

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

DB: HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI,

&

HON'BLE SHRI JUSTICE DUPPALA VENKATA RAMANA

ON THE 23rd OF JULY, 2024

REVIEW PETITION No.211/2024

AALOO PYAJ COMMISSION AGENTS

Versus

STATE OF MADHYA PRADESH & ORS.

&

REVIEW PETITION No.753/2024

KAILASH MUKATI & ORS.

Versus

STATE OF MADHYA PRADESH & ORS.

Appearance:

In R.P. No.211/2024:

(Shri Ajay Bagadiya, learned Senior Counsel with Shri Ayush Choudhary, learned counsel for the petitioner.)

(Shri Bhuwan Gautam, learned Govt. Advocate for the respondent/State)

(Shri Abhishek Tugnawat, learned counsel for the respondent(Caveat)

Shri Abhinav Dhanodkar, learned counsel for the respondent No.3)

In R.P. No.753/2024:

(Shri Vivek Phadke, learned counsel for the petitioners)

(Shri Bhuwan Gautam, learned counsel for the respondents/State)

ORDER

Per: Sushrut Arvind Dharmadhikari, J.

Heard finally with the consent of both the parties.

2. This order shall govern the disposal of R.P. No.753 of 2024 since the common question of law and facts are involved in these cases.
3. For the sake of convenience, that facts are taken from R.P. No.211/2024.
4. The review petition has been filed under Order 47 Rule Rule 1 of C.P.C. Read with Section 114 of the Civil Procedure Code seeking the review of the final order dated 23.01.2024, passed in W.A. No.130/2017(*Mukesh S/o Murlidar Somani Vs. Aaloo Pyaj Commission Agents & Ors.*) whereby the order passed by the learned Single Judge dated 07.02.2017, passed in W.P. No.1943/2016 was set aside wherein the order dated 31.03.2015 passed by the Managing Director as well as the resolution of Mandi Committee dated 23.03.2015 have been set aside dismissing the writ petition.
5. The facts in brief is that the petitioner herein is the respondent No.1 in W.A. No.130 of 2017. The petitioner is a Society registered under the provisions of the M.P. Society Registration Act, 1973(referred to as the “Act of 1973”). The petitioner was carrying on the business of trading of Onion, Potato and Garlic in the relevant Mandi market situated at Indore and they are registered licencees to operate and function in that capacity

in the said Mandi. The members of the petitioner society get certain commission in the capacity of “Commission Agent” for selling Onion, garlic and Potato of the farmers directly and paying them in cash. The sale of the product is carried out through traders or customers on a credit basis. This transaction ensures an immediate payment to the farmers while the money that is to come to the members of the petitioner Association is more often not received after a few days.

6. The respondent No.2 - Marketing Board is a State Board established under the provisions of Krishi Upaj Mandi Adhiniyam, 1972(hereinafter referred to as “the Adhiniyam, 1972”). The Market Committee is authorized to frame bye-laws in respect of the market area under its management to regulate its business, conditions of trading and market duties and functioning of the committee and sub-committees.

7. The Marketing Committee(respondent No.2) has framed its bye-laws in the year 2000 to regulate the sale and purchase of vegetables in the Krishi Upaj Mandi. They are commonly known as Mandi Samimiyom Keliye Upadvidhi, 2000. The respondent No.7/petitioner had called in question the order dated 24.02.2016, passed by the Principal Secretary Govt. of M.P. by which the order dated 13.03.2015, Resolution No.17 dated 23.03.2015, passed by the Krishi Upaj Mandi Samiti, Indore

was set aside.

8. The respondent No.7 contended that as per Chapter – IV of the Mandi Samitiyom Keliye Upadvidhi, 2000 model bye-laws have been adopted by each and every Mandi Committee of the State including Krishi Upaj Mandi Samiti, Indore. The respondent No.7 further contended that according to the bye-laws, garlic has to be treated as vegetable and not as spice since it is also perishable like vegetables and the commission agents do not recover any commission from the agriculturist, but recover commission from the traders and they also deposits the Mandi fees to the Krishi Upaj Mandi Samiti.

9. The Managing Director vide its order dated 13.03.2015 had directed all the Mandis to amend the bye-laws 2000 by inserting clause (16) (7) for garlic (dry and wet) which was in the category of spices and others are to be treated under the category of fruits and vegetables because garlic is a perishable commodity.

10. Being aggrieved the respondent No.7 filed Writ Petition No.66661/2015 before this Court. Vide order dated 08.10.2015, the writ petition was disposed of with liberty to the petitioner to file an appeal before the competent authority i.e. State Government within 15 days. The respondent No.7 availed the alternative remedy and filed an appeal before

the State Government. Vide order dated 24.02.2016, the appeal was allowed and the order of the Managing Director dated 31.02.2013 as well as resolution of the Krishi Upaj Mandi, Indore dated 23.03.2015 was set aside on the ground that only the State Govt. has the authority to amend the Schedule-1 appended to the Mandi Adhiniyam.

11. Being aggrieved by the order of the State Govt. dated 24.02.2016, the petitioner filed writ petition before this Court. The petitioner contended that the State Govt. has wrongly set-aside the order of the Managing Director and the resolution on the ground that the said order and resolution are amounting to amendment in the schedule. The Managing Director in its order dated 31.03.2015 has specifically mentioned that the order should not be treated as amendment in the schedule and the garlic would remain in the category of spices. The learned counsel for the petitioner in W.P. No.1943/2016 had further argued that the order passed by the State Government is liable to be set aside. However, the learned Single Judge allowed the writ petition by passing the following operative order :-

20. The Mandi Committee has been given authority to amend the bye-laws and under section 81 the Managing Director has been given power to amend bye-laws by condition No.16 (7). If the Managing Director and Mandi Committee amended the bye-laws of 2000 then it is within

their authority, therefore, State Govt. has wrongly set aside the order and resolution of the Managing Director on the pretext that such an act amounts to amendment in the schedule.

21. The Managing Director can direct the Mandi Committee to amend the bye-laws if it appears to him that it is necessary and desirable. The petitioner Committee is constituted under section 11 and market is defined in section 4. Market is established to regulate marketing of notified produce. In the market the agriculturist shall sell their produce to the purchasers. The market is established for the benefit of the agriculturist and traders. In fact, Mandi is established in the interest of the agriculturist and sellers so that they may get better price for their produce, therefore, any bye-laws which are framed or amended that would be deemed to have in the interest of farmers. In the present case it is established from the return of the Krishi Upaj Mandi that agriculturist represented that the garlic be permitted to be sold through agents and the State Govt. has recommended. Accordingly, it was found necessary by the Managing Director and he directed to amend the bye-laws, therefore, considering the provisions of law and the material on record State Govt. has wrongly set aside the order of the M.D dated 31.3.15 and the resolution passed by the Mandi Committee dated 23.3.15, hence impugned order is set aside.

22. Writ petition stands allowed. No order as to cost.

12. The respondent No.7 herein(appellant) has filed W.A. No.130 of 2017 being aggrieved by the order dated 07.02.2017, passed in W.P. No.1943/2016. The writ appeal was finally heard on 23.01.2024 and the order dated 07.02.2017, passed by the learned Single Judge in W.P.

No.1943/2016 was set aside and the order dated 24.02.2016, passed by the State Govt. in appeal was upheld. While allowing W.A. No.130 of 2017, the following order was passed :-

10. From perusal of Section 60 of the Act of 1972, it is clear that it is the State Government only who can amend the Act and the schedule. The amendment introduced by the respondent no.3/Managing Director has indirectly changed the list for the commodity "Garlic" under List X of Condiments, spices and others" and others by Section 21(a) as by way of the said amendment, the commission agents are now authorized to work in a similar manner as who are working like agents for fruits and vegetables. Hence, the said amendment so introduced is contrary and in violation of provisions of the Act of 1972. By this indirect method, in fact loss to the Government exchequer is being caused and only the traders are benefited.

13. Being aggrieved, the petitioner herein has filed the review petition challenging the order passed in W.A. No.130 of 2017 on the ground that the learned writ appellate Court has overlooked the fact that the power of the Marketing Committee to make bye-laws and amend bye-laws lies in Section 80 and 81 of the Adhiniyam, 1972 and it is from the provisions of these sections that the Managing Director, respondent No.2 - Marketing Board has borrowed powers and has passed the order only for insertion/amending the bye-laws and has not amended the Schedule as pointed out by the original appellant in the writ appeal.

14. Learned Senior Counsel for the petitioner further argued that a bare perusal of Sections 80 and 81 of the Adhiniyam, 1972 would show that the Managing Director/Marketing Board is duly and sufficiently empowered to make such bye-laws and amend such bye-laws as necessary for various activities *inter alia* for regulation of business, conditions of trading in market, delegation of powers etc.

15. Learned Senior Counsel for the petitioner further submitted that the learned Single Judge was right in allowing the writ petition in as much as Section 60 of the Adhiniyam, 1972 deals with different situation and contemplates a different issue all together which empowers State Government to amend the schedule and no one else. The Managing Director has rightly exercised its power under Section 81 of the Adhiniyam, 1972 and has only amended the bye-laws, that too, as an alternative. Therefore, the order passed in the writ appeal is erroneous and has been passed only on the basis of misinterpretation of the provisions of Sections 60, 80 and 81 of the Adhiniyam, 1972.

16. Section 60 of the M.P. Krishi Upaj Mandi Adhiniyam, 1972 is reproduced below :-

Section 60 - Power of State Government to amend Schedule.

The State Government may, by notification add

to amend or delete any of the items of agricultural produce specified in the Schedule and thereupon the Schedule shall be deemed to be amended accordingly: Provided that no notification shall be issued under this section without giving in the Gazette previous notice of not less than six weeks as the State Government may consider reasonable of its intention to issue notification

17. Section 81 of the Adhiniyam, 1972 is as under :-

Power of Managing Director to direct making or amendment of bye-laws-1)*If it appears to the [Managing Director] that it is necessary or desirable in the interests of a Market Committee to make any bye-law or to amend any bye-law, he may, by order, require the Market Committee concerned to make the bye-laws or the amendment of the bye-law within such time as he may specify in such order.*

(2) If the Market Committee fails to make such bye-laws or such amendment of the bye-laws within the time specified, the opportunity of being heard by an order make such bye-law or such amendment of the bye-law and thereupon subject to any order under subsection (3), such bye-laws or such amendment of the bye-law shall be deemed to have been made or amended by the Market Committee in accordance with the provision of this Act or the rules made thereunder and thereupon such bye-law or amendment shall be binding on the Market Committee.

(3)An appeal shall lie to the State Government from any order of the [Managing Director] under subsection (2) within thirty days from the date of such order and the order of the State Government on such appeal shall be final.

18. On the other hand, learned counsel for the respondents opposed the prayer and submitted that the order passed in the writ appeal is proper and

no interference is called for as the scope in review is limited.

19. Heard the learned counsel for the parties and perused the record.

20. From bare perusal of Section 81 of the Adhiniyam, 1972 categorically deals with the powers of the Board to make amendment or amend the bye-laws empowering the marketing Committee to amend the bye-laws to any extent for various purposes. Section 60 of the Adhiniyam, 1972 deals with a different situation and contemplates a different issue all together empowering the State Government to amend the schedule only. The State Government alone has the power to amend the schedule.

21. In the present case, Garlic(dry or wet) continues to be in the same Schedule i.e. Schedule - X of the condiments, spices and others. Therefore, in the opinion of this Court, an apparent error has crept in while interpreting Sections 60 and 80 of the Adhiniyam, 1972. Admittedly, the Managing Director has amended the bye-laws and not the Schedule to the Adhiniyam, 1972. Because of the aforesaid misinterpretation in the writ appeal order, the farmers/agriculturist are bound to sell the Garlic (Wet or Dry) to the Government bodies only. Infact, the Managing Director has exercised its power in accordance with law. The apparent error on the face of the record has crept in while

passing the order in writ appeal. Accordingly, the order dated 23.01.2024, passed in W.A. No.130 of 2017 is set aside. As a consequence, the order dated 07.02.2017, passed in W.P. No.1943 of 2016 is hereby restored.

22. The review petition stands allowed. No order as to costs.

23. In view of the fact that ***Review Petition No.211/2024*** is allowed, as a consequence, ***Review Petition No.753/2024(Kailash Mukati & Ors. Vs. State of Madhya Pradesh & Ors.)*** also stands allowed and disposed of.

24. The original order be kept in the present R.P. No.211 of 2024 and a copy whereof be placed in the record of connected R.P. No.753 of 2024.

(S.A. DHARMADHIKARI)
JUDGE

(DUPPALA VENKATA RAMANA)
JUDGE