

(2008) 01 P&H CK 0252

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 10407 of 2005

M/s Shyam Lal Suresh Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Jan. 21, 2008

Acts Referred:

- Haryana Rural Development Act, 1986 - Section 5
- Haryana Rural Development Rules, 1987 - Rule 3(1), 3(13), 3(2), 3(9)

Citation: (2011) 3 RCR(Civil) 405

Hon'ble Judges: Satish Kumar Mittal, J; Rakesh Kumar Garg, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.

This writ petition was filed by the petitioner in the year 2005, challenging the instructions dated 20.8.1990 (Annexure P-10) issued by the Managing Director, Haryana Rural Development Fund, Administrative Board, Chandigarh, addressed to all the Secretaries of the Market Committees in the State of Haryana, being illegal, unjust and arbitrary; and also for setting aside the show cause notices dated 5.1.1991, 2.9.1994, 21.10.1994 and 19.11.2004 (Annexures P-1, P-3, P-5 and P-7 respectively); and the letter dated 24.9.2004 (Annexure P-9) to the extent of demand of Rs. 16,85,963/- being made from the petitioner by the respondents on account of cess payment under the Haryana Rural Development Act, 1986 (hereinafter referred to as the Act") and the Rules framed thereunder and interest at the rate of 18% on the delayed payment; and also for setting aside the order dated 20.7.2000 (Annexure P-13), passed by the Director, Development and Panchayat, Haryana (as Appellate Authority), dismissing the appeal filed by the petitioner being illegal, arbitrary and mala fide and violative of the provisions of the Act and the Rules framed thereunder.

2. On February 23, 2006, this petition was dismissed in limine by this Court, by passing the following order:

We have heard the learned counsel for the petitioner.

The appeal was filed by the petitioner after a delay of five years and the writ petition has also been filed belatedly. The story put-forward by the petitioner that the order had not been conveyed to him etc. is clearly unbelievable.

Dismissed.

Feeling aggrieved against the said order, the petitioner filed SLP (C) No. 8177 of 2006, which was later on converted in Civil Appeal No. 4888 of 2007, in which the aforesaid order was set aside by the Supreme Court, while observing that the same was not a speaking and reasoned order, and remitted the case to this Court for fresh disposal of the writ petition by passing a speaking and reasoned order.

3. We have heard learned counsel for the petitioner and gone through the impugned orders as well as the contents of the petition.

4. In the year 1986, the Act was enacted and u/s 5 of the Act, 1% cess on ad valorem basis was levied on the sale proceeds of agriculture produce bought or sold or brought for processing in the notified market area committee. The constitutional validity of the Act was challenged by the various dealers including the petitioner. During the pendency of those proceedings, stay of recovery of the cess under the Act was granted. Ultimately, those writ petitions were dismissed, and even the SLP filed against the judgment of this Court was also dismissed on 4.5.1990. Thereafter, instructions were issued vide letter dated 20.8.1990 (Annexure P-10) directing all the Secretaries of the Market Committees in the State of Haryana to recover the arrears of cess, which was to be paid under the Act, from the dealers in 12 quarterly instalments, within three years (i.e. from 1.7.1990 to 30.6.1993) and first instalment was to be paid on 1.10.1990. It was further directed that in case any dealer fails to deposit the instalments of due amount in time, no relaxation of any sort will be given to him and the amount which will be found due against him shall be recovered along with penalty as per Rule 3 (1), 3 (2) read with Rule 3 (9) of the Haryana Rural Development rules, 1987. It was further decided that recovery of the due amount shall be made from the defaulting dealers by adding 18% interest thereon, which shall be applicable from 1.7.1990 till the fee amount is actually paid. It was also decided that in case, the dealer fails to deposit the amount, then the recovery shall be effected under the Land Revenue Act.

5. In pursuance of the said instructions, when the petitioner firm did not pay any amount, which was balance towards it from 1.9.1987 to 30.9.1990, a show cause notice dated 5.1.1991 (Annexure P-1) was issued as per the aforesaid instructions. In response to the said notice, the petitioner firm submitted that out of the total amount of Rs. 6,69,961.34 on account of Haryana Rural Development Fund, a sum of

Rs. 57,225.29 has already been deposited and therefore, the balance amount of Rs. 6,12,736.05 was due and a request was made to correct the amount, so that the payment is made in instalments in time, but no amount was paid by the petitioner firm. Ultimately, it was found that an amount of Rs. 7,71,326.89 was due towards the petitioner firm on account of non-deposit of the cess for the period 1.9.1987 to 30.9.1990 and the penalty of 45% (25% for not filing Form-A + 20% for not depositing the amount within time) of the amount i.e. Rs. 3,47,097/- was imposed, and vide letter dated 11.4.1991 the Deputy Commissioner, Hisar, asked the petitioner to deposit the total amount of Rs. 11,18,423.89, within 20 days of the receipt of the letter. In spite of the said letter, the petitioner firm did not pay the amount even for three years. Accordingly, in September, 1994, the assessing authority issued notice (Annexure P-3) to the petitioner firm for depositing the aforesaid amount of Rs. 11,18,423.89 within seven days, failing which the recovery was to be made as an arrear of land revenue. In spite of that notice also, the petitioner firm did not pay the said amount and again, the final show cause notice dated 19.11.1994 (Annexure P-7) was issued, whereby the petitioner firm was held liable to pay Rs. 19,23,683.89 (Rs. 11,18,423.89 + 18% interest upto 30.9.1994). Accordingly, the petitioner firm was asked to deposit the said amount within a week. In spite of the said notice, the due amount was not paid by the petitioner firm. Ultimately, when the authorities insisted for payment of the aforesaid amount, in December, 1996, the petitioner firm filed an appeal (Annexure P-12) before the Appellate Authority under Rule 3 (13) of the Haryana Rural Development Rules, 1987, against the order of penalty. The said appeal was not only barred by limitation, but along with the appeal, the amount of cess as well as penalty, as required under the Rules, was not deposited. The Appellate Authority, vide its order dated 20.7.2000 (Annexure P-13), dismissed the appeal on the aforesaid two grounds. The petitioner did not challenge the said order for five years and the instant petition was filed in the year 2005, which is highly belated.

6. After hearing counsel for the petitioner and looking into the conduct of the petitioner firm that instead of issuance of several notices, it has not paid even a single penny of the Rural Development cess, which it was liable to pay, which led to imposing of penalty. The order of penalty was also not challenged by the petitioner by filing an appeal before the Appellate Authority within the stipulated time. Keeping in view all these facts and the conduct of the petitioner, we are not inclined to entertain this writ petition, which has been filed at a highly belated stage. The explanation given by the petitioner firm that the impugned order of the Appellate Authority could not be challenged, because the copy of the impugned order was supplied without mentioning the date of issuance, cannot be accepted. A perusal of the order dated 20.7.2000 passed by the Appellate Authority shows that the order was passed in presence of the representative of the petitioner. Therefore, it cannot be said that the petitioner was not aware of the said order.

Dismissed.