(2008) 12 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition No. 1448 of 2008 (MS)

Mohammad Ayoob Mohammad Yaqub APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:
Constitution of India, 1950 — Article 286
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17, 36, 37A

Citation : (2009) 2 UC 849 : (2009) 1 UPLBEC 4

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : S.K. Posti, for the Appellant; K.P. Upadhyay, Additional Chief Standing Counsel for State of Uttarakhand for Respondent No. 1, Raman Kumar Sah and V.B.S. Negi, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, Petitioners have sought a writ in the nature of Mandamus commanding the Respondents not to impose or realize any Mandi-Fee, Development Cess, or Compounding Fee on the agricultural produce purchased by the Petitioner on behalf of the retailers within the limits of Mandi-area Nazibabad (U.P.). Further Mandamus has been sought directing the Respondents to refund the amount, which has been charged illegally by the Respondents.

2. Heard learned Counsel for the parties and perused evidence, counter affidavits and rejoinder affidavit.

3. Brief facts of the case as narrated in the writ petition are that the Petitioners are whole-sale traders of fruits and vegetables in Nazibabad, District Bijnor in the State of Uttar Pradesh. Petitioners are registered licensee of Mandi Samiti Nazibabad, who were allotted shops and plots inside Mandi compound of Nazibabad (State of Uttar Pradesh). They pay Mandi Fee and Development Cess on behalf of the retailers after purchasing fruits and vegetables from them to

Mandi Samiti Nazibabad. The Petitioners supply fruits and vegetables from State of Uttar Pradesh to State of Uttarakhand by transporting the same through trucks, but the goods loaded in the trucks for different destinations in State of Uttarakhand are stopped by the Respondent Mandi Samitis illegally and Petitioners are being made to pay Mandi Shulka at various places of Trade-tax Check Post by intercepting the trucks. It is alleged that goods transported are accompanied with valid papers with them. It is pleaded in the writ petition that the Petitioners represented their grievances to the Respondents but to no avail. Hence, the realization of Mandi-Fee by the Respondents has been challenged on various grounds alleging that the same is violative of provisions of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

4. The writ petition is contested by the Respondents. On behalf of Respondent No. 2, 4 and 5, a counter affidavit is filed, in which it has been stated that Uttar Pradesh Mandi Adhiniyam, 1964 is a welfare legislation with primary object to help the farmers. It is further stated that Section 17 of the said Act empowers the Mandi Samitis (Market Committees) to levy and collect Mandi Fee. It is further stated that u/s 36 of the aforesaid Act, the officers of the Mandi Samitis are authorized to inspect and seize the goods. It is also stated in the counter affidavit that Section 37-A of the Act empowers Chairman, Mandi Samiti to compound the offence committed by any person under the Act. It is admitted that Petitioners are carrying business of fruits and vegetables and their trucks are destined to various places in Garhwal region of State of Uttarakhand. According to the answering Respondents, Mandi Fee was rightly imposed and realized by the Respondent. In para 16 of the counter affidavit filed on behalf of Respondent No. 2, 4 and 5, it is stated that on checking, the Petitioners'' truck U.A. 11 -0993 was found transporting the goods without valid papers, the goods were seized and on receiving application for compounding of offence, the same was compounded by the authorized officers in exercise of powers u/s 37-A of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

5. A separate counter affidavit has been filed on behalf of Respondent No. 3, in which it has been stated that Mandi Fee is being realized u/s 17(iii) of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 as per U.P. Govt. Notification No. 8948/12-5-125/1973 dated 25-9-1993 (applicable to the State of Uttarakhand). It is further stated in the counter affidavit of Respondent No. 3 that under order of District Magistrate vide letter No. 3319/24-F.C. (2007-08) dated 30th August, 2008 (copy Annexure CA-3 to the counter affidavit) two Check-post at Srinagar (Pauri) and Marchula were established to check the illegal trading and transaction of Mandi goods. It is further stated that no Mandi Fee is being realized from those transporters, who are having valid Form No. 9 and Gate-pass with them. It is stated in paragraph 19 of the counter affidavit filed on behalf of Respondent No. 3 that Petitioners do not possess license while the answering Respondent provides the facilities of road, light, water, etc.

6. Before further discussion, this Court thinks it just and proper to mention that

the preamble of Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 (for short hereinafter referred to as ''the Act'') shows that this legislation has been made for regulation of sale and purchase of agricultural products and for the establishment, superintendence and control of markets therefor in State. The statement of objects and reasons of the Act further discloses that following objectives were to be achieved through the legislation:

(i) to reduce the multiple trade charges, levies and exactions charged at present from the producer-sellers;

(ii) to provide for the verification of accurate weights and scales and see that the producer-seller is not denied his legitimate due;

(iii) to establish market committees in which the agricultural producer will have his due representation;

(iv) to ensure that the agricultural producer has his say in the utilization of market funds for the improvement of the market as a whole;

(v) to provide for fair settlement of disputes relating to the sale of agricultural produce;

(vi) to provide amenities to the producer-seller in the market;

(vii) to arrange for better storage facilities;

(viii) to stop inequitable and unauthorized charges and levies from the producer-seller; and

(ix) to make adequate arrangements for market intelligence with a view to posting the agricultural producer with the latest position in respect of the markets dealing with his produce.

7. It is true that Section 17(iii) of the Act empowers a Market committee to levy and collect market fee which shall be payable on transaction of sale of specified agricultural produce in the market area (at the rate prescribed within the limits under the Section). The expression "on transaction of sale of specified agricultural produce in the market area" clearly shows that the transaction of sale or purchase must be taken within the limits of the committee, which levies or collects Mandi Fee. In Metal Crafts v. Rajay Krishi Utpadan Mandi Parishad Lucknow and Ors. (2001) 3 UPLBEC 2130 and Krishi Utpadan Mandi Samiti Ghaziabad and Another Vs. Metal Craft and Others, , the Apex Court has clearly held that where the sale has not taken place in the area of Mandi Samiti, no Mandi Fee can be imposed. The Petitioners'' case is that they have purchased the agricultural produce in Nazibabad (Bijnor) a town in State of Uttar Pradesh, where they are licensees and have paid Mandi Fee under the Act, as such merely for transporting the goods (fruits and vegetables) to different destinations of Garhwal region of State of Uttarakhand, which fall beyond the limits of Respondent Mandi Samiti, no Mandi Fee can be imposed or realized under the Act. I have gone through the counter affidavit filed on behalf of Respondents and

found that the Respondents have nowhere stated that any sale or purchase, in respect of goods being transported, had taken place in the area of their Mandi Samiti. Therefore, this Court is of the view that the Respondent Mandi Samiti had no power to realize Mandi Fee from the Petitioners in respect of goods, which was neither sold nor purchased in their area. Apart from this, there is distinction between a ''tax'' and a ''fee''. A ''fee'' can be imposed only where the person concerned is being provided some service by the authority concerned. Article 286 of the Constitution of India imposes restriction of a tax on purchase of goods outside the State subject to the law made under Clause (3) of said Article.

8. Learned Counsel for the Respondents drew attention of this Court to Section 36 of the Act, which empowers officers of a Market Committee (Mandi Samiti) to inspect, search and seize books of accounts and the vehicle carrying the same, if there is reason to believe that offence has been committed under the Act. No doubt the Respondents officers of the Market Committee have the power as pointed out by learned Counsel for the Respondents, but the Respondents failed to show as to how the goods of the Petitioners, which are being consigned at Nazibabad (State of Uttar Pradesh) for various destinations of Garhwal region in State of Uttarakhand beyond the area of the Respondent Mandi Samiti are being seized. Merely for the reason, the trucks were passing through area of Mandi Samiti (but not Market Area), it cannot be said that the officers of the Respondents can seize the goods. It is pertinent to mention here that it is nobody''s case that sale or purchase has taken place within the limits of Respondent Market Committee.

9. On behalf of Respondents, it is further argued that the Annexures to the counter affidavit filed on behalf of Respondent No. 2, 4 and 5 show that the persons concerned have themselves moved the application for compounding the offence, as such, they cannot say that they were in possession of the valid papers for transporting the goods. In reply to this, learned Counsel for the Petitioners drew attention of this Court to the Annexures filed with the rejoinder affidavit and contended that the persons concerned have denied their signatures in the compounding applications. However, the Annexures to the rejoinder affidavit appear to have been prepared after the offence was compounded and fee is paid by the persons concerned. Having gone through the Annexures filed with the counter affidavits and the one with the rejoinder affidavit, this Court is of the view that the compounding applications were genuine and once the persons concerned have admitted having transporting the goods without valid papers, it cannot be said that the order compounding the offence or realizing the compounding fee was improper, to that extent.

10. That for the reasons as discussed above, while the writ petition deserves to be allowed in respect of relief (A), the same is liable to be dismissed for relief (B). The writ petition is accordingly disposed of with the direction that the Respondent Committees shall not realize the market fee from the Petitioners in respect of the agricultural produce, which is being purchased by the Petitioners in

the State of Uttar Pradesh and directly being transported to various destinations in the State of Uttarakhand beyond the market area of the Respondent Committees. However, as to refund of the amount already paid after compounding of the offence is concerned, the writ petition is dismissed to that extent.