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W.P.(MD)NO.6717 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6717 of 2024

and

W.M.P.(MD)Nos.6233 & 6234 of 2024

Idukki District Traditional Cardamom

Producer Co. Ltd.,

Rep. by its Director T.V.Ramakrishnan.

... Petitioner

Vs.

1. The Spices Board

(Ministry of Commerce and Industry Govt. of India),

Rep. by its Secretary, Sugantha Bhavan,

N.H.By-pass, Post Box No.2277,

Palarivattom Post, Cochin – 682 025.

2. The Director(Marketing),

Spices Board,

Sugantha Bhavan, N.G.Bypass, Post Box No.2277,

Palarivattom Post, Cochin – 682 025.

3. The Assistant Director(Marketing),

Spices Board,

Kurangani Road, Bodinayakanur,

Theni District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of 1st respondent's impugned license vide No.MKT-AUC/NSWS/02/2022 dated 21.02.2024 in concerned with unnumbered 6th paragraph of the license and quash the same as illegal and devoid of merits.



For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mr.K.Govindarajan,
Deputy Solicitor General of India.

* * *

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Deputy Solicitor General appearing for the Spices Board.

2.The petitioner is a licensed auctioneer. Their license was renewed on 21.02.2024. One of the conditions of license is as follows:-

“M/s.Idukki District Traditional Cardamom Producer Company Limited has already submitted the BG equivalent to the average auction sale value in one auction of them during the preceding block period. Accordingly, it is directed that M/s.Idukki District Traditional Cardamom Producer Company Limited shall not pool / trade cardamom beyond the BG amount furnished by them, till the time the upper limit gets fixed by the Board.”

This condition is put to challenge in this writ petition on the ground that it runs counter to the amended rule 10(1)(a) of Cardamom (Licensing and Marketing) Rules, 1987).



3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. He pointed out that the principle of hierarchy of laws has to be invoked in this case. The Spices Board Act would occupy the first level. The statutory rule would come next. The Board proceedings would constitute lower level. If there is any repugnancy between one level and another, the one higher would prevail. He relied on the decision of the Hon'ble Apex Court reported in **(2006) 12 SCC 583 (Ispat Industries Ltd., V. Commissioner of Customs, Mumbai)**.

4.The respondents filed typed set of papers and the learned Deputy Solicitor General took me through its contents. His foremost contention is that the impugned condition was introduced to protect the interests of the farmers. He also drew my attention to the relevant provisions and contended that there is no merit in the petitioner's challenge. He called upon this Court to dismiss this writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is true that after the 2014 amendments made to the Rules, Rule 10(1)(a) reads as follows :



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“10.Terms and conditions for issue or renewal of licenses.-

(1)The terms and conditions for issue or renewal of auctioneer license shall be as under :-

(a) for e-auction, the applicant shall provide a security deposit in the form of a Bank Guarantee(equivalent to the average auction sale value of cardamom in one auction during the immediate preceding block period of three years) for the block period for which the applicant desires to obtain the auctioneer licence;”

If this Rule alone is in the statute book, the restrictions stipulated by the Board should be in conformity with the same. In fact, the case of the petitioner is that the extent of bank guarantee that can be demanded by the board from the licensed auctioneers should be in tune with Rule 10(1) (a) and any higher demand or greater restriction will be ultra vires.

6.The problem with this argument is that it fails to take note of Rule 3(1) of Cardamom (L&M) Rules 1987 which reads as follows:-

"3.Conditions to carry on business in cardamom.- (1) No person shall carry on business as auctioneer or dealer of cardamom except under and in accordance with the terms and conditions of a licence issued under these rules and such other instructions as may



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be issued, from time to time, by the Board for the development of the cardamom industry."

The above Rule categorically states that the auctioneer has to carry on his business in accordance with the terms and conditions of license issued under the rules and such other instructions that may be issued from time to time by the Spices Board. In other words, the Spices Board is not denuded of its power to issue appropriate instructions from time to time. The auctioneer is bound to comply with such instructions. Of course, they have to be reasonable. The impugned communication indicates that what has now been stipulated is an interim measure to safeguard the interest of farmers. If the auctioneer trades in a large volume but commits default, the farmers will be literally left in the lurch. The purpose of taking bank guarantee is to ensure that there is an assurance regarding payment. The stipulation introduced by the Board cannot be said to be arbitrary or unreasonable. Rule 10(1)(a) is to the effect that the auctioneer has to provide security deposit in the form of bank guarantee which has to be quantified as per the norm set out in the aforesaid rule. The said rule cannot be understood as taking away the power of the Board to prescribe an extra condition for the welfare of the farmers. Rule 10(1)(a) should be understood that as laying down a



minimum norm. The statutory scheme must be read as a whole and applied accordingly. Courts must endeavour to reconcile the apparent contradictions. If Rule 10(1)(a) is applied literally, that would render Rule 3(1) otiose. I cannot apply the principle of hierarchy of laws. Only if the Board resolution runs counter to or is repugnant to the statutory rule, I can interfere. In this case, the statutory rule itself empowers the Board to issue instructions from time to time to regulate business of the auctioneers. I do not find any repugnancy. In this view of the matter, the impugned condition is sustained.

7.This writ petition stands dismissed. No costs. Consequently, connected MPs. are closed.

21.03.2024

NCC : Yes / No
Index : Yes / No
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