

CASE NO.:
Appeal (civil) 1859-64 of 2002

PETITIONER:
H.S. JAYANNA AND BROS. AND ORS.

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT: 06/03/2002

BENCH:
V.N. KHARE & ASHOK BHAN

JUDGMENT:
JUDGMENT

2002 (2) SCR 261

The Judgment of the Court was delivered by

BHAN J. Leave granted in the special leave petitions.

Rice millers and commission agents in the State of Karnataka having licences under the provisions of the Rice Milling Industries (Regulation) Act, 1958 filed writ petitions challenging the validity of levy of market fee on rice by the Marketing Committees constituted under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (for short 'the Marketing Act').

Writ petitions were filed, inter alia, on the grounds as to whether the sale of rice by the rice millers to the State Government or its agents by virtue of the Karnataka Rice Procurement (Levy) Order, 1984 (for short 'the Control Order') is a sale for the purpose of Section 65 of the Marketing Act; when once paddy is subjected to levy of market fee, whether on sale of rice, market fee could be levied; whether the rice which is a processing commodity from a paddy could be subjected to market fee; and as to whether the provisions of the Marketing Act were repugnant to the Control Order framed under the Essential Commodities Act. The single Judge allowed the writ petition, aggrieved against which the State of Karnataka filed writ appeals. Few writ petitions which were filed after the admission of the writ appeals were ordered to be clubbed with the writ appeals. The writ appeals and the writ petitions were thereafter taken up together and disposed of by passing a common order. Before the Division Bench counsel for the parties addressed arguments on the following points:

(1) Whether sale of rice by the Rice Millers to the State Government or its agent by virtue of procurement order is a sale for the purpose of Section 65(2) of the Marketing Act.

(2) When once paddy is subjected to levy of market fee, whether on sale of rice, market fee can be levied or no..

(3) Whether the rice which is a processing commodity from a paddy will be subjected to market fee or not.

(4) Whether the provisions of the Marketing Act are repugnant to the control order and if so what is its effect.

The Division Bench accepted the appeals and dismissed the writ petitions. All the points raised in the appeals were decided against the rice millers and the commission agents. The first point was decided against the dealers relying upon the decision of this Court in Food Corporation of India v. State of Kerala, [1997] 3 SCC 410 wherein it has been held that sale of rice by the rice millers to the State Government or its agents by virtue of

procurement order is a sale. On the second point it was held that paddy and rice being two different commodities the market fee could be levied on paddy as well as rice. On the similar grounds question number 3 was decided against the dealers. On question number 4 the High Court opined that the provisions of the Marketing Act were not repugnant to the control order. For this reliance was placed on certain decisions of the same High Court.

Aggrieved by the judgment of the Division Bench the present appeals have been filed. Writ Petitions (Civil) Nos. 196, 194 and 437 of 1999, which were filed in this Court, were ordered to be listed with these appeals. The point being the same, these writ petitions are taken up and disposed of with the appeals. The facts are being referred from the appeals.

Counsel for the appellants addressed arguments on question number 4 only. The other points were given up and no arguments were addressed.

Relying upon the decision of this Court in Belsund Sugar Co. Ltd. v. State of Bihar and Ors., [1999] 9 SCC 620, it was contended on behalf of the appellants that since under the Control Order the entire field of marketing of rice was covered, therefore, the Marketing Act could not be made applicable to the sale of rice. A parallel was sought to be raised with the transactions concerning to sugarcane, sugar and molasses in Belsund Sugar Co. Ltd. (supra) to contend that the Marketing Act was not applicable in regulating the sale and purchase of transactions concerning rice in view of the Control Order. To fortify the submission reliance was placed on Section 6 of the Essential Commodities Act which provides that any order made under Section 3 of the Essential Commodities Act, 1955 would have effect notwithstanding anything inconsistent contained in any other enactment. The same reads as:

"6. Effect of orders inconsistent with other enactments:-Any Order made under Section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act."

As against this the counsel for the respondents contended that no parallel could be drawn on the facts of this case with the sale and purchase of transactions concerning sugarcane, sugar and molasses in Belsund Sugar Co. Ltd. case (supra). That in the said case the Constitution Bench was dealing with the legality of levy of market fee under the provisions of the Bihar Agricultural Produce Markets Act, 1960 pertaining to different Commodities, i.e., Sugarcane, sugar, and molasses; wheat products-atta, maida, suji, bran etc. vegetable oil; rice-milling; milk and milk products; and tea. The Bench dealt with each of these Commodities separately. Only in the case of purchase of Sugarcane, and sale of sugar and molasses by the sugar factories, it was held that since the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 passed by the Bihar Legislature under Entry 33 of the Concurrent List covered the entire field on the marketing of supply and purchase of Sugarcane as well as the manufactured items therefrom the Bihar Agricultural Produce Act, 1960 enacted under Entries 26, 27 of the State List read with Entry 28 therein would not be applicable. By referring to the different paragraphs of this judgment it was contended that the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 covered the entire field on the marketing of Sugarcane as well as the manufactured items whereas in the present case the Control Order did not cover the entire field of the marketing of the rice. That the Marketing Act was not repugnant to the Control Order. That the Control Order did not cover the field which was sought to be covered by the Marketing Act. It dealt with separate and distinct matters which were not covered under the Control Order and therefore the question of its being repugnant or inconsistent with the Control Order thereby making it ineffectual in terms of Section 6 of the Essential Commodities Act, 1955 did not arise. That the Bench had passed the order regarding Sugarcane or manufactured items therefrom on the peculiar provisions of the two Acts involved in the said case whereas regarding all other products i.e., wheat products-atta, maida,

suji, bran etc. vegetable oil; rice-milling, milk and milk products; and tea the levy of market fee was upheld. We find considerable force in the submissions made by the counsel for the respondents.

This Court while dealing with the sugar matters considered the applicability of the Bihar Agricultural Produce Markets Act, 1960 to the transactions of purchase of sugarcane and sale of sugar and molasses by the sugar mills keeping in view the fact that regulation of these transactions was already affected by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 as well as by the Sugarcane (Control) Order, 1966 both issued under Section 3 of the Essential Commodities Act, 1955. It was held that the Bihar Agricultural Produce Markets Act, 1960 had been enacted by the Bihar Legislature as per the legislative powers vested in it by Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution, which read as under:

"26. Trade and commerce within the State subject to the provisions of Entry 33 of List III.

27. Production, supply and distribution of goods subject to the provisions of Entry 33 of List III.

28. Markets and fairs."

That if location of markets and fairs simpliciter and the management and maintenance only were contemplated by the Bihar Agricultural Produce Markets Act, 1960 then they would fall within the topic of legislative power envisaged by Entry 28 of List II. But since the Bihar Agricultural Produce Markets Act, 1960 dealt with supply and distribution of goods as well as trade and commerce therein to regulate the sale and purchase of agricultural produce to be carried on in the specified markets under the Act; to that extent the provisions of Entry 33 of List III would override the legislative powers of the State Legislature in connection with legislations dealing with trade and commerce in, and the production, supply and distribution of goods. Under Entry 33 of the Concurrent List, the topic of trade and commerce in and the production, supply and distribution of goods enumerated therein at sub-clause (b), were listed as items of foodstuffs, including edible oilseeds and oils. It was concluded that to the extent the Bihar Agricultural Produce Markets Act, 1960 sought to regulate the transactions of sale and purchase of sugarcane and sugar which were foodstuffs and trade and commerce therein, it had to be held that the Bihar Agricultural Produce Markets Act, 1960 being enacted under the topics of legislative powers under Entries 26, 27 and 28 of List II would be subject to any other legislation under Entry 33 of the Concurrent List. Since the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 had been enacted in exercise of its legislative powers under Entry 33 of the Concurrent List therefore the field covered by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 would obviously remain exclusively governed by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 and to the extent the latter Act carves out an independent field for its operation, the sweep of the general field covered by the Bihar Agricultural Produce Markets Act, 1960 which covered all types of agricultural produce, would pro tanto get excluded qua sugarcane and the products prepared out of it.

After considering the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 in extenso from paragraphs 18 to 45 it was concluded:

"The aforesaid provisions of the Sugarcane Act leave no room for doubt that the Bihar Legislature in its wisdom has enacted a special machinery for regulating the purchase and sale of sugarcane to be supplied to sugar factories for manufacturing sugar out of the sugarcane produced for them in the reserved area. The relevant provisions of the Act project as well-knit and exhaustive machinery for regulating the production, purchase and sale

of sugarcane for being supplied as appropriate raw material to the factories manufacturing sugar and molasses out of them."

After considering the Rules framed under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 in paras 46 and 47 it was again concluded as under:

"The aforesaid provisions, therefore, clearly indicate that the need for regulating the purchase, sale, storage and processing of sugarcane, being an "agricultural produce", is completely met by the comprehensive machinery provided by the Sugarcane Act enacted by the very same legislature which enacted the general Act being the Market Act."

After reaching this conclusion on the provisions of the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 it was observed in para 48, as under:

"Once that conclusion is reached, it becomes obvious that the Market Act which is an enabling Act empowering the State authorities to extend the regulatory net of the said Act to notified agricultural produce as per Section 3(1) will get its general sweep curtailed to the extent the special Act being the Sugarcane Act enacted by the very same legislature carves out a special field and provides special machinery for regulating the purchase and sale of the specified "agricultural produce," namely sugarcane."

By a notification issued under Section 42 of the Bihar Agricultural Produce Markets Act, 1960 the State of Bihar exempted all sugar mills from the provisions of the Bihar Agricultural Produce Markets Act, 1960 with regard to their sale and purchase of agricultural produce notified under sub-section (1) of Section 4 of the said Act.

The said Notification read as under:

"S.O. 550 dated 22-3-1976 Published in Bihar Gazette (Extra-Ordinary) dated 23-3-1976. In exercise of the powers conferred under Section 42 of the Bihar Agricultural Produce Markets Act, 1960, the Governor of Bihar is pleased to exempt all sugar mills from the provisions of Section 15 of the Bihar Agricultural Produce Markets Act, 1960 with regard to their sale and purchase of agricultural produce notified under sub-section (1) of Section 4 of the said Act ."

Section 15 was described to be the heart of the Bihar Agricultural Produce Markets Act, 1960 and since the sugarcane mills were exempted from applicability of the provisions of Section 15 it was held:

".....that the State Government had given up its erstwhile intention of regulating the sale and purchase of sugarcane as per Section 3(1) of the Market Act which could not survive any further after the issuance of the aforesaid exemption notification....."

Thereafter, the Bench considered the effect of Sugarcane Order, 1966 issued by the Central Government under Section 3 of the Essential Commodities Act. After referring to the provisions of the Control Order in extenso from paras 50 to 60 it was concluded in para 64: "the facts of the present case project even a stronger situation, so

far as the appellants are concerned. Whatever shortfall is found in the Sugar (Control) Order has been supplemented by the Sugarcane Act by the Bihar legislation itself. The reasoning which appealed to the Karnataka High Court in the above judgment rendered in the absence of a separate complementary legislation by the Karnataka Legislature gets further strengthened in the light of the Sugarcane Act in the present case. Consequently on a conjoint reading of the Sugarcane Order as well as the

Sugarcane Act, an inevitable conclusion has to be reached that the regulation of sale and purchase of sugarcane in the entire market area for which the general Act, namely, the Market Act is enacted, is fully governed and highlighted by these two special provisions harmoniously operating in the very same field. Therefore, there would remain no occasion for the State authorities to rationalise and reasonably visualise any need for regulating the purchase, sale as well storage of sugarcane in the market area concerned. The wide sweep of the general notification of Section 3 of the Market Act, therefore, will have to be read down by excluding from its general sweep sugarcane and its products as the definition of "agricultural produce" as noted earlier would otherwise include not only the primary produce of agriculture but also any other commodity processed or manufactured out of such primary agricultural produce. That is precisely the reason why the State of Bihar having realised the futility of the need about controlling and regulating the sale and purchase of sugarcane in the market area by the sugar factories excluded the operation of Section 15 of the Act, which noted earlier is the soul of the Act. It is easy to visualise that if transactions concerning an "agricultural produce" are excluded from the operation of Section 15 of the Act, the entire machinery available to the Market Committee to regulate such transactions would get out of the picture and there would be no room for the Market Committee to supply and infrastructural facility or other benefits to the seller of such agricultural produce on the one hand and the purchaser thereof on the other."

It would be seen from the above discussion that the Bench came to conclusion that the Bihar Legislature had by enacting the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 created a special machinery for regulating the purchase and sale of sugarcane to be supplied to sugar factories for manufacturing sugar out of the sugarcane produced for them in the reserved area and coupled with the fact that the sugar mills were exempted from the applicability of Section 15 of the Bihar Agricultural Produce Markets Act, 1960 the entire field was covered under the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981, the Bihar Agricultural Produce Markets Act, 1960 would have no applicability.

Similarly, for sale of sugar it was held that in view of the Sugarcane (Control) Order, 1966; Sugar (Packing and Marking) Order, 1970; Sugar (Restriction on Movement) Order, 1970 and Levy Sugar Supply (Control) Order, 1979 the market fee could not be levied under the Bihar Agricultural Produce Markets Act, 1960 as this field was covered under the four orders framed under Section 3 of the Essential Commodities Act pertaining to sugar.

Thereafter, the Bench considered the levy of market fee on Vegetable Oils from paras 122 to 124; Rice-Milling Industries from paras 125 to 134; Milk and Milk Products from paras 135 to 140 and Tea matters from paras 141 onwards and held that the market fee could be levied under the Bihar Agricultural Produce Markets Act, 1960 because the Control orders issued under the Essential Commodities Act did not cover the entire field.

Adverting to the facts of the present case we find that the Karnataka Rice Procurement (Levy) Order, 1984 has been issued with the object of procurement of rice is to see that rice is made available for public distribution and no artificial scarcity is created and the people do not suffer because of hoarding by certain unreasonable elements. It provides that every miller would sell everyday beginning with the date of commencement of the Order to the State Government or the purchase agent at the purchase price specified in Schedule I, 33-1/3% of the total quantity of rice conforming to specifications obtained by milling paddy owned by it in its rice mill everyday. The rice required to be sold to the State Government or the purchase agent was required to be delivered by the miller to purchase agent or to such other persons as may be authorised by the State Government or the purchase agent to take such delivery. No stock of rice is to be removed from the mill premises without delivery of the rice

to the State Government or its agents to the extent of 33-1/3% of the total production and obtaining a release certificate. Clause 7 provides that delivery of rice is to be made by the miller to the State Government or the purchase agent as the case may be in such lots, in such manner, at such place and at such time as per the directions of the State Government or the purchase agent. This Order does not enact a special machinery covering the entire field regulating the marketing, sale and purchase of rice as was done in the case of sugarcane by the Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 or the four orders framed under Section 3 of the Essential Commodities Act pertaining to sugar. A notification similar to the one issued by the State of Bihar exempting the millers from the provisions similar to the provisions of Section 15 of the Bihar Agricultural Produce Markets Act, 1960 has not been issued in the present case.

We have no hesitation in concluding that the entire field of regulating the purchase and sale of paddy or the rice produced out of the paddy is not covered under the Control Order. The provisions of the Marketing Act do not trench upon the field covered by the Control Order. There is no inconsistency between the Control Order and the Marketing Act. They do not cover the same field and therefore the question of any inconsistency, repugnancy or the Marketing Act being ineffectual in terms of Section 6 of the Essential Commodities Act in view of the Control Order issued under Section 3 of the Essential Commodities Act would not arise. The Control Order deals with the compulsory acquisition of 1/3 of rice of each variety produced by a miller at a purchase price fixed by the Government. It requires the miller to supply to the Government or its purchase agent and deliver the procured rice at a notified place. It does not deal with the sale and purchase of the remaining 2/3rd rice except that the mill is not permitted to remove the stock of rice from the mill premises without delivery of rice to the Government or its purchase agent and without obtaining a release certificate required to be taken under Clause 8 of the said order. It does not deal with the marketing or the facilities to be provided to the grower, seller and purchaser of paddy in the market area or to the seller or purchaser of the rice. The Control Order is thus limited in operation. The Marketing Act provides for the regulation of marketing of agricultural produce (which the rice is) and the establishment and administration of markets for agricultural produce and matters connected therewith in the State of Karnataka. The Marketing Act deals with the entire gamut of marketing of agricultural produce starting from the establishment of the market committees, markets, declaration of market area, market yard, market sub yard, regulation of marketing of specified agricultural produce therein and for obtaining a licence under the Act. The process of appointment/ electing the market committees, the powers and duties of the market committee (Section 63(1)), the facilities to be provided by the market committee (Section 63(2)) and the levy of market fee (Section 65). The Marketing Act does not deal with any of the provisions made in the Control Order. The Control Order and the Marketing Act do deal with the same subject but do not cover the same field. There is no conflict between them. They do not occupy the same field. The Marketing Act deals with a cognate matter on the same subject but not the field which is already occupied by the Control Order. Under the circumstances the reliance placed by the counsel for the appellants on Belsund Sugar Co. Ltd. (supra) is totally misplaced, on the contrary on the facts of the present case, the said judgment supports the case of the respondents.

For the reasons stated above, we do not find any merit in these appeals and writ petitions consequently the same are dismissed with no orders as to costs.