

(2005) 01 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2656 of 2002

Jai Bhagwan

APPELLANT

Vs

Teshsildar-cum-A.C.I. Industries and Others

RESPONDENT

Date of Decision : 13-01-2005

Acts Referred:

Punjab Agricultural Produce Markets (Amendment) Act, 1980 — Section 23A, 6, 6(2)
Punjab Agricultural Produce Markets Act, 1961 — Section 23, 23A, 23A(2), 4, 6

Citation : (2005) 140 PLR 11

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : Namit Sharma, for the Appellant; Suvir Sehgal, for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for permanent injunction restraining the defendants from recovering Rs. 80,498.93P refunded by the Market Committee to the plaintiff earlier towards the excess amount of market fee was dismissed by the Courts below.

2. The plaintiffs is a licensee under the Punjab Agriculture Produce Markets Act, 1961 (hereinafter referred to as "the Act"), vide Haryana Act No. 17 of 1977, the rate of market fee was enhanced from 2 per cent to 3 per cent. The Hon'ble Supreme Court set aside the enhancement of the market fee. In pursuance of the said order, the enhanced amount of market fee was refunded to the plaintiff. Subsequently, vide Amending Act No. 28 of the 1980, Section 23-A was inserted and by virtue of Section 6 of the Amending Act, the Market Committee was permitted to retain the market fee collected notwithstanding anything contained in the Principal Act or in any other law for the time being in force or judgment, decree or any order of any Court, Sub Section 2 of Section 6 contemplates that if the amount of fee so collected has been refunded to any dealer or licensee, the same shall be recoverable by the Committee concerned as arrears of land

revenue. Sections 4 and 6 of the Act read as follows:

4. Insertion of Section 23A in Punjab Act 23 of 1961.- After Section 23 of the principal Act, the following section shall be inserted and shall always be deemed to have been inserted, namely:-

"23A Passing on the burden of fee:- (1) Notwithstanding anything contained in Section 23, dealer or licensee may pass on the burden of fee paid by him under that Section and the rules made thereunder to the next purchaser or add the same towards the cost of agricultural produce or the goods processed or manufactured out of it.

(2) Whenever a dispute arises as to the passing on the burden of fee or its addition, towards the cost of agricultural produce or the goods processed or manufactured out of it, it shall always be presumed, unless proved otherwise, that the burden of the fee has been passed on to the next purchaser or has been added towards the cost of the agricultural produce or the goods processed or manufactured out of it.

6. Validation:- (1) Notwithstanding anything contained in the principal Act or in any other law for the time being in force or judgment, decree or order of any court, any amount purported to have been collected from a dealer or licensee as fee, in respect of any transaction in excess of the fee livable u/s 23 and deposited with any Committee before the 15th day of May, 1980, the burden of which has been passed on by the dealer or licensee to the next purchaser or which has been added towards the cost of the agricultural produce or the goods processed or manufactured out of it, shall be retained and deemed to have been validity levied imposed, assessed or collected and shall be spent for meeting the course of services to be rendered towards the development and improvement of existing markets wherefrom the collection of such fee was made and accordingly.

(a) no suit or other legal proceedings shall be maintained or continued in any court for the refund or whole or any part of the fee so collected; and

(b) no court shall enforce any decree or order directing the refund of the whole or any part of the fee so collected.

(2) If any amount of fee so collected has been refunded to any dealer or licensee, the same shall be recovered by the Committee concerned as arrears of land revenue.

3. Since the amount of market fee was refunded to the plaintiff, the Market Committee sought to recover the said amount and issued notices for the recovery of the said amount. The said recovery process was challenged by the petitioner inter-alia on the ground that such recovery is sought to be effected from the plaintiff without giving any opportunity of hearing.

4. The legality of the Amending Act No. 28 of 1980 was upheld by Hon"ble Supreme Court in Civil Writ Petition No. 1421 of 1980, Buralkia Dari Mills and

Ors. v. State of Haryana and Ors., decided on December 3, 1985.

While upholding the legality of the Amending Act, the Hon'ble Supreme Court has relied upon the judgment reported as Amar Nath Om Prakash and Others Vs. State of Punjab and Others, arising out of pari materia provisions enacted by the State of Punjab. The argument that Amar Nath's case cannot apply to a case where refund has already been granted and is now sought to be recovered did not find any favour with Court. The order of the Supreme Court reads as under:-

The vires of the provisions of Punjab Agricultural Produce Markets (Haryana Second Amendment and Validation Act), 1980 which are more or less in identical terms as the Punjab Agricultural Produce Markets (Punjab Amendment) Act, 1980 is in question in the present case. The vires of the Punjab Amendment Act was upheld by this Court in Amar Nath Om Parkash and Ors. v. State of Punjab and Ors., We are unable to see any reason for taking a different view from that taken in Amar Nath Om Prakash and Ors. v. State of Punjab and Ors. case (supra). We agree with what has been decided in Amar Nath Om Prakash's case. The learned counsel also raised a further question that the effect of the legislation was also to get rid of the directions given in some cases to refund the amount collected by way of market fees and to the extent that it did so the legislation was bad. Reliance was placed on the decision of this Court in Madan Mohan Pathak v. Union of India and Ors. etc. Looking to the substance of the matter, we are unable to say that the present legislation which is of a general character covering all dealers who passes the burden of the fee to the consumers and not merely to the few who had approached the court, can be said to be an attempt to get round a judicial pronouncement. The principle laid down in Madan Mohan Pathak's case has no application to the present case. It was also argued that the judgment in M/s Amar Nath Om Prakash's case cannot apply to a case where refund has already been granted and the attempt now is to recover what has been refunded. We find no difference in principle. What is aimed at is the prevention of unjust enrichment and it is immaterial whether refund is yet to be made or whether what is wrong refunded is sought to be recovered.

All the petitions are, therefore, dismissed, it will be open to the petitioners, if they have any answer to the notices issued to them by the respective Market Committees to make such submissions as they are entitled to make in law.

5. The recovery of market fee earlier refunded to the licencees became also subject matter of challenge before this Court in a number of Writ Petitions. In Writ Petition No. 3031 of 1986 Ashok Industries and Ors. v. State of Haryana and Ors., decided on 5.6.1986, this Court found that the Act does not contain any provisions where an opportunity of hearing as is claimed by the petitioners, can be given. The petitioners have to refund the amount which they have recovered irrespective of the fact whether they have passed the burden to the ultimate consumer or not. The order of the Division Bench reads as under:

The two petitions i.e. C.W.P. No. 3031 and 3032 of 1986 are based on common

question of facts and law.

The petitioners are licencees for carrying on the food grains trade in the State of Haryana under the Punjab Agricultural Produce Market Act, 1961 (hereinafter called "the Act") and the rules framed thereunder, as they are applicable to the State of Haryana. These cases have a long history which saw many rounds of litigation upto the Supreme Court. The Supreme Court after quashing the levy of market fee under the aforesaid Act and reduced it (market fee) from Rs. 3/- to Rs. 2/-. On the basis of that all the licenced dealers under the Act in the State of Haryana applied for refund of Rs. 1/- which was paid in excess and got it. In the meantime the State of Haryana enacted Punjab Agricultural Produce Market, (Haryana Second Amendment and Validation) Act, 1980 to validate the recovery of the market fee at the original rate and save the refund of the money. The vires of the Validation Act, 1980 were challenged which were upheld upto the Supreme Court. As a sequel to the upholding of the vires of the Validation Act, the market Committees started taking steps to recover the refunded amount of Rs. 1/-. The matter again went to the Supreme Court. It was decided against the dealers on Decembers, 1985 and the copy of the judgment is Annexure P-1. In this case the contention of the petitioners was negated which was in a way challenge to the vires of the validation Act, 1980.

In this petition, the petitioners have urged that they are not being given any opportunity by the market committees to prove that they have passed the burden to the ultimate consumers. It has also been mentioned by way of challenge to the Validation Act, that no machinery in the Act was provided to determine such questions. So far as the second objection about the provision of machinery, is concerned, it cannot now be raised after the vires of the Act have been upheld by the Supreme Court and Mr. Malik states that no challenge about the absence of provisions of the machinery in the Validation Act was made earlier. We, therefore, cannot permit this argument to be raised at this stage.

So far as the question of giving an opportunity is concerned, the Act does not contain any provision where such an opportunity as is claimed by the petitioners, can be given. The petitioners have to refund the amount which they have recovered irrespective of the fact whether they have passed the burden to the ultimate consumer or not, because the money was refunded to them by the market committees not to the consumers. It is for the petitioners or the similarly placed licencees to manage the refund of the money from any source whether from their own or from the ultimate consumers.

In view of this, we do not find any merit in these petitions and dismiss the same in limine.

6. The said order was followed in C.W.P. No. 3054 of 1986 Mahabir Parshad Rattan Lal and Ors. v. State of Haryana and Ors., decided on 15.1.1987 by the Division Bench of this Court.

7. In the present appeal, the learned counsel for the appellant has vehemently

argued that the plaintiff is entitled to an opportunity of hearing to explain that he has not passed the burden of market fee to the next purchaser., Such opportunity of hearing is inherent in Sub-section (2) of Section 23-A of the Act. Therefore, without grant of any opportunity to prove the passing of burden, the Market Committee cannot recover the amount refunded to the plaintiff. Still further., it has been argued that the notices Ex.D1, Ex.D2 and Ex.D3 are not proved to have been served upon the plaintiff in as much as the report of the service on such notices hap not been substantiated in any manner.

8. I do not find any substance in the arguments raised by the learned counsel for the appellant. The notices issued Jo the plaintiff have been sought to be proved by an official of the respondents when it examined Jai Singh, Supervisor, Market Committee as well as by examining DW2, Shri S.K. Goyal, Secretary, Market Committee. The argument that the endorsement of service of such notices is not substantiated has been raised for the first time in second appeal. The address on such notices is that of the plaintiff firm. The endorsement on such notices have been made by the official of the respondents in their normal course of business and thus, carries presumption of correctness. Such endorsement has not been rebutted by the plaintiff in any manner. In the absence of any other evidence, the civil Court was perfectly justified to hold that the plaintiff has failed to establish that the notices to recover market fee were not served.

9. Therefore, the argument that the plaintiff was not granted any opportunity of hearing is not tenable in law. Even otherwise, I am bound by the Division Bench judgments of this Court, referred to above which contemplates that licensee is liable to return the amount of market fee refunded.

10. Consequently, I do not find that the findings recorded by the Courts below suffer from any patent or material irregularity of illegality raising any substantial question of law warranting interference by this Court in second appeal.

Dismissed in limine with no order as to costs.