

(1994) 12 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No's. 5083 to 5085 of 1990

Sri Sreeshyla Mallikarjuna Rice and Flour Mills

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 20-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 132 (2)

Citation : (1995) ILR (Kar) 1164 : (1995) 2 KarLJ 297

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : K.N. Mahabaleshwara Rao, for the Appellant; N. Devadas, Government Advocate for R-1 and Beena Devaraj, for R.B. Sadashivappa, for R-2, for the Respondent

Judgement

Hari Nath Tilhari, J.—By these Petitions, the petitioners have sought a Writ of Certiorari for quashing Annexure-A notice dated 21.2.1990, Annexure-B notice dated 22.2.1990 and Annexure-C, notice dated 21.2.1990 issued under the signature of the Tahsildar, requiring the three petitioners in the three Petitions to deposit the market fee, which have been alleged to be for the years 1981-82 and 1982-83 to the tune of Rs. 6375-20 paise from the first petitioner, a tune of Rs. 7937-00 from the second petitioner and a tune of Rs. 5640-00 from the 3rd petitioner.

2. The petitioners' cases are that the Tahsildar has no jurisdiction to issue notice in respect of the market fee and the notice issued does not specifically indicate as to which item of agricultural products the market fee is due. Further, it has been stated in the Petition that the notices do not contain the details of the accounts relating to amounts which are sought to be recovered and no notice has been issued by the respondents before initiating the recovery proceedings. The petitioners' case is that they are not liable to pay the market fee nor anything due by them of the market fee.

3. I have heard the learned Counsel for the petitioners Sri K.N. Mahabaleshwara Rao and Sri N. Devadas, learned Government Advocate for Respondent No. 1 and Miss. Beena Devaraj learned Counsel appearing on behalf of Sri R.B. Sadashivappa for respondent-2.

4. The learned Counsel for the petitioners has submitted that prior notice has not been issued to the petitioners before adopting the procedure for recovery of the amount and others. He further submitted that no amount has been due on the petitioners side and the amount has been paid before the initiation of recovery proceedings.

5. On behalf of opposite parties, it has been brought by the learned Counsel to my notice that the second respondent APMC has issued notices for demand of arrears of market fee to all the three petitioners in the above Writ Petitions on 23.7.1986. The learned Counsel have also produced the acknowledgment receipts. It appears that the said notices were served on the petitioners in W.P.Nos. 5083, 5084. As regards petitioner in W.P. 5085, there is no copy of the notice mentioning address of the petitioner. According to respondents notices were served. The opposite parties have filed the photostat copies of those notices and ADs. After having perused the original documents which were shown to the petitioners" learned Counsel it has become quite clear that the petitioners are not justified in saying that no notices were issued to them by opposite party No. 2, particularly petitioners in W.P.Nos. 5083 and 5084 have been served and bear their signatures. It appears incorrect statement has been made in the petition and affidavit and on this basis the Petitions can be rejected. It is well settled principle of law that when a person comes to seek relief under Article 226, he must come with clean hands himself placing the correct facts seeking relief before the Court. Therefore, it is the duty of the Lawyers and the Counsel drafting the affidavits to strictly verify the facts. Any way, if according to the petitioners, if no amounts are due as arrears of market fee, they could have raised the dispute u/s 132(2) of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, when the notices were served on them. The Revenue Authority can refer the matter to the Chief Marketing Officer or an Officer subordinate to him and authorised by him for decision of the dispute regarding the question of market fee, the amount mentioned in the recovery notice as due either as charges or anything like that under Sub-section (1) of Section 132 of the Act. But, this has not been done by the petitioners. They have directly approached this Court. The remedy under Article 226 of the Constitution is not meant to allow short cut methods to be adopted by circumventing the statutory remedy. In this view of the matter, the Writ Petition is dismissed subject to the following observations which are to be taken note of.

6. It is open for the petitioners to file objections if they deny their liability for the amount and they may take the plea that the amounts have not been due as market fee or that no amount is due. The opposite party should proceed with the matter in accordance with law particularly under the provisions of Section 132(2)

of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966. But, the petitioners shall deposit the amount mentioned in the notice while filing the objections subject to the decision by the authority.

Petition is disposed of accordingly.