
(1987) 09 MP CK 0038

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2765 of 1987

Chandra Shekhar Agarwal

APPELLANT

Vs

Krishi Upaj Mandi Samiti, Seoni and Others

RESPONDENT

Date of Decision : 10-09-1987

Acts Referred:

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 37(2)

Citation : AIR 1988 MP 281 : (1988) JLJ 279 : (1988) MPLJ 13

Hon'ble Judges : N.D. Ojha, C.J.;K.K. Adhikari, J

Bench : Division Bench

Advocate : K.N. Agarwal, for the Appellant; S.L. Saxena, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.D. Ojha, C.J.

This writ petition seeks quashing of the order dated 15-1-1987, a copy whereof has been filed as Annexure-E with the writ petition.

The petitioner is carrying on business of grains at Seoni and holds a licence from the Krishi Upaj Samiti, Seoni, the respondent No. 1, for the said purpose. By the impugned order dated 15-1-1987, the petitioner was informed that this licence had been cancelled for non-payment of the amount mentioned in the said order which according to the petitioner, represents the amount of interest on the price of agricultural produce as the said amount of price had not been paid by the petitioner to the agriculturist concerned within 5 days of the date of sale. The cancellation purports to be u/s 37(2) of the M.P. Krishi Upaj Mandi Adhiniyam, 1973, (hereinafter referred to as the Adhiniyam). The constitutional validity of Clause (c) of Sub-section (2) of Section 37 has also been challenged in the present writ petition.

In order to appreciate the submission made by the learned counsel for the petitioner, it may be pointed out that Sub-section (2) of Section 37 of the

Adhiniyam, as it stood earlier, was substituted by the M.P. Act No. 24 of 1986. It is this substituted provision which is sought to be declared as ultra vires.

For the sake of convenience, Sub-section (2) of Section 37 so substituted, is reproduced as hereunder

"(2)(a). The price of the agricultural produce bought in the market yard shall be paid on the same day to the seller at the market yard;

(b) In case the purchaser does not make payment under Clause (a), he shall be liable to make additional payment at the rate of one per cent per day of the total price of the agricultural produce payable to the seller within five days;

(c) In case the purchaser does not make payment with additional payment to the seller under Clauses (a) and (b) above within five days from the day of such purchase, his licence shall be deemed to have been cancelled on the sixth day and he or his relative shall not be granted any licence under this Act for a period of one year from the date of such cancellation.

Explanation : For the purpose of this clause, "relative" means the relative as specified in the explanation in Clause (a) of Sub-section (1) of Section 11."

According to the petitioner, the date of sale of the agricultural produce concerned was not 18-11-86, but was 22-11-1986. Without going into its merits, even if it is accepted for the sake of argument that the date of sale was 22-11-1986, the price had to be paid either on the same date as contemplated by Clause (a) or within five days thereof, together with interest as contemplated by Clause (b).

Nothing has been brought to our notice in this writ petition to indicate that price of the goods purchased by the petitioner was paid either on 22-11-86 or within five days thereof together with interest. That being so as a consequence thereof, the deemed cancellation of the petitioner's licence, as provided in Clause (c) was automatic and no exception can be taken to the impugned order.

The plea about Clause (c) of Sub-section (2) of Section 37 being ultra vires may now be considered. The ground on which the said clause is sought to be declared ultra vires is that cancellation of the licence has been made automatic without affording any opportunity to the purchaser to show cause. In other words, the submission made by the learned counsel for the petitioner is that Clause (c) of Sub-section (2) of Section 37 is ultra vires being in violation of the rules of natural justice. On the facts of the instant case, we find it difficult to agree with this submission also. In Union of India (UOI) Vs. Col. J.N. Sinha and Another, it was held :

"Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. As observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other

words, they do not supplant the law but supplement it." It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision either specifically or by necessary implication excludes the application of any or all the rules of principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power."

There seems to be a definite purpose in excluding the requirement of the rule of natural justice in enacting Clause (c) of Sub-section (2) of Section 37. Section 33 of the Adhiniyam is the section dealing with the power to cancel or suspend the licence. Sub-section (1) of Section 33 enumerates various contingencies in which licence can be suspended or cancelled. Sub-section (4) of Section 33 provides that no licence shall be suspended or cancelled under this section without giving an opportunity to show cause against such suspension or cancellation.

In enacting Clause (c) of Sub-section (2) of Section 37, on the other hand, the legislature made a deliberate departure in the matter of issuing show cause notice to the person whose licence was deemed to have been cancelled on the happening of the contingencies enumerated in Clauses (a) and (b) of Sub-section (2) of Section 37. The Adhinayam itself was enacted, as is well known for the benefit of the agriculturists and Sub-section (2) of Section 37 is aimed at achieving that purpose. An agriculturist, particularly in a State like M.P. having vast area, has to go to the market yard sometimes from long distance for selling his agricultural produce and the purpose of requiring payment of price of agricultural produce so sold as contained in Clause (a) obviously was to ensure that the agriculturist may not be put to any inconvenience and discomfort so that he may be in a position to go back home to attend to his normal duties after selling the agricultural produce. In order to meet the situation where the purchaser may not be in a position to pay the price of the agricultural produce on the same day, concession was given to him to make payment within five days of the date of sale with interest as already indicated above. Requirement of paying additional amount as interest, as contained in Clause (b) was again aimed at to compensate him for the expenditure which he may incur in staying on at a place away from" his home. It is to ensure compliance of this requirement of payment of price of agricultural produce to the agriculturist that the consequence of deemed cancellation of the licence was provided for in Clause (c) as deterrent. In our opinion, in this background it cannot be said that excluding the rule of natural justice would render Clause (c) as ultra vires.

The matter can be looked into from another angle. Clause (c) contemplates that the licence would be deemed to have been cancelled on the sixth day if payment, as contemplated in Clauses (a) and (b) had not been made within five days from the date of purchase. If payment had not been made as required by Clauses (a) and (b), there was nothing being left to prove on a show cause notice being given. If on the other hand payment had been made as required but under some misapprehension, the licence is deemed to have been cancelled, the licensee, whenever he is faced with such misconceived deemed cancellation of his licence, can show that he had made the requisite payment within five days of the date of purchase and consequently, the condition precedent for happening of the contingency of deemed cancellation, was not satisfied and as such, there could be no deemed cancellation.

For these reasons, the submission made by the learned counsel for the petitioner that Clause (c) of Sub-section (2) of Section 37 was ultra vires also has no substance.

No other point has been pressed

In the result, we find no merit in this petition. It is accordingly, dismissed.