THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

<u>Writ Petition Nos.3547, 10121, 3411 and 2300 of 1996</u>

<u>COMMON ORDER:</u> (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

In all these four writ petitions, the petitioners are common. They have filed these writ petitions seeking a writ of mandamus to declare the action of the respondents, in collecting market fee from them merely for transporting rice and wheat, produced and sold outside the State of Andhra Pradesh, to the Vizag and Kakinada Ports, as illegal, arbitrary and without jurisdiction; and to direct the respondents not to collect any amount towards market fee from them.

The action of the Food Corporation of India (FCI), in seeking to collect agricultural market committee fees from the petitioners for remittance to the agricultural market committees of Visakhapatnam and Kakinada, is under challenge in these writ petitions. It is the petitioners' case that they export rice and wheat from India in large quantities to Nigeria and Bangladesh; they entered into agreements with the FCI for supply of rice and wheat after furnishing Earnest Money Deposits; in terms of the contract entered into with the FCI, the latter was required to supply and allocate wheat from Punjab, to the petitioners herein, for export to foreign countries; and the petitioners were entitled to select wheat from various godowns of the FCI in Punjab, to request the FCI to freeze the stocks selected by them on their account, and to send the same to Visakhapatnam through rakes, from where they were to be shipped abroad. On the ground that the District Manager, FCI, Visakhapatnam was insisting on payment of the market fees at 1%, under the provisions of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 (for short “the Act”), the petitioners invoked the jurisdiction of this Court.

Sri M.V.Durga Prasad, learned counsel for the petitioners, would submit that all the four writ petitions relate to the assessment year 1996-97; by way of an interim order this Court had directed the FCI to return the amounts, collected by them from the petitioners, on bank guarantees being furnished by the petitioners for a likesum; the FCI was injuncted from levying 1% agricultural market fee for future transactions; and the petitioners have kept the bank guarantees alive, ever since, till date.

According to the learned counsel, none of the transactions took place within the territorial limits of either of the agricultural market committees of Visakhapatnam and Kakinada; the agreements were entered into with the FCI at New Delhi; the wheat was selected from the FCI godowns in Punjab and Madhya Pradesh; the selected products from the FCI godowns were thereafter transported to Visakhapatnam and Kakinada Ports at the petitioners’ risk; and mere transportation of the petitioners own goods, purchased by them from the FCI godowns in Punjab and Madhya Pradesh, would not amount to sale or purchase within the territorial limits of the erstwhile State of Andhra Pradesh much less within the limits of the agricultural market committees of Visakhapantam and Kakinda. Learned counsel would further submit that the respondents have relied on Rules 74 and 75 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Rules, 1969 (for short “the Rules”), which have no application to the case on hand.

On the other hand, Sri Ch.Srinivas, learned Standing Counsel for the Agricultural Market Committee, would submit that the market fees were sought to be recovered from the FCI, and not from the petitioners herein; any grievance which the petitioners may have can only be agitated against the FCI, and not against the agricultural market committees of Visakhapatnam and Kakinada; and the agricultural market committee was justified in levying fees under Section 12 of the Act, and in terms of the Rules.

While the affidavits and counter-affidavits detail the respective stands of the petitioners and the respondents on factual aspects, it is wholly unnecessary for us, in judicial review proceedings under Article 226 of the Constitution of India, to undertake an exercise of examining these factual disputes as the power of the agricultural market committee, to levy fees under Section 12(1) of the Act, is only on an assessment being made under Section 12-B(4) of the Act, more so as the petitioners herein contend that they are not liable to pay the fees under the said Act, and the respective market committees lack jurisdiction to levy market fees on them.

Section 12 of the Act relates to levy of fees by the market committee and, sub-section (1) thereof, stipulates that the market committee shall levy fees on any notified agricultural produce, livestock or products of livestock purchased or sold in the notified market area at such rate, not exceeding two rupees as may be specified in the bye-laws for every hundred rupees of the aggregate amount for which the notified agricultural produce, livestock or products of livestock is purchased or sold, whether for cash or deferred payment or other valuable consideration.

Sections 12-A to 12-G of the Act were inserted in the 1966 Act by A.P. Act 4 of 1987. While Section 12-A of the Act relates to submission of return of the turnover by a trader, Section 12-B relates to assessment of market fees. Section 12-B(4) stipulates that where any trader, liable to pay market fees under the Act, (i) fails to submit return before the date specified in that behalf; or (ii) produce the accounts, registers and other documents after inspection; or (iii) submits a return subsequent to the date of inspection, the assessing authority may, at any time within a period of three years from the expiry of the year to which the assessment relates, after issuing a notice to the trader and after making such inquiry as it considers necessary, assess, to the best of its judgment, the amount of market fees due from the trader on his turnover for that year, and may direct him to pay, in addition to the market fees so assessed, a penalty equal to two times the market fees due.

Section 12-C of the Act relates to payment of market fees and other dues payable under the Act and, under sub-section (1) thereof, the market fees assessed under the Act, and penalty levied under Sub-sections (3), (4) and (5) of Section 12-B, shall be paid by the trader in such manner and within such time not being less than fifteen days from the date of service of the notice of assessment or of the levy of penalty as may be specified in such notice. Section 12-C(3) of the Act provides that, if the market fees assessed under this Act or any instalment thereof is not paid by any trader within the time specified therefor in the notice of assessment, the trader shall pay, in addition to the amount of such market fees or instalment, interest at the rate of twelve percent per annum of such amount from the date when the market fees become due. Section 12-C(4) of the Act stipulates that, if the market fees assessed or the penalty levied under the Act or any instalment thereof is not paid by any trader within the time specified therefor, the whole of the amount, then remaining unpaid, may be recovered from him as if it were an arrear of Land Revenue.

It is evident, therefore, that, save in cases where a person voluntarily makes payment on being called upon to pay the market fees, the assessing authority is required to pass an assessment order under Section 12-B(4) of the Act; thereafter make a demand for payment of the agricultural market fees; and, on failure of the trader to pay the said amount, to then initiate recovery proceedings as if the unpaid amount constitutes arrears of land revenue.

In the present case neither the FCI nor the petitioners have been assessed to tax under Section 12-B(4) of the Act. The said provision enables the assessing authority at any time, within three years form the date on which the assessment is made, to make an assessment after putting the assessee on notice and after giving them an opportunity of being heard. As the respondents were precluded from initiating assessment proceedings under Section 12-B(4) of the Act, in view of the interim order passed by this Court, suffice it to make it clear that this order shall not preclude the respondents, if they so choose, from initiating proceedings under Section 12-B(4) of the Act to assess the petitioners to agricultural market fees. If and when any such action is initiated, it is open to the petitioners to raise all such contentions as are available to them in law, including that the assessing authority lacks jurisdiction to levy agricultural market fee on them under the provisions of the Act. Without an assessment order being passed, the agricultural market committee could not have raised a demand for payment of agricultural market fees either on the petitioner or on the FCI.

The FCI has already refunded the amount collected from the petitioners on their furnishing bank guarantees for a like sum. Suffice it therefore to make it clear that, in case the agricultural market committee does not initiate assessment proceedings within three months from today, the FCI shall return the bank guarantee due to the petitioners duly discharging the same. If, on the other hand, the concerned agricultural market committee initiates assessment proceedings within the aforesaid period of three months, the assessing authority shall complete assessment proceedings within six months from today and, thereafter, take further action against the petitioners in accordance with law.

All the writ petitioners are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

17th August, 2017
Note: Issue C.C in one week.
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