
(2008) 04 P&H CK 0076
In the Punjab And Haryana At Chandigarh

Punjab Mandi Board and Another	Vs	APPELLANT
State of Punjab and Another		RESPONDENT

Date of Decision : 07-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 3 PLR 178 : (2008) 3 RCR(Civil) 714

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 27.9.2004, passed by the Additional Secretary to Government of Punjab, Department of Agriculture, Chandigarh (P-7) whereby the revision petition filed by the Food Corporation of India-respondent No. 2 (for brevity, "the Corporation"), u/s 42 of the Punjab Agricultural Produce Markets Act, 1961 (for brevity, "the Act"), has been allowed by setting aside order dated 18.7.2003 (P-6), passed by the Appellate Authority i.e. Secretary, Punjab. State Agricultural Marketing Board, Chandigarh (for brevity, "the Board"). The Appellate Authority, vide its order dated 18.7.2003 (P-6), while allowing the appeal preferred by the Corporation u/s 40 of the Act affirmed Resolution No. 96, dated 16.1.2002, passed by the Market Committee, Khanouri, District Sangrur, raising demand of Rs. 28,43,664.50 paise on account of demurrage charges from the Corporation for non-lifting of wheat stock by it during Rabi Season 2000-01, which remained lying in the main yard of the Market Committee, Khanauri.

2. Brief facts of the case are that u/s 3 of the Act, the State of Punjab has constituted the Board to regulate purchase, sale, storage and processing of various agricultural produce and for establishment of markets for agriculture produce. Similarly, under the provisions of Sections 11 and 12 of the Act, various Market Committees within the State of Punjab including Market Committee, Khanouri, District Sangrur, have been established.

3. The Corporation also deals with the procurement, storage and distribution of food grains throughout the country. During Rabi 2000, the Khanauri Mandi, under the jurisdiction of Market Committee, Khanauri, District Sangrur, was allotted to the Corporation for effecting purchases. It is claimed that from 11.4.2000 to 8.5.2000, the Corporation purchased 7,21,237 bags of wheat from the Khanouri Mandi, however, the same was not lifted within the stipulated period of time which resulted in violation of bye-law 11(7) of the Punjab Market Committee Byelaws, 1963 (for brevity, "the Bye laws"). On 20.4.2000 and 26.5.2000 (P-1 & P-2), the Market Committee issued notices to the District Manager, Food Corporation of India, Sangrur, that the produce was to be lifted within 72 hours after its purchase and by not doing so, the Corporation has violated the provisions of Bye-law 11(7) of the Bye-laws. On 5.7.2000, another recovery notice under Bye-law 11(7) of the Bye-laws was issued to the Corporation calling upon it to deposit an amount of Rs. 28,43,664.50 paise towards demurrage charges for not lifting produce in due course of time. It was mentioned in the said notice that during year 2000, the Corporation has purchased 360618.50 quintals of wheat from 11.4.2000 to 4.5.2000 (P-3), details whereof were also attached with the said notice (P-4).

4. Feeling aggrieved against notice dated 5.7.2000, the Corporation approached this Court by filing C.W.P. No. 10021 of 2001, which was disposed off vide order dated 29.11.2001, granting liberty to the Corporation to make necessary application under the provisions of the Bye-laws. A further direction was issued to dispose of such an application by passing a speaking order within one month. On 16.1.2002, the Marketing Committee, Khanauri, passed Resolution No. 96, wherein letter dated 27.11.2001, received from the Corporation was considered. The Corporation took the stand that on 617.5.2000 and 12.5.2000 there were heavy rains due to which wheat bags could not be lifted. However, rejecting the said defence, the demand of Rs. 28,43,684.50 paise was sustained by the Marketing Committee, Khanauri (P-5).

5. Challenging notice dated 5.7.2000 and Resolution No. 96, dated 16.1.2002, the Corporation filed an appeal u/s 40 of the Act before the Secretary of the Board, which was rejected vide order dated 18.7.2003 (P-6). Assailing the order dated 18.7.2003, the Corporation further filed revision petition u/s 42 of the Act before the Additional Secretary-respondent No. 1, which has been allowed vide order 27.9.2004 (P-7). The observations made in para 5 of the order reads thus:

I have given thoughtful consideration to the submissions made by the contesting parties and have also gone through the relevant record of the case available on the file. I have also perused various provisions relevant for the case. It is a fact that the respondent committee vide its letter dated 5.7.2000 asked the petitioner to deposit an amount of Rs. 28,43,664.50 on account of late lifting of wheat. A reading of this order clearly establishes that no notice whatsoever was issued to the petitioner before making this demand and passing the above said order. Rather this order asserted that if the required amount was not deposited before

24.7.2000, the respondent-committee would resort to various provisions of Land Revenue Act for recovering the said amount. The petitioner had requested the Deputy Commissioner, Sangrur for directing the respondent committee against demanding the said amount but it seems that matter could not be resolved. Though bye law 11(7) empowers the Market Committee to impose penalties if there is a delay in lifting the wheat purchased by the buyer but before passing an order under this bye-law the buyer must be given reasonable time to explain his version of the story, it needs to be seen before passing the order whether the factors, which caused the delay, were actually controlled by the buyer or not. In the present revision a strong case has been made before me that the following two factors were really responsible for the delayed lifting:

- i) the short span of time in which the whole produce entered the market when coupled with poor marketing infrastructure led to clogging of the exit roads.
- ii) Untimely rains disturbed the whole lifting schedule made for purchase and lifting of the produce.

It was the duty of the Secretary of the Respondent committee to examine these factors after giving due opportunity of hearing to the petitioner-buyer, which is Government of India Agency. In the instant case no show cause notice or opportunity was provided to the petitioner.

Under the circumstances it is felt that the order claiming the demurrage charges is not a just order. The respondents could not show that the petitioner intentionally delayed the lifting of the produce. In view of the above discussion of the circumstances, the revision petition is accepted and the impugned order is set aside.

6. In the written statement filed by the Corporation-respondent No. 2, same stand, as has been noticed by respondent No. 1 in its order dated 27.9.2004 (P-7), has been taken. It has been asserted that poor infrastructural facilities were provided by the Market Committee, Khanauri, which caused slow lifting of wheat. The situation worsened due to untimely rains, which had disturbed the whole schedule. Negating the stand of the Market Committee that even after rains, the Corporation continued procurement of wheat, it has been submitted that fresh purchase was made on anticipation of the resentment by the farmers. Since the Corporation was the only agency to make purchase, it had no other option except to purchase the wheat. It has further been asserted that the Corporation has also suffered losses to the tune of Rs. 50 lacs on account of poor facilities i.e. lack of proper shed etc. provided by the Market Committee. The untimely rains had also damaged the stocks of about 7663.21 quintals of wheat. It has also been asserted that the principles of natural justice have not been complied with by the Market Committee, Khanauri, inasmuch as, no opportunity of hearing to explain the reasons for late lifting was granted to the Corporation.

7. After hearing learned Counsel for the parties and perusing the paper book, we are of the considered view that no case is made out to interfere in the well

reasoned order dated 27.9.2004. It has been categorically concluded that the Corporation was not given any notice to explain its position. Even the request made by the Corporation to the Deputy Commissioner for issuance of direction to the Market Committee against the demand of penalty could not bear any fruit. It has been rightly concluded that two factors clearly revealed that the delay in lifting the wheat purchased by the buyer was on account of the short span of time in which the whole product entered the market coupled with poor marketing infrastructure and clogging of the exit roads; and that there were untimely rains which disturbed the whole lifting schedule made for purchase and lifting of the produce. The afore-mentioned circumstances were clearly out of the control of the Corporation.

8. It is true that bye law 11(7) of Punjab Market Committee Bye Laws, notified in the gazette, (extra ordinary) dated 9.8.1963 contemplates imposition of penalty if the agriculture produce has not been lifted by the buyer like the corporation within a period of 48 hours of its purchase and if the buyer fails to do so then he is liable to pay demurrage @ 25 paisa to the Market Committee. Bye law 11(7) of the Regulations is penal in nature and the principles of natural justice in such like provisions are implied by law. Therefore, we are satisfied that the impugned order does not suffer from any legal infirmity warranting interference of this Court.

For the reasons recorded above, this petition fails and the same is dismissed.