

(1996) 05 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 1341, 1367, 1369, 1413, 1446, 1489 and 1673 of 1995

Kanwarlal and Others

APPELLANT

Vs

Upayukta, Narcotics, Central Narcotics Bureau and Another

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Narcotic Drugs and Psychotropic Substances Rules, 1985 — Rule 8

Citation : (1997) 1 J LJ 256 : (1997) 1 MPLJ 671 : (1997) 3 RCR(Criminal) 505

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : C.L. Yadav, for the Appellant; P.K. Saxena, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

In all these Writ Petitions, petitioners seek to challenge the order of the District Opium Officer whereby the prayer made by petitioners for grant of licence for opium poppy cultivation for the crop-year 1994-95 has been rejected. They further challenge the appellate order passed by the Assistant Commissioner of Narcotics whereby the appeal preferred by them against refusal to grant the licences for cultivation of opium poppy have been dismissed.

Applications for grant of licence filed by petitioners have been rejected by the District Opium Officer on the ground that in the crop-year 1993-94 total produce given by them was below 43 K.G. per hectare. The Appellate Authority has confirmed the aforesaid order. According to petitioners, refusal of licence on the ground that the total produce given by them for the crop year 1993-94 is less than 43 K.G., cannot be made a ground for refusal of grant of licence for the crop year 1994-95 unless prior notice is given to them. It has been stated by petitioners that prior notice was given for grant of licence for the crop year 1992-93, wherein it was stated that in case less than 38 K.G. per hectare

producers given, licence shall not be given for the crop year 1993-94. It has been stated that no such notice was given for grant of licence for the crop year 1994-95. It has been further stated that on 23-3-1994 although a notice was given that licence shall not be given to those farmers who give less than 65 ICG. of opium per hectare but the same was given after commencement of the crop season and therefore it cannot be construed as prior notice.

Learned counsels for petitioners submit that as no prior notice was given regarding weight of opium to be deposited in the previous year for the grant of licence for the subsequent crop year 1994-95, action of respondents in refusing to grant licence on the ground of less production is arbitrary and deserves to be set aside on this ground alone. It is further submitted that in any view of the matter less deposit of opium produce for the crop year 1994-95 cannot be taken into consideration for grant of licence for the crop year 1995-96 and the same if at all is relevant for the next crop year only.

Respondents in the return have stated that average yield of opium cultivation in the country for the crop year 1993-94 is 43-150 K.G. whereas that of Madhya Pradesh is 43.570 K.G. and accordingly the decision was taken not to grant licence to farmers whose yield is less than 43 K.G. per hectare.

In my opinion, in view of statistical details given by respondents, it cannot be said that fixing of minimum 43 K.G. yield for grant of licence for the subsequent year 1993-94 is arbitrary.

As regards prior notice, it is conceded that there is no requirement of the same contemplated either under the N.D.P.S. Act or the rules made thereunder. However, petitioners submit that as for the crop year 1993-94 notice was given, similar notice ought to have been given for the year 1994-95. It is relevant here to state that such notice was given on 24-3-1994 which inter alia provides that in the next crop year the licences shall be given to only those persons who deposit 65 K.G. opium per hectare. It is contended that the aforesaid notice was given after the commencement of the crop season. However, it is conceded at the Bar that collection of opium does not start before March, 1994 and in that view of the matter although there is no statutory requirement of notice, respondents have given notice to the farmers for deposit of 65 K.G. of opium per hectare for grant of licence for the crop year 1994-95. In fact, this has been reduced to 43 K.G. and petitioners therefore cannot be permitted to make grievance that no prior notice was given.

In any view of the matter, petitioners have not pointed out any statutory requirement of prior notice for grant of licence for the subsequent year, the action of respondents in refusing to grant licence on the ground of less yield cannot be said to be arbitrary on the ground of absence of prior notice.

It is relevant here to state that petitioners have stated that at the time of grant of licence for the crop year 1993-94, a notice was pasted on the notice board of the Licensing Authority and it has been specified that only 40 K.G. of opium per

hectare is desired for grant of licence for the next year, which according to petitioners has been unilaterally increased at 43 KGs. Respondents have denied these facts and stated that petitioners' contention that it was specified on the notice board of the Licensing Authority that 40 K.G. per hectare is desired from the licensee is false and misleading.

Petitioners have not produced any material to substantiate their allegation and in view of the specific stand of respondents that no notice of 40 K.G. yield was pasted, I am not prepared to accept the stand of petitioner that in the notice only 40 KGs. per hectare yield of opium was desired.

Shri C. L. Yadav, appearing on behalf of petitioners, has contended that the statute requires every bit of opium produced, to be deposited with the authorities and there being exclusive control, respondents are precluded from fixing minimum weight for grant of licence.

Shri Saxena appearing on behalf of respondents, however, submits that as a result of average yield the weight has been fixed and petitioners admittedly having not deposited the weight fixed, what can be safely deduced is that petitioners are either dishonest or inefficient farmers and in that view of the matter action of respondents cannot be faulted on the ground that minimum yield of 43 K.Gs. per hectare has been fixed.

I do not find any substance in the submission of learned counsel for the petitioners. As the weight was decided on the basis of average yield, petitioners cannot be permitted to make a complaint in this regard. One cannot lose sight of the fact that opium yield are diverted and finds place in the open market.

In any view of the matter, the decision to grant licence to only those farmers who have given 43 KG. of opium for the year 1993-94, is in the realm of policy matter and it is well settled that this Court does not interfere with the policy decision of the Government unless it is shown that the policy decision is patently arbitrary, discriminatory, unreasonable or mala fide. As held earlier, the minimum yield was fixed on the basis of average yield and the same cannot be termed to be unreasonable or arbitrary.

Petitioners further contend that they cannot be denied licence for crop year subsequent to 1994-95 on the ground that yield was less for the year 1993-94, I am not inclined to go into this question in the present writ applications. No decision has been brought to my notice in relation to the said year. As such, it is premature to enter into this submission of petitioners.

In the result, I do not find any merit in all the applications and the same are dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.