

(2007) 01 MP CK 0025

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4267 of 1996

Central Hatcheries Pvt. Ltd. and others

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 19

Citation : (2007) ILR (MP) 741 : (2007) 1 MPJR 300 : (2007) 2 MPLJ 184 :
(2007) 2 MPLJ 111

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Girish Kekre, for the Appellant; Deepak Awasthy, Dy. Government Advocate for Respondent No. 1 and R.K. Samaiya with Shailendra Samaiya, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the Petitioners are seeking quashment of Annexure P/19 dated 26-2-1996 rejecting his representation. Earlier to the rejection of representation Annexure P/19. writ petition No. 3769/94 was filed by the present Petitioners which was disposed of by this Court vide Annexure P/12 dated 9-1-1995 directing Petitioners to submit representation along with the proof of purchase so made and the decision shall be taken by the authority. The Petitioners thereafter submitted representation dated 9-2-1995 (Annexure P/13) which has been rejected by the impugned order dated 26-2-1996 (Annexure P/19). Hence this petition.

In para 5.2 of the memo of writ petition, the Petitioners have pleaded that they are engaged in the business of Hatching, Breeding and sale of Hybrid chicks. The Petitioners have established large poultry farms at village Sundarpur and near Pariyat Water. Ranjhi in Jabalpur. Nearly three lac birds of different breeds such

as layers broilers etc. are bred in these farms. The eggs produced by parent birds are incubated and hatched in the farms in special incubators and thereafter chicks of two to three weeks duration are sold in the market. The Krishi Upaj Mandi Samiti (Respondent No. 3) did not dispute the averments made in para 5.2 of the petition. The Director of Mandis (Respondent No. 2) in its return has also not disputed the averments made in para 5.2 of the petition as it is clear from bare perusal of the return. Thus, the admitted position is that Petitioners are carrying on the business of Hatching, Breeding and sale of Hybrid chicks etc.

In para 5.5 of the petition, it has been specifically pleaded that maize is a specified agricultural produce and it is included in the Schedule to the M.P. Krishi Upaj Mandi Adhiniyam, 1972 (for brevity "Adhiniyam") at Item No. 2 under the head of "Cereals". The Petitioners are required to purchase huge quantity of maize which is an essential ingredient of the poultry feed. It is used exclusively for preparation of feed which in turn is used only in the farms of the Petitioners. The poultry feed is a composite mixture of maize, oiled cake, deoiled cake, fish, rice polish, soyabean, cake, shell grit and mineral mixture. It has been further pleaded in this para that approximately 50% of the poultry feed contains maize which is a rich nutrient. The Petitioner has also filed a copy of certificate issued by the Manager of Government Poultry Farm, Jabalpur certifying the composition of poultry feed as Annexure P/3.

In its return Respondent No. 3 specifically pleaded in replying the contents of para 5.5 that no specific reply can be given by the said Respondent for want of knowledge since no declaration has been given by the Petitioners before the said authority regarding the procedure adopted for running of the business of poultry farm of the Petitioners. The Respondent No. 2 also in its return admitted the averments made in para 5.5 of the petition. Thus, it is clear that the Petitioners are processing the maize for making the poultry feed for self-consumption and the same is not prepared either to sale or it was ever sold.

The contention of Shri Girish Kekre, learned Counsel for Petitioners is that the maize which is the major raw material for the preparation and processing of poultry feed is being brought from outside Madhya Pradesh and it is used only for the consumption of poultry feed. Thus, Section 19 of Adhiniyam is not at all applicable in the given case in hand for the simple reason that this section speaks about the power to levy market fee and is applicable to notified agricultural produce brought for sale or brought or sold in the market area at such rates as may be fixed by the State Government from time to time subject to minimum rate of 50 paise or minimum rate of two rupees for every one hundred rupees of the price in the manner prescribed. There is a proviso to this section which provides that no Market Committee other than the one in whose market area notified agricultural produce is brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time shall levy such market fees. The contention of learned Counsel for the Petitioners is that unamended Section 19 of the Adhiniyam is applicable to the Petitioners since the

matter relates to the year prior to 1997 when Section 19 was amended as the same was amended on 15-6-1997. This position is not disputed by learned Counsel for the Respondents.

The contention of learned Counsel for Petitioners is that the Petitioners simply brings the maize from outside the territory of Madhya Pradesh and for the purchase of processing and making the poultry feed for self consumption and the same is not being sold and, therefore, the action of Petitioners cannot be brought under the clutches, ambit and scope of Section 19 of the Adhiniyam. It has been further contended by learned Counsel for Petitioners that even otherwise the proviso is very clear and hence the action of Respondents levying fee is without jurisdiction. In support of his contention, learned Counsel has placed heavy reliance on the decision of this Court S.K. Goyal Oil Mill and Another Vs. Krishi Upaj Mandi Samiti, Indore and Another, .

Combating the aforesaid submission Shri Deepak Awasthy. learned Deputy Government Advocate as well as Shri R.K. Samaiya and Shailendra Samaiya. learned Counsel appearing on behalf of Respondents No. 3 submitted that the Petitioners have not registered themselves under the Adhiniyam and therefore they are not entitled for any relief. It has also been further contended by learned Counsel for the Respondents that despite asking to produce the entire record, the same has not been provided by the Petitioners, therefore, they cannot ask for any relief from this Court. By inviting my attention to Annexure P/19 which is the rejection order of the representation, it has been submitted that since the Petitioners did not submit the complete record and have not obtained the licence under the Adhiniyam, therefore, they are not entitled for any relief.

Having heard learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

The averments made in para 5.2 of the petition which I have mentioned hereinabove, has not been disputed rather they are admitted in the return of Respondents No. 2 and 3. It will be germane to quote the averments made in para 5.2 of the petition which reads thus:

5.2 The Petitioners are engaged in the business of Hatching, Breeding and sale of Hybrid chicks. The Petitioners have established large poultry farms at village Sundarpur and near Pariyat Water, Ranjhi in Jabalpur. Nearly three lac birds of different breeds such as layers broilers etc. are bred in these farms. The eggs produced by parent birds are incubated and hatched in the farms in special incubators and thereafter chicks of two to three weeks duration are sold in the market.

Thus, it is no more in dispute that the Petitioners are engaged in the business of hatching, breeding and sale of hybrid chicks.

Similarly, the averments made in para 5.5 of the petition are also admitted in the return filed by Respondents No. 2 and 3. The averments made in para 5.5 of the

petition reads thus:

5.5 Maize (makka) is a specified agricultural produce. It is included in the Schedule to the Act at Item No. 2 under the head of "Cereals". The Petitioners are required to purchase huge quantity of maize which is an essential ingredient of the poultry feed. It is used exclusively for preparation of feed which in turn is used only in the farms of the Petitioners. The poultry feed is a composite mixture of maize, oiled cake, deoiled cake, fish, rice polish, soyabean, cake, shell grit and mineral mixture. However, approximately 50% of the feed contains maize which is a rich nutrient. A copy of the certificate issued by the Manager of Government Poultry Farm, Jabalpur certifying the composition of poultry feed is marked as Annexure P/3.

Since the Respondent Nos. 2 and 3 did not dispute in their return, the averments made para 5.5 of writ petition memo, it is no more in dispute that the Petitioners are purchasing the huge quantity of maize which is an essential ingredient of the poultry feed and it is used exclusively for preparation of poultry feed which in turn is used only in the farms of the Petitioners as poultry feed.

In para 5.10 of the petition a specific pleading is made by the Petitioners that the local market at Jabalpur is not able to meet the maize requirements of the Petitioners and therefore almost the entire quantity of maize required for preparation and consumption of poultry feed is imported from other major maize producing States such as Andhra Pradesh, Gujarat and Maharashtra. The Respondents No. 3 in its return, though pleaded that the contents of para 5.10 are not admitted but it is only on the ground that the Petitioners have not given the details of the entire transaction. Respondent No. 2 has partly admitted these averments and has admitted that the Petitioners purchase the maize from Andhra Pradesh, Gujarat and Maharashtra as the local market is unable to fulfil the requirement of the Petitioners.

On account of the aforesaid pleadings and admitted position, it is as clear like a noon day that the Petitioners bring the maize which is the major requirement of poultry feed from outside Madhya Pradesh and process it for self consumption for the birds in poultry farms. Apart from this, in the earlier round of litigation this Court while deciding the writ petition of the Petitioner vide Annexure P/12 on 19-1-1995. has specifically held that it is not in dispute that if the agricultural produce is purchased outside the market area and is not brought for sale or brought or sold in the market area, the market fee is not leviable. Since it has been specifically pleaded in the petition which has been admitted and not denied in the return that the maize which is being purchased by the Petitioners from outside and is not brought for sale or the same is being sold in the market area, and since there is no dispute that the same is being used for self consumption of the poultry feed by the Petitioners, therefore I am of the considered view that no market fee is leviable against the Petitioners in terms of Section 19 of the Adhiniyam prevailing when the lis was filed and the cause of action arose to the Petitioners. This Court in the case of M/s S.K. Goyal Oil Mill (supra) in para 16

has specifically held that no market fee is leviable on the agricultural produce brought from outside the State of Madhya Pradesh for self-consumption, used or processed. Once the aforesaid legal position is settled, therefore, there could not be any justification on the part of the Mandi to recover the Mandi fee on such consignment. On the basis of above enunciation of law, I do not find any merit in the contention of learned Counsel for the Respondents that since the Petitioners have not registered themselves under the Adhiniyam, therefore, the Petitioners cannot ask for any relief.

For the reasons stated hereinabove, this petition succeeds and is allowed. The impugned rejection order of the representation of Petitioner Annexure P/19 dated 26-2-1996 passed by Respondent No. 3 is hereby set aside and it is held that Section 19 of the Adhiniyam which was prevailing at the relevant point of time is not applicable on the Petitioners. However, looking to the facts and circumstances of the case, parties are directed to bear their own costs.

Petition allowed.