(1996) 10 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7916 of 1996

Laxmi Dal Mills, Commission Agents and Others APPELLANT

Vs

Punjab State Agricultural Marketing Board and Others RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 31(1)
Punjab Agricultural Produce Markets Act, 1961 — Section 46

Citation : (1997) 115 PLR 288 : (1997) 1 RCR(Civil) 730

Hon'ble Judges : G.S. Singhvi, J;B. Rai, J

Bench : Division Bench

Advocate : S.S. Narula, for the Appellant; S.C. Pathela, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—These petitions have been filed to quash the circular No. 106 dated 10.5.1995 issued by the Punjab Mandi Board (hereinafter referred to as ''the Board) fixing the composition fees equivalent to five times of the normal market fees and by which the Market Committees have been required to charge fees from the licensees who commit default in the payment of market fee.

2. In order to decide the legality of the impugned circular, it will be useful to take notice of the facts'' of Civil Writ Petition No. 7916/96. Petitioners are engaged in the business of commission agents. All of them have been given licenses under the Punjab Agricultural Produce markets Act, 1961 (hereinafter referred to as ''the Act'') and the rules framed thereunder. Petitioners have stated that they are regularly paying the market fee and rural development fund and have been filing returns in the prescribed proforma. Their grievance is that in the purported exercise of its power u/s 46 of the Act the respondent-Board has issued instructions in the form of circular dated 10.5.1995 for charging composition fees equivalent to five times the amount of fees payable by the licensees and on the basis of impugned circular, the Market Committees have initiated action for recovery of the composition fees in terms of this circular and in this manner their

business has been seriously jeopardised. Petitioners have questioned the authority of the Board to issue the impugned circular by contending that composition fees can be charged only for specified offences and not in the case of failure of licensee to deposit the market fee.

3. The respondents have justified the impugned circular by stating that this step has been taken in order to check the constant evasion of market fee.

4. For the purpose of deciding the legality of impugned circular, we may refer to the provisions contained in Sections 6(3), 8, 13(2), 13(4), 23, 30, 37 and 46 of ''the Act'' and Rules 31(1) to (9) and 36 of the Punjab Agricultural Produce Markets (General) Rules, 1962. These provisions are reproduced below for ready reference:-

"Section 6(3) : After the date of issue of such notification or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified; or purchase, sale, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and bye-laws made thereunder and the conditions specified in the licence;

Provided that a licence shall not be required by a producer who sells himself or through a bona fide agent not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

8. No private market to be opened in or near places declared to be markets - on and after the date on which the State Government have by a notification u/s 7 declared any place to be a principal or sub-market yard, no person or Municipal Committee, District Board, Panchayat or any Local Authority notwithstanding anything contained in any enactment relating to such Municipal Committee, District Board, Panchayat or Local Authority shall be competent to set up, establish or continue or allow to be continued any place within the limits of such market or within a distance thereof to be notified in the official gazette in this behalf, in each case by the State Government for the purchase, sale storage and processing of any agricultural produce.

Provided that a producer shall not be deemed to set up, establish to continue or allow to be continued a place as a market for the purposes of the purchase, sale, storage or processing of agricultural produce if he sells his own agricultural produce outside the premises set apart by the Committee for the purpose of purchase, sale, storage and processing of agricultural produce.

13(2). Every person licensed u/s 10 or section 13 and every person exempted u/ s 6 (section 8 for Haryana) from taking out licence, shall on demand by the

Committee or any person authorised by it in this behalf, furnish such information and returns, as may be necessary for proper enforcement of Act or the rules and bye-laws made there under.

13(4). No broker, weighman, measurer, surveyor, godown-keeper or other functionary shall, unless duly authorised by licence, carry on his occupation in a notified market area in respect of agricultural produce.

23. Levy of fees - A Committee shall, subject to such rules as may be made by the State Government in this behalf levy on ad-valorem basis -

(i) fees on the agricultural produce bought or sold by a licensee in the notified market area at a rate not exceeding two rupees for every one hundred rupees; and

(ii) also additional fees on the agricultural produce .when sold by a producer to a licensee in the notified market area at a rate not exceeding one rupee for every one hundred rupees:

Provided that -

a) no fee shall be leviable in respect of any transaction in which delivery of the agricultural produce bought or sold is not actually made; and

b) a fee shall be leviable only on the parties to a transaction in which delivery is actually made.

30. No trade allowance permissible except as prescribed - No trade allowance made other than an allowance permitted by rules or bye-laws made under this Act, shall be made or received in a notified market area by any person in any transaction in respect of the agricultural produce concerned and no Civil Court, shall, in any suit or proceeding arising out of any such transaction, recognise any trade allowance not so permitted;

Provided that all market charge shall be paid by the buyer.

37. Penalties - Whoever contravenes the provisions of section 6 or section 8 shall, on conviction, be punishable with simple imprisonment which may extend to one month or with fine which shall not be less than fifty rupees but may extend to five hundred rupees or with both, and in the case of a continuing contravention with a fine which in addition to such fine as aforesaid, may extend to thirty rupees for every day after the date of first conviction during which the contravention is continued.

2) Whoever contravenes the provisions of sub-sections (2) and (4) of Section 13, shall on conviction, be punishable with fine which shall not be fifty rupees and, in the case of a continuing contravention, with a fine which, in addition to such fine as aforesaid may extend to two rupees for every day after the date of first conviction during which the contravention is continued.

3) Whoever contravenes the provisions of section 30, shall, on conviction, be

punishable with fine which shall not be less than fifty rupees but may extend to two hundred rupees

46. Power of compound offences - (1) with the previous approval of the Chairman of the Board, a Committee or with the authorisation by a resolution of a Committee, its Chairman, may accept from any person against whom a reasonable suspicion exists that he has committed an offence under this Act or any rule or bye-law made thereunder a sum of money by way of composition for such offence.

(2) On the payment of such amount of money to the Committee or to its Chairman, as the case may be, the suspected person, if in custody shall be discharged, and no further proceedings shall be taken against such person.

Rule 31. Account of transaction and of fees to be maintained - (1) Every licensed dealer and every dealer exempted under rule 18 from obtaining a licence shall submit to the Committee a return in Form-M showing his purchases and sales of each transaction of agricultural produce within seven days of the date of the transaction.

(2) The Committee shall maintain a register in Form-N showing the total purchases and sales made by dealers and fees recoverable and recovered from them.

(3) The Committee shall levy the fees payable u/s 23 on the basis of the return furnished under sub-rule (1).

(4) if any dealer fails to submit a return as prescribed in sub-rule (1) or the Committee has reason to believe that any such return is incorrect, it shall, after giving a notice in Form-O to the dealer concerned and after such enquiry as it may consider necessary, proceed to assess the dealer''s business during the period in question.

(5) if a dealer habitually makes default in the submission of returns or if in the opinion of the committee the dealer habitually submits false returns, the Committee may order for the inspection of the dealer''s accounts.

(6) After an order under sub-rule (4) is made, the Committee shall inform the dealers of the date and place fixed for the inspection.

Provided that if the dealer so desires, and pays such fees as the Committee may fix in this behalf, the inspection shall be made at the dealer''s premises.

(7) The Committee may authorise one or more of its members to carry out the inspection ordered by it under sub-rule

(5) such member or members shall be assisted by such employees of the Committee as may be deputed by it for that purpose.

(8) Such member or members may after inspection prepare a return or may amend the return already furnished, on the basis of transaction, appearing in the

dealers accounts books, and the Committee may levy a fee, or, as the case may be, an additional fee, u/s 23 on the basis of such return or amended returns, but if the account books are reported to be unreliable, or as not providing sufficient material for proper preparation or amendment of the return or if no such books are maintained or produced, the Committee may assess the amount of the dealer''s business on such information as may be available or on the basis of best judgment, and levy fee on the basis of such assessment.

(9) In addition to the fee or additional fee levied under sub-rule (8), the Committee may recover from the defaulter penalty equal to the fee, or additional fee so levied.

36. Composition - (1) In case the Chairman of the Committee accepts a sum, by way of composition in accordance with the provision of section 46, he shall report the matter in next meeting of the Committee placing before the meeting all relevant papers in that behalf.

(2) The amount so realised by way of composition shall be in addition to any amount due from the offender under the Act or the rules or the bye-laws."

5. A combined reading of Sections 6(3), 8, 13(2) & (4), 30, 37 and 46 of the Act and Rule 36 of the rules shows that violations of the provisions of Sections 6 and 8 constitute offence under the Act and a person found guilty of contravention of these provisions is liable, to be punished with simple imprisonment upto one month or with fine. For continuing contravention the amount of fine is liable to be increased by Rs. 30/- every day. Contravention of Section 13(2) and (4) can result in conviction and the person found guilty is liable to pay fine. For continuing contravention of Section 13(2) and (4) the amount of fine can go on increasing by Rs. 2/- every day. A person found guilty of contravening Section 30 is liable to pay fine in case of his conviction. The maximum amount of fine recoverable from such person is Rs. 200/-. Section 46 empowers the Committee or its Chairman to accept a sum of money by way of composition for any offence. Section 46(2) provides for discharge of the offender on payment of money. Rule 36 of the Rules requires the Chairman to report to the committee cases in which the composition has been done. As against these provisions, Section 23 read with Rule 31 provides for the levy of fees and additional fees on agricultural produce bought or sold by a licensee in a notified market area. In terms of Rule 37(1) every licenced dealer is required to submit a return in Form-M showing his purchases and sales of each transaction of agricultural produce. The Market Committee is required to maintain a register in Form-N showing total purchase and sales made by dealers and fees recoverable and recovered from them. Fee is leviable by the Market Committee u/s 23 on the basis of return furnished under Rule 31(1). In the event of the failure of the dealer to submit a return under Rule 31(1) and in cases where the committee believes that the return is not correct, it can proceed to assess the amount of dealer''s business after giving notice to him in Form-O. Cases of habitual defaulter are to be dealt with as per sub-rules (5), (6), (7), (8) and (9) of Rule 31. The committee is empowered to inspect the

dealers account and levy additional fee as well as penalty on the defaulter. The amount of penalty can be equal to the fees or additional fees levied by the committee. The committee is also empowered to suspend or cancel the licence of a person who is habitual defaulter. However, there is no provision either in the Act or the Rules which empower the Market Board or the committee to levy any fees like composition fee. These provisions also do not empower the Board or the Committee to charge anything other than the fees, additional fees or penalty for breach of the i provisions contained in Rule 31(1).

6. A look at the impugned circular shows that the respondent-Board has now declared that the violations of the provisions of ''1961 Act'' and Rules and Bye-laws framed thereunder can be compounded u/s 46 by recovering composition fees @ 5 times of the fees determined. The Market Committees have been directed to recover the composition fees on the assumption that the same has been approved by the Chairman. Thus every type of violation of the provisions of the Act and the rules has to be compounded on payment of five times of the normal fees and the power of compounding, which vests in the Chairman of the Board, has been delegated to the Market Committees. In our opinion, the Board has clearly exceeded its authority by requiring-the Market Committees to compound all types of violations u/s 46. The Board has also exceeded its jurisdiction by fixing the composition fees @ 5 times of the fees payable by the licensee. While issuing this circular the respondent-Board has ignored the provisions of Section 23 and Rule 31 which empower the Market Committees to charge additional fees and penalty only. In such types of cases power vesting in the Board or the Chairman u/s 46 cannot be exercised.

7. Argument of Shri Pathela that the circular has been issued with the object of augmenting the revenue of the Market Committees is wholly untenable. The respondent-Board and the Market Committees are creature of statute and they are bound to act within the four corners of statute which regulate their functioning. They are not possessed with unbridled and unguided power to do any act which may adversely affect the rights of the licensees and as the impugned circular does not fall within the parameters of Section 46, we have no hesitation to quash the same.

8. In view of our finding that the impugned circular suffers from the lack of jurisdiction, the subsequent notices issued by the respondent-Market Committee are also liable to be declared as illegal and without jurisdiction.

9. For the reasons mentioned above, the writ petitions are allowed. The impugned circular dated 10.5.1995 is struck down. The notices issued to the petitioners for charging the composition fees are also quashed. Liberty is, however, given to the respondents to recover the amount of fees/additional fees and impose penalty on such of the petitioners who may be found guilty of violating the provisions contained in Rule 31. Parties are left to bear their own costs.

