(1993) 05 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6392 of 1992

Jagatjit Industries, Ltd. APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 04-05-1993

Acts Referred:

Citation : (1993) PLJ 504 : (1993) 3 RRR 480

Hon'ble Judges : A.L.Bahri, J and G.C.Garg, J

Advocate : Subhash Goyal, Advocates., G.R. Sethi, Sanjay Kaushal, J.N. Kaushal, Sr. Advocate, Advocates for appearing Parties

Judgement

A.L. Bahri & G.C. Garg, JJ.

1. Petitioner M/s. Jagatjit Industries Limited Hamira has impugned an order Annexure P3 passed by the Secretary Punjab State Agricultural Marketing Board. The petitioner is a licencee under the Punjab Agricultural Produce Markets Act, 1961 (for short ''the Act''). It purchases wheat, barley and maize from within the State of Punjab as also from Mandis outside the State of Punjab and brings the same to its factory at Hamira within the jurisdiction of Market Committee, Dhilwan for preparing malt, malt whisky and Maltova. The petitioner was sought to be assessed to market fee by the Market Committee, Dhilwan for the purchases made during the years 1980 to 1989. A liability of about one crore rupees was created against the petitioner on account of levy of market fee and penalty. This led to filing of a writ petition being 5828 of 1991 in this Court, which was allowed by a Division Bench of this Court, on June 7, 1991. The demand notice was quashed with liberty to the Market Committee to pass a fresh order. The Market Committee thereafter took proceedings to assess the petitioner for levy of market fee by requiring it to appear on July 15, 1991. Petitioner filed objections supported by affidavits claiming therein that no market fee is leviable on purchases of agricultural produce made from outside the State of Punjab, by the Head Office of the petitionerCompany situated in Delhi. The Administrator of the Market Committee exercising the powers of the Committee by order in the

form of a resolution, dated November 7, 1991 concluded that the petitioner was not liable for the payment of market fee in respect of purchases made by it from outside the State of Punjab. While coming to the above conclusion, it was observed :

"It transpires that purchases by Jagatjit Industries Limited, Hamira of wheat, barley and maize from Mandis outside the State was made by the Head Office of the Company Delhi through Commission Agents. The Secretary and the Accountant of the Market Committee, Dhilwan in his report had stated that Market Committee, Dhilwan had not provided any facility and no weighment was checked by Market Committee, Dhilwan. Purchases of agricultural produce made from outside the State of Punjab by the Company were never heaped in the Market Committee, Dhilwan or in any of its yards. No weighment of that produce was ever made and no facility was given by the Market Committee, Dhilwan in respect of agricultural produce purchased from outside the State of Punjab regarding weighment, sieving and filling etc. The Company had paid market fee outside the State of Punjab in respective Mandies where facilities were provided and goods were delivered. In the aforesaid matters, opinion of Shri Anand Saroop, Advocate was also obtained and is placed on file. On aforesaid basis, I understand that M/s. Jagatjit Industries Limited, Hamira in respect of purchases made by the Company from outside the State of Punjab are not within the ambit of provision of Punjab Agricultural Produce Markets Act, 1961 and Rule 29(7) of Punjab Agricultural Produce Markets (General) Rules, 1962 and it is therefore not proper to impose market fee for the period 198081 to 198889 in respect of purchases of agricultural produce made from outside the State of Punjab. Therefore, the case is being filed."

This order/resolution of the Administrator was cancelled by the Secretary, Punjab State Agricultural Marketing Board while exercising the powers of the Board under Section 33(4)(i) of the Act delegated to him by the Board with the prior approval of the Government by observing that the order/resolution was against the provisions of Section 23 of the Act read with rule 29(7) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (for short ''the Rules''). Copy of the order passed by the Secretary of the Board is Annexure3 to the writ petition. It is this order which has been impugned in the present writ petition. On notice of motion having been issued, written statement has been filed. While supporting the action, a preliminary objection has been raised by the respondent to the effect that the petitioner has not availed of the statutory remedy of revision provided under Section 42 of the Act and thus, the writ petition deserves to be dismissed on this ground alone. On merits, the order passed by the Secretary of the Board is sought to be justified, it being in accordance with law and the order/resolution passed by the Administrator of the Market Committee being contrary to law.

2. While impugning the order, Annexure P3, the contentions of Shri Jagan Nath Kaushal, Senior Advocate, learned counsel for the petitioner are three fold. The

learned counsel firstly argued that no notice or opportunity of hearing was afforded to the petitioner by the Secretary of the Board before cancelling the order/resolution, Annexure P2; secondly, the Secretary of the Board who passed order Annexure P3 cancelling the order/resolution Annexure P2 of the Market Committee, was not competent to pass such an order in terms of Section 33(4)(i) of the Act; and thirdly, the finding of fact as recorded by the Administrator had not been set aside by the Secretary of the Board while cancelling the order resolution, Annexure P2.

3. After hearing learned counsel for the parties, we are of the opinion that this petition deserves to succeed. Section 42 of the Act provides that the Government shall have the power of reversing or modifying any order of the Board or any of its of passed or purporting to have been passed under this Act, if it considers it to be not in accordance with this Act, or the rules or byelaws framed thereunder. In order to deal with the preliminary objection, it is necessary to notice the provisions of Section 33(4) of the Act which read thus :

"33. Power to call information, inspect, enforce attendance and the suspend actions etc. of Committees :

xxx xxx xxx

(4)(i) The Board may, by order in writing, annul any proceedings of a committee or subcommittee or joint committee or ad hoc committee which it considers not to be in conformity with law or with the rules or byelaws made thereunder and may do all things necessary to secure such confirmity, or may suspend any resolution which it considers likely to cause injury or annoyance to the public or is likely to affect adversely the interest of the Committee or of producers of dealers or any class of functionaries working in the notified market area concerned.

(ii) The Board may, by order in writing, suspend the execution of any resolution or order of a committee or subcommittee, or joint committee or ad hoc committee, or prohibit the doing of any act which is being done or is about to be done in pursuance of or under cover of this Act or any rule or byelaw made thereunder, if in its opinion, the resolution, order or act is in excess of the powers conferred by law, or is likely to cause injury or annoyance to the public or is likely to affect adversely the interest of the Committee or of producers or of dealers or of any class of functionaries working in the notified market area concerned.

(iii) When the Board makes an order under this subsection, he shall forthwith forward a copy thereof, with a statement of reasons for making it and the explanation, if any, of the Committee concerned, to the State Government who may thereupon rescind the order or direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit."

4. Clause (iii) of subsection (4) of Section 33 of the Act provides that when the

Board makes an order under subsection (4), it shall forthwith forward a copy thereof, with a statement of reasons for making it and the explanation, if any, to the State Government who may thereupon rescind the order or direct that it shall continue in force with or without modification, permanently or for such period as it thinks fit. It has to be taken that while passing order Annexure P3 exercising the powers under Section 33(4)(i), a copy of the order was sent to the Government and if the Government wanted to rescind the same, it could do so in exercise of its powers under clause (iii) of subsection (4) of Section 33. This is precisely the same power as is available to the Government under Section 42 of the Act. Since the Government has not opted to exercise its power under clause (iii) of subsection (4) of Section 33, no useful purpose would have been served by filing a revision petition under Section 42 of the Act. There is, thus, no merit in the preliminary objection. Mr. Anand Saroop, Senior Advocate, learned counsel appearing on behalf of the respondents for meeting the first contention of Mr. Kaushal, relied upon Shri Baldev Raj Sharma v. The State of Punjab, 1972 PLR 144; Karam Singh v. The State of Punjab, 1979 PLR 426 and Jagdish Rai Chawla v. State of Punjab, AIR 1984 Punjab and Haryana 102 : 1984 R.R.R. 474 to contend that no person to whom the resolution related has a right to urge that he has not been given any notice or hearing before annulling the resolution. According to the learned counsel for the respondents, it is only the Committee whose resolution is annulled, which can be said to have any grievance and no other person and thus, it was not necessary to afford any opportunity of hearing before annulling the resolution, to any person who may be affected by the order. In all the judgments noticed above, the resolutions either passed by the Municipal Committee or the Improvement Trust were initiated by the competent authority and the resolutions related to the executive functions of the authorities concerned. The present is a case where the order of the Administrator, though in the form of a resolution, is a quasijudicial order. The power to levy market fee and framing of assessment is that of the Market Committee, the Administrator in the present case, the Committee being not in existence. The order of assessment passed by the Market Committee is subject to appeal under Rule 31 of the Rules and the appeal lies to the Chairman of the Board. The order of assessment either creating liability or saying that the assessee is not liable to pay market fee, is a quasi judicial order and is an order of assessment. It can in no situation be said to be a executive/administrative function of the Market Committee. Before such an order is set aside, the rules of natural Justice require that the person like to be affected should be afforded an opportunity of being heard, especially in a case, where the order is a quasijudicial order. The Administrator while holding at the petitioner is not liable to pay market fee in respect of agricultural produce brought by it within the notified market area, has recorded a finding after making reference to various provisions of the Act and the Rules and the facts as brought to his notice during the course of assessment. The petitioner in our view was certainly entitled to a notice before the order/resolution exonerating it from the liability to pay market fee was annulled. In Smt. Maneka Gandhi v. Union of India, AIR 1978 SC 597, while dealing with an order impounding a passport under the Passports Act, 1967, it was observed that such an order is a quasijudicial order and the rules of natural justice would in the circumstances be applicable. The Supreme Court further observed that the same result would follow even if the power to impound a passport was regarded as administrative in character, because it seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences. During the course of the judgment, it was observed by the Supreme Court :

"Although there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is part of the rules of natural justice.

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be does fairness in action demand that an opportunity to be heard should be given to the person affected.

The law must now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

5. The second contention raised by Mr. Kaushal has also merit. Section 3(17)(ii) of the Act provides that the Board may with the prior approval of the State Government, delegate any of its powers to its Chairman, Secretary or any of its officers. Mr. Kaushal submitted that it is the Board which can annual any proceedings of the Committee in exercise of its powers under Section 33(4) of the Act and that the powers exercisable by the Board under this Section have not been delegated to the Secretary of the Board. On these premises, Mr. Kaushal contended that the order Annexure P3 is wholly without jurisdiction. Shri Anand Saroop, learned counsel for the respondents in order to controvert the submissions of Mr. Kaushal has placed strong reliance on the order of the State Government, Annexure R2. In this letter, it is stated that the President of India is pleased to accord approval for delegation of powers as per list attached, to the Secretary Board/Enforcement Chief/District Mandi Officers. Enclosure to the said letter brings out that powers under Section 33(4)(i)(ii)(iii) of the Act were delegated to the Chairman of the Board vide resolution No. 4 dated April 1, 1971 and proposal was made that such a power be delegated to the Secretary of the Board. From the enclosure to Annexure R/2 it is not at all discernable that the Board after according of approval by the Government by letter dated December 8, 1987 delegated its powers under Section 33(4) of the Act to the Secretary. From the letter Annexure R2 or its enclosure it cannot be inferred that the Board had in fact delegated its powers to the Secretary under the aforesaid Section. The only fact discernable from Annexure R2 and its enclosure is that the Board wanted to delegate its powers under Section 33(4) to the Secretary and other officers mentioned therein and had sought prior approval of the State

Government as required by Section 3(17)(ii) of the Act which approval had been granted by Annexure R.2. After the approval was granted, it was incumbent upon the Board to pass a further resolution delegating its powers to the Secretary in all matters covered by Section 33(4) of the Act. Such a delegation has not been made by the Board in favour of the Secretary, Shri Anand Saroop, learned counsel for the respondents could not bring to our notice any resolution of the Board delegating its powers in favour of the Secretary. The order of the Secretary, Annexure P3 cancelling the order/resolution of the Administrator, Annexure P2 has thus to be held as void and without jurisdiction.

6. Having regard to the conclusions arrived at in respect of the first two contentions, it is not necessary to consider the third submission of the learned counsel for the petitioner that finding of fact as recorded by the Administrator had not been set aside by the Secretary of the Board while cancelling at this stage, on commenting upon correctness or otherwise of the view expressed in the order/resolution passed by the Administrator and leave it to the appropriate authority to pass any orders against such an order resolution according to law as observed above.

7. For the reasons stated above, order Annexure P3 is quashed and the writ petition is allowed accordingly no costs.

