

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 832 of 2013**

Shiv Kumar S/o Late Jularam Tandon Aged About 42 Years Agriculturist, R/o Village Sundari, PS and Tahsil Bhatapara, Revenue And Civil District Balodabazar- Bhatapara, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, Through: Secretary, Department of Agriculture, Mahanadi Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Chhattisgarh State Agricultural Marketing Board, Through Managing Director, Chhattisgarh State Agricultural Marketing Board, Beej Bhawan, G.E. Road, Telibandha, Dist Raipur, Chhattisgarh
3. Secretary, Krishi Upaj Mandi, Bhatapara, Tahsil Bhatapara District Balodabazar Bhatapara Chhattisgarh

---- Respondents

For Petitioner	: Shri Raghavendra Pradhan, Advocate.
For Respondent/State	: Shri UNS Deo, Government Advocate.
For Respondent/Board	: Ms. Pushpa Dwivedi, Advocate on behalf of Shri A.S. Kachhwaha, Advocate.
For Intervenor	: Shri H.B.Agrawal, Senior Advocate with Ms. Itu Rani Mukherjee, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Sanjay Agrawal, Judge****Judgment on Board****Per Ajay Kumar Tripathi, Chief Justice****31/08/2018**

1. Heard counsel for the parties.
2. Vide notification published in the official gazette dated 10.10.2011, an amendment by way of deletion to the provision of Section 32(5) has been brought about in what is known as Chhattisgarh Krishi Upaj Mandi Adhiniyam, 1972 (*for short 'the Act'*). Sub-section (5) of Section 32 of the Act, before the deletion, read as under:

"No commission agent or a broker or both shall act in any transaction between the agriculturist-seller or trader-purchaser, on behalf of an agriculturist seller nor shall he deduct any amount towards commission or dalali from sale proceeds payable to the agriculturist-seller."

It is the above deletion which has been challenged in the present writ application stating it to be *ultra vires*.

3. When the argument began on behalf of the Petitioner and on a close questioning, the counsel gave up the submission that the Legislatures lacked legislative competence to carry out such amendment. However, the other limb of the argument is that by deleting sub-section (5) of Section 32 of the Act, the very soul behind the above legislation has been taken out and such deletion also amounts to diluting, if not taking away the effect and object behind the said statute.
4. Learned counsel for the Petitioner argues that the object behind the above legislation was to bring the producers or the agriculturists face to face with the purchasers or the end users and to keep out the role of the middleman by providing a common place for trading on one platform. That was the reason why the Legislatures intentionally incorporated sub-section (5) to Section (32) of the Act to keep commission agents or brokers out of any sale or purchase of agricultural produce in the market area.
5. He further submits that similar provisions in fact had been tested earlier as violative of Article 19(1)(g) of the Constitution of India but a Division Bench of the Madhya Pradesh High Court in Writ Petition 1962/1997, decided on 01.08.1997, held in favour of sub-section (5), therefore, the said provision was held to be valid and legal.
6. Similar view was also taken by the Hon'ble Supreme Court which was the case of **Karan Singh and Another v. State of Madhya Pradesh & Others**, reported in AIR 1986 SC 1506.

7. The issue before us is not the provision as such, but whether the Legislatures could be prevented or barred from exercising their power of legislation which includes power to amend, modify or even delete certain provisions in the statute book. No doubt, sub-section (5) of Section 32 of the Act had in so many terms stated that there was no role for commission agent or broker in any transaction which was carried out in the market area but by deleting the said provision, the object behind the legislation in no way is either diluted or taken away. Section 31 of the said Act still talks in terms of the requirements and the safeguard against exploitation of the agriculturist and Section 31 reads as under:

"Regulation of persons operating in market area. -

No person shall, in respect of any notified agricultural produce, operate in the market area as commission agent, trader, broker, weighman, hammad, surveyor, warehouseman, owner or occupier of processing or pressing factories or such other market functionary except in accordance with the provisions of this Act and the rules and bye-laws made thereunder."

8. In our opinion, Section 31 of the Act is more rigorous than sub-section (5) of Section 32 in terms of imposing prohibition of barring persons to operate in a market area in any of the nomenclatures which have been used by the Legislatures in the said Section. Not only this, there are other provisions as well which are very much on the statute book and the basic essence and object behind the said Legislation does not fail merely because of deletion of a particular sub-section of the statute.
9. However, the State, in its counter affidavit had tried to explain the object and reason behind the said amendment which was notified on 10.10.2011, on the ground that the State and the Legislatures had gained certain experience in the working of the legislation over a period of time and looking at the condition of the agriculturists of the State of Chhattisgarh, some of whom being totally illiterate and not exposed to the market conditions have been exploited by the middleman by trying to

persuade them not to deal with their commodity by going to a market area but may be to dispose it off at their home or fields. Besides, since most of these agriculturists do not understand the basics of economics in such trading, it was felt by the Legislatures that sub-section (5) of Section 32 of the Act prohibits all kinds of agents or brokers in any kind of transaction and this may come in the way of helping the agriculturists by permitting set of people or persons who can act as agents on behalf of the agriculturists instead of the traders or the purchasers.

10. The amendment was brought about to reach the object of the legislation and to strengthen the hands of the agriculturists looking at their socio economic conditions prevalent in the State of Chhattisgarh. The State, in fact, would like to provide services of such persons by allowing them and introducing them in the market area on behalf of the agriculturists who will be able to not only get a better bargain for the producers but also understand the working of the market much better than most of the producers dealing with the agricultural produce, which are required to be sold within the market area.
11. Be that as it may, we do not find that the amendment, which is deletion of sub-section (5) of Section 32 of the Act, in any manner can be declared to be *ultra vires* and therefore, the challenge thrown to such repeal in the present writ application does not merit consideration. The said amendment dated 10.10.2011 is held to be *intra vires*.
12. The writ application stands dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE