(2000) 08 PAT CK 0066

In the Patna High Court

Case No : Civil Review No. 63 of 1999

Maha Kali Milling Co. (P) Ltd. — APPELLANT

Vs

Bihar State Agriculture Marketing Board and Others — RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 27A, 9

Citation : AIR 2001 Patna 70 : (2000) 4 PLJR 590

Hon'ble Judges : Shashank K. Singh, J;Ravi S. Dhawan, J

Bench : Division Bench

Advocate : Navniti Prasad Singh, Raj Kishore Prasad, Tej Bahadur Roy, Gajendra Pratap Singh, Purnendu Singh, Mriganj Mauli, Vinay Mistry, Vijoy Kr. Sinha and Rajesh Mohan, Shashi Anugrah Narain, General and S.D. Yadav, for the Appellant; Ram Janam Ojha and K.P. Yadav, for the Respondent

Judgement

1. The origins of this matter being placed before the Court on a review application need to be stated briefly. This is a matter under the Bihar Agricultural Produce Markets Act, 1960.

2. AC.W.J.C. No. 2355 of 1977 Maha Kali Milling Co. (P) Limited, Digha, Patna v. Bihar State Agricultural Marketing Board had been filed. The writ petition was dismissed on the grounds of an alternate remedy. It would be best to reproduce the order dated 3 March, 1998 on the writ petition :--

"In this writ application, the prayer of the petitioner is for quashing of the order, dated 30-11-96 passed by the Sub-divisional Officer-cum-Special Officer, Agricultural Produce Market Committee, Mussallehpur, Patna. by which the assessment has been made in terms of Section 27A of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter referred to as ''the Act). Having regard to the statutory appeal available to the petitioner, I am not inclined to interfere with the order, aforesaid.

Accordingly, the petitioner, if so advised, may file an appeal in terms of Section

27B of the Act, If there Is any delay in filing the appeal, that shall be condoned in view of the fact that the petitioner was prosecuting his remedy before this Court by way of the instant writ application. Let it be recorded that I have not gone Into the merit of this case. This disposes of the instant writ application."

3. Thereafter, the petitioner filed a Letters Patent Appeal. The petitioner did not resort to invoking the remedy as provided, as an appeal. Thus, Letters Patent Appeal had been filed. The Letters Patent Appeal was dismissed on 14 October. 1998 and the following order had been passed dismissing the appeal:--

"This Letters Patent Appeal is directed against an order dated 3-3-98 passed in C.W.J.C. No. 2355 of 1997.

M/s. Maha Kali Milling Co. (P) Ltd. Digha, Patna, had filed a writ petition for Issuance of a writ in the nature of certiorari for quashing the assessment order and the demand notice dated 6-12-96 whereby a demand of Rs. 8,97,691.92 (Rupees Eight Lakh Ninety seven thousand six hundred ninety one and paise ninety two) only was made.

The writ Court by the Impugned order dated 3-3-98 non-suited the appellant directing it to exhaust the statutory remedy by way of appeal available u/s 27B of the Bihar Agricultural Produce Markets Act, 1960 (hereinafter to be referred to as the Act).

The Writ Court appears to have passed the order impugned based on the doctrine of "exhaustion of alternative remedy".

The record also demonstrates that Instead of filing appeal, the appellant chose to file revision. But in view of the provisions of Section 27-B of the Act, the revision was not entertained being not tenable.

Shri Mahto learned senior Counsel for the appellant contends that initially the assessment order passed in terms of Section 27-Aof the Act assessing Rs. 8,97,691.92 (Rupees Eight Lakh Ninety seven thousand six hundred ninety one and paise ninety two) only and pursuant to that demand made is completely without Jurisdiction and whenever the order is found to have been passed without jurisdiction the Writ Court is not loathed to interfere with the same notwithstanding the fact that statutory appeal is provided Just as provision of Section 27-A of the provides for appeal.

This submission has no two opinion provided the order under challenge is completely without jurisdiction being a NULLITY.

In this regard it is needless to say that jurisdiction means authority to decide and thus it is well settled that a Court, Tribunal or any statutory authority having jurisdiction over the subject matter as welt as over the parties thereto is bound to decide and it does not lose Its jurisdiction by coming to a wrong conclusion or decision whether It may be wrong in law or in fact and thus even though it decides wrong it would not be doing something which it had no jurisdiction to do.

Thus the order rendered by such authority having jurisdiction cannot be treated as nullity and provision of appeal provided in the statute must be resorted to.

However, if the authority is statutorily not empowered to seize with the matter and decides the case which suffers for want of Inherent Jurisdiction, indeed only in such set of circumstances the argument of without jurisdiction would be tenable and in discretionary jurisdiction the Writ Court may entertain despite the provision of statutory appeal. But such is not the position in the Instant case. Though learned Counsel has tried to advance argument that the assessment made is without jurisdiction, no foundation is laid to this effect before the Writ Court and that is why even the impugned judgment dated 3-3-98 ex facie does not speak of the same.

This being so the submission made by Shri Mahto is not available at this appellate stage.

A general trend is being now developed that where resorting the remedy to file statutory appeal, amount is required to be deposited, instead of doing so, the assessment order is being challenged in writ petition taking the plea or jurisdiction. The same is the position with this ease.

However, where the law has taken care of providing appeal such practice of entertaining writ petition must be deprecated and rightly the Writ Court has dismissed the petition.

For the reasons slated in the order impugned that the appellant may avail the statutory remedy u/s 27-B of the Act, in our considered opinion, this appeal has no merit. Accordingly, it is dismissed in limine without issuing notice to the other side."

4. Thereafter, the petitioner filed a SLP before the Supreme Court. The SLP was withdrawn by the petitioner and it was contended that the petitioner would file a review application before the High Court. Thus, the present review application has been filed.

5. The Court has heard the matter yesterday and today. Learned Advocate General is also before the Court.

6. Plainly the contention on behalf of the petitioner is that the assessment which was normally to be done by the Sub-Committee of the Market Committee under the Act has not been made as there is no validly constituted Market Committee. Thus, It is contended that the Sub-Divisional Officer is a poor substitute and even if this aspect is to be ignored no notification has been Issued by the Stale of Bihar to invest powers in the Sub-Divisional Officer to carry on the functions of the Market Committee. Thus, the Sub-Divisional Officer is not clothed with any authority to carry on the functions of the Market Committee. Plainly, if the aspect of jurisdiction is to be considered and It goes to the root of the matter the submission made by the petitioner had to be answered by the respondents. It is not necessary for the Court to go into the record as it is accepted by learned

Advocate General, Bihar as also learned counsel who appears on behalf of the Marketing Board that there is no notification in existence upon which the Sub-Divisional Officer has been required to carry on the functions of the Market Committee.

7. In the present context, the term of the Market Committee has been given in Section 9 of the Act. As the term of the last Committee came to a close and taking all the necessary extensions into account a situation was rendered that the Committee ceased to function, a situation recognised under Sub-section (5) of Section 9 of the Act. Clearly, this situation could only be remedied provided the State Government had notified a person to carry on the functions of the Market Committee. This the State Government did not do. It is not for the Court to find out the reasons why this had not been done or why the situation escaped the attention of the State Government. Section 17 A perhaps could come as an aid by saving any act which may have been done by the Market committee from being invalidated. But, even this situation cannot remedy the state of affairs as the learned Advocate General has fairly accepted that there is no Market Committee consequent upon a notification which ought to have been Issued under Sub-section (5) of Section 9 but never saw the light of the day.

8. This again leaves a situation that somebody is exercising the functions of the Market Committee but has not been given the sanction by law to carry on these functions. A faint attempt on behalf of learned counsel for the Board, to save the situation u/s 33 A of the Act cannot be invoked by suggesting that the Bihar Agricultural Marketing Board impliedly having permitted the Sub-Divisional Officer to carry on the functions of the Committee may be understood to save the assessment order as having been rendered by a Sub-committee of the Market Committee. Collections of fees by the Market Committee is one aspect of the matter, to make an assessment of making fee as may be leviable is an entirely different aspect. A taxing and an assessing authority must have the sanction of the law to discharge their functions.

9. This is a bad situation and the sooner it is remedied by taking recourse to the law by investing the functionary to act in lieu of the Market Committee or the Sub-Committee the State Government needs to formalise this announcement without delay as it may render all Acts of the corporation sole, which at present the Market Committee, as void.

10. In the present case, the situation may not arise because this order is being ren- dered by consent of all parties. If recourse to an alternative remedy is to be had, then, it rests on the proposition that all defects in the order, by which the petitioner is aggrieved, may become the subject matter of consideration in the appeal. The petitioner does not resist the proposition that he has immunity from assessment. In case, he cannot take the stand as his contention is that he has deposited the admitted fee. Only that person would deposit the admitted fee who accepts that he is liable to trade within the market area and is subject to Market Committee assessing him. The petitioner is one such person. But the petitioner''s

submission that the Market committee or whoever its functionaries as a sub-committee, in the absence of a Committee may be does not inspire confidence and the assessment by a Sub-Divisional Officer without authority perhaps is void. The petitioner may not be incorrect. In fact, none of the respondents has succeeded in countering the argument or submissions on behalf of the petitioner. Thus, it leaves the assessment order perhaps in a state of irregularity though not Illegality.

11. It is in this regard that the Court indicated to learned counsel for the petitioner that the only aspect which could aggrieve it is the imposition of a full penalty standing at Rs. 4,76,551.24. By the assessment of 30-11-1996 by the Sub-Divisional Officer. Annexure 2 to the review application and Annexure 3 to the writ petition, the petitioner was assessed at Rs. 4,76,551.24. The petitioner deposited Rs. 27,705.28 and after taking into account this amount the balance stood at Rs. 4,48,845.96. On this amount a full penalty of like amount was also added. Thus, the petitioner was required to deposit a sum of Rs. 8,97,691.92.

12. As there is an issue whether the assessing authority had been Invested with the powers to make an assessment, no resistance has been offered to the proposition that the imposition of a penalty may be bad at this stage and in any case imposition of 100% penalty only implies that no mind had been applied and it ought to be considered whether a lesser amount may be imposed. The petitioner has, during the pendency of the review application, deposited a sum of Rs. 1,50,000/-. This leaves a balance of Rs. 2,98,845.96.

13. Learned counsel for the petitioner has consented that he will advise the petitioner to file an appeal u/s 27B of the Bihar Agricultural Produce Markets Act, 1960. This the petitioner may, provided the appeal is filed within one month from today. It will be within the discretion of the appellate authority to go into the question of penalty also. Whether it has to be waived or imposed and if imposed then how much? Clearly, all issues will be open before the appellate authority.

14. This disposes of the review application and any orders on the writ petition and the Letters Patent Appeal shall stand modified accordingly.