Kishan Lal And Ors vs State Of Rajasthan & Ors on 23 March, 1990

Equivalent citations: 1990 AIR 2269, 1990 SCR (2) 142, AIR 1990 SUPREME COURT 2269, (1991) 1 PAT LJR 56, 1990 UJ(SC) 1 625, (1990) 183 ITR 433, (1990) 1 JT 550 (SC), 1990 SCC (SUPP) 742

Author: R.M. Sahai

Bench: R.M. Sahai, K.J. Shetty

PETITIONER:
KISHAN LAL AND ORS.

Vs.

RESPONDENT:
STATE OF RAJASTHAN & ORS.

DATE OF JUDGMENT23/03/1990

BENCH:
SAHAI, R.M. (J)
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SHETTY, K.J. (J)

CITATION:
1990 AIR 2269 1990 SCR (2) 142
1990 SCC Supl. 742 JT 1990 (1) 553
1990 SCALE (1)555

ACT:
Rajasthan Agricultural Produce Markets Act, 1961 : Section 40 and Schedule--Market fee--Levy of--On Khandsari, Shakkar, Gur and Sugar as agricultural produce--Validity of.
Constitution of India, 1950: Articles 14, 19, 301, 304 , 246, 254(2), Seventh Schedule, List I Entry 52, List H Entries 28, 66 and List 111 Entry 33--Market Fee--Levy of--On Khandsari, Shakkar, Gur and Sugar as agricultural produce--State Legislature--Competency of--Rajasthan Agricultural Produce Markets Act, 1961 Section 40 and Schedule--Repugnancy and validity of.
Words and Phrases: 'Sugar'--'Agricultural produce'--Meaning of.

HEADNOTE:

In the Writ Petition flied in this Court, the validity of Rajasthan Agricultural Produce Markets Act, 1961, levying market-fee on sale and purchase of agricultural produce was challenged for lack of legislative competence, and arbitrary inclusion of Khandsari, Shakkar, Gur and Sugar as agricultural produce in the Schedule. It was contended that inclusion of sugar was arbitrary inasmuch as it being a declared commodity of public importance under Entry 52 of List I of Schedule VII, the State Legislature was precluded from legislating on it and that being a mill or factory produce, it could not be deemed to be agricultural produce, which was basically confined to produce of or from soil.

Dismissing the Petitions, this Court,

HELD: 1.1 Sugar is one of the items which was included in the Schedule to the Rajasthan Agricultural Produce Markets Act, 1961, statutorily, right from the inception. Such inclusion is found in many States. Whether it was subsequently deleted or re-included or regrouped or was added later was immaterial, as Section 40 of the Act empowered State Government to amend or include any item in the Schedule of agricultural produce. Existence of such delegated power is

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usual feature of the statutes. No illegality or infirmity could be pointed out in it. Any challenge, therefore, rounded on excessive delegation of legislative power was misconceived. [144H, 145A-B]

1.2 The definition of the word "agricultural produce" in the Act includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not exhaustive but inclusive, neither excludes any item produced in mill or factories nor it confines its width to produce from soil. Nor switch over from indigenous method of producing anything to scientific or mechanical method changes its character. To say, therefore, that sugar being produced in mill or factories could not be deemed to be agricultural produce is both against the statutory language and judicial interpretation of similar provisions of the Act in statutes of other States. [145C-D, F]

Kewal Krishan Puri v. State of Punjab, [1979] 3 SCR 1217; Ramesh Chandra v. State of U.P., [1980] 3 SCR 166; Rathi Khandsari Udyog v. State of U.P., [1982] 2 SCR 966; Sreenivisa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1264; Ramesh Chandra v. U.P. State [1980] 3 SCR 194 and State of U.P. v. Ganga Das Mill, [1985] SCR 87-88, referred to.

Halsbury's Law of England, Vol. I and Paragraph 1845, referred to.

2. In view of the settled position of law that sugar legislations are within the scope of Entry 33 of Concurrent

List, no further discussion on clash between Entry 52 of List I of Vllth Schedule and Entry 28 of List II is necessary. There is no repugnancy in the Central and State legislation. Even if there would have been any, the Act having received assent of the President is fully protected by Article 254(2) of the Constitution. [146B-D]

Choudhary Tika Ram and Others v. State of U.P., [1956] SCR 393, followed.

JUDGMENT:

ORIGINAL APPELLATE JURISDICTION: Writ Petition No. 1555 of 1979 etc. etc. (Under Article 32 of the Constitution of India).

D.N. Dwivedi and Sarwa Mitter for the Petitioners. Dr. L.M, Singhvi, B.D. Sharma, Shri Narain, Sandeep Narain, Shrid Rizvi and D.K. Singh for the Respondents. The Judgment of the Court was delivered by R.M. SAHAI, J. Validity of Rajasthan Agricultural Pro- duce Markets Act, 1961 (for brevity the Act) levying market-fee on sale and purchase of agricultural produce in market-yard or sub-marketyard was challenged by dealers for lack of legislative competence, violation of Articles 14, 19, 30 1 and 304 of Constitution, absence of any quid pro quo in the fee paid and service rendered, illegal and arbi- trary inclusion of manufactured articles such as Khandsari, Shakkar, Gur and Sugar as agricultural produce in the sched- ule etc. Acts of other States, for instance, Punjab and Haryana and U.P. were also assailed for similar infirmities. Whether these petitions, which appear to be identical, are reproduc- tion of any of those petitions, which were pending in this Court from before is not relevant but various group of petitions of Punjab and Haryana dealers challenging constitutionality and legality of Act and its provisions including Gut, Khandsari and Shakkar as agricultural produce in the schedule of Punjab Act have been dismissed by different benches presumably because of decisions in Kewal Krishan Puri v. State of Punjab, [1979] 3 SCR 1217; Ramesh Chandra v. State of U.P., [1980] 3 SCR 166; Rathi Khandsari Udyog v. State of U.P., [1982] 2 SCR 966 and Sreenivisa General Traders v. State of Andhra Pradesh, AIR 1983 SC 1264. Despite these decisions spelling out basic principles for determining validity of marketing legislations dealing with agricultural produce the petitioners were not willing to take it lying down probably because none of these deci- sions dealt with sugar. It was urged that inclusion of sugar in the Schedule of the Act was arbitrary., primarily because it being a declared commodity of public importance under Entry 52 of List I of Schedule VII the State legislature was precluded from legislating on it. Its inclusion in the Schedule was also assailed as it being a Mill or Factory produce it could not be deemed to be agricultural produce which is basically confined to produce of or from soil. Sugar is one of the items which was included in the Schedule to the Act, statutorily, right from its inception. Such inclusion is found in Maharashtra, Gujarat, West Bengal, Bihar etc. Whether it was subsequently deleted or re-included or re-grouped or it was added later was immaterial as Section 40 of the Act empow- ered State Government to amend or include any item in the Schedule of agricultural produce. Existence of such delegat- ed power is usual feature of the statutes. No illegality or infirmity could be pointed out in it. Any challenge, there- fore, rounded on excessive delegation of legislative power was misconceived.

Inclusion of sugar in the Schedule was urged to be arbitrary as it was not produced out of soil the basic ingredient of agricultural produce. Fallacy of the submis- sion is apparent as it was in complete disregard of defini- tion of the word "agricultural produce" in the Act which includes all produce whether agricultural, horticultural, animal husbandry or otherwise as specified in the Schedule. The legislative power to add or include and define a word even artificially, apart, the definition which is not ex- haustive but inclusive neither excludes any item produced in mill or factories nor it confines its width to produce from soil. If that be the construction then all items of animal husbandry shall stand excluded. It further overlooks expanse of the expression "or otherwise as specified in the Sched- ule." Nor switch over from indigenous method of producing anything to scientific or mechanical method changes its character. Khandsari sugar, which is produced by open pan process and is not different from sugar produced by vacuum pan process except in composition, filterability and conduc- tivity as held in Rathi Khandsari Udyog, (supra) was held to be agricultural produce in some decisions. No distinction was made on method of production, namely, by modern plant and machinery. To say, therefore, that sugar being produced in mill or factories could not be deemed to be agricultural produce is both against the statutory language and judicial interpretation of similar provisions of the Act in statutes of other States. Rice or dal produced in mills have been held to be agricultural produce in Ramesh Chandra v.U.P. State, [1980] 3 SCR 194 and State of U.P. v. Ganga Das Mill, [1985] SCR 87-88. Even in Halsbury Law of England,' Vol. I the word agricultural produce for purpose of agricultural marketing schemes is understood as, 'including any product of agriculture or horticulture and any article of food or drink wholly or partly manufactured or derived from any such product and fleeces (including all kinds of wool) and the skins of animals'. In the same volume products covered by the provisions of EEC Treaty as to agriculture (classified according to the Brussels Nomenclature of 1965) are men- tioned in paragraph 1845. Sugar is one of them.

Another legalistic challenge regarding inhibition of State to legislate on sugar or of repeated argument of occupied field was more attractive than of any substance. Reliance on Article 246 of the Constitution was academic only. As far back as 1956 Constitution Bench of this Court in Choudhary Tika Ram and others v. State of U.P., [1956] SCR 393 examined the matter in detail and held sugar legis- lations to be within the scope of Entry 33 of concurrent list. It was observed that all 'Acts and the notifications issued thereunder by the Centre in regard to sugar and sugarcane were enacted in exercise of concurrent jurisdic- tion'. Effect of it was described thus, 'The Provincial Legislature as well as the Central Legislature would be competent to enact such pieces of legislation and no ques- tion of legislative competence would arise'. Any further discussion on clash between Entry 52 of List I of VII Sched- ule with Entry 28 of List II in the circumstances is unnec- essary. As regards the submission of occupied field suffice it to say that there is no repugnancy m the Central and State legislation. At least none was made out. Even if there would have been any the Act having received assent of the President it is fully protected by Article 254(2). For these reasons these petitions fail and are dismissed with costs.

N.P.V. Petitions dismissed.