(1978) 09 MP CK 0033

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 44 of 1977

Jaora Sugar Mills Ltd. APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 01-09-1978

Acts Referred:
Madhya Pradesh Land Revenue Code, 1959 — Section 146

Citation : (1979) MPLJ 21

Hon'ble Judges : G.L. Oza, J;G.G.Sohani, J

Bench : Division Bench

Advocate : A.M. Mathur, for the Appellant; K.L. Goyal for State, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This is a petition filed by the petitioner challenging a notice of demand issued against the petitioner u/s 146 of the M.P. Land Revenue Code, 1959, for recovery of Rs. 1340700-28 P. as the price of sugarcane with interest.

According to the petitioner, under clause 3 of the Sugarcane (Control) Order, 1966, the minimum price of sugarcane fixed by the Central Government is payable by the petitioner and no one is authorized to purchase sugarcane at a price lesser than fixed under clause 3 of this Order. It is alleged that the State Government by its order dated 21-3-1976 directed the Sugar factories in Madhya Pradesh to pay Rs. 12 per quintal at factory gate and Rs. 11.50 per quintal at purchase centres and this, it was alleged, would be payable retrospectively. This according to the petitioner is fixed on the basis of some meeting held on 21-3-1976 and is alleged to be the agreed price of sugarcane. According to the petitioner, the price as defined in clause 2 (g) of the Sugarcane (Control) Order, 1966 does not contemplate such a fixation of price. Consequently, the petitioner was not liable to pay this amount nor can it be recovered u/s 20 of the M.P.

Sugarcane (Regulation of Supply & Purchase) Act, 1958 (hereinafter referred to as "the Act"). According to the petitioner, the petitioner has already paid more than the minimum price fixed by the Central Government under clause 3 of the Sugarcane (Control) Order, 1966. This recovery ordered against the petitioner therefore is contrary to law and deserves to be quashed.

The only contention advanced by learned Additional Government Advocate appearing for State was that in the meeting held on 17-3-1976 which ultimately was postponed to 21-3-1976 the agreed price of sugarcane was fixed and this agreed price of sugarcane falls within the ambit of the definition of "price" in clause 2(g) of the Sugarcane (Control) Order 1966 and therefore this is recoverable u/s 20 of the Act. As the petitioner failed to pay the price a demand for recovery has been issued u/s 20 of the Act.

It is not in dispute that the period for which the controversy in this petition is raised is from 1-101975 to 30 9-1976 and it is also not in dispute that there was a meeting as alleged by State on 17-3-1976 and 21-3-1976 at Bhopal. It is also not is dispute that the petitioner was not present in this meeting on 21-3-1976 nor any authorized representative of the petitioner was present therein as it is clearly stated in the return paragraph 9 that "Jaora and Mahidpur Sugar Factories did not depute their representatives for attending this meeting". Apparently therefore, it could not be contended that there was any agreement whereby the petitioner agreed to pay the price as indicated in the order of the Government, i.e. Rs. 12 per quintal at factory gate and Rs. 11.50 at purchase centres.

Learned Additional Government Advocate frankly conceded that there is no other justification for fixation of this price except on the basis of agreement, and as regards agreement the statement made in the return quoted above clearly indicates that there was no agreement so far as the petitioner is concerned.

Under section 20 of the M.P. Sugarcane (Regulation of Supply & Purchase) Act, 1958, provision has been made for payment of price of sugarcane:

20. Payment of cane price.--(1) The occupier shall make suitable provision to the satisfaction of the Collector for the payment of the price of cane.

(2) Upon the delivery of cane, the occupier shall, subject to the deductions specified in sub-section (2-a), be liable to pay immediately the price of the cane so supplied, together with all other sums connected therewith and where the supplies have been made through a purchasing agent, the purchasing agent shall similarly be liable in addition to the occupier.

(2-a) Where a cane grower or a Cane-grower''s Co-operative Society, as the case may be, to whom price is payable under sub-section (1) has borrowed a loan for cane development from any agency notified by the State Government in this behalf the occupier or the purchasing agent, as the case may be shall be, on being authorised by that agency so to do, entitled to deduct from the price so payable, such amount as may be prescribed, towards the recovery of such loan and pay the same to the agency concerned forthwith.

(3) Where the person liable under sub-section (2) is in default in making the payment of the price for a period exceeding fourteen days from the date of delivery he shall also pay interest at a rate of 7 1/2 per cent per annum from the said date of delivery upto the date of payment but the Cane Commissioner may, in case direct with the approval of the State Government that no interest shall be paid or be paid at such reduced rate as he may fix.

(4) The Cane Commissioner shall forward to the Collector a certificate under his signature specifying the amount of arrears on account of the price of cane plus interest if any due from the occupier and the Collector, on receipt of such certificate, shall proceed to recover from such occupier the amount specified therein as if it were an arrear of land revenue together with further interest up to the date of recovery.

The word "price" used in this section has not been defined in this Act and both the Learned Counsel frankly conceds that the only definition is in clause 2 (g) of the Sugarcane (Control) Order, 1966. Clause 2 (g) ibid provides:

2 (g) "price" means the price or the minimum price fixed by the Central Government from time to time for sugarcane delivered--

(i) to a sugar factory at the gate of the factory or at a sugarcane purchasing centre; or

(ii) to a Khandsari unit;.

It was contended by learned Additional Government Advocate that the word "price" has been defined in this sub-clause to mean price or minimum price fixed by the Central Government. He contended that the pharse "fixed by the Central Government" shall only control the words "minimum price" and shall not control the word "price"; whereas Learned Counsel appearing for the petitioner contended that the pharse "fixed by the Central Government" would govern both "price" as well as "minimum price". Learned Additional Government Advocate contended that as the word "price" is not controlled by the phrase "fixed by the Central Government", the ''agreed price'' of sugarcane also will be "price" within the meaning of this word in clause 2 (g) of this Order; and therefore it would be recoverable u/s 20 of the Act. In the present case, as discussed above there is no agreement to indicate that the agreed price of sugarcane was as alleged by the State Government and attempted to be recovered by the demand notice. And in view of this clear factual position it is not necessary for us even to go into the question of interpretation of the word "price as defined in clause 2 (g) of the Sugarcane (Control) Order, 1966, as admittedly, if it is not the agreed price there is no other justification sought by the learned Additional Government Advocate for recovery of the same. Apparently therefore, the price which is sought to be recovered is not the price falling within the ambit of the definition in clause 2 (g) quoted above and therefore it could not be recovered in accordance with section

20 of the Act noted above.

Consequently, the petition is allowed. The demand notice issued against the petitioner dated 21-4-1977 (Annexure ''H'') is hereby quashed. The petitioner shall be entitled to costs of this petition. Counsel fee Rs. 250 (two hundred fifty) if certified. The security deposit be refunded to petitioner after verification.

