

CASE NO.:
Appeal (civil) 5321 of 1997

PETITIONER:
I.T.C. Limited

RESPONDENT:
The Person Incharge Agricultural Market Committee, Kakinada & Ors.

DATE OF JUDGMENT: 30/01/2004

BENCH:
S. Rajendra Babu & G.P. Mathur.

JUDGMENT:
JUDGMENT

With C.A. No.5204 of 1997 and C.A. No.4803 of 1999.

G.P. MATHUR, J.

1. The controversy raised in all these appeals is similar and, therefore, they are being disposed of by a common judgment. We will state the facts of Civil Appeal No.13217 of 1997. The appellant is a public limited company within the meaning of the Companies Act, 1956 having its registered office at Calcutta. It is engaged in the business of processing and exporting of marine products and for that purpose it has established a branch office at Kakinada in the State of Andhra Pradesh, from where it carries on the business activities in respect of prawns. The appellant purchases dead prawns from various locations like Bhimili, Vizag, Vakapadu, Bhimavaram, Kakinada, Narsapur, Kodur, Nagayalanka, Machilipatnam, Repalla, Amalapuram in the State of Andhra Pradesh and after getting them processed, exports the same to various countries. The appellant had obtained licenses from the respondents under the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 (hereinafter referred to as 'the Act') for carrying on its business activity in the aforesaid places. A demand notice dated 26th September, 1995 was served upon the appellant demanding payment of market fee wherein it was mentioned that if the market fee was not paid, interest at the rate of 12 per cent per annum shall be charged, apart from prosecution being launched for violation of Sections 12(1) and 12(a) and (3) of the Act, which entails punishment upto one year R.I. and a fine of Rs.5,000/-. The appellant challenged the notice demanding market fee by filing writ petition in the Andhra Pradesh High Court which dismissed the same by the order dated 18.2.1997 relying upon an earlier detailed judgment dated 17.4.1996 of a Division Bench of the same Court given in a batch of writ petitions and writ appeals.

2. Shri S. Ganesh, learned senior counsel for the appellant, has submitted that the activities carried on by the appellant were not covered by the provisions of the Act inasmuch as dead and dried prawns purchased by the appellant could not be considered to be 'livestock' within the meaning of Section 2(v) of the Act. The word 'livestock' meant and implied the continued existence of life and that once life ceased, the thing could no longer be considered to be 'livestock' and consequently could not, in law, be notified as 'livestock' under Section 2(v) of the Act. At any rate, the Government could declare animals alone as livestock for the purpose of the Act and as live or dead or dried prawns were not animals within the meaning of Section 2(v) of the Act, it is urged, they could not be notified as 'livestock' under the aforesaid provision. Learned counsel has submitted that the inclusion of prawns in the Schedule to the Act as 'livestock' was illegal and ultra vires and, therefore, no market fee could be demanded from the appellant.

3. In order to examine the contention raised by learned counsel for the appellant, it is necessary to refer to the relevant provisions of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 and the notification issued thereunder. As the Preamble shows, the Act has been enacted to consolidate and amend the law relating to the regulation of purchase and sale of agricultural produce, livestock and products of livestock and the establishment of markets in connection therewith. Section 2 of the Act gives the definitions and sub-sections (v), (ix), (x) and (xv) thereof read as under :

(v) 'Livestock' means cows, buffaloes, bullocks, bulls, goats and sheep, and includes poultry, fish and such other animals as may be declared by the Government by notification to be livestock for the purposes of this Act;

(ix) 'notification' means a notification published in the Andhra Pradesh Gazette, and the word 'notified' shall be construed accordingly;

(x) 'notified agricultural produce, livestock or products of livestock' means agricultural produce, livestock or products of livestock specified in the notification under Section 3;

(xv) 'products of livestock' means such products of livestock as may be declared by the Government by notification, to be products of livestock for the purposes of this Act.

Sub-section (1) of Section 3 provides that the Government may publish in such manner, as may be prescribed, a draft notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification. Sub-section (3) of Section 3 provides that after the expiry of the period specified in the draft notification and after considering such objections and suggestions as may be received before such expiration, the Government may publish in such manner as may be prescribed a final notification declaring the area specified in the draft notification or any portion thereof, to be a notified area for the purposes of this Act in respect of any agricultural produce, livestock and products of livestock specified in the draft notification. Sub-section (4) of Section 4 lays down that as soon as may be after the establishment of a market under sub-section (3), the Government shall declare by notification the market area and such other area adjoining thereto as may be specified in the notification, to be a notified market area for the purposes of this Act in respect of any notified agricultural produce, livestock or products of livestock.

4. The State Government has issued notifications declaring their intention of regulating the purchase and sale of different kinds of agricultural produce, live stock and products of Live Stock which have been broadly classified as agricultural group, fruit group, vegetable group, fish group, live stock group, poultry group etc. The notification regarding the Fish Group includes the following items:

1. Live fish including fish with or without life in any form.
2. Dry Fish.
3. Live prawn including prawn with or without life in any form.
4. Dry Prawn.

Section 3 of the Act confers power upon the Government to issue notification declaring their intention of regulating the purchase and sale of such agricultural produce, livestock or products of livestock in such area as may be specified in such notification. The Andhra Pradesh Government has issued notification, whereunder live prawns including prawns with or without life in any form has been notified. The commodity which the appellant purchases namely dead prawns, which after processing is exported to various countries are clearly included in the notification issued by the Sate

Government. In view of Section 12 of the Act which is the charging section and empowers the Market Committee to levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area, the appellant is liable to pay market fee.

5. Learned counsel has next submitted that the State Government can issue a notification under Section 3 of the Act only with regard to livestock or products of livestock. In common parlance prawn with or without life is not treated as 'livestock' and, therefore the State Government, it is submitted, could not have issued any notification for the same. According to learned counsel the normal meaning of the word 'livestock' is as under : "Animals of any kind kept or raised for use or pleasure; especially : meat and dairy cattle and draft animals \026 opposed to dead stock."

Learned counsel has also submitted that animal is always a quadruped and therefore prawn is not an animal and consequently it is not a livestock regarding which a notification could be issued by the State Government under Section 3 of the Act.

6. To test the argument it will be convenient to reproduce the meaning of the word animal, prawn and fish given in some standard dictionaries which is as under :

Animal : An organised being having life, sensation and voluntary motion; - typically distinguished from a plant, which is organised and has life, but apparently not sensation or voluntary motion.

Prawn : 1. A small long-tailed decapod marine crustacean (palxmon senatus), larger than a shrimp, common off the coast of Britain and used as food.

2. Any of numerous decapod crustaceans that have slender legs, long antennae, a large strong compressed abdomen, and a prominent serrated rostrum, are widely distributed in fresh and salt waters in warm and temperate regions and highly esteemed as food, and vary in size from an inch or so to the size of lobster

Fish : A vertebrate cold-blooded animal with gills and fins living wholly in water. An animal living wholly in water e.g. cuttlefish, shellfish, jellyfish.

Section 2(b) of The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 also defines fish, which is as under : "2(b) "Fish" means any aquatic animal, whether piscine or not, and includes shell fish, crustacean, molluses, turtle (chelonia), aquatic mammal (the young, fry, eggs and spawn thereof), holothurians, coelenterates, sea weed, coral (Porifera) and any other aquatic life."

Normally, in common parlance animal is understood as a quadruped creature but fish is also an animal but of different kind. Prawn is included in the definition of fish as given in the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act and has all the essential attributes of an animal, viz., life, sensation and voluntary motion. It is therefore not possible to accept the contention that prawn is not a livestock. The State Government is thus fully competent to issue a notification regarding prawns under Section 3 of the Act.

7. Shri Ganesh has also referred to a decision of this Court in Royal Hatcheries Pvt. Ltd. v. State of A.P. 1994 Supp. (1) SCC 429 in support of his submission that prawns with or without life cannot be treated as

livestock. The case turned on the interpretation of Rule 5(2)(xxvi) of A.P. General Sales Tax Rules, 1957 which used the expression "livestock, that is to say, all domestic animals such as, oxen, bulls, cows, buffaloes, goats, sheep, horses etc." This Court held that the words "that is to say" are words of limitation and, therefore, the livestock contemplated by the said clause becomes confined to the domestic animals referred to in the said clause and would not include day-old chicks sold by the hatcheries. In fact after referring to *Peterborough Royal Foxhound Show Society v. I.R.C.* 1936(1) All ER 813, wherein it was held that the word 'livestock' takes within its fold animals of any description, it was observed that ordinarily speaking 'livestock' is not confined to domestic animals. Therefore, the authority cited by the learned counsel does not support his contention in any manner.

8. Learned counsel has lastly submitted that in *Sri Lashmi Dry Fish Traders v. State of A.P.* AIR 1986 AP 330, a Division Bench of Andhra Pradesh High Court had held that even if fish is considered to be an animal, dry fish cannot fall within the sweep of the definition of 'livestock' and, therefore, 'dry fish' could not be included in Schedule II thereof. Learned counsel has urged that the State of Andhra Pradesh accepted the verdict of the High Court and did not choose to file an appeal against the said decision and, therefore, it is not open to the State Government to contend now that prawn with or without life is livestock. In support of this submission, reliance is placed upon *Union of India v. Kaumudini Narayan Dalal* 249 ITR 219 and *Commissioner of Income Tax v. Narendra Doshi* 254 ITR 606. In these cases, it was held that where the High Court decides the matter on the basis of an earlier judgment, which decision had not been challenged by the Revenue by filing an appeal, the Revenue must, therefore, be bound by the principle laid down therein and it is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessee without just cause. On the aforesaid principle this Court declined to consider the correctness of the decision of the High Court in the matter before it.

9. In our opinion, the principle laid down in the aforesaid decisions has no application here. Firstly, in *Sri Lashmi Dry Fish Traders* (supra), the challenge was to the notification by which dry fish was included in the Schedule and did not relate to prawns with or without life. Secondly, the High Court in the present case has considered this contention and has expressly rejected it holding in favour of State Government and it is the appellants which is coming up in appeal to this Court. In *State of Maharashtra v. Digambar* 1995 (4) SCC 683, a three Judge Bench had expressly repelled such a contention and had held that non filing of an appeal in one matter would not act as a bar against the State in filing appeal in another matter where similar point may be involved. The Court ruled as under :

"The circumstances of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by the Supreme Court in some other similar matters by itself, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest."

Therefore, the contention raised has absolutely no substance.

For the reasons discussed above, the appeals lack merits and are hereby dismissed.