

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No.1088/2016

(@Petition(s) for Special Leave to Appeal (C) No(s). 17862/2011)

PLYWOOD ASSOCIATION (DHANBAD-BOKARAO)

Appellant(s)

VERSUS

STATE OF JHARKHAND & ORS.

Respondent(s)

WITH

Civil Appeal No.1089/2016

(@Petition(s) for Special Leave to Appeal(C) No. 19511/2011)

O R D E R

We have heard Mr. Devashish Bharuka, learned counsel appearing for the appellant, Mr. Ashok Grover, learned Senior counsel appearing for the respondents and Mr. Tapesh Kumar Singh, learned counsel appearing for the State of Jharkhand.

Leave granted

These appeals raise the question; whether it is necessary for the State Government to issue a Notification under Sections 3 and 4 of the Bihar Agricultural Produce Markets Act, 1960 in respect of a particular agricultural produce in order to bring such produce within the regulatory mechanism of the Act including the levy of market fee thereon in respect of transactions of produce and sale of the said agricultural produce within the market yard.

Sections 3 and 4 read as follows¹

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3. Notification of intention of exercising control over purchase, sale, storage and processing of agricultural produce in specified area. - (1) Notwithstanding anything to the contrary contained in any other Act for the time being in force, the State Government may, by notification, declare its intention of regulating the purchase, sale, storage and processing of such agricultural produce and in such area, as may be specified in the notification.

(2) A notification under sub-section (1) shall state that any objection or suggestion which may be received by the State Government within a period of not less than two months to be specified in the notification, shall be

According to the appellant, such notifications under Sections 3 and 4 not having been issued in respect of plywood, ply board, ply patti, core and veneer etc., the transactions in respect of such agricultural produce cannot be regulated under the Act nor can a trader be compelled to obtain a licence for trade in such agricultural produce. Though the appellants accept that the said agricultural produce i.e., plywood, ply board etc. has been included in the Schedule to the Act which contains a list of agricultural produce within the meaning of Section 2 (1)(a) of the Act, such agricultural produce cannot be regulated under the Act *ipso facto* because of inclusion in the Schedule. According to them, the procedure contemplated by Sections 3 and 4 of the Act must be followed before the regulatory mechanism can be operated. Reliance

considered by the State Government.

4. Declaration of market area. - (1) After the expiry of the period specified in the notification issued under section 3 and after considering such objection and suggestions as may be received before such expiry and after holding such enquiry as it may consider necessary, the State Government may by notification, declare the area specified in the notification under section 3 or any portion thereof to be a market area for the purposes of this Act, in respect of all or any of the kinds of agricultural produce specified in the notification under section 3.

(2) On and after the date of publication of the notification under sub-section (1), or such later date as may be prescribed therein, no municipality or other local authority, or other person, notwithstanding anything contained in any law for the time being in force, shall, within the market area, or within a distance thereof to be notified in the official Gazette in this behalf set up, establish, or continue, or allow to be set up, established or continued, any place for the purchase, sale, stores or processing of any agricultural produce so notified, except in accordance with the provisions of this Act, the rules and bye-laws.

Explanation. - A municipality or other local authority or any person shall not be deemed to set up, establish or continue or allow to be set up, established or continued a place as a place for the purchase, sale, storage or processing of agricultural produce within the meaning of this section, if the quantity is as may be prescribed and the seller is himself the producer of the agricultural produce offered for sale at such place or any person employed by such producer to transport the same and the buyer is a person who purchases such produce for his own use or if the agricultural produce is sold by retail sale to a person who purchases such produce for his own use.

(3) Subject to the provisions of section 3, the State Government may at any time by notification exclude from a market area any area or any agricultural produce specified therein or include in any market area or agricultural produce included in a notification issued under sub-section (1)

(4) Nothing in this Act shall apply to a trader whose daily or annual turnover does not exceed such amount as may be prescribed.

for this was placed on the decision of the Supreme court in Sasa Musa Sugar Works and Others vs State of Bihar and Others² where the Court observed in paragraph 33 as follows:-

"Mr. Sen, in our view, has rightly contended that when the field of control is circumscribed by the items in the Schedule, the actual control part of it including the goods to be controlled, the market area where the control will operate and where the controlled products will have to be sold are left to the judgment of the State Government subject to the statutory conditions imposed by Section 3 (1) and Section 4 (1) of the Markets Act. Once the notification under Sections 3 and 4 are issued specifying the goods to be controlled and the areas where the control will operate, the other provisions of control contained in Section 5 onwards including the levy of fee under Section 27 of the Markets Act spring into action.

On the other hand, learned Senior counsel appearing for the Market Committee and learned counsel appearing for the State of Jharkhand relied on Section 4-A³ of the Act which lays down that Sections 3 and 4 shall not apply to the exercise of powers by the State Government when the Government decides to amend the Schedule by way of addition of new items.

The respondents contend that the import of the said Section is that it is not necessary for the Government to comply with Sections 3 and 4 before bringing the agricultural produce under the regulatory mechanism of the Act. They relied on the decision of this Court⁴ where this Court reversed the order of the Patna High Court which had held that the agricultural produce in question "chura" cannot be brought within the regulatory mechanism of the Act unless the procedure prescribed by Sections 3 and 4 have not been complied i.e., notifications thereunder have not been issued.

² (1996) 9 SCC 681

³ 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.

⁴ (2005) Volume-X SCC 173 (Bihar State Agrl. Mkt. Board vs. Anil Prasant and Another

In the result, this Court allowed the appeals and set aside the Judgment of the High Court. The Court relied on the same Judgment in Sasa Musa Sugar Works. However, it may be noted that paragraph 33 of Sasa Musa's case, referred to above, does not seem to have been specifically considered. We would like to take note of statement made by the learned counsel for the State that the Market Fees is not levied any more from 1-9-2006. The learned counsel for the State, however, stated that the appellants would be still liable to pay the market fees for the prior period i.e. 31-8-2000 to 1-9-2006. Therefore, the matter cannot be treated infructuous.

We thus find that there are two divergent opposite views on the requirement to comply with the procedure under Sections 3 and 4 of the Act before an agricultural produce is brought under the regulatory mechanism. Since the two Judgments of this Court, referred to above, are Judgments of coordinate strength being Judgments of two Judges Benches of this Court, we consider it appropriate to refer the following question for decision by a larger bench:-

Whether in respect of an agricultural produce which is introduced in the Schedule to the Act in exercise of powers under Section 39, is it necessary for the State Government to comply with the procedure under Sections 3 and 4 of the Act in order to bring the said agricultural produce under the regulatory control of the Act.

We direct the Registry to place all the papers of these cases before Hon'ble the Chief Justice of India for reference to a larger bench.

.....J
(S.A. BOBDE)

.....J
(AMITAVA ROY)

NEW DELHI,
10TH FEBRUARY, 2016.

ITEM NO.1

COURT NO.11

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 of 2016
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Respondent(s)

WITH

Civil Appeal no.1089 of 2016

(@SLP(C) No. 19511/2011)

(With appln.(s) for c/delay in filing rejoinder affidavit and Interim Relief and Office Report)

Date: 10/02/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s)

Mr. Harshvardhan Jha, Adv.
Mr. Yugandhara Jha, Adv.
Mr. Abhishek Chaudhary, Adv.

Mr. Devashish Bharuka, Adv.
Mr. Abraham C. Mathews, Adv.
Ms. Rita Jha, Adv.

For Respondent(s)

Mr. Ashok Grover, Sr. Adv.
Mr. Praveen Kumar, Adv.

Mr. Tapesk Kumar Singh, Adv.
Mr. Mohd. Waquas, Adv.

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

Leave granted.

We direct the Registry to place all the papers of these cases before Hon'ble the Chief Justice of India for reference to a larger bench in terms of the signed order.

(VISHAL ANAND)
COURT MASTER

(MADHU NARULA)
COURT MASTER

(Signed Order is placed on the file)