

(2000) 11 AHC CK 0029
In the Allahabad High Court

Case No : Writ Petition No. 5093 (MB) of 1993 and two other writ petitions

Rajesh Trading Co. and Another

APPELLANT

Vs

U.P. Krishi Utpadan Mandi Parishad and Another

RESPONDENT

Date of Decision : 08-11-2000

Acts Referred:

Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 17(3)(B), 32

Citation : (2001) 1 AWC 514

Hon'ble Judges : S.K. Sen, C.J.; Dev Kant Trivedi, J

Bench : Division Bench

Advocate : Alka Verma, for the Appellant; N.C. Mehrotra, for the Respondent

Final Decision : Allowed

Judgement

S. K. Sen, C.J.—We have heard learned counsel for the parties and have perused the records.

2. Writ Petition No. 5093 of 1993 has been filed by M/s. Rajesh Trading Co. through its partner Murari Lal, Writ Petition No. 5094 (M/B) of 1993 has been filed by M/s. Sri Shyam Dal and Oil Mills through its partner Rajesh Kumar and the Writ Petition No. 5095 (MB) of 1993 has been filed by M/s. G. L. Dal and OH Industries through its partner Suresh Kumar. Since in all these writ petitions the subject-matters challenged are common and identical, the same are being taken up together and are being disposed of by one and common order, as agreed by learned counsel for the parties.

3. In the writ petition filed by M/s. Rajesh Trading Co., the petitioner has challenged the imposition of market fee on the grounds that he is not actually selling the goods in question, agricultural produce u/s 17(3)(B) of the U. P. Krishi Utpadan Mandi Adhiniyam, 1964 (hereinafter referred to as the Act) in the market area of Nanpara Mandi Samiti since the goods are brought from another market area and are exported for sale to the various destinations outside the market area of Nonpara. In the writ petition, the writ petitioner has prayed for a

direction in the nature of mandamus calling upon the opposite parties not to demand and realise any market fee over the goods which are being exported outside the market area of Nonpara Mandi Samiti, in support of his contention that the goods are not sold in the market area of Nonpara, learned counsel for the petitioner has relied upon the definition of sale u/s 4 in Sale of Goods Act, and submits that no agreement for sale or purchase has taken place in the market area of Nonpara Mandi Samiti and as such there is no sale. It is also his submission that the goods are being taken away from the market area of Nonpara Mandi Samiti to several other markets, therefore, Section 17 (3) (B) is not attracted in the instant case. Krishi Utpadan Mandi Samiti Nonpara in the instant writ petition has imposed fee and made a demand against the petitioners. Whether the goods are sold or not in the Mandi area and whether the goods are exported or not, depend upon the facts of each item of the transaction of goods. No specific averment has been made in respect of each transaction of goods in the writ petition. Be that as it may, the writ petitions are lacking material particulars. The specific particulars of each transaction of goods have not been pleaded in the writ petition also. That apart, the same requires determination on the basis of the evidence. In our view, the writ petition is not an appropriate remedy. In fact one of the writ petitioners of Writ Petition No. 5093 (MB) of 1993, namely, M/s. Rajesh Trading Co. has filed a civil suit, being Regular Suit No. 268 of 1993 in respect of the same transaction of goods which, as submitted by the learned counsel for the respondents, has been dismissed for default. The writ petitioners, probably considering the fact that the question on material facts can be appropriately decided in regular civil suit, filed the aforesaid regular suit, which was ultimately dismissed for default. That apart there is, admittedly, a provision for revision u/s 32 of the Act. Section 32 of the Act confers power on the Board to call for proceedings of Mandi Samiti and pass an order if any imposition has been made on the transaction of goods. The matter can be reviewed by the Board in the event an appropriate application is made against any imposition made on the transaction of the goods of the petitioners. The writ petitioners would have approached for the appropriate alternative remedy before the Board also. Be that as it may, we are of the view that writ petition is not the appropriate remedy. Accordingly, we are not Inclined to grant any relief prayed for in the writ petitions.

4. The writ petitions fail and are dismissed. Interim order, if any granted, stands vacated.