ADSL 1.
August 10, 2023.
MNS.

WPA No. 19137 of 2023

M/s. Edible Products (India) Ltd.
and another
Vs.
The State of West Bengal and others

Mr. Suddhasatva Banerjee,
Mr. Chayan Gupta,
Mr. Subhankar Chakraborty,
Ms. Dola Bahattacharya,
Mr. Saptarshi Bhattacharya

… for the petitioners.

Mr. Sirsanya Bandopadhyay,
Mr. Arka Kumar Nag

…for the State.

Ms. Suptapa Sanyal,
Mr. Debrup Bhjattacharjee,
Mr. Pradeep Kr. Tulsyan

…for the respondent no. 6..

Learned counsel appearing for the petitioners contends that the petitioners' vehicle containing edible oil, which is agricultural produce under the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 (hereinafter referred to as the 1972 Act), was detained for inspection by the respondent no. 6-authroity, apparently, for some unknown reason. Upon the petitioner asking for explanation, no reply was given by the said respondents. It is submitted that the petitioners, although not furnished with any reason for such seizure/detention, apprehends that such detention was done under the provisions of 1972 Act. However, learned counsel for the petitioners places reliance on Section 13 of the said Act to stress upon the proposition that only if a person carries on business or acts as a trader within a market area, the said provisions are applicable to the petitioners.

In the present case, it is submitted, by placing reliance on certain notifications annexed to the writ petition, that the place from which the petitioners procured the edible oil, that is, within the jurisdiction of the Cossipore Police Station, does not fall within any of the declared market areas. The previously existing regulated market area in that region was specifically rendered defunct by a notification of the Government.

Learned counsel next places reliance on Section 17 of the 1972 Act. The said provision deals with levy of fee by market committee. Sub-section (1) of Section 17 provides that notwithstanding anything contained in any other law relating to taxation of agriculture produce in force, the market committee shall levy fees on any agricultural produce “purchased or sold in the market area”, as stipulated therein.

However, by placing particular reliance on explanation (i), it is contended that the same stipulates that, for the purpose of sub-section (1) thereof, all agricultural produce taken out or proposed to be taken out of a market area shall, unless the contrary is proved, be presumed to have been sold within such area. Hence, it is submitted, the instances of both purchase and sale have been restricted to the market area from which the goods are taken out for the purpose of Section 17(1) of the 1972 Act.

Learned counsel next places reliance on sub-section (2) of Section 17, which provides that fees referred in sub-section (1) shall be paid by the purchaser of the agricultural produce in the manner as given therein. Clause (i) thereunder envisages that when a licensed trader is the buyer of any agricultural produce, he shall pay the fees to the market committee in the prescribed manner within a week from the day of the transaction. However, in Clause (ii), it is provided that when a licensed trader is the seller of any agricultural produce and the buyer is not licensed, the trader shall recover the fees from the buyer and deposit the same in the prescribed manner with the market committee within a week from the day of the transaction.

In the present case, it is submitted that the petitioner is a trader, who is not required to carry any licence at all within the contemplation of the 1972 Act, since the petitioners have not taken out the goods-in-question from any 'market area' as envisaged under the said Act.

Learned counsel next places reliance on the provisions of Section 17B of the 1972 Act, which provides for search and seizure. The same provides that the officers or employees of "the market committee" etc. shall have power to seize any agricultural produce "taken or proposed to be taken out of a market area" in any vehicle etc.

Section 17C of the 1972 Act, it is argued, provides for inspection of vehicles, boats etc. and submits that at any time when so required by any officer or employees of the market committee empowered by the State Government in this behalf, the driver or any other person-in-charge of any vehicle etc., which is taken or proposed to be "taken out of a market area", shall stop the vehicle, etc. and keep it stationary as long as may reasonably be necessary to allow the officer or employees empowered by the State Government to examine the contents in the vehicle and inspect all records relating to the agricultural produce carried, which are in the possession of the driver or other person-in-charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle etc.

It is argued that the petitioners do not fall within the purview of the said provisions. First, the petitioners were not taking out the goods out of any 'market area'. Secondly, the vehicle of the petitioners containing the edible oil has already been seized for an inordinate period of about ten days, since the detention took place on July 30, 2023, which is not "reasonable" within the contemplation of Section 17C under any stretch of imagination.

Learned counsel appearing for the respondent no. 6 places reliance on Section 3 of the 1972 Act. In the said Section, it is provided that the State Government may by notification declare any area as a market area within which "purchase and sale" of such agricultural produce as may be specified in the notification shall be regulated.

Learned counsel then cites Section 2(1)(t) of the said Act, which defines “trader” to mean a person ordinarily engaged in the business of purchasing and selling agricultural produce in such manner as may be prescribed, as a principal or a duly authorised agent of one or more principals and includes the person ordinarily engaged in the business or processing or preservation of agricultural produce but does not include an agriculturist.

Learned counsel next cites sub-section (ta) of Section 2(1), which defines “transportation” to mean taking agricultural produce by push cart, bullock cart, truck, boat, vessel or other vehicle in course of business for marketing area from one place to another.

At this juncture, learned counsel takes the court through the definition of “business” as given in Section 2(1)(ca), where the said terms has been defined to mean purchase and sale, processing, value addition, storage, transpiration and connected activities of agricultural produce.

Learned counsel submits that the petitioners, being traders and transporters within the contemplation of the said provisions, come within the purview of 1972 Act.

By placing reliance on Section 13 of the 1972 Act from the perspective of respondent no. 6, learned counsel argues that, within the ambit of the said provision, any person carrying on business or acting as a trader is subject to production of a licence as per the said provision.

It is submitted that in the event Section 13 is not applicable directly, sub-section (2) of Section 17 comes into play, since it contemplates any licence to trader, who is either the buyer or the seller of any agricultural produce, within the stipulations made under the said sub-section.

Learned counsel for the respondent no. 6 cites an unreported co-ordinate Bench judgment dated March 15, 2023 where, according to learned counsel, in an identical situation, the petitioner agreed to pay the levy, upon which the vehicle was released.

Upon hearing learned counsel for the parties, the first provision which is required to be looked into is Section 13 of the 1972 Act. In the present case, it is required to be noted, that admittedly, the petitioners have taken out the agricultural produce from an area, which does not come under the purview of any market area as contemplated in the 1972 Act. As such, the petitioners cannot be said to be required to carry any licence in that regard.

Section 13 provides that after six months from the declaration of any area as a market area, no person shall “within the market area” carry on business or act as a trader.

Section 17 provides that notwithstanding anything contained in any other law relating to taxation of agricultural produce, “the market committee” shall levy fees on any agricultural produce purchased or sold in the market area. The expression “market area”, as used in Sections 13 and 17, being within the same Statute, have to be seen in similar context.

Since the place from which the petitioners took out the goods was not a market area, the provisions of Section 13, requiring the trader to obtain a licence, is not applicable to the petitioners at all.

The levy of fee by “the market committee” obviously refers to the market committee having jurisdiction over the petitioners in the capacity of trader, which is not applicable to the petitioners in the facts of this case.

Importantly, the expression “purchased or sold in the market area” used in Section 17(1) is qualified by Explanation I, which provides that, for the purpose of the said sub-section, all agricultural produce taken out or proposed to be taken out of a market area shall, unless the contrary is proved, be presumed to have been sold within such area. Hence, all the references to purchase and sale in the context of the present case have to refer back to the market area, if any, from where the goods were taken out in the first place. In view of the petitioners having not taken out goods from any market area, the expressions ‘purchase’ and ‘sale’, both pertain to a non-existent entity within the contemplation of the 1972 Act. The petitioners obviously do not come within the definition of traders who are taking out agricultural produce from a ‘market area’, for subjecting them to the provisions of levy of fees.

The argument of respondent no. 6, that in the event Section 13 does not apply, Section 17(2) is attracted to the petitioners’ case, cannot be accepted as well.

Subsection (2) of Section 17 provides that the fees referred to sub-section (1) [thereby referring to the provisions of sub-section (1), which has been discussed above] shall be paid by the purchaser of the agricultural produce concerned in the manner as prescribed therein. Sub-Section (I) provides that when a licensed trader is the buyer of agricultural produce, he shall pay the fees to the market committee.

In the present case, however, the petitioners are not "licensed traders", nor have they any necessity to obtain a licence, in view of the discussions above, since the petitioners are not taking out the goods or trading with the goods within the contemplation of Section 2 of the 1972 Act, from a market area.

Sub-section (ii) contemplates a situation when a licensed trader is the seller of any agricultural produce, thereby subject to the provisions as discussed above. Hence, the said sub-section also does not come to the aid of the respondents in any manner whatsoever.

Now coming to the legality of the detention of the vehicle of the petitioners carrying edible oil, the provision of Section 17B have not been exercised as yet, since the officers or the employees of any market area to which the petitioners are subject only would have the power to seize any agricultural produce carried by the petitioners.

In the present case, such criteria being absent, there could not have been a seizure. In any event, the provisions regarding seizure as stipulated in Section 17B have not been complied with in the present case.

Section 17C provides for inspection of the vehicles. It can at best be argued that the vehicle of the petitioners has been detained for the purpose of inspection. The language used in Section 17C is that at any point of time when so required by any officer or employees of the market committee empowered by the State Government in this behalf, the driver or any person-in-charge of any vehicle "shall stop the vehicle" and keep it "stationary" as long as may "reasonably" be necessary and allow the officer or employee empowered by the State Government as aforesaid to examine the contents in the vehicle and inspect all records relating to the agricultural produce carried, which are in the possession of such driver or other person-in-charge.

Certain cardinal features of the said sections are required to be discussed here. First, the driver or person-in-charge is required to "stop" the vehicle. The other expression used is "keep it stationary". The expression "stationary", by its very nature, denotes a pause in motion. As such, 'stopping' a vehicle and keeping it 'stationary', used in conjunction, cannot by any stretch of imagination tantamount to a detention for more than even a single day.

The acts of stoppage and keeping the vehicle stationary is only for the purpose of allowing the officer or empowered employee to examine the contents in the vehicle and inspect all records relating to the agricultural produce carried, *which are in the possession of such driver or other person-in-charge*.

Hence, read as a whole, Section 17C only envisages a temporary stoppage of a vehicle and keeping it stationary for the limited time which is reasonably required to allow an officer to examine the contents *in the vehicle or inspect records which are in the possession of the driver or such person-in-charge*.

Hence, no inspection or enquiry or investigation beyond the documents contained in the vehicle or as given out by the driver or the person-in-charge is contemplated by the phrase "inspection of vehicles" in Section 17C. Hence, the detention of the vehicle for a prolonged period, as in the present case, is not even contemplated within the purview of the 1972 Act. Thus, even in case where an officer or employee is permitted in law to have the said inspection, the vehicle cannot be detained for more than 24 hours in any event, since even 24 hours would be too long for an officer or employee, who is competent enough to be empowered to so inspect, to complete the examination of the contents in the vehicle and inspect the records, which are in possession of the driver or the person-in-charge. It is, at the most, a matter of minutes or hours.

Such officer or employee cannot look into or enquire about any further records or other papers, which are not available on the person of the driver or person-in-charge or in the vehicle on the spot, or tally his notes with any other authority situated elsewhere, within the contemplation of an inspection under Section 17C. Since the inspection is restricted to documents contained in the vehicle as well as the contents of the vehicle otherwise, the same inspection could not be carried over a few minutes, hours, or, at the most, a single day (the latter, in exceptional circumstances).

Hence, seen from all perspectives, the Birbhum Zailla Regulated Market Committee formed under the 1972 Act had no authority or jurisdiction to detain the vehicle of the petitioners for any purpose whatsoever.

It may be added that the reason for the State discarding the previous practice of putting up barricades even within market areas from where the agricultural produce was taken, that is, unnecessary harassment and delay to the traders of agricultural produce, would be frustrated if vehicles are detained in transit in the manner as done in the present case. Such practice ought to be deprecated immediately.

The only occasion when a vehicle can be so detained, that too for a limited period as discussed in Section 17C, or seized under Section 17B of the 1972 Act is when the goods are being taken out by any trader or any other person coming within the purview of the above act, from a market area as contemplated in the Statute.

In view of the above, WPA No. 19137 of 2023 is allowed, thereby directing the respondent no. 6 to immediately release the vehicle of the petitioners, including its shipment, that is, the edible oil as well as other products loaded on the said vehicle, as expeditiously as possible, positively within 48 hours from now.

The petitioners shall approach the respondent no. 6 for release of their vehicle within the said period for the respondent no. 6 to implement the direction as given above.

The parties shall act on the server copy of this order as well as the communication by the learned Advocates for the parties for the purpose of compliance, without insisting upon prior production of certified copy thereof.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)