

PETITIONER:
CHHANGANLAL MANSUKHLAL & ANR.

Vs.

RESPONDENT:
K. K. BHATT & ANR.

DATE OF JUDGMENT 05/02/1981

BENCH:
KOSHAL, A.D.
BENCH:
KOSHAL, A.D.
ERADI, V. BALAKRISHNA (J)
MISRA, R.B. (J)

CITATION:
1981 AIR 1102 1981 SCR (2) 761
1981 SCC (2) 418 1981 SCALE (1) 426

ACT:
Gujarat Agricultural Produce Markets Rules 1965-Rules
48 and 49-Scope of.

HEADNOTE:
The parties are agreed that the provisions of Rule 49 are not attracted and no fees are payable under it at the stage of entry into a market area if the agricultural produce in question is covered by sub-rule(2) of Rule 48, i.e., when such produce fulfils either of the following conditions:-

- (i) It is brought from outside the market area thereinto for use therein by the industrial concerns situated therein or for export and in respect thereof a declaration has been made and a certificate has been obtained in Form V.
- (ii) The sale or purchase of such produce comes within the purview of sub-section (3) of section 6 of the Gujarat Agricultural Produce Markets Act.

This interpretation of Rules 48 and 49 which flows directly from the language employed therein is correct. Rule 49 will have no application to any case which falls within the ambit of sub-rule (2) of Rule 48. [763 D-E]

JUDGMENT:
CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1967 of 1975.

Appeal by Special Leave from the Judgment and Order dated 30-10-74/1-11-1974 of the Gujarat High Court in Special Civil Application No. 766/71.

Soli J. Sorabji, Vimal Dave, Subhash Parikh and Gopal Subharamaniyan for the Appellants.

S. H. Sheth, M. V. Goswami, Ambrish Kumar and Mukesh Goswami for Respondent No. 1.

J. L. Nain, M. N. Shroff and S. C. Patel for Respondent No. 2.

The Judgment of the Court was delivered by

KOSHAL, J.-Rule 49 of the Gujarat Agricultural Produce Markets Rules, 1965, the vires and the reasonableness of which have been the main points of challenge in this appeal, runs thus:

"49. (1) The fees on agricultural produce shall be payable as soon as it is brought into the principal market

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yard or sub-market yard or market proper or market area as may be specified in the bye-laws:

Provided that the fees so paid shall be refunded-

(i) on production of sufficient proof that such produce was not sold within the limits of the market area; or

(ii) if such produce is brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and in respect of which a declaration has been made and a certificate has been obtained in Form V subject to the proviso to sub-rule (2) of rule 48.

(2) The licence fees payable under rule 56 or 57 shall be paid alongwith the application for licence but in case the market committee refuses the grant or renewal of a licence the fees recovered shall be refunded to the applicant."

In order to interpret this Rule it is also necessary to set out the provisions of Rule 48. They are:

"48. (1) The market committee shall levy and collect fees on agricultural produce bought or sold in the market area at such rate as may be specified in the byelaws subject to the following minima and maxima viz.

(1) rates when levied ad valorem shall not be less than 10 paise and shall not exceed 40 paise per hundred rupees.

(2) rates when levied in respect of cattle, sheep or goat shall not be less than 10 paise per animal and shall not exceed Rs. 2 per animal.

Explanation:-For the purposes of this rule a sale of agricultural produce shall be deemed to have taken place in a market area if it has been weighed or measured or surveyed or delivered in case of cattle in the market area for the purpose of sale, notwithstanding the fact that the property in the agricultural produce has by reason of such sale passed to a person in a place outside the market area.

(2) No fees shall be levied on agricultural produce brought from outside the market area into the market area for use therein by the industrial concerns situated in the market area or for export and in respect of which declaration has been made and a certificate has been obtained in Form V:

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Provided that if such agricultural produce brought into the market area for export is not exported or removed therefrom before the expiry of twenty days from the date on which it was so brought, the market committee shall levy and collect fees on such agricultural produce from the person bringing the produce into the market area at such rates as may be specified in the bye-laws subject to the maxima and minima specified in sub-rule (i):

Provided that no fee shall be payable on a sale or purchase to which sub-section (3) of section 6 applies."

Learned counsel for the parties are agreed that the

provisions of Rule 49 are not attracted and no fees are payable under it at the stage of entry into a market area if the agricultural produce in question is covered by sub-rule 2 of Rule 48, i.e. when such produce fulfils either of the following conditions:

- (1) It is brought from outside the market area there into for use therein by the industrial concerns situated therein or for export and in respect thereof a declaration has been made and a certificate has been obtained in Form V.
- (2) The sale or purchase of such produce comes within the purview of sub-section (3) of section 6 of the Gujarat Agricultural Produce Markets Act.

After hearing learned counsel for the parties, we accept this interpretation of Rules 48 & 49 which flows directly from the language employed therein, and hold that Rule 49 will have no application to any case which falls within the ambit of sub-rule (2) of Rule 48.

Mr. Sorabjee does not press any other point in support of the appeal which is accepted to the extent of the above interpretation of Rules 48 & 49 but is otherwise dismissed with no order as to costs.

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Appeal partly allowed.