

(2002) 05 PAT CK 0005
In the Patna High Court
Case No : C.W.J.C. No. 4128 of 2001

Santosh Kumar

APPELLANT

Vs

The Managing Director, Bihar State Agricultural Marketing
Board and Another

RESPONDENT

Date of Decision : 08-05-2002

Acts Referred:

Bihar Agricultural Produce Markets Act, 1960 — Section 25A, 27A, 27A(7), 27A(8),
27B(2)
Bihar Agricultural Produce Markets Rules, 1975 — Rule 82

Citation : (2002) 3 PLJR 281

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard Mr. A.K. Jain for the Petitioner, and Mr. Rajeshwar Prasad for the Respondents. This writ petition is directed against the order dt. 3.3.2001/5.3.2001 (Annexure-3), passed by the Managing Director of the Bihar State Agricultural Produce Marketing Board (Respondent No. 1), in exercise of his revisional power u/s 27C of the Bihar Agricultural Produce Market Act, 1960 (hereinafter referred to as "the Act"), and the Bihar Agricultural Produce Market Rules, 1975 (hereinafter referred to as "the Rules"), whereby he has upheld the order dt. 17.11.2000 (Annexure-1), passed by the Agricultural Produce Market Committee, Bhagwanpur, (hereinafter referred to as "the Committee") in exercise of powers conferred on it by Section 27A(vii) of the Act for the periods 1996-97, 1997-98, 1998-99 and 1999-2000. The proceedings relates to income escaping assessment leading to best judgment assessment.

2. The Petitioner is a licensed trader under the provisions of the Act and the Rules and is doing his trade and business in agricultural produce within the jurisdiction of the Committee. According to the Petitioner, it has submitted returns and was assessed to tax and had paid the same. Thereafter proceedings were taken by the Committee against the Petitioner with respect to income

escaping assessment in terms of Section 27A of the Act, leading to the impugned order dt. 17.11.2000 (Annexure-1)," whereby income escaping assessment for the aforesaid four years has been assessed to tax. on the basis of best judgment assessment. It appears from the same that the Petitioner did not appear before the Committee and, therefore, the matter was taken up by the Committee in the absence of the Petitioner leading to the best judgment assessment. Thereafter the Petitioner did not prefer statutory appeal before the Regional Director, Agricultural Marketing Board, Muzaffarpur, and straightway preferred an application before the Managing Director with delay who is the revisional authority under the Act in terms of Section 27C of the Act. Taking it to be a revisional application, the same has been rejected by the aforesaid order dt. 3.3.2001/5.3.2001 (Annexure-3), on the grounds of delay, and that the appeal was purposely not preferred in order to avoid deposit of the statutory amount in terms of Section 27B(2)(a) of the Act.

3. While assailing the validity of the impugned orders, learned Counsel for the Petitioner submits that he was never served with the statutory notice in terms of Section 27A(v) of the Act, let alone the notice in Form-C. The contention is stated only to be rejected. It is manifest from the counter affidavit that the statutory notice in terms of Section 27A(v) of the Act was issued to the Petitioner (per registered post) on the ground that the returns submitted by the Petitioner earlier appeared to be incorrect. Photo copies of the notices are marked Annexures-A to C to the counter affidavit, and the postal receipt showing despatch of the same per registered post is also an annexure to the counter affidavit. It is further manifest from the impugned order passed by the assessing authority that the Petitioner was served with the show cause notice notwithstanding which he failed to appear before the Committee as a result of which the Committee had to proceed in his absence. The impugned order makes a detailed reference of the show cause notices with letter number and dates thereof have been mentioned to therein.

4. Learned Counsel for the Petitioner has also contended that the notice in terms of Section 25A(v) of the Act has to be served in Form-C which was not complied with. It appears to me that the form is merely a guideline and is not mandatory. In order to derive any benefit in this connection, he has to establish prejudice which is basically a question of fact and, therefore, should have been raised before the statutory authorities. Not having been raised earlier, the Petitioner is precluded from raising this question for the first time in writ jurisdiction. Further more, in spite of being called upon repeatedly, learned Counsel for the Petitioner was unable to satisfy this Court as to what prejudice was caused to him in case the notice in terms of Section 27A(v) of the Act was not served on him in Form-C. The contention is, therefore, rejected.

5. Learned Counsel for the Petitioner has next contended that the best judgment assessment with respect to income escaping assessment may a good deal be based on interferences, but there should never the less be a reasonable basis for

the same. He relies on the judgment of the Supreme Court reported in [1957] 8 S.T.C. 770 (Raghubar Mandal Harihar Mandal v. State of Bihar), a division Bench judgment of this Court reported in 1996 (1) PLJR 203 (M/s. Shree Gauri Shankar Rice and Oil Mills v. State of Bihar and Ors.). I am unable to accede to the submission for two reasons. It appears from a plain reading of the impugned order read with the show-cause notices (photo copies of which are Annexures to the counter affidavit) that there was adequate material and a reasonable basis for the assessing authority to bring about a best judgment assessment. The position in so far as the Petitioner is concerned is all the more indefensible for the reason that he did not avail of the opportunity of explaining his position before the assessing authority nor did he prefer the appeal for a mala fide reason. The assessing authority was, therefore, left with no option but to proceed on the basis of existing materials. It appears to me that in the facts and circumstances of the present case, the law laid down in the aforesaid reported judgments has been observed by the assessing authority. The contention is, therefore, rejected.

6. Learned Counsel for the Petitioner has next contended that the penalty imposed on the Petitioner is excessive, and in violation of the provisions of Section 27A(8) of the Act which reads as follows:

(8) In addition to the market fee levied under Sub-section (7), a defaulter trader may be liable to pay a penalty equal to the fee so levied, if so ordered by the sub-committee.

He relies on the judgments reported in (i) Bharat Sugar Mills Limited and Another Vs. The State of Bihar and Others, , (ii) 2000 (4) PLJR 391, paragraph 12 [M/s. Maha Kali Milling Co. (P) Ltd. v. Bihar State Ag. Mktg. Board]. In his submission, therefore, penalty could not have been twice the fee levied by the assessing authority whereas the assessing authority has imposed a higher amount of penalty. The contention is stated only to be rejected. Learned Counsel for the Petitioner has conveniently overlooked the amendment made to the same. Rule 82(xi) of the Rules has been amended by G.S.R. 12A dt. 16.9.96 [published in Bihar Gazette (extra-ordinary)], dt. 26.9.1996, issued in exercise of the powers conferred by Section 52 (i) of the Act. The Governor of Bihar is pleased to make the amendment in the Rules, whereby Rule 82 (xi) has been substituted, and the proviso to the amendment Rule 82(xi) reads as follows:

Provided further that the penalty payable under the rule and levied under Sub-section (8) of Section 27A together shall not exceed the sum thrice to the fee levied or payable by such trader.

It is thus manifest from a plain reading of the amended proviso that the penalty in terms of Section 27A(8) shall not exceed the sum thrice to the fee levied or payable by such traders. The amount of penalty imposed by the assessment order does not exceed thrice the amount. The contention is, therefore, rejected.

7. Learned Counsel for the Petitioner has lastly submitted that in case of illegal

assessment order and excessive demand, the appropriate course for this Court is to set aside the impugned order and remit the matter back to the assessing authority for fresh orders in accordance with law. He relies on the judgment of division Bench reported in *Take Home Vs. The State of Bihar and Others*, . The contention is stated only to be rejected. In view of the discussions hereinabove, it is manifest that the impugned orders are valid, in compliance of the provisions of law and settled principles. The question of excessive demand does not arise in the present case.

8. In the result, this writ petition is rejected.