

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5779 of 2005

M/s. Dharampal Satyapal Ltd. and another

.... Appellants

Versus

State of Bihar and others

.... Respondents

WITH

CIVIL APPEAL NO. 5782 of 2005

M/s. Agricultural Produce Market Committee,
Muzzarfarpur

.... Appellant

Versus

M/s. Prabhat Zarda Factory (India) Ltd. and others

.... Respondents

AND

CIVIL APPEAL NO. 5785 of 2005

M/s. Prabhat Zarda Factory (India) Ltd. and another Appellants

Versus

State of Bihar and others Respondents

JUDGMENT

S.B. SINHA, J..

1. These three appeals involve a question as to whether the levy of market fee on Zafrani Zarda in terms of the provisions of Bihar Agricultural Produce Market Act, 1960 (for short the Act) is valid which arise out of a common order dated 7th October, 2002 passed by the High Court of Patna in three writ petitions filed by the appellants.

2. Writ petitioners are manufacturers of Zafrani Zarda. It is indisputably a manufactured form of tobacco.

The question as to whether Zafrani Zarda is manufactured item of tobacco or not came up for consideration before this Court in Agricultural Produce Market Committee and others v. M/s. Prabhat Zarda Factory and another, [1994 Supp (2) SCC 514]. This Court noticed that the definition of 'agricultural produce' has undergone a change so as to include the 'manufactured goods' therefrom by way of amendment on 30th April, 1982. This Court noticed that the judgment of the High Court did not take into consideration the changed definition of 'agricultural produce' with effect from 30th April, 1982 but upheld the judgment of the High Court in respect of levy of market fee prior thereto.

3. Indisputably again with effect from 30th April, 1982 Zafrani Zarda was inserted in the Schedule appended to the said Act, by reason of a Notification dated 31st July, 1991, issued by the State of Bihar which reads thus:-.

"No. 6/Misc. 13/91 - 6386 Governor of Bihar in exercise of its powers conferred under Section 39 of Bihar Agricultural Produce Marketing Act, 1980 (Bihar Act 16 of 1960) makes the following amendment in the Schedule of the abovementioned Act :-

AMENDMENT

In the said list -Heading 11 - following heads should be added or included after head 1 under Narcotic - Tobacco.

2. Zarda
3. Zafrani Zarda etc.

The effect of this amendment shall be considered to be in force from the date of implementation of Bihar Agricultural Produce Marketing Act, 1960.

By order of Governor of Bihar

Nagendra Tiwari
Joint Secretary to Govt."

4. The State Government issued another Notification being S.O. 220 dated 31st August, 1992 for regulation of sale, purchase, storage and process of all agricultural produce mentioned in the Schedule of the Act in the areas covering 122 market committees including the respondent Market Committee.

5. Questioning the orders of assessment of market fee relying on and on the basis of the said G.Os., by the Assessing Authority, the Writ Petitioners filed writ applications before the Patna High Court inter alia for the following reliefs :-

- "i) issue Rule NISI calling upon the respondent to show cause as to why the notice No.569 dated 08.06.2001, 638 dated 26.06.2001 and 770

dated 24.07.2001 as contained in Annexure 6, 7, 9 and issued by the respondent Secretary, Agricultural Produce Market Committee should not be set aside and quashed and upon return of the rule and after hearing the parties make the rule absolute.

- ii) Issue rule in the nature of mandamus restraining the respondents from enforcing the provisions of Bihar Agriculture Produce Market Committee Act and the Rules thereunder in respect of the petitioners dealing in zafrani zarda and spices and demanding any fee in respect thereof and upon return of the rule and after hearing the parties make the rule absolute.
- iii) Issue Rule NISI in the nature of writ of mandamus calling upon the respondents to show cause as to why the notification issued under section 39 published in the Bihar Gazette Extra Ordinary dated 31.07.2001 (Annexure-2) be not declared invalid, illegal without jurisdiction and unenforceable and upon return of the rule and after hearing the parties make the rule absolute.
- iv) Issue such other writ(s) order(s) direction(s) as your Lordships may deem fit and proper."

6. In the said writ petitions, inter alia it was contended on behalf of the respondent-Market Committee, that the market fee would be assessed from the date of coming into force of the Amendment i.e. 30th April, 1982 from which date the definition of 'agricultural produce' had been amended.

7. The High Court by reason of the impugned judgment did not go into other contentions raised by the parties. It was held that the market fee would be leviable with effect from 31st August, 1992. It failed to take into consideration the important question raised by the petitioners that the Notifications were ultra vires the Act and/or would have no application in relation to Zafrani Zarda. It also did not take into consideration the contention of the Market Committee that having regard to the provisions of Section 4-A of the Act, Sections 3 and 4 thereof were not required to be complied with.

8. The questions raised by the parties are of significance. They should have been dealt with by the High Court.

9. We, therefore, are of the opinion that the impugned judgment cannot be sustained. They are set aside accordingly and the matters are remitted to the High Court for consideration and disposal thereof afresh as expeditiously as possible and preferably within a period of six months from the date of receipt of a copy of this order.

If any application is filed by the parties hereto raising additional contentions, the same may be considered by the High Court on their own merits.

10. The appeals are disposed of accordingly with no order as to costs.

.....J.
(S.B. SINHA)

.....J.
(LOKESHWAR SINGH PANTA)

New Delhi
May 14, 2008