

CASE NO.:
Appeal (civil) 4824 of 2000

PETITIONER:
Krishi Utpadan Mandi Parishad & Anr.

RESPONDENT:
I.T.C. Ltd.

DATE OF JUDGMENT: 16/11/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

In this appeal challenge is to the judgment rendered by a learned Single Judge of the Allahabad High Court allowing the writ petition filed by the respondent. The matter came to be placed before learned Single Judge as there was difference of opinion between two Hon'ble Judges constituting the Division Bench and the learned Single Judge as the third judge decided the Writ Petition.

The facts giving rise to present petition, filtering out unnecessary details are as follows:-

Respondent ITC Ltd is a company incorporated under the Companies Act, 1956 (in short 'Company') having its registered office at 37, Chowringee Road, Calcutta. This company is engaged in manufacture of cigarette and has established several factories for this purpose including a factory at Sardar Patel Marg, Saharanpur. For manufacture of cigarette, leaf tobacco is required which is excisable to fee levied and collected by the Tobacco Board (in short the 'Board') constituted under Tobacco Boards Act, 1975 (in short 'Tobacco Act'). The Company purchases tobacco in its raw form from the auction body established by the Tobacco Board at various places throughout the country. The raw tobacco so purchased is brought to the factory at Saharanpur where it is processed and cut tobacco is prepared. This cut tobacco is further processed and then such tobacco is used for manufacture of cigarette. The cut tobacco prepared in the factory at Saharanpur is dispatched to the factories of the company at Calcutta where it is used for manufacturing cigarettes. Some of the cut tobacco produced at Saharanpur factory is dispatched to certain contract manufacturers who entered into agreements with the respondent for manufacture of cigarettes. Respondent company's supplies them raw material i.e. cut tobacco paper and packing material etc. and pays them manufacturing charges.

Under Section 12 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as the 'Act'), a committee called Mandi Samiti is established for every market area which is a body corporate having perpetual and official seal. Mandi Samiti is entitled to levy and collect fee under

Section 17 of the Act in respect of all transactions of sale of specified agricultural produces in the market area at such rates, being not less than 1% per centum and not more than 2% of the price of agricultural produce as sold, as the State Government may specify by notification. By U.P. (Amendment) Act No.12 of 1987 an explanation was inserted which provided that for the purpose of clause (iii) unless the contrary is proved, any specified agricultural produce taken out or proposed to be taken out of the market area by or on behalf of licensed dealer shall be presumed to have been sold within such area for levying Mandi fee, and in such case, the price of such produce presumed to be sold shall be deemed to be such reasonable price as may be ascertained in the manner prescribed. This explanation came into force w.e.f. 31st March, 1987.

Respondent filed a Writ Petition before the High Court alleging that appellants for the first time demanded market fee it on cut tobacco being transported from Saharanpur for the purpose of use in its another factory at Calcutta or to be used by the contract manufacturers for manufacturing cigarettes. It represented against the said demand on 22nd April, 1987. Authorities allowed respondent to take their stock of cut tobacco without payment of market fee and it continued to do so except on two occasions in the year 1995 and 1996. On 9.9.1998, the President of the Mandi Samiti, Saharanpur by his order dated 28th October, 1998 held that respondent-Company is not liable to pay market fee on the consignment of cut tobacco dispatched to its Calcutta Factory. However, with regard to the consignments dispatched to contract manufacturers he sought a direction from the Director, Mandi Parishad. In response to the notice served on the respondent by Director, it furnished its reply and placed materials before the Director, Mandi Parishad on 2.12.1998. The Director, Mandi Parishad however, by order dated 14.1.1999 rejected the case of the respondent-Company and required the President Mandi Samiti to take fresh decision with regard to the levy of market fee in the light of the guidelines provided in the order. Aggrieved by this order petitioners have filed present writ petition was filed under Article 226 of the Constitution of India, 1950 (in short the 'Constitution')

The High Court held that the Director could not have exercised the power of revision under Section 32 of the Act and therefore, the order impugned i.e. one dated 14.1.1999 was without jurisdiction. Even on merits it was held that the Director had reopened all the cases since 1987, and even in respect of proceedings which was not referred to him at all.

According to learned counsel for the appellant the approach of learned Single Judge constituting the majority suffer from various infirmities. The High Court has erroneously considered the provisions to hold that the Director had no power. Even otherwise on merits, it is submitted that the view of learned single judge cannot be sustained.

Learned counsel for the respondent-writ petitioner on the other hand supported the judgment of learned Single Judge.

The position of various provisions, more particularly Section 26 (I) (L), Section 32 and Section 33 at different points of time need to be noted:

ORIGINALLY

Sec. 32. Powers of the State Government to call for the proceedings of a Committee and pass

order thereon.- The State Government may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by, a Committee, at any time call and examine the proceedings of the Committee, and, where it is of the opinion that the decision or order of the Committee should be modified, annulled or reversed, pass such orders thereon as it may deem fit.

Sec. 33. Delegation of powers.- The State Government may, by notification in the Gazette, delegate, subject to such conditions and restrictions as may be specified therein, any of its powers or the powers of any other authority under this Act, to any officer or authority subordinate to it.

AMENDEMENT BROUGHT BY PRESIDENT ACT
NO. 13 OF 1973

Sec. 26-I. Delegation of powers. Subject to the provisions of this Act, the Board may, by general or special order, delegate, either unconditionally or subject to such conditions as may be specified in the order, to any sub-committee appointed by it or to the Member-Secretary or any other officer of the Board such of its powers and duties under this Act, as it may deem fit.

Sec. 26-L. Powers and functions of the Board. \027
(1) The Board shall subject to the provisions of this Act, have the following functions and shall have power to do anything which may be necessary or expedient for carrying out those functions-

(i) superintendence and control over the working of the Market Committees and other affairs thereof including programmes undertaken by such Committees for the [construction of new Market Yards and development of existing Markets and Market Areas];

(ii) giving such directions to Committees in general or any Committee in particular with a view to ensure efficiency thereof;

(iii) any other function entrusted to it by this Act;

(iv) such other functions as may be entrusted to the Board by the State Government by notification in the Gazettee.

2. Without prejudice to the generality of the foregoing provision, such power shall include the power-

(i) to approve proposals of the new sites selected by the Committee for the development Markets;

(ii) to supervise and guide the

Committees in the preparation for site-plans and estimates of construction programmes undertaken by the Committee;
(iii) to execute all works chargeable to the Board's fund;

(iv) to maintain accounts in such forms as may be prescribed and get the same audited in such manner as may be laid down in regulations of the Board;
(v) to publish annually at the close of the year, its progress report, balance-sheet, and statement of assets and liabilities and send copies to each member of the Board as well as to the Chairman of all the Market Committees;
(vi) to make necessary arrangements for propaganda and publicity on matters related to regulated marketing of agricultural produce;
(vii) to provide facilities for the training of officers and servants of the Market Committee;
(viii) to prepare and adopt budget for the ensuing year;
(ix) to make subventions [and loans] to Market Committees for the purposes of this Act on such terms and conditions as the Board may determine;
(x) to do such other things as may be of general interest to Market Committees or considered necessary for the efficient functioning of the Board as may be specified from time to time by the State Government."

32. Powers of the State Government to call for the proceedings of a Committee and pass order thereon.- The Board may, for the purpose of satisfying itself as to the legality 'propriety of any decision of, or order passed by, a Committee, at any time call and examine the proceedings of the Committee, and, where it is of the opinion that the decision or order of the Committee should be modified, annulled or reversed, pass such orders thereon as it may deem fit.

33. Delegation of powers.- The State Government may, by notification in the Gazette, delegate, subject to such conditions and restrictions as may be specified therein, any of its powers under this Act, to the Board or to any of its officers.

AMENDMENT BROUGHT BY U.P. ACT NO. 6 OF 1977

26-I. Delegation of powers.- Subject to the provisions of this Act, the Board may, by general or special order, delegate, either unconditionally or subject to such conditions as may be specified in the order, to the Director or the Member-Secretary or any other officer of the Board such of its powers and

duties under this Act, as it may deem fit.

33. Delegation of powers.- The State Government may, by notification in the Gazette, delegate, subject to such conditions and restrictions as may be specified therein, any of its powers under this Act, to the Board or to the Director.

AMENDMENT BROUGHT BY U.P. ACT NO. 10 OF 1991

33. Delegation of powers.- The Board may, by regulations, delegate subject to such conditions and restrictions and in such manner, as may be specified therein any of its powers to the Director.

The position of Section 32 and Section 33 prior to 1973, after Amending Act, 1973, after Amending Act, 1977 and after the Amending Act 1999 reads as follow:

Prior to 1973

Section 32: The State Government may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by a Committee, at any time call and examine the proceedings of the Committee and where it is of the opinion that the decision or order of the Committee should be modified, annulled, or reversed, pass such orders thereon as it may deem fit.

Section 33: The State Government may, by notification in the Gazette, delegate, subject to such conditions or restrictions as may be specified therein, any of its powers or the powers of any other authority under this Act, to any officer or authority subordinate to it.

After 1973 Amending Act

Section 32: The Board may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by a Committee, at any time call and examine the proceedings of the Committee and where it is of the opinion that the decision or order of the Committee should be modified, annulled, or reversed, pass such orders thereon as it may deem fit.

Section 33: The State Government may, by notification in the Gazette, delegate, subject to such conditions or restrictions as may be specified therein, any of its powers under this Act, to the Board or to any of its officers.

After the 1977 Amending Act

Section 32: The Board may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by a Committee, at any time call and examine the proceedings of the Committee and where it is of the opinion that the decision or order of the Committee should be modified, annulled, or reversed, pass such orders thereon as it may deem fit.

Section 33: The State Government may, by notification in the Gazette, delegate, subject to such conditions or restrictions as may be specified therein, any of its powers under this Act, to the Board or to the Director.

After the 1991 Amending Act

Section 32: The Board may, for the purpose of satisfying itself as to the legality or propriety of any decision of, or order passed by a Committee, at any time call and examine the proceedings of the Committee and where it is of the opinion

that the decision or order of the Committee should be modified, annulled, or reversed, pass such orders thereon as it may deem fit.

Section 33: The Board may, by regulations, delegate subject to such condition and restrictions and in such manner, as may be specified therein, any of its powers to the Director.

After the 1973 amendment power was given to the Board to delegate its powers. After the 1977 amendment, power to delegate was given to State Government under Section 33 relating to exercise of power to the Board or the Director. After 1991 amendment under Section 33, the State had no power of delegation and it was vested on the Board.

A comparison of the provisions shows that Sections 32 and 33 relate to provisional powers while Section 26(L) deals with powers and functions of the Board. Section 26(L)(iv) deals with powers and functions of the Board. After the 1973 amendment, in Section 32 the word "State" was substituted by the word "Board" while the power exercisable under Section 33 continued with the State Government. The High Court seems to have erroneously proceeded on the basis that the sole repository power was the State Section 33 A deals with powers of Director to ensure performance of duties of Market Committees. Section 33-B deals with State Governments' power relating to general power of supervision but there was no scope for revising the delegates' decision. On 22.11.1973 the Board resolved to delegate powers. On 21.3.1974 there was a specific order of Board to delegate powers to the Director. From 1974 till 1991, Director was exercising power under Section 26(I). According to the High Court after 1991 Director cease to have authority because of Section 33. Regulations in terms of Section 26(X) were brought in by the 1973 amendment. Submissions of the appellant is that when Section 26(F) came into question and was not repealed and was continued, repository of the power was the Director and the source of power continued. Till 1991, the existing arrangements continued notwithstanding amendment to Section 33. Arrangements and delegations made under the whole regime continued. According to Section 24 of the General Clauses Act, 1897 (in short the 'General Clauses Act') post 1991 all delegations (after Regulation came to become operative) has to be with prior sanction of the Board.

Comparison Section 26-I becomes otiose and irrelevant and cannot be operative if the High Court's view is accepted. Every statute has to be read as a whole and no part of the statute cannot be rendered inoperative by another provision. The power of revision continued with the State Government up to 1973. After 1973 amendment the revisional power was with the Board and not with State Government and it was not a case where delegation under Section 33 had to play any role. After 1991 delegation can be either under Section 26 \026 I or Section 33.

In reply it is submitted that Section 26-I did not stipulate delegation the Director Office of Director came in 1977 and he was not an officer of the Board. Only delegation was made was on 21.3.1974. The Director could not have been the delegatee and could be delegated power after 1977.

Section 26-I relates to the exerts covered by Section 26(L)(i)(ii)(iii), while Section 33 deals with the area relatable to Section 26(L)(iv). Since the same is not a power under the Act, has to be covered by the Regulation. It is not conferred by either Section 33 or by Statute.

As rightly contended by learned counsel for the appellant, the High Court's view would render Section 26- I otiose and irrelevant. After 1991, the delegation can be either under Section 26-I and under Section 33. In the statute there is no power to reopen unlike some other statutes. The Chairman hold that there were two transactions i.e. one was outside Saharanpur and the other relatable to job-work. According to the Chairman the first was not covered by the Act and for the second transactions reference was made to the Director. Contrary to what the Chairman had told, the Directors held that both the transactions were covered under the Act and issued guidelines for transactions from 1987 onwards. Reference appears to have been made to Section 17 (iii) (b). But there is no analysis of that provision to support the stand of the Director. Admittedly there is no power of reopening of assessments. Transactions for the assessment year 1997-98 fell for consideration. The complaint was made on 20.10.1998 therefore the factual position could have been determined with effect from 01.08.1998 onwards. The stand of the respondent that the office of the Director came into effect in 1977 is not correct. In fact the office of the Director came into existence in 1973 but not as an officer of the Board. The delegation was done on 21.3.1974 to the Director. Under Section 32 after 1973 there is a substantive power of revision. After 1991 under two provisions power of delegation i.e. Section 26-I and Section 33 could be exercised. While Section 26-I is supervisory in character. Section 33 confers the revisional power of the Board to the Director. The manner of delegation is in terms of the "Regulation" and therefore it precludes any other mode. Prior to 1991, Section 26 -I did not pertain to power of revision. It operated de hors Sections 32 and 33. The revisional power went out of the domain of the State Government and the same remained with the Board. After 1991 the situation is that Section 33 deals with aspects other than those covered under Section 32. That is because the revisional power was already with the Board. Post 1991, the delegation could be done only under the regulation. That being so, the High Court's vis-à-vis, conclusions i.e. Section 32 of the Act are not correct. On the merits there is no scope for interference with the High Court's order because there was no power to reopen. The respondent shall, however, produce the accounts relating to the period subsequent to 1.8.1998, and the factual aspects have to be considered by the appellants.

The appeal is disposed of accordingly without any order as to costs.