

G. Venugopal and ors. Vs. the State of Andhra Pradesh and anr.

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Court : Andhra Pradesh

Decided On : Oct-30-1992

Reported in : 1992(3)ALT695

Judge : Radhakrishna Rao, J.

Acts : Andhra Pradesh (Agricultural Produce and Live Stock) Markets Rules, 1969 - Rule 70(2); Code of Criminal Procedure (CrPC) - Sections 397 and 401

Appeal No. : Criminal Revision Case No. 633 of 1991

Appellant : G. Venugopal and ors.

Respondent : The State of Andhra Pradesh and anr.

Advocate for Def. : Public Prosecutor for Respondent No. 1 and ;P. Harinatha Gupta, Standing Counsel for Agricultural Market Committee for Respondent No. 2

Advocate for Pet/Ap. : K. Venkata Ramaiah and ;D. Bhagyalakshmi, Advs.

Disposition : Revision dismissed

Judgement :

Radhakrishna Rao, J.

1. These Criminal Revision Cases arise out of the common Judgment of the learned Sessions Judge, Anantapur dated 21st October, 1991, passed in Criminal

Appeal Nos. 18 to 24 of 1991, on his file, confirming the conviction of the petitioners-accused for an offence under Rule 70(2) of the Andhra Pradesh (Agricultural Produce & Live; Stock) Markets Rules, 1969 and Bye-Laws Nos. 44(5) and 45 of the Bye-Laws of the Agricultural Market Committee (Gooty) Guntakal and the sentence of fine of Rs. 500/- in default to suffer S.I. for one month imposed against each of the petitioners by the Judicial Magistrate of the First Class, Guntakal in S.T.C. Nos. 28 and 30 to 35 of 1990, on his file, dt. 19-12-1990.

2. As common questions of law and fact are involved in all the revisions and in the lower appellate court also all the appeals were disposed of by a common judgment, common judgment is being passed in all the criminal revision cases.

3. The brief facts of the cases are as follows:- The petitioners-accused were granted licences by the Agricultural Market Committee, Guntakal, respondent No. 2 in all the Crl.R.Cs., and they were being renewed every year. The licencees are bound by the terms and conditions of the licences granted to them. As per the terms and conditions of the licences, the petitioners have to maintain all the accounts relating to the sales made by them on each day and submit monthly returns of daily transactions to the Secretary of Market Committee, Guntakal before 25th of every succeeding month. But the accused failed to submit their monthly returns regarding the purchases, sales and storage of agricultural produce for the period from April 1979 till the date of filing of the complaints in the lower court. Notices dated 19-4-1985 were also served on each of the accused calling upon them to submit the monthly purchase returns. As the accused have not complied with the notices by submitting the returns, after obtaining necessary sanction, complaints were filed against the accused.

4. Some of the petitioners herein have filed writ petitions in this court, viz., W.P. Nos. 197,429,1035 and 1155 of 1987 and 15068 of 1986 for issue of a writ of mandamus directing the Agricultural Market Committee, Guntakal not to levy and collect the market fees or penalty under Sections 12 & 13 of the Andhra Pradesh (Agricultural Produce & Livestock) Markets Act, 1966 (Act No. 16 of 1966). Those writ petitions came up for hearing before a Division Bench. One of the points that arises for consideration of the Division Bench in those writ petitions is whether the

Market Committee can insist upon the Commission Agents of the sellers to collect the market fee from the purchaser and remit the same to the Market Committee. A Division Bench of this court in *The Agricultural Market Committee v. D.R. Mahipal Rao & Brothers*, ILR 1975 A.P. 420 has considered this aspect having regard to Section 32 of the A.P. (Agricultural Produce & Livestock) Markets Act, 1966, Rule 74(4) of the Rules made thereunder and Bye-Law 25 of the Market Committee and held that the Commission Agents of the Sellers will not be liable for payment of market fee in regard to such transactions where the Market Committee finds that the purchaser is liable and where they act as commission agents of the sellers. It was submitted on behalf of the writ petitioners in those writ petitions that there is no organised market yard in Guntakal, that the Market Committee established under the Act should provide all facilities like roads, store-houses, rest-houses for agriculturists, canteen, library, weighing platform with weighing machine, water and electricity etc. The learned Standing Counsel for the Market Committee has brought to the notice of the learned single Judge, before whom the writ petitions first came up for consideration, the decisions reported in *Srinivasa General Traders v. State of Andhra Pradesh*, : [1983]3SCR843 and *City Corporator of Calicut v. T. Sadasivan*, : [1985]2SCR1008 and contended that having regard to the provisions of the Act and the rules made thereunder, and in particular condition No. 6 of the licence granted to a Commission Agent, the Commission Agent shall collect the market fee from the purchaser and remit the same to the market committee. He has also contended that in view of these two decisions, viz., *Srinivasa General Traders v. State of Andhra Pradesh* (2 supra) and *City Corporator of Calicut v. T. Sadasivan* (3 supra), the view taken by the Division Bench of this court in *The Agricultural Market Committee v. D.R. Mahipal Rao & Brothers* (1 supra) is not correct. In view of the above conflicting decisions, the writ petitions were posted before a Division Bench. Thus, the Division Bench of this court came to consider the respective pleas. The Division Bench after carefully gone through the judgment of the earlier Division Bench reported in *The Agricultural Market Committee v. D.R. Mahipal Rao & Brothers* (1 supra) and held that the Division Bench in that case had no occasion to examine the matter which reference to the conditions of licence granted under Section 7 authorising the Commission Agent to collect the market fee and pay the same to the market

committee. Considering the contention of the learned Government Pleader in that case that the petitioners had not produced their account books in spite of numerous requisitions given to them, the Division Bench held as follows:

'We feel that the petitioners should comply with the directions of the Market Committee to produce their accounts for scrutiny and verification and pay to the Market Committee the licence fees in respect of the agricultural produce sold to various purchasers. The Market Committee should take expeditious action in this regard.'

So holding, the Division Bench dismissed the batch of writ petition Nos. 197, 429, 1035, 1155 of 1987 and 15068 of 1986 by its judgment dated 11th September, 1987 and leave to appeal to Supreme Court was also refused. Where there are two Division Bench cases and where the latter Division Bench has considered the previous Division Bench judgment, the judgment of the latter Division Bench has to be followed. Where the parties approached the court after receipt of notice from the Market Committee calling upon them to produce accounts and without producing the records they themselves have filed writ petitions inviting a judgment, they are bound by the decision rendered by the High Court. Having failed in their attempt in the writ petitions, the petitioners cannot now come round and say that the Market Committee has no power to call for the accounts. Since the petitioners have not filed the accounts which they are bound to produce as per rules and as per the judgment of the Division Bench, the failure on their part to produce the same must be visited with penal consequences. The contentions which are already negated by the Division Bench in the above referred writ petitions cannot be raised again and the learned magistrate as well as the learned Sessions Judge, who are bound by the judgment of the Division Bench, have rightly negated the contentions of the petitioners. It is unfortunate that these traders who are earning as Commission Agents, having obtained licences agreeing to abide by the terms and conditions laid down therein, are laying untenable contentions that they need not produce the accounts. They are bound by the terms and conditions of the licence granted to them. Even according to the petitioners, they have to maintain takpatti. Even those takpatties are not produced. So not producing any accounts inspite of the direction given to them clearly amounts to violation of the conditions

of the licence. It is true that a citizen has got a right to do business but at the same time he is bound by the terms and conditions of the licence. Having obtained the licence they are bound to follow the terms and conditions especially when they approached this court inviting a decision from the court. They cannot now be permitted to contend that they are not liable for the penal consequences. The learned Magistrate as well as the learned Sessions Judge on appeal have considered at length the different grounds raised by them and found that the petitioners have violated the conditions of the licence. The very conduct of the petitioners shows that they are not willing to produce the accounts and pay the fees and they are protracting the matter on some pretext or other. Having allowed the matter to drag on one way or other by filing writ petitions, the petitioners cannot now contend that action has been initiated against them after a lapse of so many years. When the writ petitions were filed by the petitioners themselves, naturally no market committee would come forward to take action and they will wait till the disposal of the writ petitions. That cannot be taken as a lapse on the part of the Market Committee but at the same time filing of writ petitions itself shows the wilful conduct of the petitioners to postpone the payment on some pretext or other. Both the courts below have considered all the contentions raised by the petitioners and have rightly come to the conclusion that the petitioners have violated the conditions of the licence.

5. The learned counsel for the petitioners has contended that there is no valid sanction order granted in these cases for prosecuting the petitioners. A reading of the sanction order Ex.P-3 clearly shows that it is given to prosecute the petitioners for violating the bye-laws and conditions and it also authorised the concerned officer to file the complaint. The resolution passed under Ex.P-3 sanctioning prosecution is in accordance with the rules and so this contention also fails.

6. In all these matters, first show cause notices were issued to the respective petitioners and on their failure to produce the accounts and pay the fees, a resolution was taken by the Market Committee sanctioning prosecution and authorising the Secretary to launch complaints against them. All the petitioners have obtained licences to function as Commission Agents within the notified area of Guntakal Market Committee as required under Section 6 of the Act. The licence

was granted to them by the Market Committee as per Form V prescribed in Rule 48 of the Rules and the petitioners have given an undertaking to the effect:

'I/We abide by all the provisions of the said Act and the relevant rules and bye-laws made thereunder and in force from time to time.'

The petitioners have to function as Commission Agents subject to the conditions mentioned in the licence. Condition No. 5 casts a duty on the licensee to pay the fees under Section 12 of the Act to the Market Committee. As per Bye-law 25 of the Market Committee it is the responsibility of the Commission Agent to collect the market fee from the purchaser and to pay to the Market Committee. As already stated above, the Division Bench has also upheld the liability of the petitioners to produce their accounts for scrutiny and also pay the licence fee. Even the validity of Bye-law No. 25 authorising the commission agent to collect the market fee from the purchaser and to pay the same to the Market Committee came up for consideration before the Division Bench in Writ Petition Nos. 197, 429, 1035, 1155 of 1987 and 15068 of 1986, already referred to supra, and the Division Bench upheld its validity. Rule 70(1) of the Rules clearly states that the licensees including commission agents shall maintain accounts and submit the returns and reports to the Market Committee. Simply because the Market Committee did not prescribe the nature of the accounts to be maintained or the nature of the proformas, it cannot be said that the petitioners are not expected to submit the returns. The Market Committee wanted the petitioners to file the returns with regard to the sale of agricultural produce. It is their assertion that they issued 'Tak Patties'. It is also their assertion that they were issuing 'Amanath Patties'. If the tak-patties are preserved, the quantity of grain that was sold can be furnished from the tak patties. The conduct of the accused clearly shows that they are making efforts to avoid payment of market fee. The Commission Agents as per the conditions of the licence are expected to pay the market fee which in turn is expected to be collected from the purchasers. When once the liability was cast upon them as per their own undertaking given in the application at the earliest point of time, they have to discharge such liability. So they are now estopped by their own conduct from pleading that they are not liable to submit the returns and pay the market fee. Ex.P-1 is the show cause notice calling upon the petitioners to

furnish necessary returns. In the show cause notices the period for which they have to furnish the returns was also given. As already stated, Ex.P-3 is the resolution of the Market Committee authorising the Secretary to launch prosecution against the accused and it is a proper and valid sanction order.

7. In view of the above discussion, I see no reason to interfere with the judgment of the lower appellate court.

8. The conviction of the petitioners for the offence under Rule 70(2) of the A.P. (Agricultural Produce and Livestock) Markets Rules, 1969 and Bye-law 44(5) and 45 of the Bye-laws of the Agricultural Market Committee (Gooty), Guntakal and sentence of fine of Rs. 500/- in default to suffer simple imprisonment for a period of one month imposed on each of the petitioners, are confirmed.

9. The Criminal Revision Cases are dismissed.

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