

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13537 of 2000 (O&M)
Date of Decision: 17.07.2019

Aarhtia Association

... Petitioner

Versus

The Punjab State Agriculture
Marketing Board and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajesh Kumar Girdhar, Advocate,
for the petitioner.

Mr. S.S. Ranghi, Advocate and
Mr. Saurav Bhatia, Advocate,
for respondent No.1.

Ms. Simran Grewal, AAG, Punjab.

Mr. Arvind Mittal, Advocate,
for respondent No.3.

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioning Aarhtia Association, Grain Market Fazilka, District Ferozepur approached this Court in the year 2000 praying for a writ in the nature of certiorari quashing the impugned letter dated 07/14.09.1999 (P-2) together with the recovery notices (Annex. P-3 to P-5) vide which the respondents decided to recover 0.25 paise per wheat bag from the Commission Agents and the members of the petitioner Association. Since no interim stay was granted hence the amount has been recovered. They have sought a refund of the amount @ ₹0.25 paise per bag.

2. The case of the petitioner is that by notification dated April 04, 1999 the Punjab State Agricultural Marketing Board, Chandigarh in

exercise of powers conferred under Section 44 of the Punjab Agricultural Produce Markets Act, 1961 by delegating power; confirmed, registered and notified amendments in the Punjab Market Committees Bye-Laws, 1963 with immediate effect. The notification fixed charges of stitching of foodgrain bags by machine at ₹1.25 paise per unit and for manual stitching fixed ₹0.35 paise per unit. These are labour charges paid to workers by the Commission Agents. The expenses incurred on the procurement and storage of food grains are reimbursed by the Government of India in the shape of incidental charges every year. The Procuring Agencies come to the Commission Agents/kacha Arthia to purchase food grains on behalf of Government of India for distribution from the Central Pool.

3. The State of Punjab in its reply in para.3 has explained the position as follows:-

“Para-3 Admitted that the Memo No.PRA-BG-1-99/4636 dated 7-9-99 (Annexure P-2) was issued by the Respondent No.2. In this connection, it is submitted that State Govt. and its Procuring Agencies purchase foodgrains year to year through Kacha Arthia/Commission Agents, on behalf of Govt. of India i.e. for Central Pool. Therefore, all the expenses incurred on the procurement of food grains and its storages, are re-imbursement by the Govt. of India, through F.C.I., in the shape of incidental charges every year. That the element of stitching (sewing) charges is also the part of incidental charges. The incidental charges are approved by the Govt. of India for the season on provisional basis and are finalized by the Govt. of India, at the end of the season, keeping in view all the expenses incurred on the procurement and storage of foodgrains. However, it is further submitted

that before the commencement of the season, all operations/works to be performed during procurement of foodgrains, in the mandis are circulated for information of all the concerned under "Mandi Proforma" wherein the rates of each operation/work likely to be performed in Mandi are indicated. In this connection, attention of the Hon'ble Court is invited to an extract of Mandi Proforma the English version of which is annexed as R-I, which was circulated on 9-3-99. As per serial No.2, the following stipulation has been made:-

<i>2 : Stitching (sewing) (with hands)</i>	<i>As fixed by the Punjab State Agriculture Marketing Board from time to time without any premium/tender cut.</i>
<i> Double line stitching with machine.</i>	<i>As fixed by the Govt. of India, without any premium/tender cut.</i>

As has been mentioned above, that the incidental charges are approved by the Govt. of India on year to year basis, the Govt. of India, sanctioned Rs.1/- per bag for double line stitching with machine vide sanction No.192(7)-FCA/CS dated 19.8.99 and endorsed vide letter No.PRA-Inci-3(246)-99/4367 dated 24-8-99 to all the agencies (Copy to Annexure R-II). Therefore, the letter No.PRA-BG-1-99/4636 dated 7.9.99 issued by the Respondent No.2 is in consonance with the decision of Govt. of India."

4. In para.4 the State admits that arrival of wheat in the grain market starts in April every year and the season ends in the month of May of that year. If the season starts and ends in the month of May, then all the transactions which are subject matter of this writ petition would have been transacted in the month of May chargeable to the stitching charges @ ₹1.25 as per notification dated April 04, 1999 of the Punjab State Agricultural

Marketing Board. If the Commission Agents paid labour charges for stitching bags @ ₹1.25 paise per bag those payments have been made to workers/labourer with nothing remaining to be done.

5. If this is the position then it seems highly unfair that the Government of India would inform the Director, Food & Supplies & Special Secretary, Punjab Government while writing to Markfed that the incidental rate of double machine stitching bags of 95 kgs wheat for the year 1999-2000 has been fixed @ ₹1/- per bag. The Government of India and the Food Corporation of India guaranteed to pay only ₹1/- per bag for double machine stitching of wheat bags. This letter dated 07/14.09.1999 adversely affects the petitioner-Association when it directs that contractors/commission agents would also have to make payments at these rates. This communication is after the event and cannot to my mind be applied retrospectively to vary the contractual terms of the notification dated April 04, 1999 (P-1) which fixed the rate of stitching by machine @ ₹1.25 paise per unit as per Sr. No.4 of Category 'D-II' for wheat bags of 50 kgs standard unit replacing the erstwhile 95Kg bags.

6. Markfed has filed a separate reply being the procuring agencies of the food grains from the Central Pool. It has placed on record the decision dated October 12, 2000 (R-1) of Punjab Mandi Board and addressed to all the stakeholders including Markfed, FCI, PUNSUP, Punjab Agro Industrial Corporation and the Food & Supplies Department of the Government of Punjab on the subject regarding the reduction of rates specified for the machine stitching of wheat bags responding to the representation of the petitioning Aarhtia Association, Punjab that the

purchasing agencies are initiating proceedings for reduction of ₹0.25 paise in the specified rate of ₹1.25 for the year 1998-99, 1999-2000 of stitching bags by machine. The Board has clarified that it has specified the rates for stitching at the aforesaid rates which will remain enforced till April 25, 2000. Therefore, no recovery/reduction be made from the amount which has been paid to the Aarhtias. This document which has come on record through the written statement of the Punjab State Agricultural Marketing Board represented by Mr. S.S. Rangi, learned counsel affirms the view that no retrospectivity can be attached in the recovery notices (Annex P-3 to P-5) and the petitioner-Association and its members cannot be called upon to refund money that they have paid to labour for stitching bags nearly twenty years ago.

7. The notification dated April 04, 1999 (P-1) is a contract signed between the Government and the service provider to which neither the petitioner association nor any of its members are privy. If they were dissatisfied with the rates and the labour involved they need not have offered their services.

8. Accordingly, the petition is allowed. The impugned recovery notices are set aside. It may be mentioned that further recovery was stayed by the Division Bench by interim order of this Court dated August 20, 2001 when the case was admitted for hearing.

9. The inter se position between the parties shall remain governed by Annex P-1. If any amount is recovered prior to the grant of stay by this Court then the same may be refunded to the petitioner-Association/Commission agents after due verification by the party

responsible to pay. The petitioner-Association may make a representation to the authorities showing record of payment towards manual stitching charges of wheat bags for the season 1999-2000 to facilitate refund.

10. The exercise may be completed within four months from the date when the representation is filed.

(RAJIV NARAIN RAINA)
JUDGE

17.07.2019
manju

Whether speaking/reasoned	Yes
Whether reportable	Yes/No