(1994) 04 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5401 of 1994

Bedi Rice Mills APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 25-04-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Agricultural Produce Markets Act, 1961 — Section 40

Citation : (1994) 107 PLR 477

Hon'ble Judges : R.P. Sethi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Ashok Devgan, for the Appellant;

Final Decision : Dismissed

Judgement

R.P. Sethi and G.S. Singhvi, JJ.

1 The legality and constitutionality of the amendment of the Punjab Agricultural Produce Markets (General) Rules made vide notification No. G.S.R. 79/P.A. 23/61-S. 43/Amd.(33)/92 dated 11.11.1992 Published in 1993 LLT 5 9 in so far as it provides that no appeal shall be entertained unless the appellant has deposited with the concerned Committee a sum equal to twenty five percent of the amount of the fee assessed due from him, has been challenged by the petitioner mainly on the ground of being without jurisdiction, as a result of excessive delegation of powers and beyond the scope of Section 43 of the Punjab Agricultural Produce Markets Act, 1961 (for short the ''Act''). It is submitted that the list provided u/s 43 of the Act being exhaustive, the respondent - State had no jurisdiction to make the impugned provision as according to the petitioner the same is not covered under any one of the categories specified in Sub-section 2 of Section 43 of the Act.

2. The well settled proposition of law is that a right of appeal is neither natural nor an inherent right available to a litigant and is infact a creation of the statute.

It was held in Smt. Ganga Bai Vs. Vijay Kumar and Others, that a right of appeal cannot be assumed unless expressly given by the statute or by the rules having the force of the statute. Being the creature of the statute, the nature and character of the right of appeal is controlled by the provisions of the law conferring such a right. Section 80 of the Act has conferred a right of appeal upon the aggrieved person and any person objecting to an order passed by the Committee u/s 13 or by the Secretary of the Board under Sub-section (5) of Section 33 has a right of appeal in the manner prescribed. The words ''manner prescribed'' have been defined in Section 2(m) to mean prescribed by rules made under the Act. Vide amendment impugned in this petition, the right of appeal has been regulated prescribing the period of limitation, from of memorandum of appeal and the payment of court fee besides the mandate of depositing the amount equal to twenty five percent of the amount of the fee assessed as due from the appellant. The petitioner cannot be permitted to blow hot and cold in the same breath by having resort to the remedy of appeal under the rules but making his grievance directing the part payment of the amount due from him on the ground of its being illegal.

3. The submission of the learned counsel for the petitioner that amendment was beyond the scope of Section 43 of the Act is also without any substance. Section 43 of the Act provides-

" 43. Power to make rules.- (1) The State Government may by notification make rules for carrying out the purpose of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

xx xx xx xx xx"

4. A perusal of this section shows that the matters specified therein are not exhaustive but only illustrative. The words, "without prejudice to the generality of the foregoing power", and" for carrying out the purpose of this Act" are wide enough to authorise the government to frame the rules for regulating the filing of the appeal by a person aggrieved by an order passed against him. The proviso thus made vide the amendment impugned in this petition cannot be held to be beyond the scope of Section 43 of the Act.

5. The argument that the offended provision was discriminatory is also without any substance. It cannot be denied that the discretionary power of the legislature to make classification in laws dealing with taxation matters is wider as compared to other laws. It also cannot be denied that tine principle of equality before the law with its attendant limitation is applicable to taxation law but a duty is cast upon a person challenging the validity of the provision to show that the alleged offended provision was unconstitutional on the ground of discrimination. Mere harshness cannot be equated with discrimination. It was held by the Supreme Court in Murthy Match Works and Others Vs. The Asstt. Collector of Central Excise, and Another, that unconstitutionality and not unwisdom of a legislation is

the narrow area of judicial review. The Courts cannot substitute their wisdom for the wisdom of the legislature or the executive duty authorised to make a provision. The Courts would interfere only when the offending provision is shown to be either unconstitutional or beyond the scope of the, legislation. In the instant case, the petitioner has failed to show any unconstitutionality in the off ending provision. The amended provision providing for that no appeal shall be entertained unless the appellant has deposited with the concerned committee a sum equal to twenty five percent of the amount of the fee assessed due from him is legal, valid and according to law requiring no interference. The writ petition is accordingly dismissed in limine.

