

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 11786 OF 2014

Kisan Seva Private Market
Gangapur, Through its proprietor
Shri Suresh Zumberlal Gandhi
Age :- 45 years, Occu :- Business,
R/o. Gangapur, Tq. Gangapur,
Dist. Aurangabad.

... Petitioner

VERSUS

- 1] The State of Maharashtra
Through the Hon'ble Minister (Marketing)
Co-operation, Textile and Marketing Department
Mantralaya, Mumbai.
- 2] Director of Marketing
Maharashtra State, Pune.
- 3] District Deputy Registrar,
Co-operative Societies, Aurangabad.
- 4] Agricultural Produced Market Committee
Gangapur, Tq. Gangapur, Dist. Aurangabad
Through its Secretary ... Respondents

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Mr. V.J. Dixit, Sr. Advocate holding for
Mr. K.J. Suryawanshi, Advocate for petitioner
Mr. U.H. Bhogale, A.G.P. for respondent Nos. 1 to 3
Mr. S.V. Adwant, Advocate for respondent No. 4

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CORAM : RAVINDRA V. GHUGE, J.

DATE : 15th JANUARY, 2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally.
2. The contentions of the petitioner can be summarised as follows :-
 - a] The petitioner Kisan Seva Private Marketing, Gangapur is a proprietary firm and Mr. Suresh Zumberlal Gandhi is the proprietor.
 - b] Kisan Agro Industry (KAI) is a partnership firm and Mr. Sharad Zumberlal Gandhi and Mr. Annasaheb M. Mane are the partners.
 - c] Kisan Cotex Ginning and Pressing (KCGP) is a partnership firm and Mr. Annasaheb M. Mane and Mr. Suresh Zumberlal Gandhi are the partners.
 - d] Contention of Agricultural Produce Market Committee (APMC)- respondent No. 4 is that market fees to the tune of Rs. 73,15,353/- for the period 22-04-2013 to 03-05-2014 are not paid by KCGP and KAI.
 - e] The petitioner had applied for licence to respondent No. 2 authority to establish a private market.

f] On 28-09-2012, the petitioner was granted a licence by respondent No. 2 under Section 5 D of the Maharashtra Agricultural Produce Marketing (Condition and Regulation) Act, 1963 (hereinafter referred to as '1963 Act').

g] On 04-03-2013, respondent No. 2 issued a notice to the petitioner for suspension of licence upon raising certain queries. The petitioner was directed to remain present on 21-03-2013.

h] On 28-03-2013 respondent No. 2 passed an order of suspension of licence.

i] The petitioner received a notice of hearing on the application of the APMC dated 22-03-2013.

j] By order dated 22-04-2013, the application of the APMC dated 22-10-2012 and 16-01-2013 were rejected, which was filed against KAI.

k] By communication dated 24-07-2013, the District Sub Registrar, Cooperative Societies, Aurangabad informed respondent No. 2- Director of Marketing that the petitioner had cured all deficiencies.

l] Yet, by communication dated 22-10-2013, respondent No. 2 directed the District Sub Registrar to once again carry

out an inspection as regards the infrastructural facilities available with the petitioner since Mr. Prashant B. Bamb, Member of Legislative Assembly (M.L.A.) had raised certain objections.

m] By inspection dated 26-10-2013, the District Sub Registrar indicated that there are no short-comings with the petitioner.

n] By communication dated 22-10-2013, respondent No. 2 informed the petitioner to attend a hearing on 28-10-2013 along with a lawyer to meet the objections raised by Mr. Bamb, MLA.

o] Similar communication for hearing dated 30-10-2013 was served upon the petitioner.

p] The petitioner submitted a detailed reply dated 21-11-2013 to the second respondent.

q] The petitioner was constrained to prefer Writ Petition No. 1003/2014 before this Court in which the Assistant Registrar, Cooperative Societies (ARCS) submitted that the hearing as regards suspension of the petitioner's licence was in progress.

r] By order dated 04-03-2014, this Court (Coram :- Sunil P. Deshmukh, J.) disposed off the petition by observing that

a final decision in the matter should be reached expeditiously and preferably within a period of two months.

s] Respondent No. 2 issued yet another notice of hearing dated 27-03-2014 regarding the complaint of the MLA.

t] By order dated 03-05-2014, respondent No. 2 directed APMC to proceed against KCGP and KAI for recovery of its market fee by following the due procedure of law. The licence of the petitioner, therefore, was restored.

u] By communication dated 21-05-2014, the petitioner informed the second respondent that all deficiencies had been removed.

v] The appeal No. 44 of 2012 preferred by the APMC is in fact aimed against KCGP and KAI. However, relief is sought as against the petitioner as regards cancellation of its licence dated 28-09-2012.

w] The appeal filed by the APMC is time barred since the licence dated 28-09-2012 is sought to be challenged on 12-11-2012, whereas the limitation period is only 30 days.

x] Section 52-B (2) of the Act, 1963, prescribes 30 days as the limitation period.

y] Section 5 (D) of the 1963 Act pertains to grant of licence.

z] The APMC cannot go beyond its pleadings in the appeal.

aa] When the licence was granted to the petitioner by respondent no. 2, the appeal is rendered untenable.

ab] APMC had participated in the proceedings and, therefore, cannot pretend that the date of licence dated 28-09-2012 came to their knowledge on 25-10-2012.

ac] The dispute of the APMC with KCGP and KAI cannot be co-related to the licence granted to the petitioner which is a proprietary firm.

ad] There is no finding by the Hon'ble Minister on the issue of limitation and the tenability of the appeal filed by the APMC.

ae] The matter needs to be remanded back to the Hon'ble Minister for deciding the issue as regards limitation and tenability of the appeal as well as such disputed questions which have remained unanswered.

af] Section 57 of the 1963 Act provides for mode of recovery which can be resorted to by the APMC against KCGP and KAI. The petitioner has no concern with the said recovery.

ag] Rule 119 of the Maharashtra Agricultural produce Marketing [Development and Regulation] Rules, 1967 (hereinafter referred to as '1967 Rules') has provided for appointment of a Tribunal under Section 57 of the Act, 1963 which can be approached by the APMC against KCGP and KAI.

ai] The APMC cannot create obstruction / obstacles in the path of the petitioner only because family members of the proprietor of the petitioner firm are partners in KCGP and KAI from whom the APMC desires to recovery purported market fee dues .

3. The submissions of the learned Advocate for the APMC can be summarised as follows :-

a] The appeal is tenable before the Hon'ble Minister.

b] Since respondent No. 4-APMC gathered knowledge about the impugned licence dated 28-09-2012, on 25-10-2012, the appeal dated 12-11-2012 is rendered tenable.

c] The complaint dated 22-10-2012 filed by APMC is the genesis of the appeal.

d] The impugned licence dated 28-09-2012 was granted to the petitioner without considering the following points :-

i] Licence fee needs to be deposited under Rule 4 C of the 1967 Rules, which was not deposited by the petitioner.

ii] The chalan indicates that the licence fee was paid on the date on which the licence was issued.

iii] The property Gut No. 16 admeasuring 9 A. 57 R at Jakhmatha, was not held by the petitioner firm before the grant of licence.

iv] KAI, KCGP as well as the petitioner appear to operate their establishments on the same land Gut No. 16.

v] The petitioner got construction permission on 28-03-2012, prior to the land being transferred in the name of proprietor of the petitioner firm.

vi] The concerned land was transferred in the name of proprietor of the petitioner firm on 19-10-2012.

vii] Three construction permissions are obtained by the petitioner which is surprising.

viii] Bank guarantee of Rs. Five lakhs is not furnished by the petitioner under Rule 4 C (3) of the 1967 Rules.

ix] Licence cannot be grant without carrying out inspection and verification of infrastructural facilities under Rule 4 C (4) of the 1967 Rules.

e] The land / property situated at Jakhmatha from where the petitioner desires to operate a private market, is not situated in group Grampanchayat Mahuli-Sidhapur.

f] The impugned licence was granted mechanically and with electrifying speed for the reasons best known to the second respondent and the petitioner.

g] Since the appeal has been filed within limitation and is maintainable, there is no reason for the Hon'ble Minister to deal with the frivolous contentions of the petitioner.

h] The Writ Petition deserves to be dismissed by imposing heavy costs upon the petitioner.

4. I have gone through the petition paper book with the assistance of the learned Advocates. I have considered the complaint filed by the APMC, its claim against KCGP and KAI and the impugned judgment of the Hon'ble Minister

5. This Court (Coram :- Sunil P. Deshmukh, J.) by its order dated 16-09-2014 delivered in Writ Petition No. 7842 of 2014 preferred by the petitioner herein, had observed as under :-

1. After hearing the matter for quite sometime, the parties seek opportunity to address the appellate authority again for consideration of the appeal afresh as certain points and aspects they want to raise and highlight and want to be considered by the appellate authority.

2. As such, impugned order dated 30-08-2014 passed by respondent no. 1 in appeal no. 44 of 2012 is set aside. The appeal stands restored to its position as had been immediately subsisting before passing impugned order. The parties shall appear before the appellate authority on 25-09-2014 and address themselves in respect of points

they want to canvass in the appeal by following due procedure therefor. Reasonable opportunity of hearing to the parties, including production of additional evidence, if they so desire, be afforded. From 25-09-2014 onwards, the parties shall abide by schedule as may be fixed by the appellate authority. It is desirable that the proceedings be disposed of as early as possible and preferably within a period of four months from the date of receipt of writ of this order.

3. *With aforesaid, writ petition stands disposed of.*

6. Considering the impugned judgment in the light of the order passed by this Court reproduced as above dated 16-09-2014 and in the light of the submissions of the learned Advocates for the respective sides, I am of the view that the Hon'ble Minister has not considered the issue raised by the petitioner as regards the tenability of the appeal and the said appeal being affected by 30 days limitation. In the event the appeal is not tenable before the Hon'ble Minister, the impugned judgment would be rendered "Non-est". So also, the issue of limitation needs to be dealt with. Various disputed issues have also not been considered by the Hon'ble Minister.

7. Having considered the submissions of the rival sides at length as above, I expressed my view to the learned Advocates that several disputed questions have been raised by the two sides, issues as regards tenability of the Appeal and limitation aspect remained unanswered and therefore, I am not inclined to

consider disputed questions in this petition by entering into a roving enquiry in the matter. The learned Advocates therefore, have agreed that the matter be remanded to the Hon'ble Minister (the State) or such authority of the State which may decide the said issues.

8. The learned Advocates also submitted that the Hon'ble Minister be appraised of the issues which he shall decide since this is the second time when the matter is being remanded to the Hon'ble Minister. They have further suggested that they would appear before the Hon'ble Minister on 16-02-2015 at 3.00 pm and thereafter would abide by such dates of hearing on which the Hon'ble Minister would post the matter.

9. In the light of the above, the petition is partly allowed. The impugned order dated 16-12-2014 passed by the Hon'ble Minister in Appeal No. 44 of 2012 is quashed and set aside. The said appeal is relegated back to the Hon'ble Minister for hearing afresh. The litigating parties shall appear before him on 16-02-2015 at 3.00 pm.

10. For the sake of clarity, the issues to be considered and decided by the by the Hon'ble Minister, are stated here-in-below :

a] Whether filing of this appeal No. 44 of 2012 challenging the licence granted by respondent No. 2 before the Hon'ble Minister is provided in law?

b] If, yes whether there is any delay caused in the filing of the appeal and whether there is any provision to condone the delay?

c] Since, it is the case of the Agricultural Produce Market Committee (APMC) that the appeal is based only on the complaint/ representation dated 22-10-2012 outward No. 412/2012, whether there is any cause of action arising for the APMC to question the licence granted to Kisan Seva Private Marketing, Gangapur dated 28-09-2012?

d] Any other issue arising out of the appeal and which the Hon'ble Minister may deem fit and necessary to consider and decide?

11. The litigating parties shall enter their written notes of arguments before the Hon'ble Minister on 16-02-2015. Needless to state, the Hon'ble Minister is expected to specifically decide the above stated issues as expeditiously as possible and preferably on or before the 30th day June of 2015.

(**RAVINDRA V. GHUGE, J.)**