi Bharuka, Adv.
Mr. Sarvashree, Adv.
Mr. J. George, Adv.

For Respondent(s) Mr. Ashok Grover, Sr. Adv.
Mr. Praveen Kumar, AOR
Ms. Babita Sant, Adv.

Mr. Tapesk Kumar Singh, AOR
Mr. Aditya Pratap Singh, Adv.

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

The appeals are dismissed in terms of the signed
order.

Pending applications, if any, stand disposed of.

(Chetan Kumar)
A.R.-cum-P.S.

(Asha Soni)
Assistant Registrar
(Signed order is placed on the file)