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**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE  
HON'BLE SHRI JUSTICE VINAY SARAF  
ON THE 23<sup>rd</sup> OF APRIL, 2024**

**WRIT PETITION No. 11680 of 2014**

**BETWEEN:-**

**M/S ASHU INDUSTRIES THR. SHRI ITS SOLE  
PROPRIETOR SHRI SWAROOPCHAND JAIN S/O SHRI  
DULICHANDJI JAIN MAIN ROAD KARELI  
NARSINGHPUR (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI K.N. FAKHRUDDIN - ADVOCATE )***

**AND**

- 1. THE STATE OF MADHYA PRADESH THR.  
SECRETARY MINISTRY OF AGRICULTURE  
VALLABH BHAWAN (MADHYA PRADESH)**
- 2. MANAGING DIRECTOR M.P. STATE  
AGRICULTURAL MARKETING BOARD 26, KISAN  
BHAWAN, ARERA HILLS, BHOPAL (MADHYA  
PRADESH)**
- 3. SECRETARY KRISHI UPAJ MANDI SAMITI  
KARELI, DISTT. NARSINGHPUR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

***(BY MS. AARTI DWIVEDI - PANEL LAWYER, SHRI SIDDHANT JAIN -  
ADVOCATE FOR RESPONDENT NO.2 AND SHRI RAM BABU DUBEY -  
ADVOCATE FOR RESPONDENT NO.3 )***

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*This petition coming on for admission this day, the court passed the  
following:*

**ORDER**

Petitioner firm, who was granted license by Krishi Upaj Mandi Samiti (in short Mandi Samiti) Kareli (M.P.) in the year 1996 to trade in notified agriculture

produce in the marketing area of the Samiti has assailed the order dated 25.03.2010 passed by Mandi Samiti exercising the powers under Section 19(4) of Krishi Upaj Mandi Adhiniyam, 1972 (in short Act, 1972) and imposed five times penalty of market fee and debarred the petitioner firm for further transaction in the market area of Mandi Samiti, as per provision of Section 19-B(2) of Act, 1972 due to dishonor of cheques issued by petitioner firm for payment of market fee to the Mandi Samiti.

2. Brief facts of the case suffice to decide the present petition are that petitioner is a proprietorship firm and is engaged in the business of agriculture produce and obtained license in the year 1996 from respondent No.3/Mandi Samiti for the purpose of trading in notified agriculture produce in the market area of respondent No.3 and since then the petitioner was indulged in trading. As per Section 19 of the Act, 1972, every market committee is having power to levy market fees on the sale of notified agriculture produce brought in the market area and used for processing or manufacturing or for the purpose of resale. Petitioner firm applied and obtained permit from respondent No.3/Mandi Samiti on 18.03.2010 for the purpose of sale of soyabean seeds and an amount of Rs. 20,000/- was payable as market fee for the said transaction and for making the payment of the said amount of market fee, the petitioner firm issued Cheque No. 191685 of Rs. 20,000/- drawn on Central Bank of India. Cheque No. 191686 of Rs. 2000/- was also issued for payment of *Nirashrit Shulk* however, the aforesaid cheques were dishonoured upon presentation for encashment due to non-availability of required funds in the concerning bank account of the petitioner firm. Thereafter, the petitioner firm was informed by Secretary of respondent No.3/Mandi Samiti that against the permit issued in favour of petitioner, market fee was not received due to dishonor of cheques

and therefore, the petitioner is liable to pay five times of the market fee and also intimated that due to the dishonor of cheque, the petitioner has been debarred from further transaction in the market area of respondent No.3/Mandi Samiti.

3. After receipt of communication dated 25.03.2010, on the next day, i.e. on 26.03.2010, the petitioner firm submitted a letter making request to produce the cheques in the bank once again and also prayed for permitting the petitioner firm to continue the business in the market area of the Mandi Samiti. As the respondent No.3/Mandi Samiti did not reproduce the cheques before the bank and permitted the petitioner firm to continue the business in the market area of Mandi Samiti, the petitioner firm preferred WP No. 4441 of 2010 before this Court, which was disposed of by order dated 05.04.2010 by Co-ordinate Bench with a liberty to the petitioner to approach the authority under Section 59 of the Act, 1972 for redressal of his grievances. On 06.04.2010, the petitioner deposited the bankers cheque of Rs. 20,000/- and Rs.2000/- dated 31.03.2010 respectively with the Mandi Samiti and paid the market fee which was payable by the petitioner at the time of issuance of permit. However, the respondent No.3/Mandi Samiti did not allow the petitioner to continue the transaction and also not withdrew the communication dated 25.03.2010, therefore, the petitioner approached to respondent No.2/M.P. State Agricultural Marketing Board (in short the Board) by preferring appeal challenging the order dated 25.03.2010.

4. The Additional Director of the Board by order dated 01.07.2014 dismissed the appeal preferred by the petitioner firm and declined to interfere in the order passed by respondent No.3/Mandi Samiti. Assailing the order passed by respondent No.3/Mandi Samiti on 25.03.2010 and order passed by Board on 01.07.2014, the petitioner has preferred the instant petition.

5. So far as the facts narrated hereinabove are concerned, the same are not disputed and the core question emerges for adjudication in the present petition is -

***"whether penalty could be imposed as per Section 19(4) of the Act, 1972 and in consequences petitioner could be restrained from further trading under Section 19-B(2) of the Act or the petitioner was liable to pay the amount of market fees as per Section 19-B(1) of the Act?"***

6. With the consent of the parties, matter is heard finally and both the parties advanced arguments for the purpose of final disposal of the case.

7. Learned counsel for the petitioner submits that petitioner has not avoided the payment of market fees and he obtained the permit only after making the payment of market fees through cheques, but due to the reasons that some other cheques were debited in the account of the petitioner firm, the cheques issued to respondent No.3/Mandi Samiti were dishonoured. He submits that this is not a case where petitioner has tried to sold out the agriculture produce without payment of market fees payable on the produce and the provisions of Section 19(4) are not attracted to the present case. He further submits that provision of Section 19-B(1) will be attracted which provides that any person is liable to pay market fees under this Act, shall pay the same within 14 days and in default, he shall be liable to pay the market fee together @ 24% per annum. He further submits that cheques were issued on 18.03.2010, communication received from Mandi Samiti on 25.03.2010, the Samiti was requested to represent the cheques on 26.03.2010 and when the Samiti has not represented the cheques, bankers cheques were purchased on 31.03.2010 and handed over to the Mandi Samiti on 06.04.2010 therefore, there was no inordinate delay in making the payment of market fee and even as per the

provision of Section 19-B(1) , the market fee was paid within one month from the date when it was payable. Therefore, Mandi Samiti was not justified in taking action under Section 19-B(2) of the Act, 1972.

8. He further submits that banker cheques were prepared within 13 days from the date of issuance of permit and, therefore, the petitioner firm has not committed any violation of provisions of Section 19-B(1) of the Act, 1972. He prays for setting aside the communication dated 25.03.2010 and order passed by Board on 01.07.2014.

9. Learned Panel Lawyer on behalf of respondent No.1/State and respondent No.2/Board supported the orders passed by Mandi Samiti and Board.

10. Learned counsel appeared on behalf of respondent No.3/Mandi Samiti submits that the petitioner herein was under obligation to pay the market fee before lifting the material from the market area of Mandi Samiti, but the petitioner firm lifted the material on the basis of cheques issued on 18.03.2010, which was dishonoured by bank when the Mandi Samiti submitted the cheques for encashment therefore, the petitioner is guilty of selling out soyabean without payment of market fee payable on produce and as per Section 19(4) of the Act, 1972 is liable to pay five times of the market value on the produce. He further submits that the Secretary of Mandi Samiti has not committed any error in issuing communication to the petitioner, by which the demand of five times of the market fee was raised and as a consequence of non-payment, the further transaction of sale purchase in the market area of the Mandi Samiti was banned. He further submits that provisions of Section 19(4) and 19-B(2) are applicable to the present case and have been rightly applied by Mandi Samiti and, therefore, the petition is liable to be dismissed.

11. It is apposite to reproduce the provisions of Section 19 and 19-B of the Act which reads as under :

**19. Power to levy market fee.** - (1) *Every Market Committee shall levy market fee,-*

*(i) on the sale of notified agricultural produce whether brought from within the State or from outside the State into the market area; and*

*(ii) on the notified agricultural produce whether brought from within the State or from outside the State into the market areas and used for processing and manufacturing;*

*at such rates as may be fixed by the State Government from time to time subject to a minimum rate of fifty paise and a maximum of two rupees for every one hundred rupees of the price in the manner prescribed :*

*Provided that no Market Committee other than the one in whose market area the notified agricultural produce is brought for sale or processing or manufacturing by an agriculturist or trader, as the case may be, for the first time shall levy such market fee.*

*(2) The market fees shall be payable by the buyer of the notified agricultural produce and shall not be deducted from the price payable to the seller :*

*Provided that where the buyer of a notified agricultural produce cannot be identified, all the fees shall be payable by the person who may have sold or brought the produce for sale in the market area :*

*Provided further that in case of commercial transaction between traders in the market area, the market fees shall be collected and paid by the seller :*

*Provided also that no fees shall be levied upto 31st March, 1990 on such agricultural produce as may be specified by the State Government by notification in this behalf if such produce has been sold outside the market yard or sub-market yard by an agriculturist to a co-operative society of which he is a member :*

*Provided also that for the agricultural produce brought in the market area for commercial transaction Or for processing or manufacturing the market fee shall be deposited by the buyer or processor or manufacturer as the case may be, in the Market Committee office within fourteen days if the buyer or processor has not submitted the permit issued under sub-section (6) of Section 19.*

(3) *The market fees referred to in sub-section (1) shall not be levied on any notified agricultural produce,-*

*(i) in more than one market area, in the State; or*

*(ii) more than once in the same market area; if it is re-sold,-*

*(a) in the case of (i) in the market other than the one in which it was brought for sale or bought or sold by an agriculturist or trader, as the case may be, for the first time and has suffered fee therein; or*

*(b) in the case of (ii), in the same market area;*

*in the course of commercial transactions between the traders or to consumers subject to furnishing of information in such form as may be prescribed in the bye-laws by the person concerned to the effect that the notified agricultural produce being so re-sold has already suffered fee in the other market area of the State.*

***(4) If any notified agricultural produce is found to have been processed, or manufactured, re-sold or sold out of yard without payment of market fee payable on such produce the market fee shall be levied and recovered on five times the market value of the processed or manufactured produce or value of the agricultural produce as the case may be.***

*(5) The market functionaries, as the Market Committee may by bye-laws specify, shall maintain account relating to sale and purchase or processing or manufacturing in such forms and submit to the Market Committee such periodical returns as may be prescribed.*

*(6) No notified agricultural produce shall be removed out of the market yard, market proper or the market area as the case may be, except in accordance with a permit issued by the Market Committee, in such form and in such manner as may be prescribed by the bye-laws :*

*Provided that if any person removes or transports the processed or manufactured product of notified agricultural produce from the market yard, market proper or the market area, as the case may be, such person shall carry with him the bill or cash memorandum issued under Section 43 of the Madhya Pradesh Vaniiyik Kar Adhiniyam, 1994 (No. 5 of 1995).*

*(7) The Market Committee may levy and collect entrance fee on vehicles, plying on hire, which may enter into market yard at such rate as may be specified in the bye-laws.*

***19B. Default in payment of market fee. - (1) Any person liable to pay market fee under this Act shall pay the same to the Market Committee within fourteen days of the purchase of the notified***

*agricultural produce or its import into the market area for processing or manufacturing and in default he shall be liable to pay the market fee together with the interest at the rate of twenty four percent per annum.*

*(2) If the person liable to pay the market fee and the interest under sub-section (1) fails to pay the same within one month, such person shall not be allowed to enter into further transactions in that market area or any other market area and the market fee with interest shall be recovered as arrears of land revenue and the licence of such person shall be liable to be cancelled.*

12. This is not a case of tax evasion or removal of goods without payment of market fee. The petitioner firm issued the cheques to respondent No.3/Mandi Samiti for the purpose of payment of market fee etc. It is permissible to pay market fee through cheques and, material was lifted from the market area of Mandi Samiti after issuance of cheques. Meaning thereby, the petitioner firm has accepted the liability to pay market fee for the said transaction and issued the cheques. However, the default was committed by the petitioner firm in making the payment of market fee as the cheques were dishonoured. Sub-Section (4) of Section 19 provides that if any notified agriculture produce is processed or manufactured or resold or sold out of yard, without making the payment of market fee payable on the produce, the market fee shall be levied and recovered on five times the market value of agriculture produce.

13. Provision of Section 19(4) will be applicable in the case where the market fee was payable but the agriculture produce was sold out without making the payment. Meaning thereby, the trader tried to escape from the liability of the payment of market fee.

14. In the present case, the permit was issued after receipt of cheques from the petitioner firm. Meaning thereby, the petitioner firm has accepted the



liability of market fee and the material was not tried to remove without payment of market fee. It is a matter of common knowledge that once cheque is issued, the liability is accepted by drawer.

15. Section 19 gives power to the Committee to levy market fee. Section 19B refers default in payment of market fee. Therefore, the mechanism for levy of market fee is provided in Section 19 and consequences are provided in Section 19B in respect of payment of market fee.

16. As per Section 19-B(1), if any person is liable to pay market fee and failed to pay the same within 14 days from the date of purchase of notified agriculture produce, he will be liable to pay interest @ 24% per annum.

17. As per the said provision, the market fee may be paid within 14 days. In the present matter, the permit was issued on 18.03.2010, cheques were issued on 18.03.2010, intimation of dishonor of cheques were issued on 25.03.2010 within a period of seven days whereas, the licensee was having 14 days time to pay the market fee but before expiry of 14 days from 18.03.2010, the Secretary of Mandi Samiti has already imposed the penalty under Section 19(4) of the Act and restricted the petitioner firm from further transaction, which could not have been done within a period of seven days in view of the provisions of Section 19-B(1).

18. Further in case of default, the Mandi Samiti is entitled to charge interest @ 24% per annum. The Mandi Samiti has not waited for 14 days and not demanded the amount along with interest thereafter and within a period of seven days issued a direction, whereas the bankers cheques were prepared by petitioner firm on 31.03.2010 i.e. within 14 days of the date of issuance of permit. The intention of the petitioner firm was clear and the petitioner was not trying to avoid the payment of market fee and the petitioner firm was ready to

pay the amount of cheques, which were actually handed over to the Mandi Samiti on 06.04.2010 i.e. within 20 days from the date of issuance of permit.

19. As per Section 19-B(1), the Mandi Samiti could have demand the interest for a period of 20 days @ 24% per annum, but could not imposed the penalty under Section 19(4) which is applicable in a case where the parties tried to avoid the payment of market fee and did not pay market fee as per the provisions of Section 19-B(1).

20. Similarly, according to Section 19-B(2), the further transaction could be restricted only in case when the person liable to pay the market fee and the interest under sub-section (1) of Section 19(B) fails to pay the same within one month. Meaning thereby, for a period of one month, no restriction could be imposed under Section 19-B(2) however, in the present case, the restrictions were imposed within seven days, which are not according to law. In the present matter, within one month the market fee was paid through bankers cheque and, therefore, no order could be passed under Section 19-B(2).

21. By the communication dated 25.03.2010, the petitioner was restrained to operate business of sale and purchase of agriculture produce as per the implications of Section 19-B of the Act, 1972. The petitioner was under obligation to pay the market fee for issuance of license and the cheques issued by the petitioner firm for payment of Mandi Samiti were dishonored. Therefore, it cannot be accepted that the petitioner tried to avoid the payment to Mandi Samiti. Consequently, the question is answered accordingly that when the cheque was issued by the petitioner firm for payment of market fee at the time of issuance of permit, the petitioner will not be liable for five times penalty as per Section 19(4) of the Act, 1972. As this is not a case where the petitioner has

tried to avoid the payment of market fee and, therefore, the petitioner was liable to pay the market fee as per the provision of Section 19-B(1).

22. In view of above conspectus, it is apposite that Secretary of Mandi Samiti illegally imposed penalty of five times of market fee upon the petitioner firm by communication dated 25.03.2010 within a period of seven days from the date of issuance of permit, whereas the petitioner firm could have pay the market fee within 14 days as per Section 19-B(1) of the Act, 1972 and at the same time, the Secretary has also committed error in imposing restriction on the petitioner firm for further transaction in the market area of Mandi Samiti by exercising the powers under Section 19-B(2) within a period of seven days from the date of issuance of license and consequently, the communication dated 25.03.2010 is liable to be quashed.

23. The Appellate Authority has also committed error in not considering the provisions of the Act in proper prospectus and passed the order without considering the fact that the restrictions can be imposed only in case when the market fee is payable as per Section 19-B(1) of the Act. Order of Appellate Board dated 01.07.2014 is also quashed.

24. With the aforesaid, present petition stands **allowed**.

(VINAY SARAF)  
JUDGE

Shub