(2010) 12 P&H CK 0632

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2724 of 2010

Ram Nath and Sons APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Punjab Agricultural Produce Markets (General) Rules, 1962 — Rule 31(1), 31(13), 31(3)
Punjab Agricultural Produce Markets Act, 1961 — Section 10, 40

Citation : (2011) 162 PLR 15

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Judgement

Surya Kant, J.—The Petitioner-firm deals in the sale and purchase of fruits and vegetables and has got itself registered under the Punjab Agricultural Produces Markets Act, 1961 (hereinafter referred to as the "Act") and has been issued a valid licence u/s 10 of the Act.

2. The Petitioner-firm seeks a writ of certiorari for quashing of the assessment orders (Annexures P-5 to P-8) pertaining to the years 2000-2001; 2001-2002; 2002-2003 and 2003-2004, passed by the Assessing Authority under the Punjab Agricultural Produces Markets (General) Rules, 1962 (in short the "Rules").

3. The challenge to the assessment orders primarily lies on the allegations that one Baljit Singh Mahal was the Secretary of the Market Committee, Amritsar and was the ex-offtcio Assessing Authority under the Act/Rules. The said Baljit Singh Mahal was due to retirement w.e.f. 31.7.2004 and is alleged to have pressurized the Petitioner-firm to bribe him but his demand having not been met, that he allegedly subjected the firm with these punitive orders. It is alleged that on a complaint made by the Fruits and Vegetable Merchants Union (Regd.), Amritsar, the Secretary, Punjab Mandi Board vide his order dated 8.6.2004 (Annexure P-I) had withdrawn the powers of Baljit Singh Mahal to act as Secretary of the Market Committee and on further representation to the State Government, the District

Mandi Officer, Amritsar, held an enquiry and vide his report dated 30.3.2006 (Annexure P-3) came to the conclusion that Baljit Singh Mahal had un-authorizedly made the assessment orders in respect of 17 firms. The Petitioner also refers to the letter dated 11.5.2006 of the Principal Secretary to the Government of Punjab, Department of Grievances (Annexure P-4) noticing malafide and tainted action of Baljit Singh Mahal and the anxiety expressed by the State Government to set-aside the assessment orders passed by him.

4. The Petitioner further alleges that the assessment orders were never acted upon for a period of more than 3 years and it was pursuant to the notice dated 8.2.2010 (Annexure P-9) calling upon the Petitioner to deposit the assessed amount that the Petitioner came to know that these orders are yet to be set-aside. It is also claimed that the Petitioner-firm had already deposited the due amount assessed by the Market Committee, Amritsar, and thus, the impugned assessment orders are without jurisdiction.

5. The Punjab State Agricultural Marketing Board as well as the Market Committee, Amritsar (Respondent Nos. 2 & 3) have filed their reply-affidavits controverting the Petitioner-firms allegations. It has been vehemently denied that Baljit Singh Mahal made any false or fake assessment without checking the records. It has also been refuted that the Petitioner had deposited the Market Fee or Rural Development Fee assessed for the years in dispute. It is explained that the amount of Rs. 90,000/- deposited by the Petitioner on 27.3.2002 was not towards the dues of the assessed amount, rather it was a difference-between the amount deposited initially and the amount which the Petitioner firm was supposed to deposit as per the books kept by it. It is maintained that the assessment orders passed by Baljit Singh Mahal are valid, operative and have not been set-aside or withdrawn by any Competent Authority. The Petitioner-firm has been accused of its failure to deposit the assessed amount of Market Fee and Rural Development Fee despite receiving the assessment notices. Respondent Nos. 2 & 3 have taken a specific objection that the impugned assessment orders are appealable under Rule 31(1)(3) of the Punjab Agricultural Produces Markets (General) Rules, 1962.

6. Mo sooner the case was taken for hearing, learned Counsel for Respondent Nos. 2 & 3 as well as learned State counsel raised the preliminary objection that the Petitioner-firm has got an alternative efficacious remedy of statutory appeal under the Act which fact has been duly acknowledged by the Petitioner-firm also in para-13 of the writ petition. Counsel for the Petitioner, though candidly admitted the availability of alternative remedy of appeal, nevertheless contended that such an alternative remedy is no bar to the maintainability of the writ petition and this Court can still exercise its writ jurisdiction. It was contended that payment of 25% of the Market Fee and Rural Development Fee is a condition precedent for hearing of the appeal and it being a quite huge amount which the Petitioner was unable to pay, the remedy of appeal was totally farce and ineffective. Learned Counsel relied upon a decision of the Hon''ble Supreme

Court in. Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, , wherein, it was held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion and in an appropriate case, the High Court may still exercise its writ jurisdiction in atleast three contingencies, namely, (i) where the writ petition seeks enforcement of fundamental rights; (ii) where there is failure of principles of natural justice and (iii) where the orders of the proceedings are wholly without jurisdiction or the vires of an Act are under challenge.

7. Having given my thoughtful consideration to the rival contentions on the question of entertaining the writ petition at this stage, I am of the considered view that the Petitioner has got an effective and efficacious alternative remedy of statutory appeal u/s 40 of the 1961 Act read with Rule 31(13) of the 1962 Rules. I say so for the reason that the Petitioner-firm is not a person below the poverty line or belonging to poor section of the Society. In the absence of material on record like the statement of accounts etc., it cannot be said that the Petitioner cannot pay even 25% of the assessed amount, if so required for entertaining the appeal. It cannot be over-looked at this stage, that as per the categoric stand taken by Respondent Nos. 2 &3, the Petitioner has not paid any amount accessed towards Market Fee or Rural Development Fee for the years in dispute. The Petitioner is a licensee under the Act and is under a legal obligation to pay the statutory fee levied under the Act.

8. Even if it be true that the Petitioner-firm has already deposited the requisite Market Fee or the Rural Development Fee or that the assessment orders have been passed illegally and in colourable exercise of powers, yet the Appellate Forum would more effective as compared to a writ Court; to resolve such like factual issues. The Officer who had passed the assessment orders has already retired from service way back nor could he be every in a position to tinker with the wisdom or decision making process of the Superior Authority. Similarly, the documents relied upon by the Petitioner regarding withdrawn of powers of Baljit Singh Mahal or the enquiry report against him including the State Governments letter dated 11.5.2006 can very much be relied upon by the Petitioner before the Appellate Authority, who shall be obligated to decide these disputed questions of facts by summoning the relevant records.

9. Consequently and for the reasons afore-stated, however, without expressing any views on the merits of the case, I deem ft appropriate to dispose of this writ petition by relegating the Petitioner to the alternative remedy of appeal, subject to the following directions>

i) the Petitioner-firm may, if so advised, prefer its appeal within one month from the date of receiving a certified copy of this order;

ii) If the appeal is filed within the above-stated stipulated period, no objection of limitation shall be raised or entertained and the Appellate Authority shall decide the appeal on merits;

iii) In the peculiar facts and circumstances of this case, it is directed that the Petitioner may deposit only 15% of the Market Fee and the Rural Development Fee as assessed vide the impugned orders, for the maintainability of its appeal, in addition to a bank guarantee to be furnished for the remaining 10% of the said fee and upon doing so, its appeals shall not be rejected on the plea of non-payment of 25% of the assessed Market Fee and the Rural Development Fee and decided on merits;

iv) The Petitioner shall be entitled to raise all the pleas taken by it in this writ petition before the Appellate Authority;

v) The Appellate Authority is directed to deal with all the contentions and dispose of the appeal on merits by passing a speaking order within a reasonable period.

10. Ordered accordingly.