

TALCHER MUNICIPALITY

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v.

TALCHER REGULATED MKT. COMMITTEE AND ANR.

JULY 28, 2004

[S.B. SINHA AND S.H. KAPADIA, JJ.]

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Orissa Agricultural Produce Markets Act, 1956:

S.4(4) r/w. ss.2(vi) and 2(vii)—Market—Owned by Municipality—Requisitioned by Agricultural Produce Market Committee—Liability of Municipality to transfer—Held, the provision clearly mandates that even the market of a Municipality or a Gram Panchayat falling within the market area will have to be transferred if requisitioned therefor—Orissa Municipal Act, 1950—ss.295 and 296—Constitution of India—Seventh Schedule—List II, Entries 5 and 28.

C

Constitution of India:

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Article 136—Plea involving investigation into question of facts—Held, cannot be allowed to be raised for the first time before Supreme Court.

Maxim 'Generalia specialibus non derogant'—Applicability of.

E

Words and Phrases :

Expression "regulation" occurring in Orissa Agricultural Produce Markets Act, 1956—Connotation of.

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Respondent Market Committee, sent a requisition to appellant Municipality to transfer to it, in terms of s.4(4) of the Orissa Agricultural Produce Markets Act 1956 (the Act), a particular market owned by the Municipality wherein notified agricultural produces were being bought and sold. Since there was no response from the Municipality, the respondent filed a writ petition which was allowed by the High Court. Aggrieved, the Municipality filed the present appeal.

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On the question whether the land and building of a daily market owned by a Municipality or a Gram Panchayat where notified agri-

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A cultural produces are bought and sold is liable to be transferred to the Market Committee, if requisition therefor is made :

Dismissing the appeal, the Court

B HELD: 1.1. Once a market area has been declared, the provisions of the Orissa Agricultural Produce Markets Act, 1956 will bring within its sweep even the markets belonging to a Municipality or a Gram Panchayat. Sub-Section (4) of Section 4 of the Act clearly mandates that even the market of a Municipality or a Gram Panchayat falling within the market area will have to be transferred if requisitioned therefor. If in a market where together with agricultural produces some non-agricultural produces are also sold, the same by itself would not disentitle the respondent to exercise its statutory power contained in Section 4(4) of the Act. [172-G-H; 173-E-F]

D 1.2. Entry 5 of List II of the Seventh Schedule to the Constitution of India whereunder the Orissa Municipal Act has been enacted would be subject to the provisions of Entry 28 of List II as the power to establish a market is a separate and distinct one. It is true that the primary object of the Act is to protect the producers *inter alia* from being exploited from the middlemen but the State has the requisite legislative competence to establish a market and in that view of the matter the Act falls within the ambit of markets and covered by Entry 28. The Act contains special provisions. It was enacted for better regulation of buying and selling of agricultural produce. The provision of s.4(4) of the Act operates notwithstanding anything to the contrary contained in any other law for the time being in force. The provisions of the Act, therefore, would prevail over the provisions of the Orissa Municipal Act. The maxim '*generalia specialibus non derogant*' would, thus be applicable in this case. [171-E-F; 173-C-D]

G *ITC Ltd. v. Agricultural Produce Market Committee and Others*, [2002] 9 SCC 232; *Engineering Kamgar Union v. M/s. Electro Steels Castings Ltd. & Anr.*, JT (2004) Supl. 1 SC 78; *D.R. Yadav and Another v. R.K. Singh and Another*, [2003] 7 SCC 110; *Indian Handicrafts Emporium and Others v. Union of India and Others*, [2003] 7 SCC 589 and *M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board*, JT (2004) 3 SC 423, relied on.

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M.C.V.S. Arunachala Nadar Etc. v. The State of Madras & Others, A
[1959] Supp. 1 SCR 92 and *Belsund Sugar Co. Ltd. v. State of Bihar and
Others*, [1999] 9 SCC 620, referred to.

1.3. The Power to regulate buying and selling of agricultural
produce must be interpreted in the context in which the same has been
used. Each person whoever is engaged in buying and selling of the
agricultural produce in the market shall be subject to the regulation
for which the Act has been enacted. The expression "Regulation" is a
term which is capable of being interpreted broadly. It may in a given
case amount to prohibition.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2150 of
1998.

From the Judgment and Order dated 21.11.1997 of the Orissa High
Court in OJC No. 10213 of 1996.

P.N. Misra, S. Misra, R.M. Patnaik and Ms. Kumud Lata Das for the
Appellant.

Janaranjan Das, Swetaketu Mishra, Ms. Moushumi Gahlot and Radha
Shyam Jena for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. : The Appellant Talcher Municipality constructed a
market purported to be in exercise of its power conferred upon it under
Section 295 of the Orissa Municipal Act, 1950. The control of the said
market is vested in the Municipal Council in terms of Section 296 thereof.
Agricultural produces within the meaning of provisions of the Orissa
Agricultural Produce Markets Act, 1956 (for short "the Act") are bought
and sold in the said market.

The Respondent-Market Committee sent a requisition dated 13.2.1996
to the Executive Officer of the Appellant stating therein that as it was in
possession of the said market where agricultural produces were being
bought and sold it was liable to transfer the same in terms of Sub-section
(4) of Section 4 of the Act. A similar request was made to hand over the

A Hat and the land situated at Angarua in terms of a letter dated 19.7.1996.

The Appellant having failing and/or neglected to comply with the said statutory requisition, the respondent, herein filed a writ petition before the High Court of Orissa praying for a direction upon the appellant for transferring its weekly market popularly known as Jajangi Weekly Market

B By reason of the impugned judgment, the said writ petition has been allowed.

The core question which falls for consideration is as to whether the land and building of a daily market owned by a Municipality or a Gram

C Panchayat where notified agricultural produces are bought and sold is liable to be transferred to the Market Committee, if requisition therefor is made.

Submission of Mr. P.N. Misra, learned senior counsel appearing on behalf of the Appellant is that the said Act which was enacted by the State of Orissa in exercise of its legislative competence contained in Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution of India: the object whereof being to protect the producers of agricultural produce from being exploited by the middlemen and profiteers and enable the agriculturists to secure a fair return for their produce, the market where pre-

D dominantly non-agricultural produces are bought and sold. Sub-Section (4) of Section 4 of the Act would not apply. Strong reliance in this behalf has been placed on *M.C.V.S. Arunachala Nadar Etc. v. The State of Madras & Others*, [1959] Supp. 1 SCR 92 and *Belsund Sugar Co. Ltd. v. State of Bihar and Others*, [1999] 9 SCC 620.

F Submission of Mr. Das. learned counsel appearing on behalf of the respondent, on the other hand, is that the language used in Section 4(4) of the Act being clear and explicit, the judgment of the High Court must be held to have correctly rendered. The learned counsel pointed out that

G the vires of Section 4(4) of the Act has not been questioned.

The Act has been enacted to provide for better regulation of buying and selling of agricultural produce and the establishment of markets for agricultural produce in the State.

H The Cooperation Department of the Government of Orissa issued

notifications dated 2.8.1993 and 19.11.1994 whereby and whereunder various cereals, oilseeds, gur and sugarcane, fruits, vegetable items and animal husbandry products were notified as agricultural produces.

By reason of the provisions of the Act not only wholesale but also retail sale of the agricultural produces as also the market wherein the buying and selling of the agricultural produces are carried on is sought to be regulated and controlled. A "market area" and the "market" as defined in Sections 2(vii) and 2(vi) respectively are required to be declared as such in terms of sub-section (I) of Section 4 and sub-section (5) of section 4 respectively.

Once the market area is declared, the rights of those dealing in agricultural produces would be governed by the provisions of the said Act.

The legislative competence of the State to enact such enactment in exercise of its power under Entries 26, 27 and 28 of List II of the Seventh Schedule of the Constitution of India is not in dispute. The Act deals with the supply and distribution of goods as well as the trade and commerce therein as it seeks to regulate the sale and purchase of goods carried on in the specified markets.

Entry 5 of List II of the Seventh Schedule of the Constitution of India whereunder the Orissa Municipal Act has been enacted would be subject to the provisions of Entry 28 as the power to establish a market is a separate and distinct one. It is true that the primary object of the Act, as has been held in *M.C.V.S. Arunachala Nadar* (supra) and *Belsund Sugar Co. Ltd.* (supra), is to protect the producers *inter alia* from being exploited from the middlemen but the State has the requisite legislative competence to establish a market and in that view of the matter the said Act falls within the ambit of markets and covered by Entry 28, (See *ITC Ltd. v. Agricultural Produce Market Committee and Others*, [2002] 9 SCC 232). The said decision has recently been followed in *Engineering Kamgar Union v. M/s. Electro Steels Castings Ltd. & Anr.*, JT (2004) Supl. 1 SC 78.

The said Act, as noticed hereinbefore was enacted for better regulation of buying and selling of agricultural produce.

The power to regulate buying and selling of agricultural produce must

A be interpreted in the context in which the same has been used. Each person whoever is engaged in buying and selling of the agricultural produce in the market shall be subject to the regulation for which the same has been enacted. The expression “regulation” is a term which is capable of interpreted broadly. It may in a given case amount to prohibition.

B Section 4(4) of the Act must be construed in that context.

Section 4(4) of the act reads thus:

C “Notwithstanding anything to the contrary contained in any law for the time being in force, the market committee may, after a notification issued under sub-section (1), by requisition, require any Municipality or Grama Panchayat to transfer to it any land or building in possession of such Municipality or Grama Panchayat wholly or partly situated within the concerned market area which immediately before the establishment of the market was being used by such Municipality or Grama Panchayat for similar purpose, and the Municipality or Grama Panchayat, as the case may be, shall within one month from the date of receipt of the requisition, transfer the land or building or both, as specified in the requisition to the market committee and the net income derived therefrom by the market committee under Section 11 shall be shared equally by the market committee and the concerned Municipality or Grama Panchayat, every year:

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F Provided that the share of the Municipality or Gram Panchayat in any one year shall not be less than eighty per cent of the average net income derived by it from land or building or both so transferred during the three years immediately preceding the transfer.”

G A market may be belonging to a Municipality of Gram Panchayat but once a market area has been declared the provisions of the said Act will bring within its sweep even such markets. Sub-section (4) of Section 4 clearly mandates that even the market of a Municipality or a Gram Panchayat falling with the market area will have to be transferred it requisitioned therefor. In the event of such transfer, the net income derived
H therefrom by the market committee under Section 11 shall be shared

equally by the market committee and the concerned Municipality or Gram Panchayat every year. The proviso appended to Sub-section (4) of Section 4 furthermore stipulates that the share of the Municipality or Gram Panchayat in any one year shall not be less than eighty per cent of the average net income derived by it from land or building or both so transferred during the three years immediately preceding the transfer.

It is true that the appellant Municipality is a local authority. It is furthermore true that in terms of Section 295 of the Orissa Municipal Act the appellant was entitled to provide places for use as public markets, the control of which, as noticed hereinbefore is to be exercised by the Municipal Council.

The Act, however, contains special provisions. The provision of Section 4(4) of the said Act operates notwithstanding anything to the contrary contained in any other law for the time being in force. The provisions of the said Act, therefore, would prevail over the provisions of the Orissa Municipality Act. The maxim '*generalia specialibus non derogant*' would, thus, be applicable in this case. (See *D.R. Yadav and Another v. R.K. Singh and Another*, [2003] 7 SCC 110; *Indian Handicrafts Emporium and Others v. Union of India and Others*, [2003] 7 SCC 589 and *M.P. Vidyut Karamchari Sangh v. M.P. Electricity Board*, JT (2004) 3 SC 423).

If in a market where together with agricultural produces some non-agricultural produces are also sold, the same by itself would not disentitle the respondent to exercise its statutory power contained in Section 4(4) of the Act. Once, the respondent has the requisite jurisdiction in terms of provisions of the said Act to notify the market area within which there may exist market owned by and/or belonging to a Municipality or a Gram Panchayat power under Sub-section (4) of Section 4 can, in our opinion, be exercised by the respondent Committee.

Contention of Mr. Misra to the effect that in the market in question apart from agricultural produces, non-agricultural produces are also bought and sold and thus, it was obligatory on the part of the authorities concerned to find out the dominant object of the Municipality in establishing the said market cannot be gone into by this Court for the first time as such a contention has not been raised before the High Court.

- A** The appellant furthermore did not raise any contention before the High Court as regard the effect of sale of non-agricultural produces in the said market. Such a contention which would involve investigation into questions of fact cannot be allowed to be raised for the first time before this Court; more so when before us no factual foundation has been laid down in the Special Leave Petition.
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Furthermore, the validity or legality of the said provision having not been questioned, the appellant at this stage cannot be permitted to urge that the same will have no application in the case of this nature.

- C** For the reasons aforementioned, there is no merit in this appeal which is accordingly dismissed. No costs.

R.P.

Appeal dismissed.