
(1997) 05 P&H CK 0220

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18278 of 1996

Pawan Fruit Agency

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-05-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 117 PLR 798 : (1997) 3 RCR(Civil) 581

Hon'ble Judges : N.C. Khichi, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Mansur Ali, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Shinghvi, J.—Demand notice Annexure P-3 issued by the Market Committee, Barara under Rule 31(11) of the Punjab Agricultural Produce Market (General) Rules, 1962 for the levy of market fee and penalty upon the petitioner has been made the subject matter of challenge in this petition.

2. The petitioner is a licensed dealer under the Punjab Agricultural Produce (Market) Act, 1961. It is engaged in the business of purchase and sale of goods within the jurisdiction of the Market Committee, Barara. On 20.1.1996 the Chairman of the Market Committee Barara issued a notice to the petitioner requiring it to appear on 31.1.1996 and produce certain documents. The notice also contained an allegation that the petitioner was in the habit of committing defaults in the submission of returns. After the petitioner had filed reply, the Market Committee issued the impugned demand notice requiring the petitioner to deposit Rs. 40,870.42 towards the market fee and penalty. On 23.10.1996, the petitioner applied to the Secretary of the Market Committee to give it a copy of the assessment order. On 16.12.1996, the present writ petition was filed.

3. When the petition was listed for hearing on 17.12.1996, the court directed the Secretary of the Market Committee, Barara to furnish a certified copy/true Copy

of the order of assessment within 24 hours. On January 7, 1997, the learned counsel for the petitioner made a statement that the copy of the order passed by the Market Committee has not been supplied to his client. Thereafter, the court issued notice of motion to the respondents for 14.2.1997. In response to the notice, the respondents No. 2 and 3 have filed reply. One of the objections raised by the respondents to the maintainability of the writ petition is that the petitioner has failed to avail the statutory remedy of appeal available to it. On merits, the respondents No. 2 and 3 have pleaded that M/s Ekta Food Agency, Delhi with whom the petitioner had business deal in was called upon to produce record relating to the latter for the purpose of inspection. However, the said agency did not produce the record. The respondents have also pleaded that the total transactions entered into between the petitioner and M/s Ekta Food Agency, Delhi were of Rs. 52,61,420/- whereas the market fee was paid only in respect of transactions worth Rs. 42,39,669.50 and thus the petitioner is guilty of not paying market fee in respect of purchase of goods over Rs. 20,00,000/-. The respondents have further pleaded that on 24.10.1996 the petitioner firm had collected a copy of the order dated 14.10.1996 by which market fee and penalty were levied on it.

4. At the commencement of hearing, we enquired from the learned counsel for the petitioner as to why the petitioner concealed the fact that copy of the order by which Market Committee had levied fee and imposed penalty upon the petitioner, which was supplied to it on 24.10.1996 was suppressed from the court. The court also enquired from Shri Mansur Ali as to why the petitioner did not produce all the relevant documents along with the writ petition. The learned counsel submitted that whatever documents were made available to him by the petitioner had been filed along with the writ petition.

5. After perusing the averments made in the writ petition and the reply and the documents produced by the parties, we are clearly of the opinion that the petitioner has not only made an attempt but succeeded in misleading the court by withholding the order which was made available to it on 24.10.1996 by the Market Committee. A bare look at Annexure R-5 shows that the petitioner was given a copy of the document on 24.10.1996 for which application was submitted on 23.10.1996. For the reasons best known to it, the petitioner did not produce the certified copy of the document received by it from the Market Committee. Instead, the counsel appearing for the petitioner made a statement that the copy of the order passed by the Market Committee had not been supplied to his client. It is, thus, evident that by making a misleading statement, the petitioner succeeded in persuading the court to pass an order for issuance of notice of motion. This conduct of the petitioner is sufficient to decline hearing on the merits of the grievance made by it. For taking this view, we draw support from the decisions of this court in Pawan Kumar v. State of Haryana 1994(5) SLR 73 and Jai Bhagwan Jain v. Haryana State Electricity Board, Panchkula, CWP No. 15448 of 1993 decided on 21.9.1994. In the later decision, a Division Bench held:-

"It is the duty of the party seeking relief under Article 226 or 136 of the Constitution to make full and candid disclosure of all the facts and leave it to the court to determine whether relief deserves to be given to the petitioner or not. The petitioner is also under a duty to make all efforts to find out full facts of the case before filing the petition and he cannot be heard to say that he is not aware of the facts concerning him. The petitioner has to demonstrate his bona fides before seeking relief from the court in exercise of its equitable jurisdiction. It is not for the petitioner to decide as to which of the facts are relevant and which are not relevant. The petitioner cannot become a judge on the question of relevancy of facts. Non-disclosure of all the facts in a candid and straight forward manner will necessarily warrant dismissal of a petition."

6. Applying the principle of law laid down in *Jai Bhagwan Jain's* case, we hold that the petitioner is not entitled to be heard on the issue of legality of Annexure P-3.

7. Consequently, the writ petition is dismissed with costs of Rs. 10,000/-. However, we leave the petitioner free to avail the alternative remedy of appeal under the Rules of 1962.