

(2014) 04 P&H CK 0275

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4149 of 2001 (OandM)

Kuthiala Agro Food (P) Limited

APPELLANT

Vs

Market Committee

RESPONDENT

Date of Decision: April 24, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Agricultural Produce Markets Act, 1961 - Section 42

Citation: (2014) 176 PLR 680 : (2015) 2 RCR(Civil) 372

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: O.P. Goyal, Senior Advocate and Ranveer Singh Mandher, Advocate for the Appellant; P.K.S. Gill, Advocate for the Respondent

Judgement

Jaspal Singh, J.

Through the present petition filed under Articles 226/ 227 of the Constitution of India, the petitioner prays for quashing the order dated 22.10.1998, Annexure P.1 passed respondent No. 1-Secretary Market Committee, Lalru, whereby it has been directed to deposit an amount of Rs. 49520/- as market fee and the equal amount as Rural Development Fund (RDF) for not submitting K1 form thereby violating Rule 29(3) of the Punjab Agricultural Produce Markets (General) Rules, 1962 (in short, "the Rules"). Further prayer has been made for quashing the resolution dated 5.2.1999, Annexure P.2 for referring the matter to the Collector for recovery of the amount from the petitioner and the order dated 21.12.2000, Annexure P.3 passed by the Secretary, Punjab Mandi Board, whereby the appeal filed by the petitioner against the order dated 5.2.1999 passed by the Market Committee, Lalru has been dismissed. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a private limited company. It is engaged in rice shelling and for this purpose it purchases paddy from various places in Punjab from within notified market areas. While making purchase of

paddy, the market fee and RDF was paid to the market committee within whose jurisdiction purchase of paddy was made. During assessment year 1997-98, the petitioner-company purchased paddy from Market Committees Bassi Pathana, Samrala, Samana etc. The Secretary, Market Committee, Lalru vide letter dated 22.10.1998 raised a demand of Rs. 49,520/- as market fee and the equal amount as RDF. He also sought explanation for default in making payment. Vide resolution dated 5.2.1999, the Market Committee, Lalru referred the matter for recovery of demand to the Collector Patiala. According to the petitioner, it had engaged the services of one Mr. Anil Kumar who was working as Munshi with it who was managing the firm's paper work. Suddenly he died and the company was not aware about any notices/recovery. It was by letter dated 27.7.1999 sent by the Market Committee, Lalru that the petitioner came to know about the resolution of the committee. The petitioner filed appeal before the Secretary, Punjab State Agricultural Marketing Board. Since the petitioner had already paid the market fee to the respective market committees, it submitted the K1 forms certifying payment of market fee and RDF to the Market Committee, Lalru. The Secretary dismissed the appeal vide order dated 21.12.2000, Annexure P.3. According to the petitioner, principles of natural justice have not been followed while passing the impugned order. The respondent committee has not considered Rule 30 of the Rules which clearly states that no market fee is leviable in case it has been paid in other notified areas within the State of Punjab. Hence the petitioner is before this Court through the present petition.

2. A written statement has been filed on behalf of respondent Nos. 1 and 2 by Secretary Market Committee, Lalru. A preliminary objection has been raised to the effect that the petitioner has an alternative remedy of revision under Section 42 of the Punjab Agricultural Produce Markets Act, 1961 (in short, "the Act") against the order passed by the Board or any of its officers. On merits, it has been inter alia stated that the petitioner has not given any detail of purchase and payment of market fee/RDF. The forms were not submitted in time and were unsigned. On these premises, prayer for dismissal of the petition has been made.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner submitted that though alternative remedy under Section 42 of the Act was available but taking into consideration the facts of the case and there being violation of the principles of natural justice, the petitioner has approached this Court. Learned counsel further submitted that once the writ petition has been admitted, the petitioner thereafter should not be relegated to avail alternative statutory remedy. Reliance was placed on judgment of the Apex Court in L. Hirday Narain Vs. Income Tax Officer, Bareilly, in support of the submission. It was further urged that although Forms K1 were not submitted within the stipulated period under Rule 30 of the Rules, mere delay does not authorise the Market Committee to impose market fee on the agricultural produce whereas action

under Rule 39 of the Rules was available to the Market Committee. Support was gathered from the judgment of Division Bench of this Court in M/s. Anand Convass Mills Pvt. Limited v. The State of Haryana and others, (1993-2)104 P.L.R. 232 in respect of this contention.

5. On the other hand, learned counsel for the respondents besides supporting the impugned order submitted that the petitioner did not submit the requisite forms within the stipulated period and the forms which were subsequently filed were unsigned. There was non compliance of the provisions of Rule 30 of the Rules. Even alternative remedy of revision under Section 42 of the Act was available to the petitioner.

6. It would be apt and proper to reproduce Rule 30 of the Rules which provides that no market fee shall be levied on the sale or purchase of any agricultural produce in respect of which such fee has already been paid in the notified market areas in which the said produce was manufactured or extracted. Sub rules (3) to (5) are relevant for the purposes of this case. They read as follows:--

"(3) The dealer who claims exemption from the payment of market fee leviable on any agricultural produce manufactured or extracted from the agricultural produce in respect of which the market fee has already been paid in another notified market area, shall make declaration and give certificate to the Committee in Form LL, where the fee has already been paid within twenty days of the day of bringing of agricultural produce within the notified market area. Form LL shall be prepared in quadruplicate from the booklets duly attested and issued by the Secretary of the Committee against the payment fixed by the Committee. It will be the duty of the dealer claiming exemption from the Market fee under this sub rule to send the original copy of Form LL to the committee within whose market area the agricultural produce is brought.

The second copy shall be sent to the office of the committee within whose market area such agricultural produce was bought, and the third and fourth copies shall be retained by the dealer purchaser and the dealer seller, respectively and the same shall be kept as a part of their accounts maintained in respect of Market fees.

(4) It shall be the duty of the dealer claiming exemption from Market Fee under Sub-rules (3) and (5) to produce a copy of the R/R, forwarding note, bility or challan, as the case may be, duly signed by him or his authorised agent in the office of the Committee from whose market area the agricultural produce is brought before it is unloaded, the second copy in the office of the committee within whose market area the agricultural produce is brought before it is unloaded and the third copy to be retained by him:

Provided that, if no such copy of R/R, forwarding note, bility or challan is produced in the office of the concerned Committee, no claim for exemption shall be entertained.

(5) the agricultural produce brought for processing from within the State or from outside the State and for which market fee has already been paid in any market in the state or outside the State", shall be exempted from payment of market fee second time.

Provided that the dealer who claims exemption under Sub-rule (5) from the payment of fee leviable on any agricultural produce brought for processing shall make declaration and give certificate to the Committee in Form LL duly attested by the Secretary of the Committee where fee has already been paid, within twenty days of the bringing agricultural produce within the notified market area and complies with the provisions of Sub-rule (2)."

7. A perusal of the above provision shows that for claiming exemption of the market fee and RDF by a dealer, it is obligatory to establish that the dealer has already paid the market fee in a market area; certificate has been submitted to the committee in Form K1 showing that requisite fee has already been paid and that such a form has been filed within 20 days of the date of bringing the agricultural produce within the notified market area.

8. The Division Bench of this Court in M/s. Anand Canvass Mills Pvt. Limited's case (supra) had laid down that mere delay in submission of Form LL would not clothe the Market Committee to impose market fee again on such agricultural produce. It was recorded as under:--

"6. It may be observed that on account of mere delay in the submission of Form LL, the Market Committee would have no jurisdiction to impose market fee again on such agricultural produce. Since there was breach of the rule in late submission of Form LL, by the petitioner, at the most action could be taken under rule 39 for imposing penalty for which respondent Market Committee has not taken any action so far."

9. It is not disputed that K.1 forms were not submitted by the petitioner within the stipulated period due to unavoidable circumstances. The same were submitted during the pendency of the proceedings before the concerned authorities being unsigned. Learned counsel produced the original Forms K1 duly signed during the course of hearing in this Court and prayed that the petitioner may be permitted to produce the same before the authorities and the matter may be decided afresh. In the interest of justice, we are of the opinion that as the petitioner could not produce Form K1 due to certain unavoidable circumstances, an opportunity be provided to it to submit the requisite forms.

10. Adverting to the plea of alternative remedy, in view of judgment of the Apex Court in L. Hirday Narain's case (supra), it would not be appropriate to relegate the petitioner to avail the statutory remedy in the facts and circumstances of the present case at this stage. The contention of the learned counsel for the respondents is, thus, rejected.

11. In view of the above, the impugned orders Annexure A.1 to A.3 are set aside. The petition is allowed and the matter is remitted back to the Secretary Market Committee, Lalru with a direction to allow the petitioner to file the declaration and the certificate(s) in Form K1 and after verifying the genuineness and authenticity thereof to decide the matter afresh after affording reasonable opportunity of hearing to the parties in accordance with law. The writ petition stands disposed of accordingly.