
(1996) 09 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1528 of 1995

United Vanaspati Ltd.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Constitution of India, 1950 — Article 215, 226, 227, 276
Contempt of Courts Act, 1971 — Section 10
Evidence Act, 1872 — Section 114
Himachal Pradesh Agricultural Produce Markets Act, 1969 — Section 2, 21
Himachal Pradesh Agricultural Produce Markets Rules, 1971 — Rule 82(11)

Citation : (1997) 1 ShimLC 395

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : R.L. Butta, in C.W.P. Nos. 1528 of 1995 and 1299 of 1996 and D.K. Khanna, in C.W.P. Nos. 1528 of 1995 and 1299 of 1996, for the Appellant; Indar Singh, General for Respondent No. 1 in C.W.P. Nos. 1528 of 1995 and 1299 of 1996, Anand Sharma, for Respondent Nos. 2 and 3 in C.W.P. No. 1528 of 1995 and M.C. Mandhotra and Trilok Chauhan for Respondent Nos. 2 and 3 in C.W.P. No. 1299 of 1996, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—Both these writ petitions have been taken up for a joint disposal with the consent of counsel on both sides and heard together. It is necessary to set out the prior history to some extent in order to appreciate the contentions raised in the present proceedings.

2. The Petitioner in C.W.P. No. 1299 of 1996 was previously known as Shriram Foods and Fertilisers Industries, New Delhi. They filed Civil Writ Petition No. 498 of 1992 in this Court challenging the levy of market fee and contending that there was no necessity for them to obtain licence under the provisions of the Himachal Pradesh Agricultural Produce Markets Act, 1969 (hereinafter referred to as "the Act") and the rules framed thereunder. Their main contention was that

they were dealing with the "Vanaspati Ghee", which was not an agricultural produce, as defined by the Act. That writ petition was disposed of by a Division Bench of this Court on 21-11-1994. The Bench found that the statement made in the petition that the Petitioners were selling "Vanaspati Ghee" was not true and the Petitioners were attempting to misuse the process of the Court for which action should be taken. The Bench also observed that a separate case under Article 215 of the Constitution of India read with Section 10 of the Contempt of Courts Act be registered against the concerned person. Further, the Bench expressed its opinion that the petition was devoid of substance and it was pointed out by the Bench that all vegetable oils had been included in the Schedule to the Act for purpose of levy of market fee and it necessarily means every type of vegetable oil. The definition of "agricultural produce" contained in Section 2(a) of the Act was also referred to by the Bench. It was found as a fact that the product was nothing but a processed vegetable oil and it was subject to the provisions of the Act. Consequently, the writ petition was dismissed.

3. At that time, the Petitioner in C.W.P. No. 1528 of 1995 had filed C.W.P. No. 317 of 1993 on similar allegations and similar claims. When it was found by the said Petitioner that C.W.P. No. 98 of 1992 was dismissed on the findings that the goods dealt with by them were agricultural produce, the Petitioner in C.W.P. No. 317 of 1993 withdrew the writ petition on the same day, that is, 21-11-1994, and got it dismissed. The Petitioner in C.W.P. No. 498 of 1992 applied for Special Leave before the Supreme Court of India against the order of this Court and that was dismissed.

4. Even after the dismissal of the two writ petitions neither of the Petitioners chose to obtain licence for dealing with the goods as required by the provisions of the Act. As the Petitioners had not obtained such licences, notices were issued to the Petitioners by the Market Committee, Solan, which is the third Respondent in both the cases, calling upon them to appear before the concerned authority on a particular date and produce the relevant records. They were also called upon to obtain licences for carrying on their business as required by the provisions of the Act. The Petitioners sent replies contending that they were not liable to take out licences or pay market fee as they were dealers within the meaning of the Act and that their produce was not an agricultural produce, as defined by the Act. The Market Committee issued notice in Form "Q" to the Petitioner in C.W.P. No. 1299 of 1996 calling upon it to pay a sum of Rs. 10,86,888.00 by way of market fee. The assessed value of the business was mentioned as Rs. 10,86,88,800.00 but in the other case, that is, with regard to the Petitioner in C.W.P. No. 1528 of 1995, the prescribed form was not used but the demand was issued to the Petitioner therein to pay a market fee of Rs. 13,77,010. The Petitioner was informed that if there was a default in payment, the recovery will be effected by imposing penalty equivalent to the market fee and the action will be taken as per the provisions of the Rules. Challenging the said communications, these two writ petitions have been filed.

5. In both the cases a preliminary objection has been raised by the Respondents that the petitions are not maintainable inasmuch as the Petitioners had already failed in earlier writ petitions, referred to above, and that it is not open to the Petitioners to approach this Court for the second time with the same allegations and same contentions. It is also contended by the Respondents that remedy of the Petitioners, if at all, would be to approach the appellate authority under the provisions of the rules against the order of assessment made by the Committee. In the case of C.W.P. No. 1528 of 1995, it is stated in the reply filed by the third Respondent that what was communicated to the Petitioner was only a notice and the matter had not been finally decided by the Committee.

6. Learned Counsel for the Petitioners contends that these writ petitions are maintainable for the reason that law has been declared to be otherwise by a Division Bench of this Court subsequent to the dismissal of the prior writ petition. Reliance is placed upon a judgment of a Division Bench of this Court in *Shankar Trading Co. and Ors. v. State of H.P. and Ors.* C.W.P. No. 238 of 198", in which the Division Bench held that under the provisions of the Act a Producer or a Manufacturer is not liable to take licence and to pay market fee and it is only a dealer who would be liable to take licence and pay market fee. The contention urged on behalf of the Petitioners is that they are only manufacturers or the producers and they are not dealers and therefore, they are entitled to take shelter under the judgment of this Court in *Shankar Trading Company's* case. The second contention urged on behalf of the Petitioners is that the demand u/s 21 of the Act for payment of market fee is wholly unsustainable in view of the fact that the Petitioners are not licensees and the Committee can levy market fee only on licensees and not on persons who do not hold licences. The third contention is that the Market Committee has violated the principles of natural justice inasmuch as it failed to communicate the materials to the Petitioners on the basis of which best judgment assessment had been made. A supplementary contention has also been raised that in either case there was no order of assessment by the Committee and as such no demand could be made.

7. We are of the opinion that these two writ petitions are not maintainable and in any event the Petitioners do not deserve to get any relief under Article 226 of the Constitution of India. In our opinion, the Petitioners cannot invoke the extraordinary jurisdiction of this Court under the said Article as they are taking advantage of their own wrongs. We have already referred to the fact that in one case, the writ petition of the Petitioners was dismissed on merits by the Court and in the other case the Petitioner withdrew the writ petition. In both the cases the very same contentions, which are now urged before us, were put forward excepting the contention that the Petitioners were only manufacturers and not dealers. Admittedly, the said contention was not put forward by either of the Petitioners in the earlier proceedings. But the factual contention raised by them in earlier proceedings was that they were dealers and that the produce dealt with by them was not an agricultural produce. Having failed in those proceedings, it is not open to the Petitioners to raise a different factual contention in these

proceedings and claim relief on that basis.

8. However, as pointed out by us, the Petitioners are trying to take advantage of their own wrongs and trying to get reliefs from this Court under Article 276 of the Constitution of India. When their contention before the Court that they were not liable to take licences under the provisions of the Act, had failed, it was their duty to have obtained licences before continuing the business. Instead of complying with the provisions of the Act and obtaining licences the Petitioners cannot claim that they without having taken licences were not licensees within the meaning of the Act and, therefore, not liable to pay market fee. If their contention is accepted, it will only amount to this Court paying a premium on the illegalities committed by the Petitioners. In any event, such persons cannot be entertained under Article 226 of the Constitution and this Court will not exercise its discretion or extra-ordinary prerogative in favour of such persons.

9. As it is pointed out by learned Counsel for the Respondents that the principles of Explanation IV to Section 11 of the CPC would apply in this case and just because the Petitioners failed to raise the contention that they were only manufacturers in the earlier proceedings, they cannot get over the orders passed against them in those proceedings and raise different contentions in the present proceedings.

10. Learned Counsel for the Petitioners places reliance on the judgment of the Supreme Court in *M/s. Raunaq Ram Tara Chand and Ors. v. The State of Punjab and Ors.* AIR 1975 SC 1587, in which the Court considered similar provisions under the Punjab Agricultural Produce Market Act, 1961. The Court said, in that case, that Appellants therein not being licensees, as a matter of fact, fees cannot be levied against them in respect of purchases and sales of agricultural produce by them, We are unable to accept the contention of the Petitioners. As pointed out by us such contentions are not available to the Petitioners as they have by their own default failed to obtain licences inspite of dismissal of their earlier writ petitions.

11. It is then argued that the principles of natural justice have been violated by the third Respondent while making best judgment assessment. It is contended that the materials on the basis of which such assessment was made, should have been communicated to the Petitioners. Reliance is placed upon the judgments in *Jai Ram Hans Raj v. The State of Haryana and Ors.* (1973) 32 STC 107 and *Kapur Weaving Factory v. The State of Punjab* (1980) 46 STC 494. Neither of the rulings is applicable in this case. We have already referred to the fact that notices were given to the Petitioners to appear before the authority concerned on a particular date and produce the records. The Petitioners not having done so, it is not open to them to contend before this Court that the principles of natural justice have been violated. Even otherwise, such contentions can be urged by the Petitioners before the appellate authority. Admittedly, an appeal is provided under the Rules against the order of assessment.

12. It is contended by learned Counsel for the Petitioners that alternative remedy is not a bar to the entertainment of these writ petitions. Reliance is placed on the judgment of Punjab and Haryana High Court in Prem Chand Ram Lal Vs. The State of Punjab and Others, and H 50. No doubt, alternative remedy is not a bar to exercise the jurisdiction of this Court under Article 226 of the Constitution, but this Court would not exercise discretion in favour of a person, who has not come to the Court with clean hands.

In the facts and circumstances of the cases, we are of the opinion that the Petitioners are not entitled to invoke the powers of this Court under Article 226 of the Constitution of India.

13. The learned Advocate General appearing for the State has invited our attention to a judgment of the Supreme Court in State of U.P. v. Mohammad Nooh AIR 1958 SC 86 . Learned Counsel for the third Respondent has referred to the judgment of the Supreme Court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, In the latter case, the Supreme Court has pointed out that when a more satisfactory solution is available on the terms of the statute itself (in that case it was Delhi Municipal Corporation Act) resort to Articles 226 and 227 by way of writ petition was not proper. In this case also statutory remedy is available to the Petitioners against the orders of assessment.

14. There is no merit in the contention that there is no order of assessment. It is contended by learned Counsel for the Petitioners that the Respondent has not produced the assessment orders in this Court. It is not necessary for the Respondents to produce the said order in this Court. It is for the Petitioners to apply to the third Respondent to give copies of the orders of assessment as soon as they got demand notices from the third Respondent. Just because the Respondents have not produced the orders of assessment in this Court, no inference can be drawn that there is no order of assessment. On the other hand, the presumption u/s 114(e) of the Evidence Act is that all official acts are presumed to have been done properly. Hence the contention of the Petitioners that there is no order of assessment is rejected.

15. Sub-Rule (11) of Rule 82 of the Rules provides that a copy of the order of assessment shall be granted to a dealer on his making a written application and paying a sum of three rupees as copying fee to the Committee Admittedly, in this case, the Petitioners have not chosen to apply for the copies of the assessment order.

16. We have already referred to the fact that the third Respondent has stated in its reply that it has only issued a notice to the Petitioner in C.W.P. No. 1528 of 1995. Learned Counsel for the third Respondent agreed that the Market Committee would consider any representation, which may be made by the said Petitioner. Hence, it is open to the said Petitioner to approach the third Respondent and produce all the records so that the third Respondent could make a proper assessment and fix the market fee.

17. As we have taken the view that the Petitioners are not entitled to invoke the provisions of Article 226 of the Constitution of India, both the writ petitions fail and they are dismissed.

C.M.P. No. 2884 of 1995 in C.W.P. No. 1528 of 1995:

18. In view of the dismissal of the writ petition, the present application is also dismissed and interim order dated 8-9-1995 is vacated.

C.M.P. No. 2643 of 1996 in C.W.P. No. 1299 of 1996:

19. In view of the dismissal of the writ petition, the present application is also dismissed.