
(2017) 05 AP CK 0003
In the Andhra Pradesh High Court
Case No : 466 of 2017

Vedansh Traders, Jabalpur and another	APPELLANT
Vs	
State of M.P. & Ors.	RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

[Madhya Pradesh Uchha Nyayalaya \(Khand Nyaypeeth to Appeal\) Adhiniyam, 2005](#), Section 2(1), Section 33 (4)

Citation : (2017) 05 AP CK 0003

Hon'ble Judges : Hemant Gupta, Vijay Kumar Shukla

Bench : DIVISON BENCH

Advocate : Rajendra Tiwari, Nityanand Mishra, Samdarshi Tiwari

Judgement

1. In this intra-court appeal preferred under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth to Appeal) Adhiniyam, 2005 the appellant-petitioner has called in question the legality and validity of the order dated 20-4-2017 passed by the learned Single Judge dismissing the writ petition challenging the order dated 6-5-2016, Annexure-P/8 whereby licence of the petitioner for trading in Mandi has been cancelled and the appeal filed by the petitioner-appellant against the said order has also been dismissed by order dated 21-9-2016, Annexure-P/9.
2. The appellant is dealing in the business of foodgrains since 2008 and is a licensee of the Mandi Committee under the provisions of the Krishi Upaj Mandi Adhiniyam, 1972 [hereinafter referred to as "the Adhiniyam"]. The said licence was renewed from time to time by the competent authority. A few years back in place of traditional machines for weighment of agricultural produce in Mandi, the electronic instruments were directed to be established by traders.
3. It is submitted on behalf of the appellant that there was some mechanical fault in the electronic machines and, therefore, the weighment of the agricultural produce was carried out on the traditional weighing machines by the weighman. It is contended that as per provisions of the Bye-law No.24 it is the entire

responsibility of the Weighment to properly weight the agricultural produce in sacks. On the basis of some inspection report, a show cause notice, dated 18-4-2016, Annexure-P/4, was issued by Mandi Samiti to the appellant-petitioner as it was found that the appellant's weighing machine was giving excess and incorrect weight than the actual weight. It was mentioned in the show cause notice that the appellant should submit his explanation forthwith and in case, explanation is not received or found to be dis-satisfactory, appropriate action under Section 33 of the Adhiniyam and Bye-law framed therein, shall be taken against the petitioner.

4. On 20-04-2016 the Chairman of the Krishi Upaj Mandi suspended the licence of the appellant-petitioner for a period of seven days without waiting response to the show cause issued by the Mandi Samiti. It is urged on behalf of the appellant that on 02-04-2016, he filed an explanation that there was mechanical defect in the weighing machine and the same was got repaired, but as it was not functioning properly, therefore, traditional weighing machine was being used. He submitted that in future he will ensure that there is proper weighment of agricultural produce. He requested for curtailing 7 days period of suspension of the licence. On 30-4-2016, vide Annexure-P/7 the Mandi Samiti passed a resolution for cancellation of the licence of the appellant on the basis of an inspection report conducted behind the appellant. Accordingly, on the basis of the said resolution the Secretary of the Krishi Upaj Mandi Samiti passed the order impugned, dated 6-5-2016 cancelling the licence of the appellant-petitioner under Section 33(1) of the Adhiniyam and Bye-law 19 of 2000.

5. Being aggrieved by the said order an appeal was preferred under the provisions of Section 34 of the Adhiniyam, which also faced dismissal. Counsel appearing for the appellants submitted that the impugned orders are contrary to the provisions of Section 33(4) of the Adhiniyam, as no show cause notice for cancellation of the licence was given to him. It is also asserted that in the backdrop of the facts of the present case, the order of cancellation of licence of the appellant is highly unreasonable and arbitrary. The same has been passed without due application of mind. It is urged that the notice to show cause was issued by the Mandi Samiti on 18-4-2016 wherein it was not mentioned that notice was issued for cancellation or suspension of the licence. Just after two days without giving opportunity to show cause the Chairman of the Mandi Samiti suspended the licence of the appellant for a period of seven days. Thereafter, on 30-4-2016 the Mandi Samiti passed a resolution for cancellation of the licence without issuing a notice to show cause for cancellation of licence as required under Sub-section (4) of Section 33 of the Adhiniyam.

6. Regard being had to the rival submissions raised at the bar and upon perusal of the records, it is seen that a notice to show cause, dated 18-4-2016 was issued to the appellant-petitioner by the Mandi Samiti mentioning Section 33 of the Adhiniyam and also Bye-law 19 of 2000 without specifying notice for suspension of licence. After two days the Chairman of the Mandi Samiti

suspended licence of the appellant in exercise of power under Section 33 of the Adhiniyam and Bye-law 19 of 2000. The Mandi Samiti on 30-4-2016 passed a resolution for cancellation of the licence even without taking into consideration the explanation submitted by the appellant-petitioner in response to the show cause dated 18-4-2016. It was further obligatory on the part of the respondents to issue a show cause noltice to the appellant-petitioner for cancellation of the licence and to take into consideration the reply/explanation submitted by the appellnat.

7. According to Sub-section (1) of Section 33 of the Adhiniyam, a licence can be cancelled or suspended on one or more grounds specified in clauses (a) to (f) and an opportunity to show cause for such a cancellation has to be given to the licensee. Furthermore, the order must state reasons as to why the licence is being cancelled. The authority acting in a matter of cancellation or suspension of licence under the Mandi Adhiniyam, acts in a quasi judicial capacity and it is expected of it to pass a reasoned order.

8. The Mandi Samiti as well as the appellate authority have failed to appreciate that the provision of Section 33 of the Adhiniyam, in the present case, as issuance of a notice to show cause under Section 33 (4) of the Adhiniyam is not a mere formality when the authorities are exercising quasi judicial power. The authority is bound to give show cause for cancellation of licence and to consider reply/explanation. The impugned order of cancellation of the licence is capricious, highly arbitrary and unreasonable, as the authorities have failed to take into consideration that the appellant is dealing with food-grains since 2008 and the explanation that there was some mechanical defect in the electronic instrument and, therefore, weighment of agricultural produce was done in the traditional weighing machine which might not have given the accurate measurement.

9. Thus, we find that the impugned orders of cancellation of licence of the appellant dated 6-5-2016, Annexure-P/8 and 21-9- 2016, Annexure-P/9, dismissal of appeal, are unsustainable and the same are hereby quashed.

10. Consequently, we allow the appeal and set aside the order passed by the learned Single Judge, (Hemant Gupta) (Vijay Kumar Shukla) Chief Justice Judge ac.