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THE STATE OF MADHYA PRADESH

v.

M/S HARDEO SHRINATH AND ORS.

JULY 11, 1994

B

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972:

C

Section 2(b)(e)(p)—Directions restraining 'Agriculturists' from selling their produce through 'Commission Agents'—Held valid.

Expression 'Trader'—Does not include 'Agriculturist'—Such inclusion would defeat the object of the Act—Object of the Act explained.

D

The appellant-State issued directions restraining the agriculturists from selling their produce through the Commission Agents. Respondents-Commission Agents challenged the validity of instructions on the ground that they were contrary to the provisions of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 and in any case the agriculturists being traders the Commission Agents were entitled to sell/purchase the agricultural produce on their behalf. The High Court held that (i) in the definition of 'trader' the words used are 'buys or sells'. Therefore, trader means any person who in his normal course of business either buys or sells agricultural produce and includes a person engaged in processing of agricultural produce; (ii) thus the agriculturist who sells his produce through a Commission Agent is a trader according to the definition of 'trader'. Accordingly, it quashed the instructions holding that the petitioners cannot be prohibited from acting as Commission Agents on behalf of the agriculturist. State preferred an appeal in this Court.

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Allowing the appeal and setting aside the High Court's order, this Court

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HELD : 1. The expression "trader" under Section 2(p) of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 means a person who "in his normal course of business" "buys or sells" any notified agricultural produce. The High Court noticed the words "buys" or "sells" but failed to appreciate that the said buying and selling has to be "in his normal course of business".

The normal course of business of an agriculturist is neither buying nor selling. Cultivation of land to gain agricultural produce is the normal course of business of an agriculturist. It is no doubt correct that a farmer takes his produce to the market for sale but that by itself would not bring him within the definition of 'trader' under the Act. [303-H, 304-A] A

2. One of the avowed objects of agricultural produce marketing legislation is to save the farmers from the middlemen. The farmer can directly sell his produce to the consumers/purchasing agencies in the markets constituted and established under the Act. Accepting the interpretation given by the High Court would defeat the very object of the Act. Even otherwise the traders and the commission agents have been specifically excluded from the definition of "agriculturist" under Section 2(b) of the Act. Therefore, the High Court fell into patent error in holding that the expression "trader" includes Agriculturists. [304-B, C, 303-G] B C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3962 of 1987. D

From the Judgment and Order dated 8.4.87 of the Madhya Pradesh High Court in M.P. No. 1863 of 1986.

S.V. Deshpande and S.K. Agnihotri for the Appellant. E

D.K. Garg for the Respondents.

The Judgment of the Court was delivered by

KULDIP SINGH, J. This appeal by the State of Madhya Pradesh is directed against the order dated April 8, 1987 of Indore Bench of the Madhya Pradesh High Court, wherein the expression "Trader" under Section 2(p) of the Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 (the Act) has been interpreted to include an 'agriculturist'. F

Sub-sections (b), (e) and (p) of Section 2 which are relevant are reproduced hereunder: — G

"(b) 'agriculturist' means a person whose main source of livelihood is wholly dependent on agricultural produce and who cultivates land on one's own accounts — H

- A (i) by one's own labour; or
- (ii) by the labour of either spouse; or
- (iii) under the personal supervision of oneself or any member of one's family referred to in sub-clause (ii) above by hired labour or by servants on wages payable in cash or kind but not as crop share, but does not include a trader, commission agent, processor, broker, weighmen or hammad of agriculture produce although such trader, commission agent, processor, broker, weighmen or hammad may also be engaged in the production of agriculture produce;"
- B
- C (e) 'Commission agent' means a person who on behalf of his principal trader and in consideration of a commission or percentage upon the amount involved in such transaction buys agricultural produce and makes payment in cash keeps it in his custody and delivers it to the principal trader in due course or who receives and takes in his custody agricultural produce sent for sale within the market area or from outside the market area, sells the same in the market area and collects payment therefor, from the buyer and remits the sale proceeds to his principal trader.
- D
- E (By the Amending Act (No. 24 of 1986) in the aforesaid definition, after the word 'principal' the word 'trader' has been inserted.)
- (p) 'Trader' means a person who in his normal course of business buys or sells any notified agricultural produce and includes a person engaged in possession of agricultural produce."
- F The appellant issued directions dated December 9, 1986 (Annexure P-7) restraining the agriculturists from selling their produce through the Commission Agents (Adatias). It was further directed that action would be taken against the Commission Agents for violating the said instructions. Respondents 1 and 2 who were Commission Agents challenged the instructions (Annexure P-7) on the ground that they were contrary to the provisions of the Act and in any case the agriculturists being traders under the Act the Commission Agents are entitled to sell/purchase the agricultural produce on their behalf in consideration of a commission or percentage. The High Court posed the following questions for its consideration: —
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- H "The short question raised in this petition, therefore has been

whether the petitioners can be prohibited from acting as Commission Agents on behalf of the seller namely agriculturist and whether the agriculturist, who thus sells his produce is a 'trader'. A

On the interpretation of the provisions of the Act reproduced above, the High Court allowed the writ petition and quashed the Government instructions impugned before it on the following reasoning:— B

"The definition of a 'trader' cannot be interpreted to mean, as urged by the learned counsel for the respondents, that it excludes agriculturist/cultivator. In the definition of 'trader' the words used are 'buys or sells'. Therefore, any person who in his normal course of business either buys or sells any notified agricultural produce and includes a person engaged in processing of agricultural produce is a trader. Therefore, it is difficult to agree with the submission made by the learned counsel for these respondents that the business of an agriculturist is only to sell his produce and that too once in a year. The agriculturist-cultivator is at liberty to sell his agricultural produce in one lot or different lots and at intervals according to the market conditions. Therefore, the normal course of business of an agriculturist cultivator is to sell the notified agricultural produce and at times he may be required also to buy the same in the course of his normal business. Therefore, we are of opinion that the petitioners cannot be prohibited from acting as Commission Agents on behalf of the sellers that is the agriculturist and consequently Annexure P-7 has to be quashed. It, therefore, follows that the agriculturist who sells his produce through a Commission Agent is a trader according to the present definition of 'trader'". C D E F

We are of the view that the High Court fell into patent error in holding that the expression "Trader" as defined under the Act includes Agriculturists. It failed to notice that the legislature has separately defined the expression "Agriculturist" under section 2(b) of the Act. G

The expression "Trader" under Section 2(p) of the Act means a person who "in his normal course of business" "buys or sells" any notified agricultural produce.... The High Court noticed the words "buys" or "sells" but failed to appreciate that the said buying and selling has to be "in his normal course of business". The normal course of business of an agricul- H

- A turist is neither buying nor selling. Cultivation of land to gain agricultural produce is the normal course of business of an agriculturist. It is no doubt correct that a farmer takes his produce to the market for sale but that by itself would not bring him within the definition of 'trader' under the Act. One of the avowed object of agricultural produce marketing legislation is to save the farmers from the middlemen. The farmer can directly sell his
- B produce to the consumers/purchasing agencies in the markets/mandis constituted and established under the Act. Accepting the interpretation given by the High Court would defeat the very object of the Act.

- C In any case the traders and the commission agents have been specifically excluded from the definition of "agriculturist" under Section 2(b) of the Act. It seems that Section 2(b) was not brought to the notice of the High Court otherwise, for ought, the result may have been different.

- D We, therefore, allow the appeal, set aside the impugned judgment of the High Court and dismiss the writ petition filed by respondents 1 and 2 before the High Court. The appellant shall be entitled to costs of these proceedings which we quantify as Rs. 20,000 to be paid by respondents 1 and 2.

T.N.A.

Appeal allowed.