(2005) 03 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4855 of 2005

Market Committee and Another — APPELLANT

Vs

The State of Punjab and Another — RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 29, 29(1), 29(2), 29(7)
Punjab Agricultural Produce Markets Act, 1961 — Section 10, 23, 42

Citation : (2005) 140 PLR 446 : (2005) 3 RCR(Civil) 201

Hon'ble Judges : D.K. Jain, C.J;Hemant Gupta, J

Bench : Division Bench

Advocate : Akshay Bhan, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to the order dated 09.08.2004 passed by the Additional Secretary to Government of Punjab. Department of Agriculture, Chandigarh, in exercise o f revisional jurisdiction conferred on the State Government u/s 42 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter to be referred as "the Act").

2. Respondent No. 2 is a licensee of Market Committee, Rajpura, u/s 10 of the Act and deals also in purchase, sale and storage of agricultural produce in the notified market area. In April, 2000, respondent No. 2 purchased a certain quantity of wheat from M/s Fateh Trading Company, Bathinda, a licensee of Market Committee, Bathinda, u/s 10 of the Act. The Assessing Authority vide its order dated 14.02.2001 raised a demand of Rs. 3,69,524/- on account of market fee, rural development fund, interest and penalty on rural development fund on the ground that respondent No. 2 has not cooperated and has not deposited market fee and rural development fee and, therefore, the said respondent as a licensee is liable for payment of such market fee for sale and purchase of

agricultural produce. It was found that no market fee and rural development fund has been deposited for the wheat sold to respondent No. 2 by M/s Fateh Trading Company, Bathinda. The appeal against the said order was dismissed a sit was found that under Rule 29(2) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter to be referred as "the Rules") the responsibility for payment of market tee levied is on the purchaser i.e. respondent No. 2.

3. However, learned Additional Secretary to Government of Punjab, Department of Agriculture, Chandigarh in exercise of revisional jurisdiction, found that respondent No. 2 purchased 7159 quintals of wheat from M/s Fateh Trading Company, Bathinda, during 2000-2001 and that such transaction has taken place in the notified area of the Market Committee, Bathinda. It has been further found that it was the responsibility of M/s Fateh Trading Company, a licensee of Market Committee, Bathinda, to deposit the market fee. It was found that respondent No. 2 submitted Forms KK issued by then seller -M/s Fateh Trading Company - to the Market Committee, Rajpura, containing the details of the transactions including the dates, payments and value in time. It was found that if M/s Fateh Trading Company has not deposited the amount with the Market Committee, Bathinda, the fault lies with M/s Fateh Trading Company and not with respondent No. 2 and, thus, allowed the revision petition.

4. The market fee is payable in terms of Section 23 of the Act on the agricultural produce bought or sold by a licensee in the notified market area. Under Rule 29(7) of the Rules, the agricultural produce is deemed to have been bought or sold in a notified market area if the agreement of sale or purchase thereof is entered into the said area; or in pursuance of the agreement of sale or purchase, the agricultural produce is weighed in the said area; or in pursuance of an agreement of sale or purchase, the agricultural produce is delivered in the said area to the purchaser or to some other person on behalf of the purchaser and that if the agricultural produce sold or bought otherwise than in pursuance of agreement of sale or purchase and is delivered in the said area to the purchaser or to some other person on behalf of the purchaser. To avoid payment of market fee again even though on the same produce fee has been paid, Rule 29(1) of the Rules was amended on 4.9.1998. Under the amended Rule, it is contemplated that no fee shall be levied on the agricultural produce bought or sold in respect of which fee has already been paid in the same or any other notified market area within the State. It also contemplates that the dealer who claims exemption from the payment of fee levied on any agricultural produce on the ground that the fee has already been paid by him in another notified market area, shall make declaration and give certificate to that effect in ''Form KK'' within a period of thirty days of the transaction of agricultural produce in question to the Committee from where the exemption is claimed. The said Rule contemplates the procedure for issuance of Form KK as well. The relevant provisions of Rule 29 read as under:-

"29. Levy and collection of fees on the sale and purchase of agricultural produce:-

(1) u/s 23 a Committee shall levy:-

(i) fees on the agricultural produce when sold by a producer to a licensee;

(ii) also additional fees on the agricultural produce when sold by a producer to a licensee;

in the notified market area at the rate fixed by the Board from time to time.

Provided that no fee shall be levied on the agricultural produce bought or sold in respect of which such fee has already been paid in the same or any other notified market area within the State. A list of such fees shall be exhibited in some conspicuous place at the office of the Committee concerned:

Provided further that the dealer who claims exemption from the payment of fee levied on any agricultural produce on the ground that the fee has already been paid by him in another notified market area, shall make declaration and give certificate to that effect in Form KK within a period of thirty days of the transaction of agricultural produce in question to the Committee from where the exemption is claimed.

The certificate in Form KK shall be prepared in quadruplicate from the book-let, duly attested and issued by the Secretary of the concerned committee or its authorised officer, against the payment, fixed by the committee. It shall be the duty of the dealer claiming exemption from the payment of fee to send the original copy of Form KK to the Committee within whose market area the agricultural produce is brought. The second copy shall be sent to the office of the Committee within whose market area such agricultural produce is bought and the third copy shall be retained by the dealer, who purchased the agricultural produce and the fourth copy shall be retained by the dealer who sold the agricultural produce and the same shall be kept as a part of their accounts, maintained in respect of payment of the fee. The certificate referred to above presented after the aforesaid period of third days, shall not be entertained and no exemption from payment of fee shall be granted to the dealer:

Provided further that the dealer claiming exemption from the payment of fee under Sub-rule (1), shall also produce a copy of the railway receipt, forwarding note, bill, bilty or challan, as the case may be, duly signed by him or his authorised agent in the office of the Committee where the agricultural produce is bought before it is loaded, the second copy shall be produced by the said dealer in the office of the Committee, within whose market area the agricultural produce is brought before it is unloaded and the third copy shall be retained by him. In case no such copy is produced by the dealer in the office of the concerned Committee, no claim for exemption shall be entertained;

xx xx xx xx xx (2) The responsibility of paying the fees prescribed under Sub-rule (1) shall be of the buyer and if he is not a licensee then the seller who may realise the same from the buyer. Such fee shall be leviable as soon as an agricultural produce is bought or sold by a licensee."

5. Before this Court, learned counsel for the petitioner has vehemently argued that under Rule 29(2) of the Rules, the responsibility of paying market fee is on the seller.

Since the seller is not a licensee of Market Committee, Rajpura, and, therefore, the order passed by the revisional authority in setting aside the order of recovery of market fee and rural development fund is not sustainable in law.

6. The learned counsel for the petitioner could not point out that any of the procedural requirements in issuance of Form KK was not followed by M/s Fateh Trading Company, Bathinda. The only argument raised is that on verification, it has been found that market fee has not been deposited by M/s Fateh Trading Company. If the market fee has not been deposited though Form KK is furnished, the remedy is with the Market Committee within whose jurisdiction the transaction has taken place. Thus, it is for the Market Committee, Bathinda, within whose jurisdiction the transaction of sale and purchase has taken place, to seek recovery of the market fee from its licensee. Respondent No. 2 on the strength of Form KK has entered upon the transaction of purchase of wheat and, thus, consequences of non-payment of market fee in terms of such declaration form is to be borne by the person who furnished such form and not the buyer who purchased the agricultural produce on the strength of such form.

7. Learned counsel for the petitioner has relied upon the decision of this Court reported as Guranditta Mal Shauti Parkash, Rice Millers Vs. State of Punjab and Another, to contend that the liability to pay market fee is of the buyer if the buyer is a licensee in the same market area. And, in case the buyer is not a licensee in that market area, then it is the seller who is to deposit the amount of the market fee with that Market Committee. There is no dispute with the proposition of law laid down in the aforesaid judgment. In the present case, the buyer i.e. respondent No. 2 is not a licensee of the Market Committee, Bathinda, where the transaction of sale and purchase has taken place. It is, thus, the seller i.e. M/s Fateh Trading Company Bathinda, who is to deposit the amount of market fee. If the market fee is not deposited though Form KK has been issued, the remedy is with the Market Committee, Bathinda. No fault lies with respondent No. 2 who has effected purchase on the strength of representation of payment of market fee within the jurisdiction of Market Committee, Bathinda.

8. Therefore, we do not find that the reasoning given by the learned Additional Secretary to Government of Punjab, Department of Agriculture, Chandigarh, while accepting the revision petition of the licensee, suffers from any patent illegality or material irregularity warranting interference by this court in exercise of its extraordinary writ jurisdiction under Article 226/227 of the Constitution of India.

Dismissed in limine.