(2013) 07 KAR CK 0128

In the Karnataka High Court

Case No : Writ Petition No. 49396 of 2012 (APMC)

M/s. Sabakath Traders General Merchants and Commission Agents — APPELLANT

Vs

The Secretary, The Director, Agricultural Produce Market Committee and The State of Karnataka — RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Agricultural Produce Marketing (Regulation and Development) Act, 1966 — Section 65-A, 70

Citation : (2013) 07 KAR CK 0128

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Janardhana G, for the Appellant; H.K. Thimmegowda, for R1 and Sri. T.K. Vedamurthy, HCGP for R2 and R3, for the Respondent

Judgement

A.N. Venugopala Gowda, J.—Petitioner is a licensed trader in notified items. The 1st respondent issued a notice dated 20.10.2010 calling upon the petitioner to pay Rs. 79,871/- towards cess and penalty of three times i.e., Rs. 2,39,613/-, in all amounting to Rs. 3,90,484/-. The petitioner sent a reply dated 02.11.2010 seeking permission to inspect the documents on which the committee had placed reliance to arrive at the total sales and purchase at Rs. 59,28,388/- and to grant 15 days time to ascertain the correctness of the amount assessed by the committee. The 1st respondent, thereafter sent another notice dated 11.11.2010 to pay Rs. 3,19,484/. The petitioner deposited along with a communication dated 16.11.2010, a cheque for Rs. 79,871/- dated 15.11.2010 towards market fee due as assessed by the committee and another cheque for Rs. 23,962/- towards penalty payable u/s 65-A of Karnataka Agricultural Produce Marketing (Regulation & Development) Act, 1966 (for short ''The Act''). The 1st respondent served on the petitioner a notice dated 30.11.2010 to pay the balance amount of Rs. 2,15,651/- within 3 days, failing which the produce proportionate to the penalty amount would be forfeited. Petitioner submitted a reply dated 04.12.2010 for consideration and for passing appropriate order imposing penalty under S. 65-A of the Act by making it clear that the deficit market fee paid was a bonafide mistake and not committed with mala fide intention. The 1st respondent having issued a demand dated 05.04.2011, petitioner filed W.P. No. 14887/2011. Noticing that there is serious dispute with regard to question of fact, as to whether market fee was paid promptly or it was paid belatedly after detection of intentional evasion and the relevant provisions under the Act, empowering the Director of the Agricultural Marketing to go into the disputed question of fact and to decide the same by affording reasonable opportunity, the matter was remitted on 15.10.2011 to the 2nd respondent for adjudication in accordance with the provisions contained under S. 132(2) of the Act. The 2nd respondent having passed an order dated 03.11.2012, as at Annexure-K, this writ petition has been filed to quash the order of the 1st respondent dated 05.04.2011, as at Annexure-J and that of the 2nd respondent dated 03.11.2012, as at Annexure-K. The 1st respondent has filed statement of objections in justification of the decision taken as at Annexure-J and seeking upholding of the order passed by the 2nd respondent, as at Annexure-K.

2. Heard Sri Janardhana G, learned advocate for the petitioner, Sri H.K. Thimmegowda, learned advocate for the 1st respondent and Sri. T.K. Vedamurthy, learned HCGP for respondents 2 and 3 and perused the writ petition record.

3. Petitioner has paid market fee of Rs. 79,871/- and penalty of Rs. 23,962/- under two cheques dated 15.11.2010. The 1st respondent issued a notice dated 30.11.2010 calling upon the petitioner to pay the balance penalty amount of Rs. 2,15,651/-. The payment having not been made, an order dated 05.04.2011, as at Annexure-J was passed, calling upon the petitioner to pay the balance penalty amount of Rs. 2,15,651/-, failing which action under Ss. 67(2), 73(DD) and S. 114 of the Act would be taken. After the order dated 15.10.2011 was passed in W.P. No. 14887/2011, the 2nd respondent has dismissed the appeal by an order dated 03.11.2012, vide Annexure-K.

4. In the case of K.G. Kallappa and Co. Vs. State of Karnataka, with reference to the contentions that Ss. 65 and 65-A of the Act are violative of Article 14 of the Constitution of the India, it has been held as follows:-

20. The fourth contention relates to Section 65 and Section 65-A of the Act. Section 65 empowers the Market Committee to fix the maximum time allowed for payment of market fee collected The learned Advocate General submitted that a uniform period of one week for remitting the market fee is being given by all the Market Committees, in their respective Bye-laws. We find it difficult to appreciate as to how this Section can be regarded as violative of Article 14 of the Constitution. As for as Section 65-A is concerned it empowers the Market Committee to impose a penalty not less than 12% but not exceeding 30% on the amount of market fee, if it is not paid within the time allowed under the Bye-law

made u/s 65 of the Act. The rate of penalty has to be fixed in the Bye-laws. The provision, in our opinion, is compensatory in character, though the word penalty is used in the said provision, for, it provides for collection of interest on the amount of market fee withheld by a person after it became due. Thereafter, we find no substance in the contention that the provision is violative of Article 14 of the Constitution.

5. In the case of M/s. Kethan Trading Co. Vs. The Secretary, APMC, Yeshwanthpur, Bangalore and others, W.P. No. 16327/2002 decided on 16.07.2002, the challenge was to a show-cause notice directing the petitioner to pay the overdue market fee along with penalty of three times, overdue market fee imposed under S. 70 of the Act. Considering the provision under S. 70 of the Act and the factual situation, while allowing the writ petition and quashing the impugned notice, it was held as follows:-

4. On a bare reading of Sec. 70, it is apparent that this is an enabling provision for compounding the offence i.e., to say, if there is an offence and prosecution is taken or launched against the offenders, he or they are at liberty to compound the offence on the terms mentioned under Sec. 70. Admittedly, there is no prosecution launched against the petitioner. Hence, for non payment of the Market Fee for the year 1999-2000 the only penalty the first respondent can impose is under sec. 65(A) i.e., from the minimum of 12% of the amount due up-to 30% and not more than that. In my view, sec. 70 comes into operation only after the prosecution is launched for the alleged offence under the Act and not before. Hence, levying of penalty three times of the amount due under sec. 70 without there being any prosecution, is illegal.

In my opinion, the order noticed supra, squarely applies to the instant case. Following the said order and for the very reasons, this writ petition is allowed and the impugned communication, as at Annexure-J and the impugned order, as at Annexure-K are quashed.

However, the 1st respondent is at liberty to prosecute the petitioner for the offences if any under the provisions of the Act.

No costs.

