



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.10970-10971 OF 2014

STATE OF PUNJAB & ORS. ...APPELLANT(S)

VERSUS

M/S PUNJAB SPINTEX LTD. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. These appeals, by special leave, assail the correctness of the judgment and orders dated 27.01.2010 and 24.09.2010 passed by the Punjab & Haryana High Court, respectively in Civil W.P. No. 14847 of 2009 and C.M. No. 3144 of 2010 in the Writ Petition.
2. The matter pertains to exemption from payment of Market fee and Rural Development fee sought by the Respondent herein. The Respondent company was incorporated on 26.12.2006 and set up a spinning unit at Bathinda for manufacturing cotton yarn out of raw cotton.

Thereafter, the Respondent company applied to the Appellant for grant of exemption from paying Market fee and Rural Development fee in terms of the Industrial Policy, 2003¹ and claimed to be similarly situated as M/s Partap Furane Pvt. Ltd., which is also engaged in the manufacturing of cotton yarn, and was granted exemption from payment of Market fee.

3. Respondent filed Civil W.P. No. 14847 of 2009 before the High Court of Punjab & Haryana seeking such exemption. Therein, in response to the notice issued, the Counsel for the State produced the minutes of meetings of the Empowered Committee held under the Chairmanship of the Chief Minister, Punjab, on 17.12.2009, which has been reproduced as follows:

“i). Integrated Cotton Ginning and Spinning Units which have not sought the status of Mega Projects would be eligible for incentives under the Industrial Policy, 2003, including exemption from payment of market fee as per Para 11.4.2(i). This would be for

¹ 2003 Policy, hereinafter

a period of ten years from the date of issue of the notification.

a. Units that have availed of the benefit under the Mega Projects Scheme but have now sought benefits under the 2003 Policy e.g. Cotton Units seeking exemption from market fee, would be eligible for incentives and concessions only under one specific package i.e. either the Industrial Policy of 2003 or the standard package of the incentives of Mega Projects finalized in November, 2007 as per their choice."

4. The High Court, *vide* impugned order dated 27.01.2010, dismissed the Writ Petition in the following manner:

“ xxx xxx

4. Learned counsel for the State also states that Market Fee will also cover Rural Development Fee and further action as per above decision will be taken within one month.

5. In view of above, learned counsel for the petitioner does not press this petition at this stage.

6. Dismissed as not pressed.”

5. Thereafter, the Appellant, being aggrieved by the aforesaid statement made by the Counsel on instructions, filed C.M. No. 3144 of 2010 in CWP No. 14847 of 2009 seeking modification in order

dated 27.01.2010. In the application, the Appellant stated that the earlier statement made by the counsel for the State, on the instructions from the officers of the Industry department, stating that the Market fee would also cover the Rural Development fee, was not factually and legally correct. It was further argued that Market fee was collected under the provisions of Punjab Agricultural Produce Markets Act, 1961² whereas the Rural Development fee is collected under the Punjab Rural Development Act, 1987³. Therefore, both the fees being separate, decision on exemption from Market fee did not automatically apply to Rural Development fee.

6. In reply to the application, Respondent submitted that even according to the Agriculture Department of the Government of Punjab, exemption from Market fee automatically covers Rural Development fee and annexed letters dated 09.10.2001, 28.08.2001 and 10.09.2001 to supply weight to their arguments. The High Court, *vide* order dated 24.09.2010, observed

² 1961 Act, hereinafter

³ 1987 Act, hereinafter

that the abovementioned letters clearly support the stand earlier taken on behalf of the State and thus, there is no ground for modification sought. The application was dismissed accordingly. Aggrieved by the said orders, the Appellant State is before us.

7. The core issue of the matter boils down to whether the exemption from payment of Market fee granted under Clause (i) of 11.4.2 of 2003 Policy of the Punjab Government can be said to include exemption from Rural Development fee as well or not.
8. Before proceeding any further, the relevant statutory provisions may be noticed.
9. Market Fee is levied under Section 23 of the 1961 Act which is as follows:

“23. Levy of fees. – A Committee may, subject to such rules as may be made by the State Government in this behalf, levy on advalorem basis fees on the agricultural produce bought or sold by licensees in the notified market area [at the rate of [one rupee and fifty Paise]] for every one hundred rupees:

Provided that-

no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

a fee shall be leviable only on the parties to a transaction in which delivery is actually made.”

10. Rural Development Fund is levied under Section 5 of the 1987 Act and the constitution of fund is dealt under Section 6. The relevant provisions are as follows:

“Section 5 - Levy and collection of fee

Subject to the rules made under this Act, there shall be levied for the purpose of this Act, a fee on *ad valorem* basis, at the rate of rupees two for every one hundred rupees, in respect of the agricultural produce, bought or sold in the notified market area.

- (2) The fee levied under sub-section (1) shall be paid by the dealer in such manner as may be prescribed and shall be realised by a Market Committee established under the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961) :

Provided that the burden of the fee shall be passed on by the dealer by adding it to the purchase price recoverable by him from the next

purchaser of the agricultural produce or the goods processed or manufactured out of it.

[(2-A) If any dealer fails to pay the amount of the fee levied under sub-section (1), he shall, in addition to the amount of fee be liable to pay interest on the amount of fee due from him at the rate of eighteen per centum per annum from the date of default.]

- (3) The arrears of fee levied under sub-section (1) shall be recoverable as arrears of land revenue.

Section 6 – Constitution of Fund

- (1) There shall be constituted a fund to be called the Punjab Rural Development Fund which shall vest in the Board.
- (2) The Fund constituted under sub-section (1) shall be administered by such officer or officers of the Board as may be appointed by it in this behalf.
- (3) The amount of fee (realised by a Market Committee established under the Punjab Agricultural Produce Markets Act, 1961 (Punjab Act 23 of 1961)] under sub-section (2) of section 5 shall be credited to the Fund within such period as may be prescribed and the grants from the [State Government and Local Authorities and the loans raised

by the Board under section 5-A] shall also be credited to this Fund.”

11. The relevant provisions of the 2003 Policy under which such exemptions have been sought are reproduced as follows:

“11.4 Development of Agro & Food Processing Industry

11.4.1 Definition

For the purpose of this policy, Agro-Food Processing Industries would mean an activity involved in the production of value added/high end products from primary agricultural/horticultural crops including floriculture & vegetables and their residues available in the State. It will also include cultivation of processing/superior quality & high yielding varieties of all kinds of crops and their post-harvest operations such as cleaning, grading, packaging, storage, transportation, marketing etc. The extent of value addition should be atleast 50% of the basic value. However, this will not include rice, pulse and cereal mills, decorticating, expelling, crushing, roasting and frying of oil seeds, preparing of bread other than by mechanised bakery, refining and hydrogenation of edible oils, including

manufacture of Vanaspati. It will further include the non-molasses based alcohol plants.

11.4.2 Incentives

- (i) For agriculture commodities other than wheat and paddy no market fees shall be levied on purchases made by agro and food processing units.
- (ii) Similarly for commodities other than wheat and paddy purchased by food and agro processing units, no Rural output tax shall be charged.

...”

12. Heard learned counsel for the parties and perused the material on record.
13. Learned Counsel appearing for the Appellant State argued that the Market fees under the 1961 Act and Rural Development fees under the 1987 Act are two different “fees” levied under two different Acts having different objects and purpose. That the 2003 Policy does not specifically exempt Rural Development fees and therefore, such an assumption cannot be made by the Respondent. Further, it was submitted that there are various industries that are exempted from Market fees and not exempted from Rural Development fees, including the

company M/s Partap Furane Pvt. Ltd. with which a similarity as being claimed by the Respondent.

14. On the other hand, Mr. Aman Lekhi, Ld. Senior Counsel appearing for the Respondent argued that the expression 'Market fees' has been used in the Policy of 2003 because both the 1961 Act and the 1987 Act contemplate levy of fees in a notified market area and not in the sense of fees levied under the 1961 Act as has been argued by the Appellant State. Respondent has extensively argued that there is a clear convergence of interests of both the 1961 Act and 1987 Act and that the 2003 Policy exempts the recovery of the fees under both laws as incentives for the Development of Agro and Food Processing Industries.
15. Respondent further argued that the High Court had rightly dismissed the application for review of the Order dated 27.01.2010 by relying upon Note dated 28.08.2001 which was issued by the Punjab Rural Development Board, Chandigarh (recording therein the decision of the Chief Minister of Punjab) that exemption on an item from Market fees will automatically be extended

to fees under the 1987 Act. Since the Respondent relied heavily on the Note dated 28.08.2001 before us as well as the High Court, it becomes pertinent for the State to duly counter such submission.

16. In this regard, the State submitted that the letters dated 28.08.2001, 09.10.2001, 10.09.2001 are clarified with the letters dated 02.11.2010 and 21.02.2011 respectively. The Letter dated 02.11.2010 has been issued by the Department of Agriculture referring to the Govt. Memo dated 09.10.2001 and states that it has been found that the letter dated 09.10.2001 was not issued with the approval of the Competent Authority and is accordingly withdrawn.
17. Further, the Memo dated 21.02.2011 is another letter issued by the Department of Agriculture which also refers to the earlier memo dated 02.11.2010. The relevant parts of the latter memo are reproduced below:

“... ..”

4. It is clarified that because in the recovery of Rural Development Fee, the rules regarding recovery of Market Fee are applicable Mutatis Mutandis,

therefore, the items which are directly exempted under certain conditions i.e: under rule 29 and 30, the same will be applicable in the recovery of Rural Development Fee, meaning that the exemption will be applicable on Rural Development Fee on the same items.

5. Besides, the exemption from Market fee under rules 30-C, is also granted by the State Govt. in exercise of the powers on case to case basis through a separate notification. Such cases are mainly covered under Industrial Policy 2003 or Guidelines for Mega projects 2007. Under these concessions, eligible units can be exempted from Market Fee or both from Market Fee and Rural Development Fee. In such cases, exemption from Market Fee will not be automatically applicable on Rural Development Fee, rather, the exemption from Rural Development Fee will be applicable if the competent authority issues a specific order/ notification in this respect.”

18. However, the Respondent was quick to bring to our notice that the communication dated 02.11.2010 only withdraws the Memo dated 09.10.2001 and not the Note dated 28.08.2001. Further, it was also argued that the Appellant's reliance on communication dated 21.02.2011 is

wholly misconceived as that communication is subsequent to the petition of the Respondent being disposed of by the High Court.

19. It is clear that the issue as to whether the 2003 Policy only grants exemption from the Market fees as levied under the 1961 Act and does not grant exemption from the Rural Development fees under the 1987 Act, has not been adjudicated by the High Court on merits. The said adjudication could not happen as the Counsel for the State had stated before the High Court that Market fee will also cover Rural Development fee and the High Court dismissed the petition as not pressed. This is pertinently where the trail of errors began. However, it did not come to an end over there. Even in the modification application preferred by the State, the High Court failed to delve into the merits of the matter and rather instantly went on to rely on the letters dated 09.10.2001, 28.08.2001 and 10.09.2001 referred by the Respondent, thereby dismissing the application for modification. The High Court, only recorded the submissions of the State counsel and thereafter referring to the three

notes/letters of 2001 of the Agriculture Department and dismissed the application. Neither the arguments were discussed and analysed nor the contents of three notes/letters were discussed.

Scope of exemption under the 2003 Policy

20. Appellant State had argued that the Market fees and Rural Development fees are collected under two different statutes which have two different objects and the said Acts have different purposes for utilization of the fees collected under the respective Acts. Whereas, the Respondent does not deny the fact that the fees are distinct under two separate statutes, yet they emphatically argued that both the Acts have intersecting statutory provisions and an overlap in the purpose and object of the two statutes shows a clear convergence of interests of both the Acts and therefore, the term “Market fees” in the 2003 Policy exempts recovery of the fees under both the 1961 Act and 1987 Act.
21. We note that the Appellant has correctly pointed out that the two Acts have different objects. The

preamble of 1961 Act clearly stipulates that it is a statute to provide for law relating to better regulation of purchase, sale, storage and processing of agricultural produce and for establishment of markets in the State. Whereas, the 1987 Act, on the other hand, is enacted for providing relief for the loss of agricultural produce, accelerating rural development, improve facilities for purchasers of agricultural produce and augment agricultural production. Rural Development Fund is admittedly collected by the Market Committees, but forms part of the Rural Development Fund constituted under Section 6 of 1987 Act.

22. It is not uncommon for different statutes, concerning similar area of law, to have convergence of interests to some degree. However, this would not imply that benefits extended to one statute will be presumed to flow to the other statute as well.
23. The 2003 Policy does not specifically exempt Rural Development fees and therefore, such an argument by the Respondent is highly presumptive, far-fetched and a clear attempt at

over-reaching the scope of the 2003 Policy. If such an assumption is allowed, it would considerably broaden the canvas of the incentives available under the 2003 Policy, which was never intended. In fact, such a loose interpretation of the State policies would lead to an ambiguity to the State's intent and render it opposite to the public policy.

24. In view of the aforesaid, holding that the exemption from Market fees is inclusive of Rural Development fees shall be contrary to the statutory provisions and objective behind both the Acts as well as the 2003 Policy. Thereby, the two fees cannot be equated or assumed to be same or similar for the purposes of exemption.

Effect of communication made by the State via various notes/letters

25. As mentioned before, the Respondent has heavily relied on letters dated 09.10.2001, 28.08.2001 and 10.09.2001 published by the Department of Agriculture to seek such an exemption. The Appellant has submitted before us that the letter dated 28.08.2001 was only issued by the office

Superintendent in the Appellant's office and was not a decision by the Government and has consequently been withdrawn as not being an authorized letter *vide* letter dated 02.11.2010.

26. It is apparent that the letter dated 02.11.2010 has been issued by the Department of Agriculture and duly withdrew the Note dated 09.10.2001. With regard to the Respondent's argument that the letter dated 28.08.2001 still remains applicable as not explicitly withdrawn, we note that the Memo dated 09.10.2001 itself referred and relied upon Note dated 28.08.2001 and, hence, any subsequent communication withdrawing Memo dated 09.10.2001 shall *ipso facto* apply to the earlier referred letters as well including the note dated 28.08.2001.

27. In furtherance, the Department of Agriculture has also issued a Memo dated 21.02.2011 to clarify and reiterate that when exemption from Market fees is granted, as in the instant case, such exemption will not be automatically applicable on Rural Development fee. Therefore, the Respondent's reliance on such earlier letters,

improper as they were, will not help them claim exemption from Rural Development fee.

28. From an in-depth analysis of the statutes and policies produced before us, it is apparent that no unit, other than those approved as Mega Project, has been allowed exemption from the payment of Rural Development fee, unless explicitly provided by the authorities. The Respondent herein, M/s Punjab Spintex Limited, has admittedly not been approved as a Mega Project and, therefore, not eligible for such exemption from Rural Development fee.

Conclusion

29. We accordingly hold that the Market fees and Rural Development fees are distinct and, there being no exemption from Rural Development fees mentioned in the 2003 Policy, it only encompasses exemption from Market fees in its ambit. The two fees under the two different statutory frameworks cannot be equated as one by the Respondent and they cannot assume that exemption from “Market fees” would subsume in itself “Rural Development fees” also.

30. Accordingly, the appeals are allowed. The impugned orders dated 27.01.2010 and 24.09.2010 are set aside. Civil W.P. No. 14847 of 2009 is dismissed as being bereft of any merits.

31. Pending application(s), if any, is disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASHANT KUMAR MISHRA)

NEW DELHI
JULY 15, 2024