
(2010) 08 MP CK 0070

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4841 of 2010

Rajendra Kumar Jain

APPELLANT

Vs

The Krishi Upaj Mandi Samiti and Another

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 — Section 32, 33, 34, 34(1), 34(3)

Citation : (2010) 4 MPHT 441 : (2010) 4 MPJR 84 : (2010) 4 MPLJ 402

Hon'ble Judges : Piyush Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Piyush Mathur, J.

Heard on the question of admission.

This writ petition has been filed by the writ Petitioner, by challenging the License Suspension order dated 31-7-2010 passed by Secretary, Krishi Upaj Mandi Samiti, Ashoknagar, whereby the Petitioner's license has been suspended by the Secretary, Krishi Upaj Mandi Samiti, Ashoknagar on the ground that in spite of sending intimation on date 28-7-2010 for submitting the annual account (Return) the Petitioner is carrying on activity of sale and purchase within Mandi premises and in spite of affording three days time to the Petitioner, he did not furnish the details of account to the Marketing Committee of the Mandi Samiti.

The Petitioner has straight away approached this Court by challenging the License Suspension Order, in proceedings under Article 226 of the Constitution of India without exhausting statutory remedy of preferring an appeal in terms of Section 34 of the M.P. Krishi Upaj Mandi Adhiniyam.

Shri Jain, learned Counsel for the Petitioner submit that the remedy of preferring an appeal in terms of Section 34 of M.P. Krishi Upaj Mandi Adhiniyam, 1972 could not be an alternate efficacious and statutory remedy in view of the judgment of

learned Single Judge of this Court in the case of Mukta Prathmik Upbhoktha Sahkari Bhandar Fair Price Shop v. State of M.P. and Ors. reported as 2007 (2) MPJR 15, wherein it has been held by this Court that the writ petition would be maintainable without exhausting the statutory remedy.

Section 34 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 provides that a person aggrieved by the order of a Specified Authority may prefer an appeal to the Authority and Sub-section (3) of Section 34 empower the Appellate Authority to grant interim relief.

For ready reference Section 34 of the M.P. Krishi Upaj Mandi Samiti Adhiniyam, 1972 is quoted herein below:

34. Appeal.- (1) Any person aggrieved by an order of the Chairman, Market Committee or the Managing Director passed u/s 32 or Section 33 as the case may be, prefer an appeal:

(a) to the Market Committee, where such order is passed by the Chairman;

(b) to the Managing Director where such order is passed by the Market Committee; and

(c) to the Commissioner where such order is passed by the Managing Director.

(2) An appeal under Sub-section (1) shall be made:

(i) within seven days from the date of receipt of the order, where such appeal is against the order of the Chairman; and

(ii) within thirty days from the date of receipt of the order where such appeal is against the order of the Market Committee or the Managing Director; in such manner as may be prescribed.

(3) The Appellate Authority may if it considers it necessary so to do, grant a stay of the order appealed against for such period as it may deem fit.

The judgment cited at the Bar, passed in the case of Mukta (supra), relates to the suspension and cancellation of the license of a fair price shop granted to the Petitioner under the Madhya Pradesh (Food Stuff) Public Distribution Scheme, 1991, wherein this Court has found that in view of the judgment of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, on account of violation of principles of natural justice, the writ petition would be maintainable. But in the present case, it is evident from documents that adequate intimation was sent to the Petitioner on date 28-7-2010 and on account of non-compliance of the intimation/direction of the Marketing Committee, an order of suspension of license was passed by the Secretary, Mandi Samiti, therefore, it is not a case where principles of natural justice appears to have been violated, which warrants interference by this Court, however, it is a case where the Petitioner appears to have been intentionally avoiding the direction of the Competent Authority of Marketing Committee with

an intention to flout the direction of the Competent Authority.

The Petitioner has openly ignored/violated the direction of the Competent Authority and has continued with the activities of transacting business within Mandi Area, on account of which the Competent Authority has been compelled to pass an Order of Suspension of License of the Petitioner, therefore, it is apparently clear that the ratio decidendi of the aforesaid judgment would not come to the rescue of the Petitioner in as much as firstly the Petitioner has not complied with the direction of the Competent Authority and by making violation of the instruction, has created a situation for himself which has warranted passing of suspension order and secondly the Principles of Natural Justice have not been violated at all, which could warrant invocation of extra-ordinary jurisdiction by this Court, under Article 226 of the Constitution of India.

Therefore, this Court is of the view that in the peculiar facts and circumstances of the matter, the Petitioner had failed to make out a case for invocation of extra-ordinary powers of this Court available to it under Article 226 of the Constitution of India and on account of availability and existence of statutory remedy u/s 34 of M.P. Krishi Upaj Mandi Samiti Adhiniyam, 1972, the Petitioner is required to prefer an appeal first, against the impugned suspension order before the Appropriate Appellate Authority.

Consequently, this writ petition fails and is hereby dismissed in limine without issuing notice to the Respondents, however, it is made clear that in case the Petitioner prefers an appeal against the License Suspension Order, the appeal shall not be dismissed on the ground of dismissal of this writ petition and shall be heard and decided on its merits, as this Court has not expressed any opinion on the merits of the main matter.