

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.25965 of 2015

ORDER:

In this Writ Petition the petitioners question the action of respondents in not furnishing export permit books to them as mandated by bye-law No.24 (8) of the bye-laws of 3rd respondent-Market Committee, and seek a direction to respondents to issue the export permit books to them.

2. The petitioners herein are partnership firms engaged in the business of milling paddy into rice.
3. The petitioners contend that they made a representation dt.14.11.2013 to 3rd respondent for issuance of export permit books but the 3rd respondent is not issuing them and is insisting the petitioners to pay market fee on rice. They contend that there is no obligation on rice millers to collect market fee from the purchasers and remit the same to the market committee and that it is the duty of the market committee to collect market fee through licensees and commission agents or its officers and servants. They placed reliance on the order dt.28.12.2004 in WP.No.22388 of 2004.
4. The 3rd respondent filed a counter-affidavit denying that it had not issued export permit books to petitioners. He contended that petitioners, along with other licence rice millers, are purchasing paddy from farmers directly as well as from market yard; after

milling paddy into rice they supply it to the Food Corporation of India and sell the left over rice to purchasers within the State; and so 3rd respondent cannot collect the market fee from the purchasers who are not licence holders of the market. He contended that by merely furnishing the address of the purchasers, petitioners cannot get free of their obligation to pay the market fee on rice sold within the State, that petitioners are contravening the provisions of Section 12 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (**for short, 'the Act'**), and that every rice miller who purchases the modified commodity of paddy has to pay the market fee on paddy as well as rice, since both are separately notified commodities under the Act and the Rules framed thereunder.

5. He contended that the State Government, vide G.O.Ms.No.451 dt.19.11.2005 issued orders exempting payment of market fee on rice sales outside the State as well as the outside the country for one year and the exemption has been extended by issuing G.Os. year by year; that in the very same G.O., it is ordered in Clause 4 (2) that rice millers have to pay market fee at the rate of 1% on the rice sold within the State; that where purchaser of rice cannot be identified, market fee has to be paid by the seller under sub-Section (2) of Section 12 and in a situation where the purchaser cannot be identified, the purchaser shall pay the same.
6. He refuted the contention that purchasers have no obligation to collect the market fee from the purchasers and remit the same to the market committee and alleged that petitioners are trying to evade the payment of market fee on rice sales within the State

and within the jurisdiction of the 3rd respondent market committee; that petitioners have furnished the names of traders who purchased rice, but since the purchasers are not licence holders in the market committee and do not hold any licence from any other market committee, the 3rd respondent is not in a position to collect market fee from them and that is why it is insisting that petitioners pay it.

7. The issue raised in this Writ Petition is dealt with by this Court in WP.No.22388 of 2004 which was decided on 28.12.2004. There also the issue was with regard to issuance of export permit books by Agriculture Market Committee of Ongole, and the petitioners therein contended that the said Market Committee is not releasing such permit books and was insisting that petitioners should collect market fee from their purchasers and remit it to the Committee and that such conduct on the part of the Agriculture Market Committee is contrary to law.
8. This Court considered the provisions of the Act and also the bye-laws including bye-law no.24 which provides for issuance of export permit books to the licensees and noted that the scheme of the Act and the Rules entitle an licensee to an export permit book on payment of costs and on deposit of the security amount of Rs.150/- . It held that the basic object of issuing the permit books is to require the licensee to furnish necessary information to identify the produce intended for export. It noted that bye-law no.24(8) mandates that fresh book shall be issued only after the licensee submits the detailed accounts in respect of permit books issued earlier; what is leviable is a fee and not tax and the duty of a licensee is to furnish information about the sale or

purchase of the notified agricultural produce and to remit the market fee wherever it is collected; and market fee is leviable mostly on a purchase and the obligation is mainly upon the purchaser to pay it. It held that Rule 52 of the Rules framed under the Act enables an agricultural market committee to take action against defaulters in the form of suspension or cancellation of license if it is established that license was obtained through willful misrepresentation or fraud or if the conditions of the license and the provisions of the Rules or Bye-laws of the Committee are violated. It observed that licenses are also liable to be cancelled if the licensee is declared as an insolvent or is convicted of an offence under the Act, and that it is obligatory for the Market Committee to give opportunity to the licensee before such action is taken.

9. But this Court categorically held that the Act does not contain any provision which enables the Market Committee directly to recover the dues of market fee and that under Section 12-C (4) of the Act, the dues of market committee can be recovered as if it were arrears of land revenue, and for this purpose the authorities of the Market Committee have to approach the Revenue Department.
10. It also held that Section 23 of the Act provides penalty against licensees who fail to pay the market fee levied under Section 12 of the Act, and that the Court which is conferred with jurisdiction to try the offence is empowered to pass orders for summary recovery of the amount of market fee and license fee chargeable under Section 7 or dues of fee levied under Section 12 of the Act.

11. The Court therefore held that except taking steps for suspension or cancellation of the license as provided for under Rule 52 or initiation of prosecution and other steps under Section 23 of the Act, the Market Committee or its delegates have no power in the matter of recovery of market fee.
12. It also held that refusal of the Market Committee to issue permit books to petitioners therein on the ground that they did not pay market fee, is beyond the powers of the agricultural market committee and outside the scope and scheme of the Act, Rules and Bye-laws. It held that when bye-laws provide for issuance of books for a particular purpose and also indicate the consequences, in the event of any lapse on the part of the licensee, the respondents cannot be permitted to pressurize the petitioner to pay the market fee in relation to the previous transactions. It held that what is impermissible directly by law cannot be permitted to be done indirectly and that issuance of export permit books do not depend on the whims and fancies or *ipsi dixit* of the respondents.
13. It held that as long as the petitioners hold a license under Section 7 of the Act, they are entitled to be issued such books, as of right. It also deprecated the practice of the agricultural market committee in insisting on a licensee executing an undertaking to pay the market fee. It therefore directed the agricultural market committee, Nellore to issue the export permit book to petitioner therein on payment of costs for the same within one week by making it clear that if the Market Committee finds that the petitioner had not remitted the market fee as provided for under law, it is open to it to take steps prescribed

under the provisions of the Act and the Rules.

14. The applicability of the above decision to the present facts of the case is not disputed by the learned Standing Counsel for 3rd respondent.
15. Therefore, for the same reasons, this Writ Petition is also allowed and the 3rd respondent is directed to issue export permit books to petitioners on payment of fee for the same within one week from the date of receipt of a copy of the order. No order as to costs.
16. It is made clear that if the 3rd respondent finds that petitioner had not remitted the market fee as provided for under law it can take necessary steps prescribed under the provisions of the Act and Rules as explained in the order dt.28.12.2004 in W.P.22388 of 2004.
17. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-02-2016

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