**(1997) 01 MP CK 0006**

**Madhya Pradesh High Court**

**Case No:** M.P. No. 2171 of 1985

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| Bhola Prasad Jaiswal and Others | | APPELLANT |
| | Vs | |
| Krishi Upaj Mandi Samiti and Another | | RESPONDENT |

**Date of Decision:** Jan. 13, 1997

**Acts Referred:**

- Madhya Pradesh Krishi Upaj Mandi Adhiniyam, 1972 - Section 20, 21

**Citation:** (1998) 1 MPLJ 447

**Hon'ble Judges:** Ramesh Surajmal Garg, J

**Bench:** Single Bench

**Advocate:** Rakesh Jain, for the Appellant; No appearance, for the Respondent

**Final Decision:** Allowed

**Judgement**

@JUDGMENTTAG-ORDER

R.S. Garg, J.

By this petition under Article 226 of the Constitution of India the petitioners challenge the assessment orders for the year 1981-82 and the recovery certificate issued by the respondent No. 2.

Brief facts leading to the petition are that the Mandi Committee issued a notice to the petitioner on 16-9-1983 asking to -deposit a sum of Rs. 2,500/- as the Mandi Committee in its meeting dated 1-9-1983 had resolved by exercising powers u/s 21 to impose tax of Rs. 2,500/- because of non-production of accounts and/or for production of unreliable records. Immediately thereafter the petitioner showed the original receipts, bills, register etc. to the Officer of the Mandi Committee and obtained a receipt Annexure-C. Thereafter the petitioner submitted an application on 23-9-1983 to the Mandi Committee that the original records have already been produced, for inspection, to one Ramkhelaman therefore the notice dated 16-9-1983

be withdrawn. Without taking into consideration the reply filed by the petitioner, by another notice dated 9-10-1984 the respondent Mandi Committee informed the petitioner that if the amount of Rs. 2,500/- is not paid it would be recovered as arrears of land revenue. The petitioner again submitted his application on 29-10-1984 and submitted that the proposed recovery is illegal as the records had already been produced for inspection. It appears that Annexure-G a notice, was issued by the Tahsildar u/s 146 of the M. P. Land Revenue Code for recovery of the amount. On 27-6-1985 in reply to the petitioner''s letter dated 3rd June, 1985 the Mandi Committee informed that the petitioner had only deposited a sum of Rs. 1462.25 and the recovery were in accordance with law.

According to section 19 as it stood in 1981 the Market Committee was entitled to levy market fees on notified agriculture produce brought for sale or sold in the market area at such rate might be fixed by the State Government. The market fees was payable by buyer of the notified agriculture produce and could not be deducted from the price payable to the seller provided if the buyer of notified agriculture produce could not be identified the said Market-fees was payable by the seller or the persons who brought the produce for sale in the market area. According to section 20 of the Act any officer or servant of the Board or the Market Committee empowered by the State Government in this behalf may require any person carrying on business in the Market Committee Area to produce before him the accounts, and documents and furnish information regarding the stocks of such agriculture produce or purchase. All accounts and registers maintained by any persons shall be open to inspection at all reasonable times by such officer and servant of the Board or the Market Committee. If after the deposit of the tax, the Market Committee, its officer or servant are not satisfied by the fee paid then they have authority to compel the seller/buyer to produce the accounts.

If a person required to produce the accounts or furnish information under sub-section (1) of section 20 fails to produce such accounts or to furnish such information or knowingly furnishes incomplete or incorrect accounts or information or has not maintained proper accounts of the sales and delivery of the notified agriculture produce, the Market Committee shall under the provisions of the section 21 of the Act, in the prescribed-manner, assess such person for fee levied u/s 19.

In the instant case right from the beginning the petitioners have been contending that they had paid the full fee and were not under dues, they had been demanding the details but the Mandi Committee instead of supply of the particulars had merely repeated that the recovery was in accordance with law. It also does not appear from the orders/notices passed/issued by Krishi Upaj Mandi Committee that the petitioners were given any opportunity of any hearing before resolving the recovery of the said amount. Section 21 would come into effect after a notice is issued u/s 20, sub-section (1). Even otherwise it does not appear from the record, and this Court is forced to believe in absence of the return filed by the respondent, that no

opportunity was given to the petitioner after they had submitted their replies to the recovery notices. If a notice u/s 20, sub-section (1) is not issued to a person dealing with a notified produce then powers u/s 21 of the Act cannot be exercised because the power to assess persons is based on the notice issued and inaction or misaction on the part of the dealer.

As there is no compliance of section 20 and as no opportunity of hearing was ever afforded to the petitioners before passing of the order and also after submission of their reply to the recovery notice the recovery proposed is patently illegal. It deserves to and is accordingly quashed.

The petition deserves to and is accordingly allowed. The demand notices and revenue recovery certificate are quashed. It is made clear that if the respondent Committee is still of the opinion that the petitioners have not furnished correct statements or have not maintained the proper accounts or had produced incorrect or incomplete accounts then they shall be free to take action against the petitioners in accordance with law.

There shall be no order as to costs. Security amount, if any deposited by the petitioners, be refunded after due verification.