Form J(1)

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Constitutional Writ Jurisdiction
Appellate Side

Present :
The Hon'ble Justice Bibek Chaudhuri.

W.P.A. 518 of 2022

Partha Pratim Chakraborty
-Versus-
The State of West Bengal & Ors.

For the Petitioner	**: Mr. Amales Ray, Adv.** **Mr. Deborshi Dhar, Adv.**
For respondent Nos.1 to 18.	**: Mr. Hirak Barman, Adv.** **Ms. Bedashruti Bose, Adv.**
For respondent Nos.11 & 12.	**: Mr. Subir Kumar Saha, Adv.** **Mr. Bikramaditya Ghosh, Adv.**
Heard & Judgment On	**: 10th February, 2023.**

Bibek Chaudhuri, J.

The Secretary of the Timber Merchants Association , Siliguri has filed the instant writ petition to adjudicate the issue as to whether the members of the Association after purchasing forest produce through e-auction conducted by the West Bengal Forest Development Corporation Limited in respect of reserved or protected forest depots are under obligation to pay fees under the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 while transporting the forest produce/timbers from the forest depots to their saw mills, retail outlets, place of business etc.

Suffice to mention here that the members of the Timber Merchants Association purchased timbers through e-auction conducted by the West Bengal Forest Development Corporation Limited. At the time of purchase, they required to pay the cost of the timber and applicable taxes and fees to the WBFDCM. While transporting such timbers to their respective saw mills or places of business, the respondent authorities are claiming fees under the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972.

It is contended on behalf of the petitioner that such collection of levy of market fees on timbers is impermissible in the eye of law and contrary to Section 17 of the 1972 Act. Therefore, the petitioner has prayed for issuance of the writ of mandamus directing the respondent and each of them to forbear from collecting levy of market fees on timbers which are purchased by the members of the association in e-auction held by the WBFDCL along with consequential reliefs.

The learned Advocates for the petitioner and the respondents have made their respective submissions to the tune of the petition.

Since the respondents are not called upon to file any affidavit-in-opposition, entire allegations made out in the instant writ petition is deemed to have denied by them.

Section 3 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972 speaks about declaration of market area. The Section runs thus:-

3. Declaration of market area.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, 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

(2) [* * * *]

[* * * *]

(3) [* * * *]

[(4) The State Government may, by notification, declare that a market area declared as such under sub-section (1) shall cease to be a market area with effect from such date as may be specified in the notification. When a market area thus ceases to be a market area any market established, declared or notified in such market area shall cease to be a market and the market committee constituted for the said market area shall stand dissolved with the following consequences:-

(a) the members of the market committee shall be deemed to have vacated their offices, and

(b) the unexpended balance of the Market Committee Fund and other properties and liabilities shall vest in the State

Government free from all encumbrances and in such manner as may be prescribed:

Provided that the liability of the State Government shall be limited to the extent of the unexpended balance of the Market Committee Fund and the value of the property vesting in the State Government as may be determined in the manner prescribed.]

Section 2 (g) defines Market as hereunder:

(g) "market" means a market established or declared as such under this Act for a market area and includes [a principal market yard [a sub-market yard, a private market yard and consumers' or farmers' market, i.e. *Krishak Bazar or Brihat Krishak Bazar etc.,*]] if any;

Section 2(h) defines market area in the following language :

(h) "market area" means any area declared to be a market area under section 3;

It is submitted by Mr. Ray, learned Advocate for the petitioner that Section 17 empowers the market committee to levy fees. Sub-section (1) of Section 17 says : Notwithstanding anything contained in any other law relating to taxation of agricultural produce in force, the market committee shall levy fees on any agricultural produce purchased or sold in the market area-

(a) for an item of agricultural produce as specified in Part A of the Schedule, at such rate or rates not exceeding two *per centum* of the amount for which such agricultural produce is purchased or sold, whether for cash or for deferred payment or for other valuable consideration;

(b) for an item of agricultural produce as specified in Part B of the Schedule, at such rate or rates not exceeding six *per centum* of the amount for which such agricultural produce is purchased or sold in bulk, and which does not constitute a retail sale or purchase, whether for cash or for deferred payment or for other valuable consideration, as the State Government may by notification specify.

It is not disputed by Mr. Ray that timber is an agricultural produce. However, the said timbers are purchased by the members of the association through e-auctions from the depots of WBFDCL. During purchase, the purchasers pay taxes in accordance with law only because their market places are situated within the market area as defined under Section 3 of the 1972 Act. They cannot be directed to levy fees because the members of the association do not purchase the timbers from the market area.

Learned Advocate for the State, on the other hand, has submitted a notifications to the effect that the entire area of the district of Cooch Behar, whole of Siliguri P.S., Naxalbari, P.S., Kharibari, P.S., Pansidena P.S., Debagram Mouza, P.S. Rajgonj of Jalpaiguri District, entire Kalimpong, entire area of the District of

Jalpaiguri as market area within which the purchase and sale of agricultural produce/produces specified in the West Bengal Agricultural Produce Marketing (Regulation) Rules, 1982 shall be regulated. Therefore, the entire area of the above-named Districts are treated to be the market area. Be it falls within the forest area or outside it. Therefore, the petitioner and other timber merchants are under obligation to levy fees under 1972 Act.

Preamble of 1972 Act states the Act as –

"An act to provide for the regulation of marketing of agricultural produce in West Bengal;

Whereas it is expedient to provide for the regulation of marketing of agricultural produce in West Bengal and for matters connected therewith;

And whereas previous sanction of the President under the proviso to clause (b) of Article 304 of the Constitution of India has been obtained;

It is hereby enacted in the Twenty-third Year of the Republic of India, by the Legislature of West Bengal as follows"

Thus the purpose and object of the 1972 Act is to regulate market of agricultural produce in West Bengal.

Indian Forest Act, on the other hand, is

"An Act to consolidate the law relating to forest, the transit of forest produce and the duty leviable on timber and other forest produce."

Therefore, the object of the above-mentioned two Acts are distinct and separate. The preamble of the Indian Forest Act clearly states that the statute relates to forests maintenance and upkeepment of forest, transit of forest produce and duty leviable on timber and other forests produce. Therefore, under the forest Act, if any person wants to purchase timber or other forest produce from the forest land, the State Government is empowered to levy tax or duty upon such purchaser.

Section 17 of the West Bengal Agricultural Produce Marketing (Regulation) Act, 1972, on the other hand, starts with the *non-obstante clause,* meaning thereby that in spite of existence of any other law relating to taxation, market committee is empowered to levy tax in respect of agricultural produce purchased or sold in the market area.

It is not denied that forest produce was purchased from the area notified as market area vide notifications dated 17th October, 2014, 7th November, 1983, 1st September, 2017, 26th April, 2000 and 17th October, 2014. When forest produce were purchased from the area covered in the above notifications, the purchaser are under obligation to levy fees to the market committee.

In view of the above discussions, I do not find any merit in the instant writ petition and accordingly, the instant writ petition is dismissed on contest, however, without costs.

(Bibek Chaudhuri, J.)

Mithun
Ct No.2.
Sl No.5.