
(2014) 02 MP CK 0124
In the Madhya Pradesh High Court
Case No : Writ Petition No. 711/2011

Lavesh Udyog

APPELLANT

Vs

M.P. State Agriculture Marketing Board and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2015) 4 CGLJ 29 : (2015) 2 MPHT 402

Hon'ble Judges : S.C. Sharma, J.

Bench : Single Bench

Advocate : Akash Rathi, Advocate, for the Appellant; D.M. Sharma, for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present writ petition being aggrieved by the recovery initiated against the petitioner by respondent No. 3-Krishi Upaj Mandi, Manawar, Distt. Dhar.

Contention of the petitioner is that the petitioner is a licence holding trader and at the instance of respondent No. 3, demand notices dated 23-12-2010 have been issued to the petitioner for recovery of Rs. 1,01,654/-, Rs. 46,237/- and Rs. 33,232 on account of certain audit objections raised against the petitioner by respondent Nos. 1 and 2 and 4 for the period from 1999-2000, 2002-2003 to 2003-2004 and 2005-2006 to 2006-2007 without giving any show-cause notice to the petitioner and without giving any opportunity of hearing. The demand has been issued without passing any assessment order and without conducting any independent assessment to verify the objections.

The petitioner has prayed for quashing of the aforesaid demand notice impugned in the present writ petition and his contention is that this Court in identical cases has allowed the identical writ petitions by passing a common order in the case of Ramesh Chandra Goyal v. Madhya Pradesh State Agriculture Marketing Board and others in W.P. No. 8188/09 vide order dated 23-11-2009.

2. Learned Counsel appearing for the respondent/State as well as learned Counsel appearing for respondent Nos. 1, 2 and 3 have fairly stated before this Court that the controversy involved in the present case stands concluded by the judgment delivered in the case of Ramesh Chandra Goyal (supra), the present writ petition deserves to be allowed by issuing similar directions in the matter.

3. Learned Government Advocate has also stated before this Court that this Court has already allowed identical writ petitions as contended by a common order dated 23-11-2009 in the case of Ramesh Chandra Goyal (supra).

4. Heard learned Counsel for the parties at length and perused the record.

5. The petition is being disposed of at motion stage itself with the consent of the parties.

6. In the present case, it has been admitted by the parties that an identical writ petition has been decided in the case of Ramesh Chandra Goyal (supra), and, therefore, this petition is being disposed of on similar lines.

This Court in the aforesaid case has held as under:--

"The facts, which have not been disputed by the respondents, indicate that the petitioner claims to have deposited the entire amount of Mandi Fee and Nirashrit Fee, as had been assessed by Krishi Upaj Mandi Samiti, Sendhwa, respondent No. 3, from time to time. However, for the, assessment year 2005-06, the Local Fund Audit, raised certain audit objection. Through the aforesaid audit objection, it was objected that the amount of Rs. 2,22,407/- was still due and recoverable from the petitioner and had not been recovered. On the aforesaid audit objection alone, respondent No. 3, having been directed to recover the said amount, issued a demand notice to the petitioner on April 4, 2008, directing that the aforesaid amount be deposited within seven days, failing which, recovery proceedings were to be initiated. The petitioner has pleaded that he filed a reply to the said notice/demand raised by the Mandi Samiti and maintained that no Mandi Fee was payable or due against him, in as much as, the entire amount of Mandi Fee, along with interest etc., had already been deposited by him. Although the aforesaid reply was duly received by the Mandi Samiti, but without taking into consideration the said reply and without thereafter issuing any show-cause notice to the petitioner, and even without holding any enquiry in the matter, merely on the basis of the audit objection, a resolution was passed by the Mandi Samiti for recovery of the aforesaid amount from the petitioner. Consequently, a demand notice was issued and as such recovery proceedings were initiated against the petitioner.

On a Specific query put by the Court, learned Counsel for the respondents very fairly state that the resolution dated July 9,2009 had been passed by the Mandi Samiti, merely on the basis of the audit objection raised by Local Fund Audit, and no independent assessment proceedings had been undertaken by the Mandi Samiti for holding the aforesaid amount due and recoverable from the petitioner.

It has also been stated that before ordering the said recovery against the petitioner, neither any show-cause notice was ever served upon him, nor any explanation was demanded from him. Learned Counsel maintain that since an audit objection had been received by the Mandi Samiti from the Local Fund Audit, respondent No. 4, therefore, it was on that basis that the demand in question had been raised against the petitioner.

After taking into consideration the aforesaid stand taken on behalf of the respondents, and keeping in view the various pleas raised by the petitioner, I feel that the demand in question raised against the petitioner. and the consequential recovery proceedings, cannot be legally sustained. The respondent's have not even disputed the fact that before raising the aforesaid demand, and passing the resolution dated July 9, 2009, no show-cause notice was ever issued to the petitioner. No explanation was sought in the matter. Even the reply submitted by the petitioner to the recovery notice had not been taken into consideration. The resolution dated July 9, 2009 had been passed by the Mandi Samiti merely on the basis of the audit objection. The aforesaid course was not permissible to be adopted by the Mandi Samiti. Even if there was some audit objection raised by the Audit Authority, then the same was merely for consideration of the Mandi Samiti and could not be taken to be binding upon the Mandi Samiti or the petitioner, nor merely on account of the said audit objection, a demand could be raised against the petitioner. A demand could only be raised against the petitioner, by first issuing a show-cause notice to him and thereafter on taking into consideration the reply in the matter, by passing an assessment order, in accordance with the provisions of the Adhiniyam. Since the said course has not been adopted, obviously, the resolution dated July 9, 2009 passed by the Mandi Samiti cannot be taken to have been legally passed.

Consequently, the present petition is allowed. The resolution passed by the Mandi Samiti is hereby quashed, whereby an additional demand has been raised against the petitioner. As a result thereof, the suspension order passed by respondent No. 3, suspending the licence of the petitioner for carrying on the business is also quashed.

However, a liberty is granted to the respondent-Mandi Samiti to initiate appropriate proceedings against the petitioner, if so desired, by first issuing a show-cause notice upon him, and thereafter on consideration of the reply filed by him, by taking appropriate assessment proceedings, in accordance with the Adhiniyam.

It is, however, clarified that while initiating the assessment proceedings, the audit objection raised by the audit party shall not be treated to be binding upon the Mandi Samiti, but an independent determination shall be made with regard to the liability of the petitioner.

The present petition is disposed of accordingly."

7. Resultantly, the present writ petition is allowed. However, liberty is granted to

the respondent/Mandi Samiti to initiate appropriate proceeding against the petitioner, if so desired, by first issuing a show-cause notice and thereafter, considering the reply submitted by the petitioner. The respondent shall also be free to pass an appropriate order and to conduct an assessment proceeding in accordance with the provisions of Madhya Pradesh Krishi Upaj Mandi Samiti Adhiniyam, 1972.

8. The order passed in the case of Ramesh Chandra Goyal (*supra*), shall be applicable *mutatis mutandis* in the present case. With the aforesaid, the writ petition stands allowed.

No order as costs.

Certified copy as per rules.