

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9589 OF 2010

Krishi Utpadan Mandi Samiti & Anr.

...Appellants

Versus

Ved Ram

...Respondent

J U D G M E N T

T.S. THAKUR, J.

1. This appeal by special leave calls in question the correctness of an order passed by the High Court of Judicature at Allahabad whereby Civil Misc. Writ Petition No. 58900 of 2007 filed by the respondent-company has been allowed, the order passed by the Krishi Utpadan Mandi Samiti, Ghaziabad and that passed by the Deputy Director, Rajya Krishi Utpadan Mandi Parishad, Meerut in revision set aside. The High Court has further directed the Krishi

Utpadan Mandi Samiti, Ghaziabad to make a fresh assessment of the market fee for the period in question after providing an opportunity of being heard to the writ-petitioner or his authorised agent. The challenge arises in the following factual backdrop.

The respondent-company is engaged in the business of manufacture and sale of milk products including *desi ghee* which it markets under the brand name 'Paras'. The company has set up a manufacturing unit at Sahibabad, District Ghaziabad, which falls within the market area of Krishi Utpadan Mandi Samiti, Ghaziabad ('KUMS' for short). The company's case is that it sells the milk products manufactured by it through its consignee agents located at several places in different parts of the country. A list of 15 consignee agents spread over the States of West Bengal, Gujarat, Goa, Orissa, Maharashtra, Rajasthan and New Delhi was in that regard enclosed by the respondent with the writ petition filed by it before the High Court. These consignee agents, according to the respondent-company, provide to the company services like, unloading of goods from the trucks, storage in the depots of the company, dispatch of

the stocks by trucks to redistribution stockists as per sale orders, raising sale invoices on behalf of the company and collecting payments for the stocks sold.

In terms of a show-cause notice issued by the appellant-Samiti, the respondent-company was called upon to produce all relevant documents with regard to the production, sale-purchase, movement and storage of its product for the relevant period. This notice was triggered by a declaration received from the respondent-company that consignment note No.94 dated 14th May, 2004 dispatching 5250 Kgs. of *desi ghee* to Anand Sales Corporation at Ahmedabad was a stock transfer which did not require any gate pass for its movement outside the market area.

On receipt of the notice the respondent-company filed a reply explaining the nature of the transaction and claiming that transfer of stocks to its godowns outside the mandi area was on “stock transfer basis” and not pursuant to any sale effected within the mandi area. The Mandi Samiti remained dissatisfied with that explanation with the result that by an order dated 27th April, 2005 the Samiti

held that obtaining of gate passes after producing evidence to rebut the presumption arising under Explanation to Section 17(iii)(b) of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 was necessary. The Samiti further held that the respondent-company had not adduced sufficient evidence to rebut the presumption that the movement of goods from the mandi area to places outside such area was pursuant to a sale effected within the said area. The Samiti accordingly levied a market fee of Rs.9,39,200/- and development fee of Rs.2,34,800/- totalling Rs.11,74,000/- for 3906.80 quintals of *desi ghee* taken out from the market area of KUMS, Ghaziabad under Section 17(iii)(b) of the Adhiniyam mentioned above. It was further directed that in future the respondent-company shall produce the details of its business and obtain gate passes whenever it removes *ghee* from the market area of KUMS, Ghaziabad.

Aggrieved by the order passed by the Samiti, the respondent-company filed a revision under Section 32 of the Adhiniyam before the Regional Deputy Director, Rajya Krishi Utpadan Mandi Parishad, U.P. which was dismissed by the Deputy Director by its order dated 31st October, 2007.

The Deputy Director while affirming the order passed by the Samiti held that the transactions in question were not by way of stock transfers but sales within the market area of KUMS Ghaziabad, hence exigible to market fee.

The respondent-company then filed Writ Petition No.58900 of 2007 before the High Court of Judicature at Allahabad, challenging the orders passed by the Samiti and the Deputy Director on several grounds. The High Court has, by the order impugned in the present appeal, allowed the said petition set aside the orders of the Samiti and the Deputy Director and remanded the matter back to the Samiti for a fresh assessment in accordance with law. While doing so, the High Court has not only found fault with the approach adopted by the Samiti and the Deputy Director but also commented adversely about the capacity of the officers making the orders in deciding the questions of law and fact that arise in connection with such transactions. According to the High Court the entire approach adopted by the Samiti and the Deputy Director was biased, arbitrary, and authoritative and based on a misreading of the legal provisions and the judgments of this

Court. The High Court felt that all this happened because the officers who were handling the issue of such importance were not equipped with the requisite knowledge about the legal principles and procedure applicable while dealing with complex questions of law and fact. More importantly, the High Court evolved a new and somewhat novel procedure for examination of the issues involved in such cases while providing for safeguards by way of securing the amount claimed by the Mandi Samiti towards market fee. The High Court observed:

“The market fee is levied on the sale of agricultural produce in the market area. The Explanation only raises a rule of presumption which may be rebutted by manufacturing trader or the trader as the case may be. The Court cannot presume that the movement of goods cannot be occasioned unless the sale is affected. The nature of evidence to be produced at the time of gate pass is a contentious matter which has not been resolved in the last three decades. A number of attempts made by the courts have not succeeded in proper understanding of law by the officers and employees of the market committees and Mandi Parishad. In the circumstances, in addition to the directions, which have been given by the judgments cited above, the Court directs that the Petitioner will furnish to Secretary, KUMS Ghaziabad, a ‘revolving bank guarantee’ of the amount of market fees on yearly basis based on the average of the historical sales and payments of the market fees in the last three years. The bank guarantee will be furnished on the first of April and unless revoked, it shall be revalidated every year. The market committee will issue gate passes on a declaration made by the petitioners that the goods are moving by way of stock transfer and

have not been sold. They will produce the consignment note, and the proof of dispatch giving names and addresses of stockists. These documents will constitute sufficient proof of rebuttal at the stage of a request for gate pass. The market committee will assess the market fee on yearly basis after 31st March of the next year and consider documents furnished by way of rebuttal of the presumption of sale in respect of each and every transactions separately. It will not be sufficient to say that the gate pass was not obtained or obtained without payment of market fees or that documents are not sufficient. The order would show application of mind and reasoning for both accepting or rejecting the proofs on the furnished in respect of each and every transactions separately.”

2. On behalf of the appellant-Samiti it was argued by Mr. Rakesh Dwivedi, learned senior counsel, that the observations made by the High Court regarding the capacity of the officers to understand and effectively determine the contentious issues that arose for determination was wholly unjustified. He submitted that instead of finding fault with the capacity of the officers to understand the issues, the High Court would have done better in pointing out the errors committed by the authorities below in either appreciating the law or applying the same to the facts of the case at hand. He urged that the officers had appreciated the evidence adduced by the respondent properly and were well within their powers to

reject the same for reasons which they had set out in their respective orders. So long as there was no perversity in the approach adopted by the Samiti and the Deputy Director in appreciating evidence and/or the application of principles of law to the facts of the case, the mere fact that those officers were not formally trained in law was no reason to dub them as incompetent or incapable, especially when any such training was no guarantee against commission of mistakes.

3. It was further argued that the High Court had completely overlooked the fact that the respondent-company had, in complete breach of the directions and procedure sanctioned by the orders passed by this Court, removed the stock of *ghee* without the requisite gate passes necessary for such removal. The High Court had also committed an error in evolving a procedure which was different from the one that was stipulated by this Court in ***Krishi Utpadan Mandi Samiti and Ors. v. Shree Mahalaxmi Sugar Works and Ors. 1995 Supp (3) 433*** and ***Krishi Utpadan Mandi Samiti v. M/s Saraswati Cane Crusher & Co. & Ors. (Civil Appeal Nos. 1769-***

1773 of 1998) decided on 25th March, 1998. Mr. Sudhir Chandra appearing for the respondent supported the order passed by the High Court and prayed for dismissal of this appeal.

4. In **Shree Mahalaxmi Sugar Works** (supra) this Court noticed the Explanation under Section 17 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 and declared that the Samiti was entitled to raise demands against the dealers before passes for removal of the goods could be issued to them. This Court held that if there was a valid rebuttal to the statutory presumption that a sale had taken place within the notified market area, the dealers will be entitled to the passes, otherwise not. If the dealers are compelled to pay market fee as demanded, it shall be open to the aggrieved to challenge the same in the manner provided under the Act. The order passed by this Court being a short order may be extracted *in extenso*:

“1. Leave granted.

2. The Explanation to Section 17 of the Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 reads as follows:

“Explanation.— For the purpose of clause (iii), unless the contrary is proved, any specified

agricultural produce taken out or proposed to be taken out of a market area by or on behalf of a licensed trader shall be presumed to have been sold within such area 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.”

From this it is clear that there is a presumption against the dealers. In view of that presumption, it is open to the appellants-Krishi Utpadan Mandi Samiti to raise demands against the dealers before passes could be issued. If there is a valid rebuttal in that the sale did not take place within the notified market area, the dealers will be entitled to the passes, otherwise not. Of course, even the dealers are compelled to pay the market fee as demanded. It is open to them to challenge it in the manner provided under the Act.

3. *The appeals are disposed of in the above terms.”*

5. Pursuant to the above pronouncements the Mandi Samiti appears to have started issuing gate passes on payment of mandi fee demanded by them at the time of issue of gate pass. A change in the procedure came about as a result of the decision of this Court in **M/s Saraswati Cane Crusher** (supra). In that case the dealers had argued that the procedure being followed pursuant in **Shree Mahalaxmi Sugar Works** (supra) was not satisfactory inasmuch as the requirement of hearing and of an adjudication was not being satisfied unless an aggrieved dealer was in a position to challenge the assessment in the

manner provided under the Act. A three-Judge Bench of this Court found merit in that contention and held that the order passed in **Shree Mahalaxmi Sugar Works** (supra) required some repair work. The Court observed:

"We are satisfied that the orders of this Court afore-referred to would need some repair work. We treat the said order to be conceiving of a provisional assessment where after doors are opened for a final assessment. We conceive that when demands are raised by the Krishi Utpadan Mandi Samiti against a trader before he could ask for transit of goods outside the market area, the trader would be entitled to tender a valid rebuttal to say that no sale had taken place within the notified area and that if the explanation is accepted there and then by the Mandi Samiti, no question of payment would arise as also of withholding the gate passes. If prima facie evidence led by the trader is not accepted by the Mandi Samiti, the trader or the dealer can be compelled to pay the market fee as demanded before issuance of gate pass. If the trader makes the payment without demur, the matter ends and the assessment finalized. But in case he does so and raises protest, then the assessment shall be taken to be provisional in nature making it obligatory on the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged and the provisional assessment has been made, a time frame would be needed to devise making the final assessment. We, therefore, conceive that it innately be read in the order of this Court that a final assessment has to be made within a period of two months after provisional assessment so that the entire transaction in that respect is over enabling the aggrieved party, if any, to challenge the final assessment in the manner provided under the afore Act or under the general law of the land in appropriate fora. Having added this concept in this manner in the two Judge Bench decision of this Court, we declare that what repair has been done instantly would add to the order of the High Court and the instant corrective decision shall be the governing rule. The Civil Appeals would thus stand disposed of.

Since the assessment thus far made against the traders, who are involved in the instant appeals, would

have to be treated as provisional awaiting final assessment, we permit the concerned traders to move the respective Mandi Samiti within two months from today to hear their objections and proceedings onwards be regulated in accordance with procedure devised hereinbefore. Nonetheless we add that should the basis of provisional assessment be knocked off, the Samiti would refund the market fee to the traders/dealers within two months thereafter."

6. It appears from the above that the orders passed by this Court in ***Shree Mahalaxmi Sugar Works*** (supra) was interpreted to mean that a provisional assessment would be made against the trader before he could ask for a transit pass for removal of the goods outside the market area. In the course of the said provisional assessment the trader would be entitled to tender a valid rebuttal to the statutory presumption under Section 17 of the Adhiniyam and argue that no sale having taken place within the notified area, it was not liable to pay any market fee on the movement of goods. If the explanation offered by the trader was accepted the gate pass would be issued without insisting upon any payment of the fee. But if the evidence laid by the trader is not prima facie accepted by the Mandi Samiti the trader or the dealer can be compelled to pay market fee before issue of gate pass to him. The Court further held that

if the trader makes the payment without demand the matter ends and the issue finalised. In case, however, he raises a protest then the assessment shall be taken to be provisional in nature making it obligatory for the trader to pay the fee before obtaining the requisite gate pass. After protest has been lodged the provisional assessment shall be followed by a final assessment within a time frame. The Court prescribed a period of two months in respect of each such transaction enabling the aggrieved party to challenge the same under the Act or under the general law of the land before the appropriate fora.

7. The above procedure has been working effectively for the past decade and a half and ought to have been effective in the instant case also. The unfortunate part, however, was that the respondent-company did not respect the procedure stipulated under the above orders of this Court. It did not apply for and obtain gate passes for removal of its goods. The Samiti, therefore, had no occasion to pass any provisional or final order based on the material adduced before it. It is only when the respondent-company filed a declaration that the removal of the stocks pursuant

to consignment note No.94 dated 14th May, 2004 in favour of Anand Sales Corporation at Ahmedabad was a stock transfer and did not require a gate pass that the Samiti issued a show-cause notice asking the respondent-company to furnish the documents with regard to the production, sale, purchase, movement and storage of the goods. Based on the figures furnished pursuant to the said show-cause notice the Samiti determined the market fee and the development fee and raised a demand for payment thereof with a direction to the company to follow the prescribed procedure for removal of goods from the mandi area. The revisional authority, as seen above, upheld the assessment of the fee and the consequential directions issued by the Samiti. The High Court, however, completely overlooked the effect of the orders passed by this Court in the two cases mentioned earlier and brought in a new mechanism which could in its opinion be more effective, in dealing with the situation that arose so very often between the Samiti on the one hand and the traders on the other. The High Court failed to appreciate that it was not on virgin ground. The matter was fully covered by the decisions of this Court.

Further repair of the procedure and the mechanism so provided could only be under the orders of this Court. The High Court ought to have left it to this Court to determine as to whether the mechanism and procedure provided by our orders required any modification, and if so, in what form and to what extent. Instead of doing that, the High Court embarked upon an exercise which was not necessary especially when the same did no service to judicial discipline.

8. The High Court was also in error in holding that even when the movement of goods without gate passes may have been in violation of the rules regulating the issue of such passes, any such violation could only call for a penalty under the said rules. Assessment of market fee on the removal of such goods from the mandi area was, according to the High Court, a different matter unrelated to the breach of the rules requiring the traders to remove goods only on the authority of validly issued gate passes. The High Court appears to have overlooked the fact that if gate passes are required to be obtained under the rules, removal of stocks without applying for such gate passes and without

furnishing prima facie evidence of proof that there was no sale of the goods involved, was a reason enough for the Mandi Samiti to demand payment of the market fee on the stocks that were removed. The absence of gate passes was tantamount to removal of the goods in breach of the relevant rules and also in breach of the directions issued by this Court in the two cases mentioned above. A dealer who adopted such dubious procedure and means could not complain of a failure of opportunity to produce material in support of its claim that no sale was involved. No opportunity to a dealer who was acting in defiance of the rules and removing the goods without any intimation and permission of the Samiti could be granted for the occasion to grant such an opportunity would arise only when the trader applied for the issue of a gate pass. As a matter of fact, the goods having been taken away without gate passes and without any material to show that there was no sale, the Samiti could demand payment of the market fee and leave it open to the respondent-trader to claim refund by rebutting the presumption that the removal was pursuant to a sale. At any rate, the Samiti and the Deputy

Director have concurrently held that the respondent-company has not been able to rebut the presumption under Section 17 of the Adhiniyam. We see no reason to interfere with that finding especially when the appraisal of the evidence by the said two authorities has not been shown to us to be in any way perverse to warrant interference with the same.

9. In the result, we allow this appeal, set aside the order passed by the High Court and restore that passed by the Samiti and the Deputy Director in revision. The parties are left to bear their own costs.

...J.

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(T.S. THAKUR)

...J.

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(DIPAK MISRA)

New Delhi
March 23, 2012