HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Writ Petition No.43760 of 2017

Order : **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

The petitioner is a coconut trader, and the Bowenpally Agricultural Market Committee, Secunderabad levied market fee on them on the sale of coconuts in their market yard. The petitioner claims to have paid the market fee to the Government of Andhra Pradesh, at the border check post, before entering the State of Telangana. It is their case that, ever since 2.6.2014 till the year 2016, the third respondent was merely collecting the differential market fee ie, the market fee liable to be paid to them less the market fee paid by the petitioner at the A.P. border check post to the concerned Agricultural Market Committee in the State of Andhra Pradesh; and, all of a sudden, the impugned order came to be passed, levying agricultural market fee for the years 2014-15, 2015-16 and 2016-17.

Smt. K. Pallavi, learned Counsel for the petitioner, would submit that, in terms of Section 53 of the Andhra Pradesh Re-organization Act, 2014 (hereinafter referred to as the "2014 Act"), it is for both the State Governments to resolve the issue; any amount paid to the Government of Andhra Pradesh should be transferred by them to the Government of Telangana; the petitioner cannot be forced to pay market fee twice both to the Government of Andhra Pradesh and to the Government of Telangana; Section 12-E of the Telangana (Agricultural Produce and Live Stock) Markets Act, 1966 (hereinafter referred to as the "1966 Act") requires the entire market fee to be deposited for an appeal to be entertained; and this Court should, therefore, consider directing the appellate authority to entertain the appeal without insisting on the petitioner depositing the entire market fee, making it clear that, in case the appeal were to be dismissed, it would be then open to the authorities concerned to recover the entire market fee from the petitioner.

It is not in dispute that the differential market fees now sought to be collected by the third respondent from the petitioner, is only from 2.6.2014 onwards, and not prior thereto. On 2.6.2014, the State of Telangana came into existence and, consequently, in terms of Rule 74(1) of the Telangana (Agricultural Produce and Livestock) Market Rules, 1969 (hereinafter referred to as the"1969 Rules"), the fees leviable under Section 12(1) of the Act, on any notified agricultural produce, live stock or products of livestock, if paid to a market committee within the State shall not be collected by another market committee, subject to production of proof of payment of fees, if already paid once.

The obligation to pay market fees, to any one of the Agricultural Market Committees, is restricted to the Agricultural Committees located within the State; and since the State of Telangana came into being on 2.6.2014, this concession would have been available to the petitioner only if any Agricultural Market Committee, located within the State of Telangana, had collected market fee. In such an event, another Agricultural Market Committee, situated within the State of Telangana, would be disabled from collecting market fees on the same produce once again. In the present case, the petitioner has not paid market fees to any other Agricultural Market Committee situated within the State of Telangana, apart from the third respondent.

It is the petitioner's case that they had paid agricultural market fee, for the very same produce, in the State of Andhra Pradesh. Even if that be so, Rule 74(1) of the 1969 Rules, does not come to the petitioner's aid, and does not disable the third respondent from collecting market fee since, on the petitioner's own admission, no market fee has been paid by them to any other Agricultural Market Committee within the State of Telangana.

Reliance placed by the petitioner on Section 53 of the 2014 Act is also mis-placed. Section 53 relates to the assets and liabilities of State Undertakings and, under the proviso to Section 53(1), where the operation of the commercial or industrial undertaking becomes inter-State, by virtue of the provisions of Part II, the assets and liabilities are required to be apportioned as required under the proviso. Since Section 53 relates to the assets and liabilities of commercial and industrial undertakings of the existing State of Andhra Pradesh, payment by the petitioner of market fees, to any Agricultural Market Committee within the State of Andhra Pradesh, would not fall within the ambit of Section 53(1) of the 2014 Act or its proviso.

Section 12-E of the 1996 Act relates to appeals and, under Sub-section (2) thereof, before preferring an appeal, market fee shall be paid in accordance with the assessment made in the case, and no appeal shall be entertained until such market fee is paid. The obligation to pay market fee to the concerned Agricultural Market Committee, which in the present case is the 3rd respondent, is a pre-condition for an appeal to be entertained. The market fee payable in terms of the assessment order, passed by the 3rd respondent, obligated the petitioner to make payment of the entire market fee for an appeal, under Section 12-E of the Act, to be entertained by the appellate authority.

The contention urged before us by Smt. K. Pallavi , learned counsel for the petitioner, that the amount paid by the petitioner to the Agricultural Market Committee in the State of Andhra Pradesh should be deducted from the amount payable for an appeal to be entertained, if accepted, would fall foul of Section 12-E (1) and (2) of the Act. No mandamus can be issued directing the authorities to disobey the law. The petitioner's contention, even if true, would only enable them to question the action of the Agricultural Market Committee in the State of Andhra Pradesh who have levied market fee on them. While the learned Government Pleader for Agriculture would submit that the market fee, levied by the Agricultural market committee in the State of Andhra Pradesh, was on the purchase of the produce and not on its sale, these are issues wholly extraneous to the present proceedings, and can only be examined in case the action of the Agricultural Market Committee, located in the State of Andhra Pradesh levying such market fee on the petitioner, is subjected to challenge. While we see no reason to entertain the Writ Petition wherein the action of the third respondent-Agricultural Market Committee, located in the State of Telangana, levying market fee on the petitioner, is subjected to challenge, we make it clear that this order shall not disable the petitioner from questioning levy of market fee, by the agricultural market committee located in the State of Andhra Pradesh, in appropriate legal proceedings.

Subject to the aforesaid observations, the Writ Petition fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

3rd January, 2018

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