

SUPREME COURT

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was a graver offence; sometimes involving the security of the State, and so an amendment was introduced in 1949 constituting the possession of such apparatus a graver offence and imposing a more severe punishment. Therefore, it cannot be said that s. 6(1-A), inserted in the Act XVII of 1933 by the amending Act of 1949, is either covered by the provisions of the Indian Telegraph Act, 1885, or a surplusage not serving any definite purpose. Even from the history of the legislation we find it not possible to say that it disclosed an intention different from that envisaged in s. 6-A of the General Clauses Act.

For the aforesaid reasons, we hold that s. 6(1-A) of the Act continued to be on the statute book even after the amending Act of 1949 was repealed by Act XLVIII of 1952, and that it was in force when the offence was committed by the appellant.

The appeal fails and is dismissed.

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CHIMANLAL PREMCHAND

v.

THE STATE OF BOMBAY

(SYED JAFER IMAM and K. SUBBA RAO, JJ.)

Agricultural produce—Packed or pressed—If loses identity—State Government—Powers to make rule for regulation of business and condition of trading—Bombay Agricultural Produce Market Act, 1939 (Bom. 22 of 1939), ss. 2 and 26—Bombay Agricultural Produce Market Rules 1941, r. 65.

The appellant as a trader made purchases of full pressed cotton bales in the market area of Broach without requisite licence from the market committee, thereby contravening the provisions of r. 65(1) of the Bombay Agricultural Produce Market Rule 1941. The appellant, *inter alia*, contended that the Act and Rules passed thereunder did not apply to pressed cotton which having been pressed into bales had lost its identity and was no more an agricultural produce and that r. 65 was *ultra vires* inasmuch as its provisions were in excess of the rule making power of the State Government.

Held, that an agricultural produce by being packed in containers or pressed into bales does not in any way change its essential character, and continues to be an agricultural produce.

The fact that the cotton ginned or unginned is pressed into bales, or packed otherwise does not make it any less the cotton and is an agricultural produce as defined under s. 2 of the Bombay Agricultural Market Act, 1939.

Under s. 26 of the Act, the State Government has ample powers to make rules for the regulation of business and conditions of trading in the market and sub-s. (1) of the said s. 26 confers power on the State Government to make r. 65.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 200 of 1957.

Appeal by special leave from the judgment and order dated the September 11, 1956, of the Bombay High Court, in Criminal Appeal No. 742 of 1956, arising out of the judgment and order dated December 31, 1955, of the Joint Civil Judge (J.D.) and Judicial Magistrate, First Class, Broach, in Criminal Case No. 605 of 1953.

Purshottam Tricumdas, J. B. Dadachanji, S. N. Andley and Rameshwar Nath, for the appellants.

H. J. Umrigar and R. H. Dhebar, for the respondent.

1959. September 15. The Judgment of the Court was delivered by

SUBBA RAO J.—This is an appeal by special leave against the judgment of the High Court of Judicature at Bombay setting aside that of the First Class Magistrate, Broach, and convicting the appellant for contravening the provisions of r. 65 (1) of the Bombay Agricultural Produce Markets Rules, 1941, hereinafter called the Rules, and imposing on him a fine of Rs. 25.

The appellant was a trader carrying on business in cotton at Broach. On February 7 and 9, 1953, he purchased full pressed cotton bales from M/s. Ratanji Faramji & Sons in two instalments of 200 bales each through a licensed broker, Dahyabhai Acharatlal. He also purchased 100 bales from Halday Multi-Purpose Co-operative Society. All these purchases were made by the appellant as a trader in the market area of Broach without the requisite licence from the Market Committee. He was charged in the Court of

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the Joint Civil Judge (Junior Division) and Judicial Magistrate, First Class, Broach, for committing the breach of r. 65 (1) of the Rules. The Judicial Magistrate held that pressed cotton was not cotton, ginned or unginned, within the meaning of one of the items mentioned in the schedule to the Bombay Agricultural Produce Markets Act (hereinafter called "the Act"), and, therefore, the appellant did not commit any offence under the Act or the Rules framed thereunder. The State of Bombay carried the matter by way of appeal to the High Court of Bombay, and a Division Bench of the said High Court, consisting of Chainani and Shah, JJ., allowed the appeal and convicted the appellant for contravening the provisions of r. 65(1) of the Rules and imposed upon him a fine of Rs. 25. This appeal challenges the correctness of the judgment of the High Court.

Learned Counsel for the appellant raised before us the following three contentions: (i) the Act and the Rules framed thereunder did not apply to pressed cotton, and, therefore, the appellant did not contravene the provisions of r. 65 (1) of the Rules; (ii) r. 65 is *ultra vires* inasmuch as its provisions are in excess of the rule making power of the State Government; and (iii) the transactions in question were forward contracts for future delivery, and, as no delivery was intended or in fact made, the appellant cannot be said to have traded in cotton within the market area.

The answer to the first contention turns upon the interpretation of cl. (1) of sub-s. (1) of s. 2 of the Act read along with the relevant items or items in the Schedule. The relevant provisions read:

S. 2 (1): In this Act unless there is anything repugnant in the subject or context,—

(i) "Agricultural Produce" includes all produce of agriculture, horticulture and animal husbandry specified in the schedule;

* * *

(vi) "Market Area" means any area declared to be a market area under section 4.

Schedule E.

1. Fibres

(i) Cotton (ginned and unginned)

The Bombay Agricultural Produce Markets Rules, 1941 :

Rule 65. (1): No person shall do business as a trader or a general commission agent in agricultural produce in any market area except under a licence granted by the market committee under this rule.

* * *

(7): Whoever does business as a trader or a general commission agent in agricultural produce in any market area without a licence granted under this rule or otherwise contravenes any of the provisions of this rule shall, on conviction, be punishable with a fine which may extend to Rs. 200 and in the case of a continued contravention with a further fine which may extend to Rs. 50 for every day during which the contravention continues after the date of the first conviction, subject to the maximum of Rs. 200.

The gist of the aforesaid provisions may be stated thus: Agricultural produce includes all produce of agriculture specified in the Schedule. Cotton, ginned and unginned, is specified in the Schedule as an agricultural produce. A trader cannot do business in the said produce in any market area without obtaining licence from the Market Committee. If he does such business without a licence, he is liable to punishment under r. 65 of the Rules.

If pressed cotton is "cotton, ginned or unginned", specified in the Schedule, the appellant, having admittedly done business in the said cotton in the market area, has contravened the provisions of r. 65, and, therefore, he is liable to be convicted under r. 67 of the Rules.

It is contended that ginned cotton which has been pressed into bales is not cotton within the meaning of the Act. What is "pressed cotton" in bales? It involves a simple process described as pressing, and cotton is pressed into bales only to facilitate its transport from one place to another; it does not involve

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any chemical change or even a manufacturing process. Ginned cotton, after it is pressed into bales, continues to be ginned cotton, and it is sold and purchased only as cotton, though in bales. We find it difficult to accept the argument that pressed cotton is a different commodity. Nor do we find any relevancy in the argument that stockists, industrialists and exporters deal with pressed cotton and not loose cotton, because the said fact does not in any way change the essential character of the agricultural produce. If a trader carries on business in that commodity, the consideration whether the trader or the buyer is an agriculturist or a non-agriculturist is not relevant to the enquiry.

Items II to XI of the Schedule specify cereals, pulses, oilseeds, narcotics, sugarcane, fruits, vegetables, animal husbandry products, condiments, spices and others, and grass and fodder. A perusal of the items indicates that most of them would be sold in containers like baskets, packages, tins etc. It cannot be argued that when the pulses, fruits or vegetables are packed in a basket, the basket with its contents becomes a different commodity from that contained in it. So too, when tobacco is pressed and packed, it cannot be suggested that packed tobacco has changed its character. So also in the case of other products mentioned in the Schedule. We do not, therefore, see any principle or reason for treating cotton in a different way from other agricultural products.

It is said that the primary object of the Act is to help agriculturists, that agriculturists do not ordinarily deal or do business in bales of cotton and that the legislature could not, therefore, have intended to make the Act applicable to pressed cotton. It cannot be disputed that one of the objects of the Act is to protect the producers. That object would certainly be defeated, if within the market area a trader, whether he is an agriculturist or not, can do business of buying and selling cotton pressed into bales, for by that simple process he would be free from the restrictions imposed to protect the agriculturists. The object of such legislation is to protect the producers of agricultural crops from being exploited by the middlemen and profiteers

and to enable them to secure a fair return for their produce. This object would certainly be defeated if we were to accept the contention of the learned Counsel for the appellant.

Shortly stated the position is this: Cotton, ginned or unginced, continues to be cotton till it loses its identity by some chemical or industrial process. So long as the identity is not lost, the fact that it is pressed into bales or packed otherwise does not make it any the less cotton specified in the Schedule to the Act. In this view, the pressed cotton in bales is an agricultural produce as defined in s. 2(1)(i) of the Act, and, therefore, the appellant in doing business in the said produce without licence has contravened r. 65 of the Rules.

The second contention is that r. 65 is in excess of the rule making power of the State Government. This argument is elaborated by the learned Counsel in the following manner: Purporting to exercise the powers conferred by s. 26 of the Act, the Government of Bombay made r. 65 prohibiting any person from doing business as a trader, or as a commission agent, in any agricultural produce in any market area except under a licence granted by the Market Committee under that rule. Under s. 26(2)(e) of the Act, the State Government has power only to make rules fixing the maximum fees which may be levied by the Market Committee in respect of agricultural produce bought and sold by persons holding a licence under the Act in the market area. Under the Act the State Government is only empowered to grant a licence to any person to use any place in the market area for the purpose of buying or selling of any agricultural produce; therefore, under s. 26(2)(e) of the Act, the Government can only make a rule prescribing the fees in respect of a licence issued to a person to use any place in the said area and not prohibiting any other person from doing business without a licence in that area. So stated the argument appears to be plausible, but a scrutiny of the relevant provisions of the Act, the Rules made by the Government and the Bye-laws framed by the Market Committee shows that there is no basis for this contention. The relevant provisions read :

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The Bombay Agricultural Produce Markets Act, 1939.

S. 26 (1): The Provincial Government may, either generally or specially for any market area or market areas, make rules for the purposes of carrying out the provisions of this Act.

(2). In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for or regulate :—

* * *

(e) the management of the market, maximum fees which may be levied by the market committee in respect of agricultural produce bought and sold by persons holding a licence under the Act in the market area.

S. 27 (1): Subject to any rules made by the Provincial Government under section 26 and with the previous sanction of the Director or any other officer specially empowered in this behalf by the Provincial Government, the market committee may in respect of the market area under its management make bye-laws for the regulation of the business and the conditions of trading therein.

The Bombay Agricultural Produce Markets Rules, 1941.

Rule 65 (1): No person shall do business as a trader or a general commission agent in agricultural produce in any market area except under a licence granted by the market committee under this rule.

(2). Any person desiring to hold such licence shall make a written application for a licence to the market committee and shall pay such fee as may be specified in the bye-laws.

(3). On receipt of such application together with the proper amount of the fee the market committee may, after making such enquiries, as may be considered necessary for the efficient conduct of the market, grant him the licence applied for. On the grant of such licence the applicant shall execute an agreement in such form as the market committee may determine, agreeing to conform with these rules and the bye-laws and such other conditions as may be laid down by the market committee for holding the licence.

(4). Notwithstanding anything contained in sub-rule (3), the market committee may refuse to grant a licence to any person, who, in its opinion, is not solvent or whose operations in the market area are not likely to further efficient working of the market under the control of the market committee.

(5). The licence shall be granted for a period of one year, after which it may be renewed on a written application, and after such enquiries as are referred to in sub-section (3) as may be considered necessary, and on payment of such fees as may be specified in the bye-laws.

(6). The names of all such traders and general commission agents shall be entered in a register to be maintained for the purpose.

(7). Whoever does business as a trader or a general commission agent in agricultural produce in any market area without a licence granted under this rule or otherwise contravenes any of the provisions of this rule shall, on conviction, be punishable with fine which may extend to Rs. 200 and in the case of a continued contravention with a further fine which may extend to Rs. 50 for every day during which the contravention continues after the date of the first conviction, subject to the maximum of Rs. 200.

Bye-laws of the Agricultural Produce Market Committee, Broach.

Bye-law 33': (1). All traders, general commission agents, brokers, weighmen, measurers, and surveyors operating in the market area shall pay full fees for each market year or any part thereof as per Schedule given in Appendix No. 2 for obtaining licences, required to be taken by them, under Rules 65 and 67.

The said provisions may be summarized thus: Section 27 of the Act empowers the Market Committee, subject to any rules made by the State Government under s. 26 and with the previous sanction of the Director, to make bye-laws in respect of a market area for the regulation of the business and conditions of trading therein. Section 26(1) of the Act enables the State Government to make rules for the purposes of carrying out the provisions of the Act. In exercise of

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that power conferred under s. 26(1), the State Government made r. 65 prohibiting any trader from doing business in agricultural produce except under a licence granted by the Market Committee. In exercise of powers conferred under s. 27 on the Market Committee, it made bye-law 33 prescribing the fee payable in respect of a licence under r. 65 of the Rules.

The question is whether under s. 26(1) the State Government is empowered to make r. 65 prescribing the taking of a licence as a condition for doing business in a market area. It can do so for the purposes of carrying out the provisions of the Act. Section 27, which is a provision of the Act, enables the Market Committee to make bye-laws for the regulation of the business and the conditions of trading in the market area. To enable the Market Committee to discharge its functions under s. 27 of the Act more effectively, the Government made a rule prohibiting a trader from doing business in a market area without licence, and the Market Committee prescribed the fees payable in respect of the licence. The rule was certainly one made for the purpose of facilitating the Market Committee to function effectively under s. 27 of the Act. That the legislature conferred such a power on the State Government is also supported by the provisions of s. 27 of the Act. Under s. 27(1), the bye-laws made by the Market Committee for the regulation of business and conditions of trading in the market area are subject to the rules made by the State Government under s. 26. This indicates that under s. 26 of the Act, the State Government has also power to make rules for the regulation of business and conditions of trading in the market area, and that power can be spelled out from the provisions of s. 26(1) of the Act. Therefore, s. 26(1) confers ample power on the State Government to make r. 65. In this view, it is not necessary to invoke the provisions of s. 26(2)(e) to sustain the power of the State Government to make r. 65.

The third contention though raised was not pursued in view of the word "business" in r. 65(1) which is comprehensive enough to take in even forward contracts.

In the result the appeal fails and is dismissed,