

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 25100 of 2017

DATE OF DECISION : 29.01.2018

M/s Gobind Enterprises, Sirhind, District Fatehgarh Sahib

.... PETITIONER

Versus

State of Punjab and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE

HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Sameer Sachdeva, Advocate,
for the petitioner.

Mr. S.P. Garg, Advocate,
for respondents No.2 to 4.

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AVNEESH JHINGAN, J.

This petition has been filed challenging the confiscation order dated 13.10.2017, passed by Market Committee, Bassi Pathana.

2. Respondents No.2 to 4 are the statutory authorities under the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the Act').

3. The petitioner is carrying on business of sale and purchase of by products of rice shellers in the State of Punjab. 'Nakku'/broken rice is purchased within Punjab and from outside the State of Punjab. The petitioner is not a licensee under the Act. The petitioner had taken premises on rent from M/s Thabal Rice and General Mills, Village Rasulpur, Bassi

Pathana. Goods were stored in the rented premises. The officers of Market Committee, Bassi Pathana, on 14.09.2017 conducted a physical verification of the premises. The goods worth ₹ 41,10,997/- were found. A show cause notice dated 20.09.2017 was issued stating that the petitioner is liable to deposit market fee/RDF on the stock found during verification. On failure to deposit, the stock was liable to be seized. Petitioner filed reply dated 21.09.2017. The respondents, after considering the reply, reiterated the demand. Petitioner was directed by notice dated 25.09.2017 to deposit the fee, interest and penalty, failing which the stock was to be seized. Reply dated 29.09.2017 was filed raising the issue that 'Nakku' is not an agriculture produce. Petitioner received letter dated 04.10.2017 from the respondents that his failure to obtain valid licence and to deposit fee results in confiscation of rice (broken).

4. A representation dated 09.10.2017 was made to Secretary, Punjab Mandi Board, Mohali. The petitioner filed CWP No. 23554 of 2017. The writ petition was disposed of vide order dated 12.10.2017. The respondents were directed to decide the representation of the petitioner by passing a speaking order within a period of two weeks, after affording an opportunity of hearing to the petitioner.

5. The respondents invoked Rule 24-B of the Punjab Agricultural Produce Markets (General) Rules, 1962 (hereinafter referred to as 'the Rules') vide order dated 13.10.2017 and confiscated the stock.

6. The representation of the petitioner was rejected by passing a speaking order dated 27.10.2017.

7. The relevant provisions of the Act and the Rules, for ready reference, are re-produced below :-

Section 2 – In this Act, unless the context otherwise requires, -

(a) to (c) x x x

(d) “Committee” means a market committee established and constituted under sections 11 and 12;

(e) to (kk) x x x

(l) “notified market area” means any area notified under section 6;

Section 6 (3) – After the date of issue of such notification or from such later date as may be specified therein, no person, unless exempted by rules made under this Act, shall, either for himself or on behalf of another person, or of the State Government within the notified market area, set up, establish or continue or allow to be continued any place for the purchase, sale, storage and processing of the agricultural produce so notified; or purchase, sell, store or process such agricultural produce except under a licence granted in accordance with the provisions of this Act, the rules and by-laws made thereunder and the conditions specified in the licence :

Provided that a licence shall not be required by a producer who sells himself or through a bona fide agent, not being a commission agent, his own agricultural produce or the agricultural produce of his tenants on

their behalf or by a person who purchases any agricultural produce for his private use.

Section 13 (1) (b) – *It shall be the duty of a Committee to control and regulate the admission to the market, to determine the conditions for the use of the market and to prosecute or confiscate the agricultural produce belonging to person trading without a valid licence.*

Section 40. Appeal – *Any person objecting to an order passed by a Committee under section 13 or by the Secretary of the Board under sub-section (5) of section 33 may appeal to the Board in the manner prescribed and the Board's decision on appeal shall be final.*

Rule 24-B. Seizure of the agricultural produce –
(1) The agricultural produce belonging to a person selling without a valid licence shall be liable to be confiscated.

(2) (a) The Secretary of the Committee shall seize the agricultural produce referred to in sub-rule (1) and thereforth he shall prepare a seizure memo, of the agricultural produce so seized giving such of the following particulars as may be available on the spot :-

- (i) Name of the agricultural produce;*
- (ii) Weight or available description of the vehicle;*
- (iii) Name of the driver of the vehicle;*
- (iv) Builty or consignment No.;*
- (v) Name of the consignee or consignor;*
- (vi) Place from where the agricultural produce is seized; and*
- (vii) Such other particulars as may be considered necessary.*

(b) The seizure memo, shall be signed by the Secretary of the Committee, the driver of the vehicle or the person from whose possession the agricultural produce is seized and if the driver or the person from whose possession the agricultural produce is seized does not sign the seizure memo, it shall be signed by two witnesses alongwith the signatures of the Secretary of the Committee.

(3) The Secretary of the Committee shall inform the Chairman of the Committee about the seizure referred to in sub-rule (2) for convening a meeting of the Committee or of the Sub-Committee, as the case may be, for taking a decision regarding its confiscation and the meeting of the Committee or the Sub-Committee, as the case may be, shall be convened within forty-eight hours of the seizure of the agricultural produce :

Provided that the order to confiscate the agricultural produce shall not be made without giving the person concerned an opportunity to show cause as to why such order should not be made.

(4) The confiscated agricultural produce shall be disposed of in an open auction or in such other manner as may be decided by the Committee and the sale proceeds thereof shall be deposited in the Market Committee Fund.

8. Under the Act, no person, unless exempted, without grant of

licence, can establish any place for purchase, sale, storage and processing of agricultural produce in the notified market area.

9. Respondents confiscated the goods of the petitioner, as he was carrying sale, purchase and storage of agricultural produce in the notified market area without having a licence under the Act. The confiscation order has been challenged in the present petition. We have come to the conclusion that the petitioner must avail remedy of appeal under the Act.

10. An analysis of the provisions of the Act and the Rules would show that the petitioner cannot even store an agricultural produce in the notified market area without having licence under the Act. The Market Committee has the power under section 13(1)(b) of the Act to confiscate the agricultural produce belonging to a person trading without a valid license. The modalities for invoking the power under section 13(1)(b) have been provided under Rule 24-B of the Rules. The order of confiscation passed under Rule 24-B of the Rules is an order passed under section 13 of the Act. Appeal has been provided against the order passed by the Committee under section 13 of the Act. Order dated 13.10.2017, Annexure P-13, is an appealable order and the appeal would lie against the said order under section 40 of the Act.

11. The issue raised involves disputed questions of fact as to whether the confiscated goods were 'Nakku' or broken rice; whether 'Nakku' is agricultural produce or not; whether the goods were delivered in the notified market area of Bassi Pathana or the petitioner was doing trading there.

12. In view of the involvement of disputed questions of fact and remedy of appeal being available against the impugned order , the petitioner is relegated to the alternative remedy of filing the appeal. Since the present petition was pending in this court, in such circumstances if the petitioner files an appeal within 30 days from today the same shall be decided by the Appellate Authority on merits.

13. During the pendency of the writ petition vide order dated 22.11.2017 the confiscated goods were released on petitioner's production of a demand draft of ₹ 2 lakhs in the name of the Registrar General of this Court. The amount would be kept in the fixed deposit in a nationalised bank initially for a period of 6 months and like-wise for further period of 6 months thereafter. The investment made shall be subject to the outcome of the appeal.

14. The writ petition is disposed of accordingly.

**(S.J. VAZIFDAR)
CHIEF JUSTICE**

January 29, 2018
ndj

**(AVNEESH JHINGAN)
JUDGE**

Whether speaking/reasoned	Yes
Whether Reportable	Yes