

HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.1085/2019

M/s Sharda Dal Mill, Katni

-Versus-

M.P. State Agricultural Marketing Board, Bhopal and another

Shri Mukesh Kumar Agrawal, Advocate for the appellant.
Shri Siddharth Sharma, Advocate for the respondent No.1.
Shri Samdarshi Tiwari, Advocate for the respondent No.2.

CORAM :

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Reserved for judgment on : 22-7-2021

Judgment pronounced on : 03-8-2021

J U D G M E N T
(Jabalpur, dtd.03.08.2021)

Per : Vijay Kumar Shukla, J.-

The present intra-court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam, 2005, being aggrieved by the order dated 18-6-2019 passed by the learned Single Judge in *WP-6220-2017 [M/s Sharda Dal Mill vs. M.P. State Agricultural Marketing Board & another]* whereby the writ petition filed by the appellant/petitioner [hereinafter referred to as "the appellant"] has been dismissed.

2. The appellant has challenged the validity of the orders passed by the respondents on 13-9-2014, 29-12-2016 and 10-4-2017 vide Annexure-P/1, Annexure-P/14 and Annexure-P/2 respectively. The writ petition was the second round of litigation against the impugned order dated 13-9-2014 passed by the respondent No.2 restraining the appellant from trading (sale & purchase) within the market area of the Krishi Upaj Mandi Samiti, Katni, affirmed in appeal vide order dated 10-4-2017, Annexure-P/2.

3. The main plank of submission of the learned counsel for the appellant is that the impugned order is without jurisdiction and there is no provision under the M.P. Krishi Upaj Mandi Adhiniyam, 1972 [for short, "the Act 1972"] for restraining sale and purchase of a licence-holder without any reason.

4. The basic order dated 13-9-2014, Annexure-P/1 has been passed by the respondent No.2 levying market fees as per Section 19(4) of the Act 1972. The appellant preferred an appeal under Section 34 of the Act 1972 along with an application under Section 59 of the Act to the Managing Director for setting aside the action taken by the respondent No.2 against it, but in both the proceedings, i.e. the appeal as well as application preferred by the appellant, the prayer has been rejected by the appellate authority vide order dated

10-4-2017 (Annexure-P/2) and 29-12-2016 (Annexure-P/14) respectively.

5. The facts of the case succinctly stated are that, the appellant is a licensee of the respondent No.2 and it has the licence of wholesale trading since 1991. Under the said licence the appellant was engaged in the trading of the notified agriculture produce and had a Dal Mill. The appellant has also applied for another licence of processing and it has installed a Dal Mill at Pawai, District Panna, but the same has been refused by the respondents without assigning any reason. Thus, it is clear that the appellant had no licence for processing and admittedly, it has not installed any processing unit within the market area falling within the jurisdiction of the respondent No.2. It is also an admitted position that the appellant has not applied for issuance of a licence under the provisions of Section 32-A of the Act 1972.

6. According to the appellant, it has a licence under Section 32 of the Act 1972 for trading business within the jurisdiction of the respondent No.2. It is set forth that when the application moved by it for grant of licence under Section 32 of the Act 1972 for the purpose of business of trading/processing within the area under the jurisdiction of the Krishi Upaj Mandi Samiti, Pawai, was not being

decided by the respondents, then it preferred a writ petition, forming the subject-matter of W.P. No.18590/2014 which was disposed of by this Court vide order dated 02-12-2014, directing the Krishi Upaj Mandi Samiti, Pawai to consider the application of the appellant and take a suitable decision for grant of license. Eventually, the application of the appellant was also rejected. Thus, it is clear that the appellant without having a valid licence even for trading and processing, installed the Dal Mill and was involved in the business of processing of notified agricultural produce particularly, *Rahar Dal*.

7. It is further pleaded on behalf of the appellant that in pursuance to the licence to be granted by the respondent No.2, the requisite fee was being paid by it and hence, there was no outstanding against the appellant. The appellant was aggrieved with the action taken by the respondent No.2, as the impugned order dated 13-9-2014 was issued against the appellant restraining it to carry out any sale and purchase business of food grains within the market area of Krishi Upaj Mandi Samiti, Katni. It was also required to deposit a sum of Rs.31,37,499/- towards Mandi Shulk and Nirashri Shulk. Notices have been issued to the appellant on different dates for depositing the said amount, but that was not done and consequently, the order dated 13-9-2014 (Annexure-P/1) was passed restraining the

appellant from carrying out the business within the market area of Krishi Upaj Mandi Samiti.

8. It was further argued on behalf of the appellant that before passing the impugned order dated 13-9-2014 (Annexure-P/1), the appellant was not afforded an opportunity of being heard and even no show cause notice was issued. It is also contended that in the enquiry report (Annexure-P/13), it is found that the appellant has not committed any irregularity and it was entitled to pay the market fees only on 9 quintals and 80 Kgs. It was further contended that the order dated 13-9-2014 is without jurisdiction as the appellant cannot be restrained for carrying out the sale and purchase business, as it was holding a valid licence under Section 32 of the Act 1972 and such, restraint can be made only under the conditions prevailing in Section 19-B of the Act 1972, whereas such default has been made by the appellant in paying the market fees as nothing is outstanding.

9. The respondents have filed their reply contending *inter alia*, that the appellant was not entitled to get exemption, as provided under the notification dated 13-10-2006 (Annexure-P/6), as the same was not available for it. It is luminescent from the notification that exemption from the market fees is provided by the State to the licence-holder bringing agricultural produce from out of the State for

processing in the Dal Mill established in the market area. The appellant obtained a licence under Section 32 of the Act 1972 from the respondent No.2 – Krishi Upaj Mandi Samiti, Katni, but it established a Dal Mill in the market area of of Krishi Upaj Mandi Samiti, Pawai, District Panna. Thus, it is clear that the benefit of exemption of market fees as per the notification was not available to the appellant, but despite that it took undue advantage of the same suppressing the material information from the authority and as such, notices were served upon the appellant time and again, for depositing the evaded market fees, but the same was not deposited by the appellant. An enquiry has also been conducted giving an opportunity to the appellant to ascertain the irregularity committed by it and also to ascertain the quantity of agricultural produce, especially *Rahar Dal* which was brought and processed by the appellant. The enquiry report, Annexure-P/13 reveals that the appellant has committed illegality and also evaded payment of market fees. Thus, the respondents have argued that there was no illegality on their part while issuing the impugned order dated 13-9-2014 (Annexure-P/1). It is asserted that the appellant has fraudulently taken undue advantage of the notification, Annexure-P/5, just to evade the market fess, whereas it was not entitled to get any exemption from the market fees.

10. Regard being had to the arguments advanced on behalf of the parties, the learned Single Judge framed the following issue for adjudication :

“Whether the petitioner was entitled to get the benefit of notification issued on 13th October, 2006 (Annexure-P/5) and if not, then action taken by the respondent No.2 vide issuing order dated 13-9-2014 was justified or not ?”

11. Admittedly, the appellant is a licensee of the respondent No.2 since 1991 and it has been granted licence under Section 32 of the Act 1972. It is seemly to reproduce the said provision. It reads thus :

“S.32 Power to grant licence. -

(1) Every person specified in section 31 who desires to operate in the market area shall apply to the market committee for grant of a licence or renewal thereof in such manner and within such period as may be prescribed by bye-laws.

(2) Every such application shall be accompanied by such fee as the Director may, subject to the limits prescribed, specify in this behalf.

(3) The market committee may grant or renew the licence or for reasons to be recorded in writing refuse to grant or renew the licence :

[Provided that if the market committee fails to grant or renew a licence within a period of six weeks from the date of receipt of application therefor the licence shall be deemed to have been granted or renewed, as the case may be.

Provided further that the licence shall not be renewed, if any Mandi Committee dues including dues

under the Madhya Pradesh Nirashriton Avam Nirdhana Vyaktion Ki Sahayata Adhiniyam, 1970 are outstanding against the applicant :

Provided also that no licence shall be granted to a minor.]

(4) All licences granted or renewed under this section shall be subject to the provisions of this Act and the rules and bye-laws made thereunder.

(5) No commission agent or a broker or both shall act in any transaction between the agriculturist-seller or trader-purchaser, on behalf of an agriculturist-seller nor shall he deduct any amount towards commission or dalali from the sale proceeds payable to the agriculturist-seller.”

12. It is also admitted that the appellant has applied for grant of licence for processing before the Krishi Upaj Mandi Samiti, Pawai, where it has installed a Dal Mill, but that application has been rejected, which means that the appellant had no licence of processing or to carry out any such process in the unit of Dal Mill installed by it within the market area of Krishi Upaj Mandi Samiti, Pawai. It is also clear from the stand taken by the respondents and action taken against the appellant that the appellant has unlawfully taken advantage of the notification issued by the State Government exercising power under Section 69 of the Act 1972 granting whole exemption from paying the market fees to the licence-holder who brings foodgrains from out of the State for processing in the Dal Mill established in the market area. It is limpid clear that such

notification is not available for the appellant because it was not processing the foodgrains particularly, *Rahar Dal* in the market area of Krishi Upaj Mandi Samiti, Katni, as it has Dal Mill installed in some other place which does not fall within the jurisdiction of the respondent No.2. Despite that, it has taken the benefit of the notification (Annexure-P/5) just to evade the market fees which is payable by it, as it was bringing the foodgrains from out of the State. It is also clear from the notification that exemption from paying the market fees was provided by the State to the Dal Mills involved in processing of foodgrains, if the unit is installed in the market area for which licence is granted but admittedly, the appellant had no licence granted by the Krishi Upaj Mandi Samiti, Pawai where its Dal Mill was installed.

13. The enquiry report (Annexure-P/13) further makes it clear that the appellant had been given an opportunity to justify its stand, but it failed to do so. It clearly spells out the irregularity committed by the appellant taking undue advantage of the notification dated 13-10-2006. The enquiry report further reveals the quantity of foodgrain for which the appellant had to pay the market fees, which it has evaded. Under such circumstances, Section 19 of the Act 1972 provides for penal action. At this juncture, it is condign

to reproduce Section 19 of the Act 1972, which is extracted hereunder :

“Section 19-Power to levy market fee- (1) Every Market Committee shall levy market fee-

(i) on the sale of notified agriculture produce whether brought from within the State or from outside the State into the market area; and

(ii) on the notified agriculture produce whether brought from within the State or from outside the State into the market areas and used for processing or manufacturing;

at such rates as may be fixed by the State Government from time to time subject to a minimum rate of fifty paise and a maximum of two rupees for every one hundred rupees of the price in the manner prescribed:

Provided that no Market Committee other than the one in whose market area the notified agriculture produce is brought for sale or processing or manufacturing by an agriculturist or trader, as the case may be, for the first time shall levy such market fee.

(2) The market fees shall be payable by the buyer of the notified agriculture produce and shall not be deducted from the price payable to the seller: Provided that where the buyer of a notified agriculture produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area:

Provided further that in case of commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller:

Provided further also that no fees shall be levied upto 31st March, 1990 on such agriculture produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market yard or

sub-market yard by an agriculturist to a co-operative society of which he is a member:

Provided also that for the agriculture Produce brought in the market area for commercial transaction or for processing or for manufacturing the market fee shall be deposited by the buyer or processor or manufacturer, as the case may be, in the market committee office within fourteen days if the buyer or processor or manufacturer has not submitted the permit issued under sub-section (6) of Section 19.

(3) The market fees referred to in sub-section (1) shall not be levied on any notified agriculture produce--

(i) in more than one market area, in the State; or

(ii) more than once in the same market area; if it is resold,-

(a) in the case of (i) in the market other than the one in which it was brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time and has suffered fee therein; or

(b) in the case of (ii), in the same market area; in the course of commercial transactions between the traders or to consumers subject to furnishing of information in such form as may be prescribed in the bye-laws by the person concerned to the effect that the notified agriculture produce being so resold has already suffered fee in the other market area of the State.

(4) If any notified agriculture produce is found to have been processed, manufactured, resold or sold out of yard without payment of market fee payable on such produce the market fee shall be levied and recovered on five times the market value of the processed or manufactured produce or value of the agriculture produce as the case may be.

(5) The market functionaries, as the Market Committee may by bye-laws specify, shall maintain account relating to sale and purchase or processing or manufacturing in such forms and submit to the Market Committee such periodical returns as may be prescribed.

(6) No notified agriculture produce shall be removed out of the market yard, market proper or the market area as the case may be, except in accordance with a permit issued by the market committee, in such form and in such manner as may be prescribed by the bye-laws:

Provided that if any person removes or transports the processed or manufactured product of notified agriculture produce from the market yard, market proper or the market area, as the case may be, such person shall carry with him the bill or cash memorandum issued under Section 43 of the Madhya Pradesh Vanijyik Kar Adhiniyam, 1994 (No. 5 of 1995).

(7) The Market Committee may levy and collect entrance fee on vehicles, plying on hire, which may enter into market yard at such rate as may be specified in the bye-laws.”

(emphasis supplied)

14. The stand taken by the appellant that before issuing order impugned dated 13.09.2014 (AnnexureP/1), it was not provided any opportunity and no notice was even issued to it, but such stand of the appellant is also not acceptable, because from the record it is manifest that on 28.06.2014 (Annexure-P/7) the appellant was given a notice informing that it has no entitlement to get exemption from *Mandi Shulk* and asked it to deposit the requisite *Mandi Shulk/Nirashri Shulk* as per Section 19(4) of the Act , 1972. The said notice was replied by the appellant which is appended as Annexure-P/8 to

the writ petition. It is noteworthy to mention here that even from the reply submitted by the appellant it is discernible, that nowhere it is stated that the appellant has not taken the benefit of the notification and if taken, as to how it was eligible to get the said benefit. Likewise, further notice was given on 19.07.2014 (Annexure-P/9), which was replied by Annexure-P/10 and another notice on 28.08.2014 (Annexure-P/11), but nothing was done by the appellant and the appellant has also not denied that it has evaded the market fees under the garb of the notification dated 13.10.2006 (Annexure-P/5). Thus, it is clear, that the respondents have not committed any illegality while issuing order impugned dated 13.09.2014, as the appellant has unlawfully taken the benefit of the notification dated 13.10.2006 and evaded the *Mandi Shulk* for which penal action has been taken by the respondents under Section 19(4) of the Act, 1972.

15. As far as the contention raised by the learned counsel for the appellant regarding competence of the respondents restraining the appellant to carry out the sale and purchase business within the market area of respondent No.2 is concerned, Section 19-B of the Act, 1972 clearly provides the competence of the respondent No.2 to restrain the appellant to enter into further transaction in the market area or even any other market area for which the market fees has not

been paid by the licence-holder. It is apt to refer to Section 19-B of the Act 1972, which is extracted hereunder :-

“S.19-B. Default in payment of market fee.- (1) Any person liable to pay market fee under this Act shall pay the same to the market committee within fourteen days of the purchase of the notified agriculture produce or its import into the market area for processing or manufacturing and in default he shall be liable to pay the market fee together with the interest at the rate of twenty four percent per annum.

(2) If the person liable to pay the market fee and the interest under sub-section (1) fails to pay the same within one month, such person shall not be allowed to enter into further transactions in that market area or any other market area and the market fee with interest shall be recovered as arrears of land revenue and the licence of such person shall be liable to be cancelled.”

16. From the record, it is clear that the appellant availed exemption on bringing 978.13 quintals Rahar Dal in the year 2011-12 and 7410.20 quintals in the year 2012-13 in the market area of the Market Committee, Katni and did not pay the market fees. The appellant has failed to establish processing unit within the market area of Katni and the agricultural produce brought within the market area Katni should be consumed in such processing unit. Thus, the exemption was availed over certain quantity of agricultural produce during the period in question contrary to the conditions of exemption notification and, therefore, the action prescribed in para 3 of the notification itself became incumbent. As set forth in paras 5.7 to 5.10 of the petition, the appellant has operated entire business from Katni Samiti under the licence of wholesale trading.

17. The appellant had availed exemption from market fees despite not possessing the licence for processing to be issued by the Market Committee. The appellant was found guilty of suppressing such status and, therefore, the exemption availed during the aforesaid period was not legal and the consequences stipulated in condition No.3 of the notification dated 13-10-2006 were attracted. Further, the appellant did not furnish any information with regard to transportation of the aforesaid quantity of agricultural produce within the time limit stipulated in the notification to the Market Committee. The appellant did not obtain any licence for trading or processing from the Market Committee, Pawai within whose jurisdiction its Dall Mill has been established. Thus, it is luminescent, that on the one hand the appellant is operating a Dall Mill within the market area of the Market Committee, Pawai without any licence and on the other, the appellant has played mischief with the Market Committee, Katni by evading the market fees or illegally availing the exemption.

18. Further, the appellant has not opted to obtain licence for operating in two Market Committees, prescribed under Section 32-A of the Act 1972. The appellant has not disclosed as to even the market fee was paid over such purchases within the market area Pawai to the Market Committee, Pawai. The Market Committee,

Pawai has already raised demand against the appellant and action under the provisions of sections 48 and 49 of the Act 1972 has been initiated. The matter has been reported to the competent court of jurisdiction, i.e., the Judicial Magistrate First Class, Pawai District Panna under Section 48 and the application for licence has also been rejected by the Market Committee, Pawai on 02-02-2015. Thus, demand has been raised for illegally availing exemption over agricultural produce during the period 2011-2013 and the appellant failed to respond the demand notices. Therefore, consequences not only under Section 19(4) of the Act 1972 but under Section 19-B(2) of the Act, were also attracted.

19. By the impugned order dated 13-9-2014 the appellant was restrained to operate business of sale & purchase of agriculture produce as per the implications of Section 19-B of the Act 1972. Licence of the appellant was not renewed after the year 2015 by implication of the second proviso to Sub-section (2) of Section 32 of the Act 1972.

20. In view of the aforesaid, it is luculent that the appellant had to pay the market fees to the respondent No.2 for bringing foodgrains from outside the State, but has availed the same taking undue advantage of the notification dated 13-10-2006 and as such

notices were issued to it by the respondents, but the appellant has not deposited the requisite Mandi fees and, therefore, there is no illegality in the action taken by the respondents. Further, no illegality has been committed by the appellate authority while dismissing the appeal preferred by the appellant holding that the appellant is guilty of illegality committed by it by defrauding the respondents and taking undue benefit of the notification, dated 13-10-2006. The learned Single Judge has considered all material and relevant provisions of the Act 1972 in proper perspective and thereafter the writ petition was dismissed.

21. In the case of **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others**, (1996) 3 SCC 52, the Apex Court ruled, that in an intra-court appeal the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

22. We do not perceive any illegality or perversity in the order passed by the learned Single Judge and the findings ascribed in the impugned order are impeccable and the same do not warrant any interference in the present intra-court appeal.

23. Ex-consequenti, **the writ appeal, being sans substratum , is dismissed** without any order as to costs.

(Mohammad Rafiq)
Chief Justice

(Vijay Kumar Shukla)
Judge

ac.