

(2009) 03 RAJ CK 0064
In the Rajasthan High Court

Jay Kisan Traders

APPELLANT

Vs

Krishi Upaj Mandi Samiti and Another

RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:

Rajasthan Agricultural Produce Markets Act, 1961 — Section 16

Citation : (2009) 03 RAJ CK 0064

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dated 23.10.1999 whereby his licence as A-Class Broker was cancelled by the Krishi Upaj Mandi Samiti or the Market Committee, the order dated 17.09.2001 whereby the Director, Marketing Board had upheld the order dated 23.10.1999. The petitioner has further challenged the order dated 12.11.1999 (Annex- 5) and the notice dated 11.04.2002 (Annex-6) whereby he was directed to vacate the shop and was threatened with ejectment from the shop.

2. The brief facts of the case are that in the year 1988, the Krishi Upaj Mandi Samiti allotted a shop to the petitioner in the Mandi Yard to carry on his business as A-Class Broker. Initially, the licence of the shop was valid upto 31st March, 1989, but the same was later on extended from time to time and the last renewal period is 01.04.1993 to 31.03.1998. Thereafter, the petitioner submitted an application for renewal in a routine manner to the Market Committee praying that the licence may be renewed for further period, but no order was passed; neither the application was rejected nor the same was allowed. Suddenly, vide order dated 23.10.2009, the petitioner was informed by the Secretary, respondent No. 1 that in pursuance of the order 04.10.1999 of the Director, his licence was cancelled. According to the petitioner, neither any reason was shown in the order of cancellation, nor a copy of the order of Director dated 04.10.1999 was supplied to him, nor he was afforded any opportunity of hearing before

passing the order of cancellation of licence on 23.10.1999. Thereafter, the respondents issued a letter to the petitioner on 12.11.1999, whereby the petitioner was directed to vacate the shop within a period of 15 days, failing which the petitioner firm would be evicted from the shop. Against the order dated 23.10.1999, the petitioner filed a revision petition before the Director. But, the same has been dismissed by the Director on 17.09.2001. After rejection of the revision petition, vide order dated 17.09.2001, the respondent No. 1, has further issued an order/notice dated 11.04.2002 to the petitioner for vacating the shop. Thereafter, the petitioner gave a representation to the respondents. However, the respondents have not acted on the said representation. Hence, he has filed the present writ petition before this Court.

3. Mr. S.C. Gupta, the learned Counsel for the petitioner, has raised the following contentions: firstly, the order dated 23.10.1999 was passed after seeking the approval from the Director of the Agriculture Marketing Board. Surprisingly, the director has passed the impugned order dated 17.09.2001 whereby he has upheld the order dated 23.10.1999. Since the order dated 23.10.1999 was passed after the approval of the Director was sought and was granted, the Director could not be a judge in his own cause. Therefore, the Director should have declined to entertain the revision petition filed by the petitioner. Secondly, since the petitioner could have filed an appeal u/s 16 of the Rajasthan Agricultural Produce Markets Act, 1961 ("the Act" for short), he should have directed the petitioner to file an appeal before the Government. However, without following this process, the Director has passed the impugned order dated 17.09.2001. Hence, the order dated 17.09.2001 is in violation of principles of natural justice. Thirdly, the order dated 12.11.1999 and the notice dated 11.04.2002 are in consequence of the order dated 17.09.2001. Since the very basis of the order dated 17.09.2001 is illegal, so the order dated 12.11.1999 as well as the notice dated 11.04.2002 are unsustainable in the eye of law.

4. On the other hand, Mr. Inderjeet Singh, the learned Counsel for the respondent- Board, has contended that the fault does not lie with the Director, but lies with the petitioner who had pursued a wrong remedy and had entered a wrong forum. Since the order dated 23.10.1999 was passed after seeking the approval of the Director, the petitioner, in fact, should have filed an appeal before the Government u/s 16 of the Act. Therefore, the petitioner cannot put the blame on the shoulder of the Director.

5. We have heard the learned Counsel for the parties and have perused the impugned orders.

6. It is, indeed, a settled principle of natural justice that a person cannot be a judge in his own cause. In case, a person were to be a judge in his own cause, the element of bias would be writ large in his decision. A bare perusal of the order dated 23.10.1999 clearly reveals that the said order was passed after the approval of the director was granted. Therefore, the said order is not independent of approval of the Director. In these circumstances, the Director

should have recused himself from entertaining the revision petition before himself. In fact, he should have directed the petitioner to file an appeal before the Government u/s 16 of the Act. The Director should have been well aware of the principles of natural justice and should not have entertained the revision petition. Since the revision petition has been entertained and has been dismissed, the element of bias cannot be discarded. Therefore, in the opinion of this Court, the order dated 17.09.2001 is unsustainable.

7. Since the order dated 12.11.1999 and the notice dated 11.04.2002 were passed in pursuance of the order dated 17.09.2001 of the Director, therefore, even these two impugned orders and notice are legally unsustainable.

8. In order to rectify the mistake, in the opinion of this Court, it would be just, fair and reasonable to direct the petitioner to challenge the order dated 23.10.1999 before the Government u/s 16 of the Act. Therefore, the petitioner is granted two weeks' time to file the necessary appeal before the State Government. The State Government shall decide the appeal within a period of six months from the date of filing of the appeal. Since the petitioner has been pursuing his remedy before the wrong forum, the question of limitation, if any, should be ignored. The Government is directed to pass a reasoned order, in accordance with law. It is also directed that as long as the matter is pending before the Government, the petitioner should not be ejected from the place of his business.

9. With theses observations, this petition is, hereby, allowed. There shall be no order as to costs.